

THE REPUBLIC OF UGANDA.
IN THE TAX APPEALS TRIBUNAL AT KAMPALA REGISTRY
MISC.APPLICATION NO. 67 OF 2023
(ARISING FROM MISCELLANEOUS APPLICATION NO. 45 OF 2023)
AND
(ARISING FROM APPLICATION 54 OF 2023)

UGANDA REVENUE AUTHORITY..... APPLICANT
VERSUS
D & M CONSULTS LIMITED..... RESPONDENT

BEFORE DR.ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA

RULING

This ruling is in respect of an application for review of the tribunal's decision granting the respondent a temporary injunction in Miscellaneous Application 45 of 2023

The applicant seeks for an order that the Tribunal reviews its decision in Miscellaneous Application 45 of 2023 and sets aside the temporary injunction granted. The applicant contended that said application was based on an invalid withholding tax (WHT) exemption certificate which was misrepresented as valid. It also contended that tribunal should set aside the order on the ground of discovery of new important material. The respondent objected to the jurisdiction of the tribunal to review its own decision and that the applicant has not proved the grounds for review.

Issues

- 1) Whether the tribunal has jurisdiction to review its own decisions?
- 2) Whether the applicant has sufficient grounds to review the orders granted in Miscellaneous Application 45 of 2023?

The applicant was represented by Mr. Joseph Angura while the respondent by Mr. Samuel Oseku and Ms. Barabara Nahone Ajambo.

The applicant premised its application on Sections 82 and 98 of the Civil Procedure Act, Order 46 Rule 1, Order 41 Rule 1 of the Civil Procedure Rules, S. 26 of the Tax Appeals Tribunal Act and Rule 30 of the Tax Appeals Tribunal (Procedure) Rules 2012. The grounds of the application are;

- 1) That the said certificate relied on by the respondent had expired and has no legal effect.
- 2) That the said order is a bar to the applicant exercising its statutory mandate of revenue collection and that the grant of WHT exemption its mandate.
- 3) That the order granted in the Miscellaneous Application 45 of 23 was barred by law since the said exemption certificate had expired in 2022.
- 4) That the respondent doesn't have a valid exemption certificate, thus did not come to the tribunal with clean hands.

The application was supported by an affidavit of Mr. Abel Kagumire, the Commissioner Customs. The gist of his affidavit is that the respondent filed Application 54 of 2023 in the Tax Appeals Tribunal on the ground that the applicant cancelled its WHT tax exemption certificate. The respondent obtained an interim order to restrain the applicant from collecting WHT and further a temporary injunction with similar prayers as the interim order. The deponent contended that upon scrutinizing the certificate it established that it had expired. It was issued for the period 1st July 2021 to 30th June 2022. It contended that the applicant relied on an expired WHT exemption certificate to circumvent payment of taxes during the Financial Year (FY) 2022/2023. This would result in unfair treatment of other importers in Uganda. The deponent further contended that the order which was granted was barred by law and premised on fraud. The reliance on an expired WHT exemption shows that the respondent did not approach court with clean hands. The court should review and set aside the order.

The respondent's director Mr. Mujulizi Deo deponed that the Tribunal has no jurisdiction to review its decision. The application is frivolous, vexatious and untenable because it would require the Tribunal to sit as an appellant court in its own decision. The application is bad in law as it is brought under a wrong law and not based on any grounds for review. The respondent contended that its application 54 of 2023 was filed as a result of the applicant withdrawing its WHT exemption without giving it a fair hearing. It challenged the legality, rationality and procedural propriety of such decision, The Tribunal granted a permanent injunction for all entries in 2021 to 2022 which were within the period when the WHT exemption was in force. He contended that the respondent used the expired WHT certificate for the years 2021/2022 and not 2022/2023. He contended that it is erroneous to assert that the respondent may not pay taxes when it can be compelled to pay them if the tribunal finds against it on merit.

The applicant cited S. 82 of the Civil Procedure Act and O. 46 r. 1 of the Civil Procedure Rules. It submitted that one of the grounds for review is discovery of new and important matter or evidence which after the exercise of due diligence was not within knowledge of the party or could not be produced at the hearing. It further cited O. 41 R. 4 of the Civil Procedure Rules which provides that; 'any order for an injunction may be discharged or varied or set aside by the court on an application made to the court by any party satisfied within the order.' The applicant cited *AZK Services Ltd v Crane Bank Ltd* Civil Suit 334 of 2016 for what amounts to misrepresentation, where it was stated that

'The law dictionary at law.com defines misrepresentation as an intentionally or sometimes negligently false representation made verbally or by conduct or sometimes by non-disclosure or concealment and often for the purpose of deceiving, defrauding or causing another to rely on it detrimentally; also; an act or instance of making such a representation.'

The applicant submitted that the effect of misrepresentation is that once there is a false statement, it is then necessary for the representee to demonstrate that the false statement induced them to enter into a contract. It also cited *Bisset v Wilkinson* [1927], *Horsfall v Thomas* [1862] 1 H & C 90, *Long v Lloyd* 1 WLR 753 for the proposition that that a party may apply to court for a review of an order or a decree passed by it upon discovery of

new evidence which after exercise of due diligence was not within its knowledge and could not be produced at the time when the order was made.

The applicant submitted that the exemption certificate was valid up to 30th June 2022. At the time of the grant of the injunction the exemption certificate was invalid. It cited *British America Tobacco Uganda Ltd v URA* Application 62 of 2019 wherein the Tribunal stated that one cannot correct or nullify something that has expired, it's like chasing wind. The applicant further submitted that the respondent intentionally presented an invalid tax exemption with the purpose of causing the applicant to rely on it, which is a false representation. The applicant also cited *Red Concepts Ltd v URA* Application 36 of 2023 to show that information submitted to the tribunal must be accurate. If it is false or misleading the tribunal cannot condone such illegality as it would be perpetrating fraud, It also cited *Active Automobile v Crane Bank Ltd* Civil Appeal 21 of 2001 and *Scott v Brown Doeing MCNOI and Co* (3) (1892)2 QD, 724-728.

In reply, the respondent submitted that the Tax Appeals Tribunal is not vested with jurisdiction to review its own decision which mandate is with the high court. Jurisdiction is imposed by statute. The respondent cited *Words and Phrases Legally Defined*, Volume 3 1-N p. 13 where it is stated that where a court exercises a jurisdiction which it does not possess, its decision amounts to nothing. It also cited *Uganda Revenue Authority v Rabo Enterprises (U) Ltd and another* Civil Appeal 12 of 2004. The respondent further cited *Hillside Landscape Construction Inc. v City of Lewiston*, 151 Idaho 749, 753,264, P.3d 388, 392 (2011) 111 for the position that words of a statute must be given ordinary meaning. It submitted that Article 152(3) of the Constitution of Uganda gave Parliament powers to make laws establishing Tax Appeals Tribunals for setting tax disputes. Parliament enacted the Tax Appeals Tribunal Act. S. 22 of the Act vested the Tribunal with powers to conduct proceedings. The proceedings must conform to the stipulations of the Act. The respondent cited S. 1(h) of the Act for the definition of proceedings in relation to the tribunal, which means;

- I) An application to the tribunal for the review of a taxation decision.
- II) An application to the Tribunal for an extension in time as per section 16(2)

- III) An application to the Tribunal for the reinstatement of an application under S. 25(4).

The respondent cited *Saint Alphonsus Reg'd Medical Center v Gooding City*, 159 Idaho 84, 356 p 3d 377, 380 (2015) and submitted that where a statute specifies certain things, the designation of such things excludes all others. An application for review of its own decisions is not among the proceedings that legislature vested the Tribunal with jurisdiction to handle. The respondent submitted that the power of review under S.14 of the Act is for review of taxation decisions. It would be wrong to assume that it is for review of its own decisions. It cited *Heritage Oil and Gas Ltd v Uganda Revenue Authority* Application Miscellaneous 26 of 2011 where the tribunal dealt with an issue of whether it has jurisdiction to stay its own decisions. The tribunal held that the review body for the purpose of the decisions of the Tax Appeals Tribunal is the High Court.

The respondent also submitted that the legislature amended S. 28(3) of the Tax Appeals Tribunal Act and provided for the tribunal as a reviewing body. The amendment provides for the right of appeal from the decisions of the High Court to the Court of Appeal and then supreme court. The respondent explained that the reviewing court for the purpose of any decision of the commissioner is the Tax Appeals Tribunal .

The right to review arises from S. 82 of the Civil Procedure Act where a party is aggrieved by a decree/order from which an appeal is allowed. The respondent submitted that the tribunal cannot invoke S. 82 of the Civil Procedure Act as it was dealt with *Housing Finance Bank Ltd v Uganda Revenue Authority* Civil Appeal 22 of 2012 and *URA v Rabo Enterprises* (supra). The respondent stated that a person considered aggrieved is one who has suffered a legal grievance as stated by Odoki CJ in *Mohammed Allibhai v W.E Bukenya Mukasa and Departed Asians Property Custodian Board* SCCA 56 of 1996. The respondent submitted that for a party to succeed they must prove the grounds of review laid down in O. 46 r. 1 of the Civil Procedure Rules as stated in *FX Mubuke v Uganda Electricity Board* High Court Miscellaneous Application 98 of 2005. These are

- 1) Error apparent on the fact of a record.

- 2) Discovering of new and important evidence which after exercise of due diligence was not within the applicant's knowledge.
- 3) Any other sufficient reason. According to *Re Nakivubo Chemists (U) Ltd* [1979] HCB 12 the expression 'sufficient' should be read as meaning sufficiently of a kind analogous to the above two grounds.

The respondent submitted that this application is founded on misrepresentation of facts that the exemption it possesses are of the year 2021/2022. The entries for which it imported rice in January 2022, that is C248, C526, C528, C583 and C259 were not liable to pay WHT as there was a valid WHT exemption. The respondent objected to the applicant's sudden withdrawal of the exemption. After a protracted exchange of letters without an amicable solution, the respondent filed Application 54 of 2023 challenging the legality of the applicant's actions.

The respondent submitted the applicant has not demonstrated any self-evident error. The authorities it referred to are on contract and do not aid the present case. Hence should be disregarded.

Having read the application and the submissions of the parties, this is the ruling of the tribunal.

The respondent filed Application 45 of 2023 challenging the applicant's refusal to release its goods on payment of WHT which it contends were validly exempted from WHT. The respondent applied for a temporary injunction in the said application which was granted, restraining the applicant from collecting WHT. The respondent was also ordered to pay 30% of the tax in dispute. The applicant has applied for a review of the order on grounds of discovery of new evidence and an error on face of the record.

The application was brought under Sections 82 and 98 of the Civil Procedure Act. S. 82 reads.

"Any Person considering himself/ herself aggrieved;

- a) By a decree/ order from which on appeal is allowed by this Act, but from which no appeal has been preferred or
- b) By decree or order from which no appeal is allowed by this Act may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit."

S. 98 reads

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such order as may be necessary for the ends of justice or to prevent the abuse of the Court."

The applicant cited O 41 R.4 of the Civil Procedure Rules which provides "Any order for an injunction may be discharged or varied by the court on application made to the court by any party dissatisfied with the order."

The respondent objected to this application on the ground that it was improperly before the tribunal. It submitted that the Tribunal has no jurisdiction to entertain it. It is only limited to proceeding listed in S. 1(a) of the Tax Appeals Tribunal Act, that is to say;

- i) An application to a tribunal for review of a taxation decision
- ii) An application to a tribunal for an extension of time the under S. 10(2).
- iii) An application to a tribunal for reinstatement of an application under S. 25(4).

The Procedure before the Tribunal is set in out in S. 22 of the Tax Appeals Tribunal Act. For the purpose of this application, S. 22(3) of the Act states that

"The proceedings of a tribunal shall be conducted in accordance with such rules of practice and procedure as the Tribunal may specify, and the tribunal may direct the application of the rules of practice and procedure of any court subject to such modifications as the tribunal may direct. "

In line with the said Section, the Tax Appeals Tribunal promulgated the Tax Appeals Tribunal Procedure Rules. Rule 31 of the said Rules reads

"(1) In any matter relating to the proceedings of the Tribunal for which these Rules do not provide, the rules of practice and procedure of the High Court shall apply.

(2) The Tribunal may direct the modifications of the use of any rule of practice or procedure of the High Court."

The practice and procedure of the High Court is set in the Civil Procedure Act and the enabling Civil Procedure Rules. In line with the practice and procedure in the High Court the Tax Appeals Tribunal adopted the Civil Procedure Act and the enabling Civil Procedure Rules with some modifications deemed necessary. S. 82 of the Civil Procedure Act enables the High Court to review a decision. S. 98 allows the High court to make orders so as to meet the ends of justice and to prevent abuse of court process. O. 41 R.1 of the Civil Procedure Rules allows an order for a temporary injunction to be varied where a party is aggrieved. If the said practice and procedure is used in the High Court, the applicant has not explained why it cannot be applied in the Tribunal especially where it may be necessary to meet the ends of justice and prevent abuse of court process. If there is an error on the record why would the Tax Appeals Tribunal refuse to review it so as to correct it to meet the ends of justice?

The applicant cited S. 1 of the Tax Appeals Tribunal Act which deals with the definition of an applicant and states what the applicant has applied for. A statute must be read as a whole. S. 28 of the Tax Appeals Act reads

"Operation and implementation of a decision subject to review or appeal.

- (1) Where an application for review of a taxation decision has been lodged with a tribunal or an appeal against a decision of a tribunal has been lodged with the High Court, the reviewing body may make an order staying or otherwise affecting the operation or implementation of the decision under review or appeal, or a part of the decision, as the reviewing body considers appropriate of the purposes of securing the effectiveness of the proceeding and determination of the application or appeal."

The said Section mentions review of an application or appeal at the tail end of delivery of justice. S. 1(k) defines a taxation decision to include a decision. However, S. 28 does not seem to limit a taxation decision to one made by the respondent. The Section has to be given a purposive interpretation so as to handle reviews after a decision has been made by the Tax Appeals Tribunal. Otherwise, the whole Section will be nugatory on reviews. S. 22(3) of the Act defines a reviewing body. It states

"(3) In this Section, "reviewing body" means-

- (a) in the case of an application for review to a tribunal, the tribunal or
- (b) in the case of appeal to the High Court, the High Court.”

In short, the Section states that parties apply for review to the Tribunal and appeals to the High Court. Therefore, the application for review by the applicant is properly before the Tribunal.

The grounds for review are set out in Order 40 of the Civil Procedure Rules which reads “Application for review of judgment.

(1) Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.”

The applicant contended that there was an error when the application for temporary injunction was granted. The error was that the temporary injunction was granted when the WHT exemption certificate had expired. It also contended that the tribunal should set aside the temporary injunction on the ground of discovery of a new important material.

The applicant contradicts itself when it states that the injunction was granted as a result of an error. In the same breath it states that injunction was granted as a result of fraud. Fraud connotes a deliberation action and not an erroneous one. So, which of the two is applicable? It is not clear whether the error was on the part of the applicant or that of the Tribunal. In its application the respondent stated that the exemption certificate had been cancelled. It contends that there was no error when the tribunal granted the temporary

injunction. The law on review is that for a party to rely on the ground of an error existing on the face of the record, it must be manifestly self-evident.

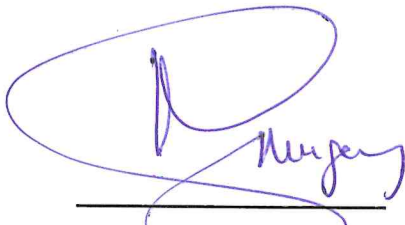
In addition, there must be a discovery of new evidence which was not within the applicant's knowledge. The applicant states that the injunction should be set aside on discovery of a new information. There are two contradictory positions on what happened to the WHT exemption certificate. The applicant contends that the certificate expired. On the other hand, the respondent contends that the applicant cancelled the certificate. If it expired, the Tribunal notes that it is the applicant who issued the WHT exemption certificate. Therefore, it ought to have known when it expired or should expire. If it was cancelled, how did the respondent cancel a certificate that had expired? How can one cancel a WHT exemption certificate and not be aware of it? At the time the temporary injunction was granted that information on the status of the certificate was within the purview of the applicant. The respondent clearly stated in paragraph 10 of its main application that it protested the applicant's cancelling of its WHT exemption. The application was filed on 12th April 2023. By the time the injunction was granted on 5th May 2023, the applicant was aware of its action cancelling the WHT exemption certificate. Whether it had expired or cancelled would make no difference. Because the effect of cancelling a certificate and it expiring are the same. It is null and void. If the applicant ignored to act on the said information at the time of the grant of the injunction, it cannot claim it is new information. It did not exercise due diligence. As to whether the WHT had expired or was cancelled the Tribunal can only determine that after listening to the parties during the hearing of the main application on merit.

In its main application, the applicant is contesting the cancelling of its WHT exemption certificate. It contends that there were custom entries which came under the exemption. A closer scrutiny of the custom entries reveals that the dates on which these were made fell within the period for which the WHT exemption certificate was granted. The injunction was to prevent the applicant from collecting taxes until the main application was heard. The respondent paid 30% of the tax in dispute. Therefore, it would not prejudice if the status quo remains the same till the main application is disposed of. It is important for the

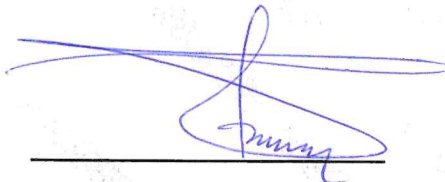
applicant to note that the injunction is limited to restraining it from charging and collecting WHT as exempted for entries C248, C526, C 527, C528, C582, C583, C9259 pending determination of Application 54 of 2023. The applicant has not been curtailed from collecting and charging WTH from any other entries of the respondent so long as they do not form part of the subject matter in dispute. This also vitiates its argument that it cannot exercise its mandate.

For these reasons, this application is dismissed with costs to the respondent.

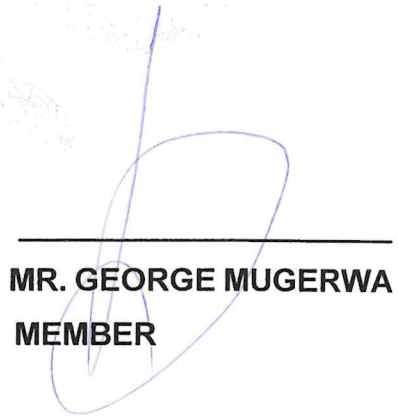
Dated at Kampala this 18th day of July 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MR. GEORGE MUGERWA
MEMBER