THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 22 OF 2012

HOUSING FINANCE BANK LTD .... APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY .... RESPONDENT

CORAM : Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Stephen Musota, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment of my learned brother Hon. Mr. Justice Christopher Madrama, JA.

I agree with him that, there appears to be no provisions in law granting a party a right to appeal to this Court from a decision of the High Court on appeal from the Tax Appeals Tribunal.

I also agree with his observations and findings that, an appeal to this Court in those circumstances may be allowed with leave of the High Court or this Court, upon application by a party seeking to appeal. In this particular case, the appellant does not appear to have sought leave to appeal at the High Court or at this Court.

Be that as it may, *Rule 42* of the Rules of this Court provides as follows:-

42. Order of hearing applications.

(1) Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court.

(2) Notwithstanding subrule (1) of this rule, in any civil or criminal matter, the court may, on application or of its own motion, give leave to appeal and grant a consequential extension of time for doing any act as the justice of the case requires, or entertain an application under rule 6(2)(b) of these Rules, in order to safeguard the right of appeal, notwithstanding the fact that no application for that purpose has first been made to the High Court.

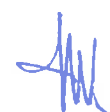
It is evident from the above Rule that this Court may on its own motion grant leave to appeal whenever the peculiar circumstance of the case so require.

Had the appellant sought leave to appeal when this matter came up for hearing before us, I would have granted it without hesitation considering the importance of the questions of law the matter before us has raised, which in my view are of great public importance and are peculiar.

The Rule 2(2) of the Rules of this Court stipulates as follows:-

(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any court caused by delay.

The above Rule, read together with *Rule 42* of the Rules of this Court (Supra) and *Article 126 (3)(c)* of the Constitution clearly requires this Court to apply the principle that substantive justice shall be administered without undue regard to technicalities.



In this case there being no law that expressly bars an appeal to this Court from the decision of the High Court on appeal from Tax Appeals Tribunal and in view of the provisions of the a law I have cited above which are clearly permissive , I would be inclined to grant leave to appeal on Court's own motion and order that the appeal proceeds for hearing on merit. This however, is the minority decision.

Since Hon. Madrama Izama and Hon. Musota JJA have both struck out this appeal with costs for the reasons set out in their respective Judgments, It is ordered.

Dated at **Kampala** this ....9th..................day of ....March.........2020.

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Kenneth Kakuru
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPEAL NO. 22 OF 2012

5 **HOUSING FINANCE BANK LTD :::::::::::::::::::::::::: APPELLANT**

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::::::::: RESPONDENT

10

CORAM:

HON. MR. JUSTICE KENNETH KAKURU, JA

HON. JUSTICE STEPHEN MUSOTA, JA

15 **HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA**

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Christopher Madrama.

20 I agree with his analysis, conclusions and proposed orders therein. The law did not confer a right of appeal from the decision of the High Court to this court pursuant to an appeal emanating from a decision of the Tax Appeals Tribunal under the Value Added Tax Act and the Tax Appeals Tribunal Act.

25 The principle Acts which are the Tax Appeals Tribunal and the Value Added Tax Act enacted by parliament under Article 152(3) of the Constitution of the Republic of Uganda do not confer a right of Appeal from the decision of the High Court.

Therefore the Court of Appeal has no jurisdiction to hear this appeal.
30 This appeal is accordingly struck out with costs.

Dated at Kampala this 9th day of March 2020

5 ....

Stephen Musota

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 22 OF 2012

(CORAM: KENNETH KAKURU, STEPHEN MUSOTA & MADRAMA, JJA)

HOUSING FINANCE BANK LTD} ....APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY} ....RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

This appeal arises from the decision of the High Court of Uganda (Commercial Division) dated 17th September, 2010 by Hon. Mr Justice Lameck Mukasa allowing an appeal by the respondent from a decision of the Tax Appeals Tribunal delivered on 11th of May 2007.

The background to the appeal is sufficiently set out in the judgment of the High Court on appeal from the Tax Appeals Tribunal. The genesis of the dispute is that a VAT assessment was made by the respondent against the appellant in respect of earnings under 3 Government housing projects. The first was described as the "Namuwongo Project". The second was described as the "Government Pool Houses Project" and the third was described as the "National Housing Pool Houses Project". The Namuwongo project was based on an agency agreement between the Government of the Republic of Uganda and the appellant dated 16th March, 1991. It was to facilitate the development and upgrading of the Namuwongo low income (slum) area by establishing a fund to constitute a principal source of assistance to individuals and persons desirous of building and improving their houses at Namuwongo. The appellant was required to administer and handle the fund on behalf of the government. The appellant would disburse to the

developer the required building materials and was entitled to charge an interest of 20% per annum on the amount disbursed to the developer. The appellant was required to apportion 10% of the interest for remittance to the Government of Uganda and to retain 10% as administrative costs and contribution to the fund. As security for repayment of the credit, developers were obliged to execute a mortgage in favour of the appellant.

The 2nd project namely the Government Pool Houses Project was based on an agency contract between the appellant and the Government of Uganda dated 23rd September, 1994. Under the arrangement the Government of Uganda was the owner of the pool houses occupied by public servants. The Government facilitated the occupants of the pool houses to purchase and acquire them. The appellant was appointed as an agent to receive the proceeds of the sale of the pool houses under the project. Where the purchaser was unable to pay the total purchase price within the stated period, the appellant was to enter into a mortgage arrangement with the purchaser after the purchaser had made part payment of at least 10% of the mortgage value of the property. The appellant could charge an interest on the mortgage loan of 1% per annum above the saving rate. The Government was not to have any responsibility whatsoever under the mortgage. For Administration of the project, the Government was to pay the appellant 60% per annum of the interest charged on the principal sum deposited by the mortgagor.

The 3rd project namely the National Housing Pool Houses Project was governed by another agency agreement between National Housing and Construction Corporation and the appellant dated 23rd May, 1995. Under the agreement the appellant was an agent charged with the task of collecting the proceeds of sale of the houses and buildings. The appellant was entitled to retain 2% of the interest chargeable on the mortgage. The purchasers were to execute mortgages in favour of National Housing and

Construction Corporation which in turn granted the appellant a power of attorney for purposes of the agreement to act on its behalf. Under that agreement, the purchasers executed mortgages in favour of the corporation where the purchase price was not paid in full.

The respondent (Uganda Revenue Authority) issued a VAT assessment for Uganda shillings 5,491,436,703/= as VAT on the sale of houses on the 3 projects and on the part of the interest earned by the appellant thereunder. The appellant objected to the assessment and the respondent reduced the sum assessed to Uganda shillings 2,427,486,928/= as VAT.

The appellant appealed to the Tax Appeals Tribunal on the ground that it was not a registered VAT company and it had not collected any VAT from the credit purchases under the 3 projects. Secondly, the appellant contended that there was a misdirection on the classification of the services it rendered which services were financial services and that financial services are exempt supplies for purposes of VAT. Any interest earned by the appellant, was earned pursuant to the provision of financial services, which services are exempt supplies from VAT. On the other hand, the respondent maintained that the appellant's services under the 3 projects did not fall within the classification of financial services under the VAT Act. Secondly, the commission the respondent earned through the 3 agency contracts amounted to commission paid for debt collection services which is liable to VAT.

The issue for consideration before the Tax Appeals Tribunal was:

1. Whether the services rendered by the appellant to the Government of Uganda and the National Housing & Construction Corporation in administering the credit sales of houses in respect of the 3 projects were financial services within the meaning of the VAT Act?

2. Whether the earnings of the appellant for rendering the services in respect of the 3 projects were exempt from VAT?

The Tax Appeals Tribunal noted that the question to be answered was whether the appellant rendered the services as an agent of 2 principals namely the Government of Uganda and the National Housing and Construction Corporation in which case the services would have been rendered by the principals. Further, whether the services rendered were financial services exempt from VAT under section 19 (1) of the VAT Act. It was the contention of Uganda Revenue Authority that the services were debt collection services which were not financial services envisaged under the VAT Act. The Tax Appeals Tribunal held that the services rendered by the appellant went further than mere debt collection. The appellant had executed mortgage agreements and opened accounts for its clients as a financial institution. The appellant also opened up a branch to render services for its clients as a financial institution. The tribunal ruled in favour of the appellant on the 1st issue.

On the issue of whether the services rendered by the appellant under the 3 projects was exempted from VAT, the tribunal found that having ruled that the services rendered by the appellant to its 3 principles were financial services, it inevitably came to the conclusion that the earnings do not fall for assessment for VAT because they are exempted by section 19 of the VAT Act having been specifically listed under schedule 2 (1) (c) of the VAT Act. In the premises the Tax Appeals Tribunal quashed the assessment and ordered a refund of 30% of the disputed tax with interest to be paid on the same from the date of the deposit until payment in full. The appellant was further awarded the costs of the appeal.

Uganda Revenue Authority which was the respondent before the Tax Appeals Tribunal appealed to the High Court against the decision on the following grounds:

1. The Tribunal erred in law when it held that the services performed by the applicant under the 3 projects were financial services within the meaning of section 19 and the 2nd schedule of the VAT Act.
2. The Tribunal erred in law when it held that the meaning ascribed to financial services namely granting, negotiating and dealing are separate activities and must interpreted as such.
3. The Tribunal erred in law when it failed to evaluate all the evidence thereby reaching a wrong conclusion.

In resolving the appeal, the learned judge of the High Court firstly resolved the issue of whether the meanings ascribed to financial services namely granting, negotiating and dealing are separate activities and must be interpreted as such. He noted that the import of the tribunal's holding is that the granting, negotiating and dealing were separate activities. The Tribunal noted that an activity must be completed as a grant without necessarily involving negotiations or dealing. Therefore, each of the separate activities can stand alone as a financial service within the meaning of section 19 and the 2nd schedule to the VAT Act. The learned High Court judge considered the definition of financial services and the services generally in the 2nd Schedule paragraph 2 (b) (i) of the VAT Act and the use of the word "and" and held that the word "and" denotes a conjunctive while the word "or" denotes a disjunctive. He held that the words granting, negotiating and dealing were used conjunctively and not disjunctively. In the context of the relevant provision he held that granting is giving or offering while negotiating is communicating with another party for the purposes of reaching an understanding or agreement. Finally, the dealing is the transacting. The words therefore have to be read together conjunctively. The learned High Court judge held that the provision dealt with loans, credit, credit guarantees and any security for money and none of these can be dealt with by a financial institution without being negotiated. A successfully negotiated service is granted. For a financial

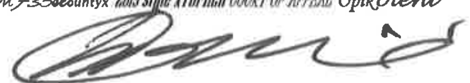
institution to be exempted under section 19 of the VAT Act, the provider of services liable to VAT must have granted, negotiated and dealt in the specified transaction. The High Court allowed the 2nd ground of appeal.

On the 1st ground of appeal on the issue of whether the tribunal erred in law when it held that the services performed by the appellant under the 3 projects were financial services within the meaning of section 19 and the 2nd Schedule of the VAT Act, the learned judge considered the definition of the supply of services under section 11 of the VAT Act. He noted that financial services were exempt from VAT. The financial services are those defined in paragraph 2 (b) of the schedule. Whether the services rendered by the appellant were financial services was a question of fact and law. The question to be considered was whether the appellant granted, negotiated and dealt with the loans or credit with the beneficiaries under the three projects.

Under the Namuwongo project, the High Court found that there were elements of granting, negotiating and dealing and therefore the appellant provided financial services, which services were exempt from VAT under section 19 and the 2nd schedule to the VAT Act.

Under the Government Pool Houses Project agreement, the High Court found that the appellant dealt in an already negotiated and granted credit which it converted into a loan secured by a mortgage executed in its favour. The services lacked the elements of grant and negotiation and did not qualify for exemption.

Under the National Housing and Construction Corporation houses agreement, the High Court found that the appellant's services were collection of the instalments from the purchasers of the houses, execution of the mortgage in favour of the Corporation and there was no element of



grant or negotiation of the credit. It did not therefore qualify for exemption from VAT.

The appellant was aggrieved by the holding of the decision of the High Court and further appealed to this court. The grounds of the appeal are as follows:

1. The learned judge erred in law in holding that the words granting, negotiating and dealing with loans under the 2nd Schedule to the Value Added Tax Act could not be interpreted as separated activities.
2. The learned judge failed to contextually interpret the meaning assigned to "financial services" in the 2nd Schedule to the Value Added Tax Act and hence erred in holding that the services the appellant rendered to Government and National Housing and Construction Corporation were not VAT exempted services.
3. The learned judge misapplied the value added tax principle and erred in holding that section 19 of the Value Added Tax Act intended to grant some relief to taxpayers providing specified services and goods.
4. The learned judge erred in law in holding that the appellant did not supply its financial services to Government or National Housing and Construction Corporation (the principal) but did so on their behalf to 3rd parties and hence erroneously held that the appellant's services were outside the scope of section 13 (2) of the Value Added Tax Act.

The appellant prays that the appeal is allowed and the orders of the High Court are set aside and instead the orders issued by the Tax Appeals Tribunal are restored. The appellant also prays for the costs of the appeal in this court and in the lower court.

At the hearing of the appeal, the appellant was represented by learned counsel Mr James Nangwala while the respondent was represented by learned counsel Mr Alex Alideki Ssali. Both counsel adopted their written

submissions that had already been filed on the court record as their address to court on the appeal.

Ruling

I have carefully considered the record of appeal, the submissions of counsel as well as the law and I am confronted with the question of whether the Court of Appeal has jurisdiction to hear the appellant's appeal. The record clearly shows that the genesis of the dispute was a VAT assessment dated 15th of March 2005 by the respondent which was served on the appellant. The appellant lodged an objection to the Commissioner General against assessment of Uganda shillings 5,491,436,703/= as VAT by the respondent's officials. Pursuant to the objection, the Commissioner General of the respondent reduced the assessment to Uganda shillings 2,427,486,928/= as the VAT that was due for payment. The appellant was still dissatisfied with the objection decision and further appealed to the Tax Appeals Tribunal. The Tax Appeals Tribunal decided for the appellant and the respondent, being aggrieved by the decision of the Tribunal appealed to the High Court. The High Court reversed the decision of the Tax Appeals Tribunal. The appellant further appealed to this court.

It has been held by the East African Court of Appeal that appellate jurisdiction is a creature of statute. The statutory position on appellate jurisdiction can begin with article 134 (2) of the Constitution of the Republic of Uganda which provides that:

> (2) An appeal shall lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law.

The laws, if any conferring appellate jurisdiction on the Court of Appeal is supposed to be enacted by Parliament. Section 10 of the Judicature Act Cap 13 laws of Uganda 2000 provides for the appellate jurisdiction of the Court of Appeal as follows:

10. An appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this Act or any other law.

The question therefore is whether there are any other laws, which confer appellate jurisdiction on the Court of Appeal hear and determine appeals from decisions of the High Court having heard and determined an appeal from a decision of the Tax Appeals Tribunal. The Constitution itself and article 152 (3) thereof provides that:

(3) Parliament shall make laws to establish tax tribunals for the purposes of settling tax disputes.

There is therefore need to set out the laws establishing tax tribunals for purposes of settlement of tax disputes and any appellate system that it may prescribe. The statutory provisions which confer a right of appeal by a taxpayer from any objection decision or taxation decision of the Commissioner General can be found in the Value Added Tax Act Cap 349 and the Tax Appeals Tribunal Act Cap 345.

The objection to the assessment in this appeal that was addressed by the appellant to the Commissioner General is dated 29th August, 2005. The objection decision of the Commissioner General in respect of the stated objection is dated 22nd September, 2005 and it revised the VAT assessment as indicated above. Among other matters considered by the Commissioner General was the issue of whether or not the commission earned by the appellant was incidental to the provision of financial services and therefore an exempt supply. The appellant was aggrieved and applied for review of the taxation decision.

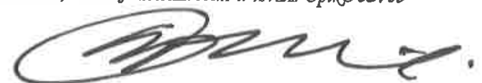
Section 1 (g) of the Tax Appeals Tribunal Act defines an "objection decision" as a taxation decision made in respect of a taxation objection. Secondly, section 1 (k) of the Tax Appeals Tribunal Act defines a "taxation decision" as any assessment, determination, decision or notice.

There is a subtle distinction or difference in wording as between a "taxation decision" and an "objection decision". An appeal from a decision of the Tax Appeals Tribunal only lies on a question or questions of law. Any assessment, determination, decision or notice may be reviewed by the Tax Appeals Tribunal. On the other hand, an "objection decision" arises as stipulated in section 1 (g) of the Tax Appeals Tribunal Act when "a taxation decision" is made in respect of a "taxation objection" and this may involve matters of interpretation of law as in this case. Under section 1 (2) of the Tax Appeals Tribunal Act, it is provided that:

> "(2) for the purposes of this Act, where a taxing Act provides that a person dissatisfied with a taxation decision may object against the decision, such an objection is referred to as a taxation objection.

The applicable law in 2005 when the cause of action arose was that an *objection decision* arises from a *taxation objection*. Under section 33A (ii) of the VAT Act an "*objection decision*" means a decision made by the Commissioner under section 33B (4) or (6). Under section 33B (1) of the VAT Act an aggrieved taxpayer may lodge an objection with the Commissioner from an assessment within forty-five days of receipt of the notice of assessment. On the other hand, the Value Added Tax Act further provided (by 2005) under section 33C (1) thereof that a person aggrieved by an objection decision of the Commissioner may within 30 days lodge an application for review of the objection decision with the Tax Appeals Tribunal. The limitation period for an application for review of a taxation decision is six months under section 16 (7) Tax Appeals Tribunal Act. I must note that an application for review to the Tax Appeals Tribunal from an objection decision is lodged within 30 days from the notice of the objection decision and is an appeal though the word review is used.

Section 18 of the Tax Appeals Tribunal Act provides that:



"In a proceeding before a tribunal for review of a taxation decision, the applicant has the burden of proving that—

(a) Where the taxation decision is an objection decision in relation to an assessment, the assessment is excessive; or

(b) In any other case, the taxation decision should not have been made or should have been made differently."

Section 18 (a) (supra) demonstrates that where an objection decision which arises from an objection is made by the Commissioner, the applicant to the Tribunal has to prove that the assessment was excessive. On the other hand, where the application for review arises from a taxation decision, the applicant has the burden of proving that the assessment should not have been made or that it should have been made differently.

Finally, section 33C of the VAT Act uses the word "appeal" with regard to an "application" for review to the Tax Appeals Tribunal from an objection decision of the Commissioner. Section 33C of the VAT Act provides as follows:

33C (1) A person dissatisfied with an objection decision may, within *thirty days* after being served notice of the objection decision, lodge an application with the Tax Appeals Tribunal for review of the objection vision and shall serve a copy of the application on the Commissioner General.

(2) An appeal lodged under subsection (1) shall be conducted in accordance with the Tax Appeals Tribunal Act 1997 and the Rules and Regulations made under it.

(3) A person shall, before lodging an application with the Tribunal, pay to the Commissioner General, thirty percent of the tax in dispute

or that part of the tax assessed not in dispute, whichever is the greater.

It is clear from the wording of section 33C (2) of the VAT Act that what is envisaged under section 33C (1) is an appeal to the tribunal. The use of the word application for review does not take away the substance of the application which is an appeal from an objection decision made by the Commissioner General pursuant to the powers of the Commissioner General to hear and determine objections lodged with the Commissioner from a taxation decision.

A further right of appeal was provided for by section 33D of the Value Added Tax Act and by the year 2005 and before amendment by subsequent Acts when this matter initially arose. It provides that:

> 33D (1) a party who is dissatisfied with the decision of the Tax Appeals Tribunal may, within thirty days after being notified of the decision, lodge a notice of appeal with the registrar of the High Court and the party so appealing shall serve a copy of the notice of appeal on the other party before the Tribunal.
>
> (2) An appeal to the High Court shall be made on a question of law only and notice of appeal shall state the question or questions of law that are to be raised on the appeal.

There is no further provision providing for a right of appeal from a decision of the High Court to the Court of Appeal. Similarly, section 27 of the Tax Appeals Tribunal Act only provides for appeals from a decision of the Tax Appeals Tribunal to the High Court.

As noted, an appeal to the High Court from the Tax Appeals Tribunal Act Cap 345 is commenced under section 27 thereof which provides that:

27. Appeals to the High Court from decisions of a tribunal.

> (1) A party to a proceeding before a tribunal may, within thirty days after being notified of the decision or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the tribunal.
>
> (2) An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.
>
> (3) The High Court shall hear and determine the appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the tribunal or an order remitting the case to the tribunal for reconsideration.

An appeal under section 27 (1) is lodged only on questions of law and by a party to a "proceeding" before a tribunal under the Act. A "proceeding" is defined by section 1 (h) of the Tax Appeals Tribunal Act as: (i) "an application to a tribunal for review of a taxation decision; (ii) an application to a tribunal for an extension of time under section 16(2); or (iii) an application to a tribunal for reinstatement of an application under section 25(4);"

In the appeal before this court, there was an application (which in my analysis was appeal) from a Taxation Decision of the Commissioner General pursuant to the appellant's application to the Commissioner General objecting to assessment for VAT.

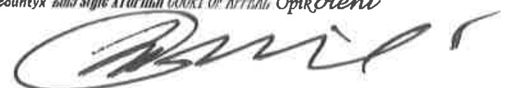
There is no further statutory provision for an appeal from a decision of the High Court on appeal from a decision of the Tax Appeals Tribunal under the laws enacted by legislature as directed by article 152 of the Constitution of the Republic of Uganda.

It may be suggested that an aggrieved person, who is aggrieved by the decision on appeal of the High Court may appeal under the general provisions of the law. First of all, such an appeal has not been provided for by the laws enacted by Parliament under article 152 of the Constitution. The principal Acts which are the Tax Appeals Tribunals Act as well as the Value Added Tax Act enacted by Parliament under article 152 (3) of the Constitution of the Republic of Uganda do not confer a right of appeal from a decision of the High Court made under the tax laws and procedures laid out there under for settling tax disputes. Article 152 (3) of the Constitution of the Republic of Uganda provides as follows:

> (3) Parliament shall make laws to establish tax tribunals for the purposes of settling tax disputes.

Those laws, as stated above, do not provide for any further right of appeal from the decision of the High Court on appeal from a decision of the Tax Appeals Tribunal.

As stated earlier, appellate jurisdiction is a creature of statute. This was held by the East African Court of Appeal in **Attorney General v Shah (No. 4) [1971] EA, 50**. In that decision the High Court of Uganda had made an order of mandamus against officers of government. The Attorney General filed an appeal and the respondent objected to the Court of Appeal on the ground that it had no jurisdiction to hear an appeal Spry Ag. P held that:



> It has long been established and we think there is ample authority for saying that appellate jurisdiction springs only from statute. There is no such thing as inherent appellate jurisdiction.

The learned Spry Ag. P further noted that the position is regulated by article 89 of the Constitution of the Republic of Uganda 1967 (since repealed) and the Judicature Act 1967 (since repealed) which make it clear that the court has only such jurisdiction as is conferred on it by Parliament.

Further in **Attorney General v Shah** (supra) Law Ag. V. -P concurred with Spry Ag. P and further considered the provisions of section 82 and 68 of the Civil Procedure Act (before revision) which provisions deal with appeals and considered whether the sections were *"any other law"* that conferred jurisdiction on the Court of Appeal. His Lordship held that section 82 of the Civil Procedure Act cannot be said to create a right of appeal.

Mustafa, JA concurred with Spry Ag. P and further held at page 51 that:

> Section 82 of the Civil Procedure Act relied on by the appellant relates only to procedural matters and does not confer a right of appeal. I am of opinion the appeal is incompetent and should be struck out.

The decision in **Attorney General v Shah** (supra) has never been overturned and is still good law. The provisions of the Civil Procedure Act which deal with appeals, are procedural sections and do not confer any right of appeal from a decision of the High Court to the Court of Appeal with regard to decisions made under the Value Added Tax Act.

In any case, the application for review of the objection should be considered as an appeal from the decision of the Commissioner General. It follows that appeal from the decision of the Tax Appeals Tribunal to the High Court, is to be considered as a 2nd appeal as envisaged by section 72 of The Civil Procedure Act Cap 71. It further follows that any appeal from the decision of the High Court under the VAT Act, which matter emanated

from an objection decision made by the Commissioner General and which was appealed to the Tax Appeals Tribunal, would be a 3rd appeal to the Court of Appeal. Section 73 of the Civil Procedure Act, envisages an appeal from a Magistrate grade II Court to the Chief Magistrate, a further appeal to the High Court as a 2nd appeal and any further appeal to the Court of Appeal on a certificate of the High Court that the appeal concerns a matter of great public or general importance. It provides that:

> 73. Third appeal.
>
> Where an appeal emanates from the judgment of a magistrate grade II but not including an interlocutory matter, the party aggrieved may lodge a third and final appeal to the Court of Appeal on the certificate of the High Court that the appeal concerns a matter of law of great public or general importance, or if the Court of Appeal in its overall duty to see that justice is done considers that the appeal should be heard.

It follows that even if it can be argued that an appeal is lodged under the general provisions the Civil Procedure Act, such an appeal had to be on the certificate of the High Court that it concerns a matter of law of great or general public importance or with leave of the High Court or Court of Appeal following an application for leave. In my judgment, the appeal before this court is not one of those which require the leave of the High Court but the question that arises is whether this court has jurisdiction conferred by Parliament to entertain the appeal. In any case, the appellant did not purport to seek the leave of the High Court or the Court of Appeal before lodging this appeal.

In the premises, any right of appeal is conferred by an Act of Parliament and Parliament did not deem it fit to confer a right of appeal from a decision of the High Court pursuant to an appeal emanating from a

decision of the Tax Appeals Tribunal under the Value Added Tax Act and the Tax Appeals Tribunal Act.

The Court of Appeal has no jurisdiction to hear the appeal. The appellant's appeal is accordingly struck out with costs.

Dated at Kampala the last day of 9th day of March 2020

Christopher Madrama Izama

Justice of Appeal