

RIO INSURANCE

v

UGANDA REVENUE AUTHORITY

HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)

HIGH COURT CIVIL APPEAL No. 12 OF 2000

(On appeal from orders in Miscellaneous Application No.15 of 1999 arising out of TAT 6 of 1999 in the Tax Appeals Tribunal)

(Before: Honourable Mr. Justice R.O. Okumu Wengi)

October 17, 2000

Appeals – Appeal from ruling of the Tax Appeal Tribunal – Notice of appeal – Requirement of service of notice

The appellant bound itself as surety to a third party in respect of taxes for a consignment of 40,000 litres of petroleum product in transit to Rwanda. The appellant executed a bond in the sum of shs. 24,546,000 being customs dues payable upon non-transit of the fuel to Rwanda. The fuel did not exit Uganda and the applicant was forced to pay on the bond it had executed. The appellant then appealed to the Tax Appeal Tribunal contesting its liability to pay on the bond. The Uganda Revenue authority did not file its defence in time and the matter proceeded *ex parte*. The applicant argued that since there was default by the defendant he was entitled to judgment as prayed for. The Tribunal proceeded to hear the appellant/applicant's case *ex parte*, in proof of its claim. The appellant applied for review of the Tribunal's decision to hear the matter, praying for an order of judgment in default. The Tribunal dismissed the application for review, whereupon the Appellant filed the present notice of appeal in the High Court.

Held: An appeal cannot be lodged *ex parte* and prosecuted *ex parte*. Both the *Tax Appeals Tribunal Act* section 28(1) and Order 39 (2) of the *Civil Procedure Rules* require Notice of an appeal to be served on the party to the proceeding in the Court below. In the instant case, although the proceedings in the tribunal had proceeded *ex parte*, on appeal, the appellant ought to have served a notice of appeal on the opposite party.

Appeal dismissed

Legislation referred to:

Civil Procedure Act Section 83

Civil Procedure Rules Order 9(4), Order 6, Order 39 (2), Order 42 rule 3(2)

Tax Appeals Tribunal Act section 28(1)

Tax Appeal Tribunal Rules 1999, Rule 30

Counsel for Appellant: Mr. Mayega

JUDGEMENT

OKUMU WENGI, J: This appeal was brought by way of Notice titled “Notice Of Appeal Exparte.” The Notice cited several laws namely section 28 of the *Tax Appeals Tribunal Act* section 83 of the *Civil Procedure Act* Rule 30 of the Tax Appeal Tribunal Rules 1999 and Orders 9(4) and 6 and Order 42 rule 3(2) of the *Civil Procedure Rules*. It sought essentially an order reversing the Tax Appeals Tribunal on the question whether in a Tax appeal before the tribunal, where the Uganda Revenue Authority did not file a defence, the applicant ought to have a default judgment entered in its favour. The facts of this case are set out in an undated ruling and award of the tribunal. They are simply that the appellant who was the applicant before the tribunal was surety to a third party who declared that a consignment of 40,000 litres of petroleum product was in transit to Rwanda. The applicant executed a bond in the sum of shs. 24,546,000 being customs dues payable should the fuel not transit to Rwanda. As night follows day as it were, the fuel never exited Uganda and the applicant was forced to pay on the bond it had executed. The applicant nevertheless appealed to the Tribunal contesting its liability to pay on the bond in the first place to pay. The matter proceeded exparte as the Uganda Revenue authority did not file its defence in time and was excluded. The applicant, then pressed that since there was default by the defendant he was entitled to judgment and in particular judgment in money without any further proof. The Tribunal did not accept this argument and in its ruling of October 5, 1999 decided to proceed to hear the appellant/applicant's case exparte, in proof of its claim. The appellant was unhappy with this decision and decided to apply for review of the Tribunal's order demanding that a judgment for the money be entered in default. The Tribunal heard the application for this review which it did not entertain and dismissed it in their undated ruling I referred to earlier. From this decision the appellant filed his Notice of appeal. This was partly because he was given two options namely either to proceed with his case before the Tribunal exparte or to appeal to this court. It was also partly because from the beginning the appellant felt strongly that the Tribunal had been wrong by not entering judgment for it and calling upon it to prove their claim.

In this appeal the Uganda Revenue Authority is named as a respondent but the advocate who appeared before me insisted that the appeal was exparte since the named respondent had been originally excluded from the trial proceedings. Learned counsel Mr. Mayega also contended that his was a liquidated claim for refund of shs. 24,546,000 and rather than formally prove the claim as ordered by the Tribunal a decree for the sum ought to have been entered in his client/s favour.

There are a number of legal problems in this appeal the first of which is that both the *Tax Appeals Tribunal Act* (section 28(1) and Order 39 (2) of the *Civil Procedure Rules* require Notice of an appeal to be served on the party to the proceeding in the Court below. I note that this was not done and the appellant's counsel contended that the reason was that the other party had been locked out of the proceedings. I do not agree that this is correct that an appeal should be lodged exparte and prosecuted exparte without allowing notice thereof to the side likely to be affected by its outcome, even if that party had been excluded by being in default from the trial. Somehow this appeal highlights the problem where a party may proceed exparte and lose a case. If he appeals on questions of law the appeal deserves some argument. This is perhaps partly why in appeals parties cannot just file a consent judgment in the appeal. On this ground alone I would

dismiss this Notice of Appeal.

I also note that in the proceedings before the Tribunal the claim was not for a liquidated sum but rather on a question whether or not the appellant was liable to pay the liquidated sum. There was no prayer for a refund or even a declaration that the appellant was entitled to recover the sum, this perhaps being left for proceedings in consequential relief. I also note that the question before the Tribunal was framed in paragraph 4 as follows

“4. Issue(s) on which a decision(s) is/are sought:

Whether the applicant is liable to pay U. Shs. 24,546,000 (Twenty four million five hundred forty six thousand) in the premises.”

There was no prayer for a refund of the sum paid under the bond. In the "statement of Facts and Reasons in support of the Application" the applicant also clearly sought for a hearing in proof of his side of the case. This side of the case was not for money but whether he was exempted from paying a sum of money. It is indicated at the end of the statement that a cargo receipt note and other evidence would be adduced in support of certain contentions favouring exemption of the applicant from the payment. Clearly formal proof in order for the declaration sought to be made was necessary.

In the circumstances the Tribunal acted properly in my view and even if it had entered interlocutory judgment before ordering the appellant to proceed ex parte to prove its case, such judgment would not give rise to a decree for payment of a liquidated sum of money. I agree with the Tribunal therefore that they would proceed to hear the appellants claim and take evidence on the matter if need be, and so proceed ex parte to decide the question before it. In the result this appeal fails and an order is made remitting the case back to the Tribunal to proceed to hear the appellant's case exparte. The appellant will also pay the costs of this failed appeal. Since this matter has been disposed of, there is no need for me to go into the other legal problems raised in these proceedings as necessary for my decision. *Appeal dismissed*