THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT)

CIVIL APPEAL No. 8/2011

(ARISING FROM TAT NO. 15/2010)

RO. III LT. JULIUS EMMY KUMANYA:::::::::::::::::::::::::::: APPELLANT

VERSUS

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

BEFEORE JUSTICE B.KAINAMURA

JUDGEMENT

The appellant, R.O III LT. Julius Kumanya lodged this appeal against the decision of the Tax Appeals Tribunal in TAT 15/2010 dated 26th April 2011 seeking orders that; (a) the appeal be allowed, (b) the ruling of the Tax Appeals Tribunal be reversed, (c) the respondent pays costs of the appeal.

The brief facts are that the appellant who is employed as an qualified accountant in the UPDF filed an application for permission to import a vehicle from Japan tax-free. He was denied the request by the respondent. The appellant then imported his motor vehicle and paid the import duties of Ug shs 3,489,838/=

on the 31st of March 2010. The vehicle was thereafter registered in his name under registration number UAN 993G. The appellant objected to the assessment before the Tax Appeals Tribunal under TAT application No. 15 of 2010. His contention was that as a professional serving in the UPDF, he was entitled to import a motor vehicle free from taxes according to the UDPF Act and Regulation 29 of The Uganda Peoples' Defence Forces (conditions of service) (officers) Regulations SI 307-2. The tribunal ruled that he was entitled to import a tax-free vehicle as provided for. However, the appellant could not claim from the respondent a refund. The appellant was dissatisfied with the tribunal's ruling hence this appeal on the following grounds;

1. The honourable Tax Appeals Tribunal erred in law when it ruled that the appellant was entitled to import a tax free vehicle but could not claim for a tax refund from the respondent.
2. The honourable Tax Appeals Tribunal erred in law when it ruled that the appellant in his professional capacity in the UPDF was not entitled to tax exemption of import duties in respect of his private vehicle.

3. The honourable Tax Appeals Tribunal erred in law when it ruled that the Minister had no powers to grant tax exemptions under the UPDF Act and the rules made there under.

The appellant was represented by Mr Habomugisha Innocent while Mr. Haruna Mbeeta appeared for the respondent. Both Counsel filed skeleton arguments. Counsel for the respondent first raised a preliminary point of law that the appeal was filed out of time. He further stated that under Section 27 (1) of the Tax Appeal Tribunal Act, a party is required to file a notice of appeal in court within thirty days after being notified of the decision. He also cited Section 79(1) a of the Civil Procedure Act which is to the effect that;

> **‘’except as otherwise specifically provided in any other law, every appeal shall be entered within thirty days of the date of the decree or order of court.’’**

He submitted that this section is coached in mandatory terms and should be upheld as such. Counsel additionally cited the case of

Construction Engineers & Builders Ltd Vs. The A.G Civil Application No. 84/2001 in which court struck out the notice of appeal for failure to file the appeal within the prescribed time. He submitted that in this case, the appeal was way out of time because it should have been filed by 29/9/2011 but was filed on the 11/10/ 2011. Counsel also pointed out that the appellant did not even file an application for extension of time within which to file an appeal. He thus prayed that the appeal be struck out with costs to the respondent.

In reply, it was the appellant's Counsel's submission that this appeal is within time and court should uphold it and go ahead to determine the issues at hand. He submitted that the appeal process is fully and principally covered by **Section 27 of the TAT Act** cap 245. He further stated that an appeal is a creature of statute and in this particular case, the appeal is brought under **Section 27 of the TAT Act**. He was therefore of the view that the appeal process is solely and principally governed by **Section 27 of the TAT Act**. He submitted that there was no provision for the filing of a memorandum of appeal under the TAT Act. Counsel therefore invited court to dismiss the preliminary point of law for

being misconceived and bad in law. It was his prayer that the appeal be determined on merit.

Ruling of court on the preliminary point of law

I have considered the arguments of both Counsel and looked at the provisions of the law concerning this matter. It is not in dispute that **Section 79(1) of the Civil Procedure Act** provides that every appeal shall be entered within thirty days of the date of the decree or order of court as urged by the respondent's counsel. The section provides;

> ''**'except as otherwise specifically provided in any other law**, every appeal shall be entered:-
>
> (a) Within thirty days of the date of the decree or order of court.'' **(emphasis mine)**
>
> (b) .....
>
> ....

My reading of this is that unless there is a specific law on the matter appealed against, **Section 79 of the Civil Procedure Act** shall apply. I am persuaded by Counsel for the appellant's

argument that **Section 27 of the TAT Act** provides for the procedure expressly and there is no need to look at the Civil Procedure Act for procedure on appeals to the High Court from the Tax Appeals Tribunal. In the case of **Attorney General Vs Shah (No. 4) [1971] EA 52** Spry Acting President stated:-

> *"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.''*

It is important to note that this appeal is from a decision of the Tax Appeals Tribunal which has its enabling law i.e. the Tax Appeals Tribunal Act. In the case of **Uganda Communications Commission Vs Uganda Revenue authority Misc. App. No. 11 of 2006**, Lameck Mukasa J had this to say:-

> *"**Section 27 of the Act** (TAT Act) specifically provides that an appeal from the Tax Appeals Tribunal to the High Court shall be by Notice of Appeal lodged with the Registrar High Court and the Notice of Appeal shall state the questions of law that will be raised on appeal.*

That is a specific type of appeal whereby it is commenced by lodgement of a notice of appeal with the Registrar of the High Court stating the questions of law to be raised.'' *[**Emphasis mine**]*

In the case of **Uganda Revenue Authority Vs Toro & Mityana Tea Co. Ltd HCT-OO-CC-0004-2006, Arising out of MA-010/2005**, the court's decision was to the effect that;

*".....That is a specific type of appeal. The section (i.e. **Section 27 of the TAT Act**) negates the requirements of Order 43 of the Civil Procedure Rules.....therefore even if the document at page 5 of the record is only regarded as a notice of appeal it satisfies the specific provisions of **Section 27 TAT Act** whereby an appeal is commenced by lodgement of a Notice of Appeal.....'*

I agree with the stance taken by court in the above decisions.

Accordingly i am of the considered view that an application for extension of time was not necessary. The appeal was lodged by the notice of appeal which was filed on the 6th of May 2011 from a

decision which had been entered on the 26th of April 2011. Accordingly this was in tandem with the provision of **Section 27 of the TAT Act**, and i find that the appeal is within the prescribed time.

The preliminary objection is accordingly overruled. I now proceed to the merits of the appeal.

Ground one:- That the honourable Tax Appeals Tribunal erred in law when it ruled that the appellant was entitled to import a tax free vehicle but could not claim for a tax refund from the respondent.

Learned Counsel for the applicant cited Regulation 29 of The Uganda Peoples' Defence Forces (Conditions Of Service) (Officers) Regulations SI 307-2 which relates to salary, advance and allowances and provides under sub-regulation 4; that both the professional and quasi-professional persons within the service shall receive the professional allowances specified in the sixth schedule. Clause 15 of the sixth schedule is to the effect that;

> "***All professionals in Groups A, B, C shall be availed motor transport for official duties and***

shall be allowed to purchase their own vehicles tax free....''

The ninth schedule of the regulations lists accountants as professionals. It was Counsel's contention therefore that basing on the provisions cited the appellant was entitled to import a vehicle tax free.

Additionally, it was Counsel's contention that the Income Tax Act as amended has been overtaken by the UPDF Act of 2005 especially Regulation 29 made there under.

He cited the case of **Re: Berry (1936) ch.274** where Farewell J stated that;

> *"It is well settled that the court does not construe a later Act as repealing earlier Act unless it is impossible to make the taw acts stand together i.e. if the Section of the later Act can only be given a sensible meaning if it is treated as impliedly repealing the section of the earlier Act.*

Counsel further submitted that the East African Community Customs Management Act (EACCMA) 2005 under **Section 253** provides for precedence of the said Act over the local laws, and therefore there is no conflict with the UPDF Act. Counsel further stated that nonetheless, the EACCMA does not prevent any partner states' local laws from imposing tax privileges and if it was the case it would have stated so specifically.

He took issue with the tribunal's ruling in which the tribunal while referring to **Section 252 of the UPDF Act** concluded that the said Act did not give the Minister powers to grant tax exemptions, that the UPDF Act came into force in 2005 while the VAT Act and Income Tax Act came into force in 1996 and 1997 respectively and as such the provisions of regulations under the UPDF Act being subsidiary legislation of another Act cannot supercede/amend the provisions of the VAT Act and Income Tax Act. Counsel urged that the section gives mandate to the Minister after consultation with the Defence Forces Council to make regulations by statutory instrument which are necessary for the discipline and better carrying out of the provisions of the Act.

Counsel accordingly submitted that Regulation 29 (4) is clear on entitlements/privileges of professionals in the army.

He cited the case of **Opoya Vs Uganda (1967) E.A 754** where it was held that the duty of the court in interpreting a statute is to put upon words of the legislature honestly and faithfully its plain and rational meaning according to its expression or manifest intention. It was Counsel's submission that the appellant paid taxes which according to the law was supposed to be free which entitles him to a refund which the Commissioner Customs Department rejected and the tribunal rejected.

On Ground two Counsel submitted that the exemption regime in the EACCMA is covered under **Section 114 of the Act** which provides that goods in Part A and B of the 5th schedule are not subject to duty. It was his contention that the UPDF Act under its regulations allowed the appellant in his professional capacity to import a motor vehicle free from import duty.

Counsel stated that the provisions of item 15 of the sixth schedule of the Uganda Peoples Defence Forces (Conditions Of Service (Officers) Regulations S.I 307-2 derive authority from Regulation

29 and **Section 97 of the Act** and is to the effect that transport shall be availed to entitled officers in accordance with the regulations made under the Act.

He emphasised that the appellant falls under group A category II of the sixth schedule, under which the professionals in group A, B, C shall be availed motor transport for official duties and allowed to purchase their vehicles tax free.

Counsel concluded by stating that Regulations 29 of the UPDF Act is very explicit and for the benefit of the appellant and that the respondent had illegally asserted and collected tax from the applicant.

Counsel for the respondent submitted on all the three grounds together since they all related to**; whether the appellant was entitled to an exemption under the EACCMA 2004.**

He submitted that the tribunal rightly found that the appellant could not claim a tax refund since he was not entitled to an exemption in the first place. He stated that it is imperative to note that Article 152 (1) of the Constitution provides:- ‘

'No tax shall be imposed except under the authority of an Act of Parliament.''

It is upon such premise that the Value Added Tax Act and the Income Tax Act were passed by the Parliament as taxing laws. He stated that the EACCMA 2004 provides for import duties on items imported into the country and the UPDF Act is not a taxing Act. He associated himself with the decision of the tribunal which in his opinion rightly found that the UPDF regulations being a subsidiary legislation of another Act cannot supercede/amend the provisions of the VAT Act, Income Tax Act or the EACCMA 2004. He emphasised that the EACCMA 2004 takes precedence over partner states laws with respect to matters related to taxes as provided in **Section 253 of the Act**. It was Counsel's contention therefore that the motor vehicle imported by the appellant is subject to import duties as imposed by the provisions of the EACCMA 2004. He further submitted that exceptions are provided for under section 114(1) of the EACCMA 2004 which provides that;

''Duty shall not be charged on the goods listed in Part A of the fifth schedule to this Act, when imported, or

purchased before clearing through the customs, for use by the person named in that part in accordance with any conditions attached thereto as set out in that part."

Counsel submitted that those exempted under the parts mentioned do not include the professionals mentioned in the UPDF regulations. Counsel urged that the appellant is subject to be taxed basing on the fact that the vehicle was a private one within the meaning of the EACCMA 2004.

Counsel Contended that in as far as the UPDF Act impliedly granted tax exemption to the appellant under Regulation 29, this however is not legally tenable since the UPDF Act is not a taxing Act to grant such exemptions.

Counsel in reference to the ***Opoya case*** (supra) urged that the case was distinguishable from the instant case because the wording of **Section 114 (1) of the EACCMA** is coached in mandatory terms by the use of the word "shall" while in the case cited the words used were "shall be liable" which was directory and gave the court discretion. Counsel emphasised that the manifest intention of the legislature in **Section 114 (1) of the**

EACCMA 2004, was that what is not an exception cannot be implied or read into the section, and would be contrary to the Act.

Counsel prayed court upholds the TAT decision that the appellant is not entitled to tax exemption under the EACCMA 2004 for his private vehicle and could not seek a refund from the respondent. It was his prayer therefore that the appeal be dismissed with costs to the respondent.

Decision of court

The basis of the appellants claim that he was entitled to import a tax free vehicle is **Section 97 of the UPDF Act 2005**, **Regulations 29 and 29 (4) of the UPDF Regulations.**

Section 97 of the UPDF Act provides:-

> *"Transport for official duties shall be availed to entitled officers and militants in accordance with the Regulations made under this Act"*

Regulations 29 (4) provides:-

> *"Professional and quasi professional persons within the service who are not officers under these Regulations*

shall receive the professional allowances specified in the six schedules".

Clause 15 of the six schedule provides:

"All professionals in group A, B and C shall be availed motor transport for official duties and shall be allowed to purchase their own vehicles tax free....."

Base on the above, the appellant contends that he was entitled to import a vehicle tax free.

The ruling of 26th April 2011 of the Tax Appeal Tribunal (TAT) is in my opinion to the following effect:-

- What is tax free may not necessary mean it is tax exempt.
- No exemption of taxes levied under tax laws can be made under regulations of another Act that is not in respect of taxes.
- The UPDF Act did not give the Minister powers to grant tax exemptions.

- The provisions of regulations under the UPDF Act being Subsidiary Legislation of another Act cannot supercede/amend the provisions of the VAT Act and Income Tax Act.
- The regulations under UPDF Act are not in conflict with the tax laws since they do not grant tax exemptions.
- The regulations under UPDF Act allow purchase of vehicles tax free but do not indicate who would meet the tax component.
- Since the UPDF Act did grant tax exemption, the applicant/appellant should have applied for a refund from his employer and not from the respondent.

In view of the fact that the East African Community Customs Management Act (EACCMA) takes precedence over partner states laws, any tax exemptions would require specific inclusion in the fifth schedule of EACCMA to be effective.

In this appeal, Learned Counsel for the applicant takes issue with the position taken by TAT. According to him the Income Tax Act

has been overtaken by the UPDF Act in relation to the matter at hand. Counsel urged that the EACCMA notwithstanding, the fact that it takes precedence over any partner state laws does not preclude a partner state from granting tax privileges. In Counsel's opinion the appellant was entitled to a refund of the tax he had paid since the respondent had illegally assessed and collected tax from the appellant. On his part Counsel for the respondent agreed with the position taken by TAT and emphasised the point that the UPDF Act is not a taxing law and as such no tax exemption could be granted and that EACCMA takes precedence over partner states laws with respect to matters related to taxes.

The long title of EACCMA is to the effect:

> *"An Act of the Community to make provision for the management and administration of customs and for related matters".*

Accordingly the general purpose and scope of the Act is captured in the long title. My reading of the long title is that the member states of the East African Community in passing EACCMA intended it to provide for the management and administration of

customs in the territory. This view is further buttressed in **Section 253 of EACCMA** which provides:

> *"This Act shall take precedence over the partner states laws with respect of any matter to which its provisions relate"*

Specifically as to which goods are exempted from duty, EACCMA under **Section 114 (1)** provides:-

> *"Duty shall not be charged on goods listed in Part A of the Fifth schedule of this Act, when imported or purchased before clearance through customs, for use by the person named in the that part in accordance with any condition attached thereto as set out in that part".*

The above section in fact stems from Article 33 of the Protocol on The Establishment of the East African Customs Union which provides:-

Article 33

Exemption Regimes

1. *The Partner States agree to harmonise their exemption regimes in respect of goods that are excluded from payment of import duties.*

2. *The partner states hereby agree to adopt a harmonised list on exemption regimes which shall be specified in the customs.*

Since the appellant does not fall in the category set out in Part A of 5th Schedule of EACCMA i then fail to see how he can claim a refund.

The above said, it is in my opinion erroneous to urge as indeed Learned Counsel for the appellant did, that EACCMA does not prevent any partner states laws from imposing tax privileges.

As pointed out above both Article 33 of the EAC Customs Protocol and Section 114 of EACCMA specifically make provision for how exemption regimes should be handled within the East African

Customs Union and any other enactment to the coutraly would in my view be untenable.

Learned Counsel for the respondent quoted the observation of Lord Donovan in ***Mangin Vs Inland Revenue Commissioner [1971] 1 All ER 179*** about rules of interpretations of revenue statutes. These were:-

(1) . That the words are to be given their ordinary meaning,

(2). One has to look merely at what is clearly said,

(3). Since they embody the will of the legislature then it may be presumed that neither injustice nor absurdity was intended and

(4). Last the history of the enactment and the reasons which led to its being passed may be used as an aid to its constructions.

The rules set out above are clearly not in tandem with the preposition by Learned Counsel for the appellant that **Section 114 of EACCMA** should be looked at in a holistic way and member states may grant exemption in some exemptional cases.

As pointed out above (Art. 33 of Customs Union Protocol) the intent of the East African Community Members Countries was to harmonise among others the exemption regimes. It would therefore be foolhardly for court to hold that notwithstanding EACCMA and the EAC Customs Union Protocol, member states can at will come up with additional exemption regimes outside the EAC frame work.

However that notwithstanding, member states may, indeed as TAT opined, come up with schemes where deserving persons are given tax reliefs provided always the responsible body picks up the tax bill under its budget. It is not speculation on my part that as a matter of fact such schemes are up and running within Government. Court will not however go to the extent of advising the appellant on what to do as TAT seemed to do lest this be taken by appellant as authority to peruse his claim.

In the result this appeal is dismissed with costs.

B. Kainamura

Judge

15.07.2014