**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**CIVIL SUIT NO.616 OF 2012**

**WOODFIX TECHNICAL SERVICES LTD :::::::::::::::::PLAINTIFF**

**VERSUS**

**THE COMMISSIONER GENERAL & ANOTHER::::::::DEFENDANTS**

**BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO**

**JUDGMENT**

1. **Background**

On the 1st day of December, 2011 the Defendant issued VAT assessment No.VAT/MBR/11/17 for the sum of **Uganda Shillings One Hundred Sixty Nine Million Six Hundred Sixteen Thousand Nine Hundred Thirteen Only** **(Ug. Shs. 169,616,913/=)** against the Plaintiff. This assessment was served upon the Plaintiff on the 9th day of December 2011. The Plaintiff objected to the said assessment on the 13th day of January 2012 on the ground that no tax was due to the Defendant arising from such an assessment.

It is alleged that the Plaintiff served the Defendant the objection on the 18th  day of January 2012. The Defendant on receipt of the said objection called the Plaintiff for a meeting through a letter dated the 16th day of February 2012 to discuss the matter and to find a way forward.

The meeting was held on the 21st day of February 2012 where the Plaintiff’s Managing Director met one Linda Julius and Muhwezi Albert (Bothsaid to beemployees of the Defendant). In the said meeting it was agreed that the Defendant was to review the audits upon which assessments had been made and the Plaintiff would told of the outcome in a final meeting before a decision whether it was to pay the earlier stated VAT assessment or not was to be made.

The review was never conducted by the Defendant according to the Plaintiff and this was also followed by lapse of the time within which an Objection decision was required to be made by the Defendant. On the 19th of July 2012 the Defendant issued an agency notice on the Plaintiff’s bank accounts at Bank of Africa Limited and Barclays Bank (U) Ltd and attached monies which were on the said two bank accounts to enforce the earlier VAT Assessment No. VAT/MBR/11/171.

This action of the Defendant aggrieved the Plaintiff who then lodged this suit in this court seeking orders to have the said VAT assessment set aside on the grounds that since it had made an objection to the assessment under **Section 33B (6) and (7)** of the **VAT Act** then the defendant had no right to impose the action it took against its accounts without making an objection decision as required by law. The plaintiff therefore prayed to this Honourable Court to make an order declaring that the action of the Defendant in attaching its monies after not making an objection decision to be vacated. The Plaintiff further prayed for general damages and the costs of this suit.

1. **Facts:**

The facts as gleaned from the summary above and which appears constant from either side is to the effect that Plaintiff from the 1st day of August 2005, after winning a series of service contracts for the collection of revenue levied on motor vehicles parked on gazetted and marked parking bays in Mbarara Municipal Council (hereinafter referred to as the “Council” ), carried out the said duties which under the said contracts required it to remit to the Council specific sums which had been established on a weekly basis.

On the 8th day of November 2011, the Defendant wrote a letter to the Plaintiff informing it that it had made under declaration of sales values for Value Added Tax for the years of 2008 and 2009 based on its activities which it had carried on behalf of the council. The Plaintiff is responded to the said allegation by a letter dated 29th November, 2011 pointing out to the Defendant that the period in question had been audited by the Defendant itself and all taxes computed had been paid with no arrears outstanding.

The Defendant ignored this explanation and on the 1st day of December, 2011 issued the Plaintiff a VAT Assessment for the period in question and on the disputed amount. The Plaintiff objected to the assessment by a letter dated 13th January 2012 on the grounds that no tax was due. The Defendant on receipt of the Plaintiff’s objection instead of making an objection decision invited the Plaintiff for a meeting by a letter dated 16th February 2012 to discuss the assessment. The meeting took place on the 21st day of February 2012. The Managing Director of the Plaintiff met two employees of the Defendant Linda Julius and Muhwezi Albert and it was agreed in that meeting that the Defendant would review its previous audits of the period in question and would eventually any such review findings with those of the Auditor General and subsequently the Plaintiff would be called for a meeting before a decision was taken.

No meeting took place and on the 19th day of July 2012, the Defendant issued an agency notice on the Plaintiff’s bank accounts and attached monies on the said accounts in an effort to enforce the VAT assessment earlier made and objected to by the Plaintiff.

The Plaintiff had disputed the Defendant’s assessment averring that it included monies which had been received by the Plaintiff for and on behalf of Mbarara Municipal Council arising from the sale of parking coupons and that Mbarara Municipal Council had made returns and paid VAT on the same amount of monies in its capacity as the Plaintiff’s principal thus rendering the action of the Defendant to be not only unlawful but illegal.

The Defendant on the other hand while acknowledging the objection made by the Plaintiff stated that the same was made past the required statutory period of 45 days within which it ought have been made and that even the Plaintiff who had the option to apply to the Defendant’s Commissioner General for extension of time within which to lodge its objection did not do so implying that there was no objection rendering the assessment levied against the Defendant to be regarded as valid with the Plaintiff not eventually being entitled to the remedies sought.

1. **Agreed issues**

Two issues were formulated for settlement of this dispute. They are discussed as presented.

1. Whether the Plaintiff is liable to pay the taxes as assessed.
2. Whether the Plaintiff is entitled to the remedies sought.
3. **Issue 1: Whether the Plaintiff is liable to pay the assessed tax of 169,616,913=**

The Plaintiff’s case is that when it objected to VAT assessment No. VAT/MBR/11/171 totaling to Uganda Shillings One Hundred Sixty Nine Million Six Hundred Sixteen Thousand Nine Hundred Thirteen Only (Ug. Shs. 169,616,913/=), the Defendant should have made an objection decision either allowing the objection or disallowing the same within 30 days after receiving the objection and having failed to do so and the Plaintiff having elected to treat the objection as one allowed under **Section 33B** **(7)** of the **VAT Act,** then no tax is due to be paid under the said VAT assessment.

The controversy before me is based on the interpretation the law as provided under **Section 33B (4)** and **(5)** of the **VAT Act** as amended. This law provides for the procedure to be followed by the Defendant when an objection to a tax assessment is made by a tax payer. They are reproduced below for clarity purposes;

*Section 33B (4): The Commissioner General may, within thirty days after receiving the objection, consider it and allow the objection in whole or in part and amend the assessment accordingly.*

*Section 33B (5): The Commissioner General shall serve the person objecting with notice in writing of the objection decision within thirty days after receiving the objection.*

Relating these provisions of the law to the instant matter, it is the case of the Plaintiff that he Defendant received the it’s objection on the 18th day of January 2012 and that since the Defendant received the objection by that date then it should have made an objection decision on or before the 17th day of February 2012 in compliance with the provision of **Section** **33B (4) and (5)** of the **VAT Act** but that instead ofdoing so by the said date, the Defendant opted to write a letter to the Plaintiff on the 16th of February 2012inviting for a meeting a before a final decision could made. The same is verifiable by the receipt stamp of the Defendant acknowledging made on Exhibit D.Ex.5. This is not denied and I have no reason not to believe it and I would take it that the Defendant intended the Plaintiff to meet before a decision on the assessment could be made.

In my view, this piece of evidence corroborates the Plaintiff’s contention that no objection decision had been made by the Defendant who instead of writing to the plaintiff to inform it of its objection decision decided to invite it for a meeting.

Clearly this action on the side of the defendant was not in consonance with the provisions of Section **33B (4) & (5)** of the **VAT Act** when dealing with issues relating to objection. Also it is clear to me that when the defendant procrastinated in making its decision and eventually only decided to call the Plaintiff for a meeting by the 21st of February 2012, then the statutory time limit permitted for it to make an objection decision under **Section 33B(4)** **& (5)** of the **VAT Act** had clearly would elapsed.

Even if I were to take that the meeting between the Plaintiff and Defendant of the 21st of February 2012 was convened to inform the Plaintiff of the Defendant’s objection decision, it is clear to me from the evidence of PW1 as indicated in paragraph 13 of his testimony in chief that again the Defendant did not inform the Plaintiff of its objection decision with the meeting between the two parties only ending with the matter of the objection being simply deferred pending a review by the Defendant’s auditors. The minutes of the meeting (Exhibit D.Ex.7) between the two parties confirms this position.

It seems to me from the testimony in chief of PW1 at paragraph 17 and Exhibit D. 10 which are to the effect that when the Defendant opted to call a meeting between it and the Plaintiff on the matter of the Plaintiff’s objection instead of making an objection decision, the Plaintiff presumed the silence as acceptance of its objection and therefore went on to elect that it’s objection had been allowed by virtue ofSection 33B (6) of VAT Act.

It is clear to me this apparent lack of a decision by the Defendant was contrary to the provisions of Sections 33B (6) and (7) of VAT Act which provides thus:

*(6) Where the Commissioner General has not made a decision within thirty days after the lodging of the objection, the taxpayer may by notice in writing to the Commissioner General, elect to treat the Commissioner General as having made the decision to allow the objection.*

*(7) Where a taxpayer’s election under subsection (6), the taxpayer is treated as having been served with a notice of the objection decision on the date the taxpayer’s election was lodged with the Commissioner General.*

The effect of such silence by the Defendant and an election by the Plaintiff would mean that the Plaintiff does not owe the Defendant the sum as stated above arising from VAT assessment No.VAT/MBR/11/171.

However, tax matters being such, I would while acknowledging the fact that the aforementioned section of the law would have become operative, it was important that when the defendant utilized its powers of attachment of the accounts of the Plaintiff, the dispute then should have been referred to the Tax Appeal Tribunal which would be in the position to examine the issue and make a conclusion effectively.

From the above, it is my view that while the Plaintiff clearly raised a point which action on the part of the Defendant within a specified time, the Defendant wasted time required within specific time to make an the objection decision when it engaged the Plaintiff in meetings which were outside the provision of the law yet the law provided that the Defendant had the statutory duty to make an objection decision which it failed to do so and in the premises, I would order the vacation of action of the Defendant in utilizing its powers of attaching the accounts of the Plaintiff by an agency notice on the basis of the previously mentioned assessment. However, I note that wrong procedures were made by either party in trying to resolve the original dispute of tax assessment. It would be in the interest of the justice of the matter that the issue of the tax assessment be referred to the Tax Appeals tribunal for it to handle and make appropriate orders as regards the tax obligation of the Plaintiff or not as it is the best forum for doing so.

1. **Issue 2: whether the Plaintiff is entitled to the remedies sought?**

As regards to the remedy sought by the Plaintiff herein this court, PW1 stated in cross examination that he paid to the Defendant Shs. 6,600,000/= pursuant to the agency notices issued by the Defendant and in addition, Shs. 900,000/= was removed from the Plaintiff’s account in Bank of Baroda by the Defendant in pursuit of the tax which was said to have been assessed as against the Plaintiff. This evidence is not controverted and is believable as it is corroborated further by documentary evidence before this Honourable Court to that effect. I therefore proceed to find that indeed the Defendant by virtue of issuing an agency notice collected monies belonging to the Plaintiff as the but since there was a dispute, the money could not at that stage be said to be due and hence belonging to the Defendant and it ought to be refunded it until such a time when there is a clear decision in that regards. I would order for the money to be refunded by the Defendant accordingly.

I note that he Plaintiff prayed for general damages as against the defendant in this matter. It should be recalled that general damages are normally awarded by courts upon an irrational act of one party as against another which act made party to suffer unnecessarily. In the instant matter and from the uncontroverted testimony of PW1 it is clear to me that stated the Defendant’s actions in issuing agency notices on the Plaintiff’s accounts for tax which was still in dispute caused loss of business repute to the Plaintiff within the banking and business community thereby putting the Plaintiff’s business under a lot of stress and anxiety. The decided case of **Paramount Insurance Ltd versus Commissioner General Uganda Revenue Authority HCT-00-CC-CS-264 OF 2010,** the High Court awarded general damages against the Defendant for unreasonably issuing and maintaining agency notices on the Plaintiff’s account for over two years and six months in a manner that disorganized his business is of relevance here as the Defendant did and has continued to unreasonably maintain agency notices on the Plaintiff’s account for now a period of over two years which action is damaging not only to the business repute of the Plaintiff but to its credibility before its bankers. I would therefore apply the rationale in the decision in **Paramount Insurance** (above) and award the Plaintiff a sum of **30,000,000/=** as general damages.

The Plaintiff also prayed for the costs of this suit. Under Section 27 (2) of the Civil Procedure Act, costs usually follow the event. In the instant matter, all pointers are to the effect that the actions of the defendant caused the Plaintiff to seek legal redress before this Honourable Court for the period in question and since it is the act of the defendant which caused all these , I would find that the Defendant is culpable for the costs incurred and hence I would be constrained to award to the Plaintiff costs of this suit as it is clear to me that the Plaintiff did incur costs while prosecuting this matter which should have been resolved more amicably and by other methods by the parties.

1. **Orders:**

In conclusion therefore, I would make the following orders;

1. The Defendant is ordered to refund the monies it took from the Plaintiff and or attached from the accounts of the Plaintiff when it issued the agency notices against such accounts in pursuance of the Tax Assessment which is in dispute.
2. I order that the matter of the disputed tax assessment be handled by the Tax Appeal Tribunal in the first instance as provided for by the law.
3. I order the Defendant to pay the Plaintiff Uganda Shillings Thirty Million Only (Shs. 30,000,00/=) being general damages for having acted outside the law by attaching the accounts of the Plaintiff under agency notices and or receiving funds from the Plaintiff’s monies on based on a tax assessment yet there was a dispute to it.
4. I grant to the Plaintiff d the costs of this suit in any event.

I do so order.

**Henry Peter Adonyo**

**Judge**

**22nd September, 2014**