

THE HIGH COURT OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL COURT]

CIVIL APPEAL No. 26 OF 2014

[Arising From Tat Application No. 02 of 2013]

MIX TELEMATICS EAST AFRICA LTD ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

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

BEFORE: THE HON. MR. JUSTICE B. KAINAMURA

The appellant; Mix Telematics East Africa Ltd brought this appeal against Uganda Revenue authority seeking orders to allow the appeal and set aside the orders of the Tax Appeals Tribunal and for costs of this appeal and the TAT application. It arises from a decision of the TAT made on 29th August 2014 in which the TAT dismissed the appellant’s case ruling that the taxable supply is subject to standard rated VAT since the appellant did not qualify for zero rated VAT. In the application, the appellant/applicant was challenging the decision of the respondent to charge VAT of UGX 87,198,707/= against it. The appellant thus lodged an appeal to challenge the decision of the TAT.

Three grounds were set out in the memorandum of appeal. The first was that the Honorable members of the Tribunal erred in law and fact when they held that the appellant did not export the tracking devices. Secondly that the Honorable members of the Tribunal erred in law and fact when they failed to properly evaluate the evidence on record and came to a wrong conclusion that the taxable supply is subject standard rated VAT. Thirdly that Honorable members of the Tribunal erred in law and fact when they failed to properly evaluate the evidence on record and came to a wrong conclusion that the appellant did not qualify for zero rated VAT in respect of the supplies made.

However, Counsel for the respondent first raised three preliminary points of law which include; that the appeal is based on grounds which constitute those of fact and law, the appeal is incompetent due to failure to extract a formal order and the copy of the ruling forming part of the record of appeal was not certified. Counsel argued that this is contrary to **Section 33 D (2) of the**
5 **VAT Act Cap 349** which requires that an appeal shall be made only on questions of law. Secondly, the appeal is incompetent for failure to extract a formal order which cannot be entertained as similarly held in the case of *Barclays Bank of Uganda Ltd vs. Eddy Rodgriues C.A.C.A No.5 of 1987* that such omission is not merely procedural and cannot be waived. Lastly, Counsel submitted that the appellant filed a record of appeal certifying correctness of the record
10 of appeal which lacks an order which is a basic requirement as noted in the case of *Barclays Bank* (supra). In conclusion, Counsel submitted that the appeal is therefore incompetently and inappropriately brought before court and prayed that the appeal be dismissed with costs.

In reply, Counsel for the appellant submitted that the grounds of the appeal not only raise legal issues for determination by the court but also by their nature involves a controversy about law.
15 Counsel added that **Section 80(2) of the VAT Act** provides that the appellate court shall have the same powers and perform as nearly as may be the same duties as conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted in it. He argued that therefore this court has the powers to evaluate evidence. Regarding the objection of failure to extract a formal order Counsel submitted that in the cases of *Banco Arabe Espanol Vs Bank Of*
20 *Uganda (1996) HCT 12* and *Kibuuka Musoke William & Anor Vs Dr Apollo Kaggwa App No. 46 of 1992* it was *inter alia* held that the extraction of a formal decree embodying the decision is no longer a legal requirement in institution of an appeal. Counsel argued that the lack of an order does not warrant the striking out of the appeal accordingly the objection should be overruled. In response to the objection in regard to certification of the ruling, Counsel relied on **rule 24 of the**
25 **Tax Appeals Tribunal (procedure Rules) of 2012** which provides that the tribunal shall provide a certified copy to be served on each party to the proceeding and as such there is no objection on the appellant to certify a copy of the ruling. Counsel therefore prayed that the objections be overruled and the appeal heard on its merits.

In rejoinder, Counsel for the respondent reiterated his submission that the High Court is limited
30 to questions of law as an appellate court. Counsel prayed that the appeal be dismissed for being incompetently before court. Secondly regarding extraction of a formal order, the respondent

reiterated that the appeal cannot be entertained as the record is not in order. Lastly regarding the objection of failure to provide a certified copy, Counsel submitted that having been provided a certified copy, the appellant ought to have attached it to the record of appeal. Counsel therefore maintained that due to the foregoing the appeal is incompetently and inappropriately before this
5 court and prayed that the appeal be dismissed with costs.

RULING

The appellant filed an appeal against the decision of the Tax Appeals Tribunal. The appellant raised three grounds of appeal which are; that the Honorable members of the Tribunal erred in law and fact when they held that the applicant did not export the tracking devices, the Honorable
10 members of the Tribunal erred in law and fact when they failed to properly evaluate the evidence on record and came to a wrong conclusion that the taxable supply is subject to standard rated VAT and that the Honorable members of the Tribunal erred in law and fact when they failed to properly evaluate the evidence on record and came to a wrong conclusion that the applicant did not qualify for zero rated VAT in respect of the supplies made.

15 Counsel for the respondent raised three objections to the effect that; the appeal is based on grounds which constitute law and fact, the appeal is incompetent due to failure to extract a formal order and the copy of the ruling forming part of the record of the appeal was not certified.

I have duly considered the objections to the appeal and will address them accordingly;

Regarding the issue of law and fact, in the Nigerian Supreme Court decision of ***Alhaji Sulaiman Mohammed vs Lasisi Sanusi Olawumni & others SC 42/1989 in the lead judgment of J.S.C Obaseki***, while addressing the issue of having grounds of both law and fact in an appeal stated that;
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25 *“If the grounds of appeal involve questions of fact or questions of mixed fact and law the appeal can be competent if the appellants obtained leave of either the High Court or Court of Appeal to appeal on those grounds.....if there are many grounds of appeal filed and only one of the grounds is of law alone, that ground is sufficient to sustain the appeal if no leave is obtained. The other grounds are incompetent and will be struck out.”*

That being the case, I humbly agree with the argument that the grounds in this matter being mixed with law and fact as they are stated herein above renders the appeal incompetent.

I will then move on to address the issue of the failure to extract a decree and failure to attach partly to the record of appeal a certified copy of the decision. In **Abel Nayebaza & Charles Nyakahuma Vs International Credit Bank Ltd HCT-OO-CC-1059-2013** it was held that;

“Without extracting the necessary decree or order, the appeal remains premature and incompetent, **Kiwege and Mgude Sisal Estates Ltd Vs M.A Nathwami (1952) E.A.C.A 160**. The foregoing makes it clear that a record of appeal which does not have a certified copy of the decree or order appealed from is incurably defective.”

I therefore agree with the arguments by Counsel for the respondent that the appeal is incompetent based on the reasons given above. I therefore accordingly dismiss the appeal and award costs to the respondent.

B. Kainamura
Judge
02.09.2016