

THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL NO 004 OF 2016

(ARISING FROM OBJECTION DECISION NO. 5378053 OF 2006)

INTERNATIONAL SCHOOL OF UGANDA LTD}.....APPELLANT

VS

**COMMISSIONER GENERAL UGANDA REVENUE
AUTHORITY}.....DEFENDANT**

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Appellant filed an appeal against the Respondent challenging the decision of the Commissioner General of Uganda Revenue Authority delivered on 7th January 2016 for determination of the following questions of law:

- (a) Whether the Appellant is not an educational institution of a public character; or
- (b) Whether the Appellant does not fall within the provisions of section 2 (bb) of the Income Tax Act.
- (c) Whether the Commissioner General has a right to decline to issue a written ruling under section 2 (bb) (ii) of the Income Tax Act, Cap 340 if the applicant for income tax exemption fulfils all the requirements stipulated under section 2 (bb) of the same Act.
- (d) Whether the time bound nature of Certificates of Exemption issued under section 2 BB of the Income Tax Act is ultra vires the Act.

The Appellant is represented by Counsel Joseph Luswata of Messieurs Sebalu and Lule Advocates while the Respondent is represented by Counsel Ronald Baluku.

The court was addressed in written submissions.

Counsel for the Appellant submitted that the appeal is brought under section 100 of the Income Tax Act cap 340 laws of Uganda because it relates to an objection decision made by the Respondent on the 30th of October 2015 and communicated to the Appellant on the 7th of January 2016. The Appellant had applied to the Respondent for a ruling that it is an exempt organization under section 2 (bb) of the Income Tax Act.

The Appellant's Counsel submitted that the exercise of powers conferred upon the Respondent under section 2 (bb) and 99 of the Income Tax Act is in a quasi judicial capacity and has to be reasonable and fair and in part requires the Respondent to give reasons for the decision made under those provisions. The Appellant relies on the judgment of Lord Denning that giving the reasons is one of the fundamentals of good administration in the *Breen vs. AEU* (1971) 2 QB 175. A decision making body especially one exercising quasi - judicial powers must give reasons for its decision unless it has justification for not doing so (see *R versus Civil Service Appeal Board* (1991) 4 All ER 310). When the decision is challenged, the failure to give reasons for the court to consider means that there were no good reasons whatsoever for the decision according to Lord Keith in *R versus Trade Secretary Ex Parte Lonhro Plc* (1989) 2 All E.R 609.

The Appellants Counsel submitted that the objection decision leaves a lot to be desired. It simply writes "disallowed" and later on it provides: "please reapply for exemption". No reasons for decision are given and no explanation is given for the advice to reapply for exemption. Counsel contended that the manner of making decisions by a statutory body such as the Respondent is contrary to the standards set by the court's decision is quoted above and prejudicial to the Appellant who is entitled to challenge the decision in court.

The Appellants Counsel contends that in the absence of details of the objection decision, they were constrained to argue the appeal on the basis of the "exemption the rejection notice" which itself is very unsatisfactory. From that notes the reason for this alone the objection may be inferred. In that notice the Respondent wrote the legal reasons for rejection was because the taxpayer does not fall within the provisions of section 2 (bb). Secondly the Respondent wrote that the Appellant is not an educational institution of a public character. Later on in the notice to the taxpayer the Respondent wrote that "the operations of the school are open to all but, it does not fall within the definition of public character as envisaged by the law." The Appellant's

Counsel submitted that if the question for determination is whether or not the Appellant falls under section 2 (bb) or whether the Appellant is an exempt organisation within the meaning of the Act, the answer is that "it does not" without more is useless for a person looking for the reasons for that conclusion.

Whatever the case because the rejection notice was challenged by an objection and the objection was disallowed, the Appellant lodged the appeal on three grounds of appeal set out in the notice of appeal.

According to the Appellant the background to the appeal is that the Appellant who is formerly known as Lincoln International School Ltd began its operations in Uganda as a trust in 1967 before being incorporated as a company with limited guarantee in 1972. The Appellant is licensed by the Ministry of education and sports to provide educational services to children in Uganda including children of diplomats working in Uganda. According to its memorandum and articles of Association the main objective of the Appellant is to provide an international curriculum facilitate the transfer of students to other international schools and school systems. Secondly, the membership of the Appellant comprises of parents or legal guardians of children registered for attendance at the school and of its teachers. Thirdly, no member of the Appellant is entitled to any benefit by way of bonuses or dividend distributed by the Appellant by resolving a member and the Appellant is a non-profit making organisation. Lastly, the board members are not entitled to any salary or under compensation for something as members of the board of the Appellant.

In April 2005 the Respondent ruled that the Appellant was an exempt organisation as envisaged by section 2 (bb) of the Income Tax Act. The ruling or the certificate was expressed to be valid for a period of two years from 1st January 2004 to 31st December 2005. The Appellant's circumstances have not changed since then.

In the year 2008, the Act was amended in section 21 thereof exempting schools including the Appellant from the payment of income tax on their income. It meant that the applicant did not have to rely on section 2 (bb) of the Income Tax Act to maintain its exempt status. The general exemption from the income tax for schools introduced in 2008 was however abolished in the amendment to the Income Tax Act in 2014. The Appellant accordingly had to fall back to section

2 (bb) of the Income Tax Act and therefore lodged an application for exemption which was called a renewal with the Respondent on 18th February 2015. On 30th October 2015 the Respondent rejected the application for renewal of exemption on the grounds appearing in the rejection notice. The Appellant then lodged an objection to the rejection notice hence the appeal.

Legal Arguments on Points of Law:

The first ground of the appeal is **whether the Appellant is not an educational institution of a public character?**

The plaintiff's Counsel submitted that the meaning of an educational institution of a public character is derived from section 2 (bb) of the Income Tax Act which includes any company, institution or irrevocable trust which is a religious, charitable or educational institution of a public character. On the first ground the issue is whether the Appellant is an educational institution. Counsel submitted that the answer was obvious and does not require much debate. It is only because the Respondent never ascribed any reason as to whether the Appellant's application was rejected because it was not an educational institution or because it was not of the public character or whether it was rejected on both grounds.

On the first ground the Appellant is an educational institution because it is licensed by the Ministry of Education and Sports. Secondly, its character is reflected in the Memorandum of Association and it shows that it offers an international curriculum that facilitates the transfer of children to international school systems. The Appellants Counsel further relies on the audited accounts submitted to the Respondent. The plaintiff's Counsel further submitted that the word "education" is used in the widest sense to extend beyond teaching and according to the case of *Re: Hopkins Wills Trust* (1964) 3 All E.R.46 and 52. The English Oxford dictionary defines "education" to mean the systematic instruction, schooling or training given to the young (and by extension to adults) in preparation for work life. According to Lord Hailsham, education is a balanced and systematic process of instruction, training and practice containing spiritual, moral, mental and physical elements (*IRC versus McMullen* (1980) 1 All E.R.884). In the premises the Appellant is an example of an educational institution because it offers training to children to facilitate their transfer to international universities.

The second ground relates to the question of whether the Appellant is of a public character. The Appellants Counsel submitted that the employment of children at the Appellant's school is open to all. The fact is established by the Respondent in the notice to the taxpayer in the rejection notice. Secondly the membership of the Appellant comprises parents or guardians or teachers having children registered at the Appellant school or teaching at the Appellant's school at any relevant time.

The phrase "public character" is not defined by the Income Tax Act. The phrase has been defined by common law courts in New Zealand (Dilworth cases), Herman (Chapel Hill) and Nigeria (AIS). Where an institution renders services to the general public and there is no beneficial interest in it vested in any private person, that institution can be regarded as being public or of a public character although it is privately owned. Counsel relies on the case of Chapel Hill School versus the Attorney General and the Commissioner Internal Revenue Service (civil appeal number J4/25/2009 where the Supreme Court of Guyana on the meaning of an "educational institution of the public character" held that for the Appellant to succeed in showing that it was an institution of the public character, it must establish that its educational business was of public benefit and did not confer any private benefit on individuals. The fact that the institution is privately owned is not necessarily a bar to the Appellant's ability to demonstrate that. (See Dilworth and others versus the Commissioner of Stamps and Income Tax [1899] AC 99. Secondly, where an institution is a non-profit making organisation, it is of a public character and by law cannot confer a private benefit to any person. Counsel relies on Dilworth and others versus the Commissioner of Stamps; Dilworth and others versus the Commissioner of Land and Income Tax (supra). It was held in that case that the institution being an educational endowment in perpetuity vested interest is without personal interests therein, the whole beneficial interest belonging exclusively and inalienably to the public, was a public institution within the meaning of section 2 of the Charitable Gifts Duties Exemption Act, 1883 of New Zealand. In the case of Chapel Hill School versus Attorney General and the Commissioner Inland Revenue Service (Civil Appeal Number J4/25/2009) the court noted that because a company limited by guarantee was forbidden from making profit, there was a legal assurance that its business was not conferring any private benefit on individuals.

In the case of the Trustees of Sheikh Faisal Noordin Charitable Trust versus the Commissioner of Income Tax (1975) EA 616 (Kenya) was held that the expressions "for the public benefit", "directed to the public benefit" and "of a public character" are often used in relation to the purpose or object of a trust and all have the same meaning.

The Appellant's Counsel further submitted that as long as the institution is open to all members of the public, the requirement to pay fees at the rate of the fees charged for the services are not relevant facts for consideration of the public character requirement of an exempt organisation. He relied on American International School of Lagos versus The Federal Inland Revenue Service. The issue was whether the American International School of Lagos qualified as an indication institution of the public character because its services were not free and therefore not available for the benefit or use of all Nigerians. The tax appeals tribunal found that it was not common for schools to charge tuition fees to enable them carry out their object which is the provision of educational services regardless of the fees levels. In the absence of evidence that the school derived income or profits from sources other than the provision of educational services, or any segment of the Nigerian public is excluded from benefiting from its educational services, or that the profit or income is distributed to directors or guarantors, the school was exempt from paying the relevant tax.

In the premises the Appellant's Counsel submitted that the Appellant satisfies the "public character actors" because its employment policy is open to the general public and none of its members derives any private gain directly or indirectly from the business. Historically in Practice Note Number 1 of 2006 the Respondent was of the opinion that for the purposes of definition of exempt organisation under section 2 (bb) of the Income Tax Act, the benefits provided must be to the public at large or at least to a sufficient section of the community. In the premises the plaintiff's Counsel concludes that the Appellant is an educational institution of the public character and the Respondent erred in law in finding otherwise.

The second ground of appeal intends to demonstrate that once the Appellant or a taxpayer has satisfied the requirements for exemption under section 2 (bb) of the Act, the Respondent has no discretion in the matter and must issue a certificate of exemption/written ruling to the taxpayer.

The Appellant's Counsel submitted that the Appellant satisfies the criteria set out in section 2 (bb) to the extent that it is an educational institution of the public character and manner of its income or assets confers or may confer a private benefit to any person. This would be a substantive requirement to qualify for exemption from tax. The issuance of a certificate of ruling is just an administrative requirement.

Secondly, the Appellant's Counsel submitted that section 2 (bb) defines the character of the organisation to which it applies. I.e. it is an amateur sporting associations; a religious, charitable or educational institution of a public character. Thirdly, it has to be established whether its income is applied for the benefit of the members. Fourthly, it requires the Respondent to use the characterisation of the organisation to establish whether the organisation is eligible for the issuance of a certificate of an exempt organisation. In the premises, the ruling of the Respondent was not a substantive requirement but a procedural or administrative requirement only. The language of the provision provides that an organisation should have a written ruling stating that it is an exempt organisation. An organisation that does not fulfil the criteria stipulated under the provision cannot be issued a ruling. Conversely an organisation that fulfilled the criteria has to be issued with a ruling.

Last but not least the last ground is that certificates which are time bound and issued under section 2 (bb) are ultra vires the Act.

In 2005 the Respondent held that the Appellant satisfied the requirements of section 2 (bb) (i) B and (iii) and ruled that it was an exempt organisation. Furthermore the Respondent ruled that the ruling would be valid for a period of two years from 1st January 2004 to the 31st December 2005. The submission is that the restriction of the period of the certificate confirming that an organisation is exempt has no basis in the Income Tax Act and is ultra vires. Counsel relies on the case of IRC vs. Mangin (1971) AC 739. The Income Tax Act is a tax legislation and everything that the Respondent can do is to be specified there under. The Act does not specify that a ruling may be issued with such conditions and for such period as the Respondent may deem fit but is silent. Furthermore because section 2 (bb) characterises which organisation is exempt, it does not require a continuous assessment. In the premises time bound rulings would be absurd and would place an administrative burden on the taxpayer. An interpretation that

allows for a periodic review opens the possibility of the Respondent issuing different rulings on the same issues at different times as she has done in the instant case.

The Appellant's Counsel further submitted that when an authority makes a decision which is in part good and in part bad, the court may either invalidate the entire decision or sever the bad part from the good (see *Agricultural and Forestry Industry Training Board versus Aylesbury Mushroom* (1972) 1 Weekly Law Reports 190; *R versus North Hertfordshire DC* (1985) 3 All E.R 486).

In the premises, the Appellant's Counsel prayed that the court holds that the certificate confirming that the Appellant was an exempt organisation within the meaning of section 2 (bb) issued by the Respondent to the Appellant in 2005 is still subsisting and can only be revoked by lawful means.

In conclusion the Appellant prays that the court finds that the Appellant is an educational institution of the public character. Once an applicant satisfies the requirements specified in the law, the Commissioner General is bound to issue the ruling or certificate and the court should declare the time bound nature of rulings issued under section 2 as ultra vires the Income Tax Act. The court should declare that the ruling issued to the Appellant in 2005 is varied or in the alternative direct the Respondent to issue the ruling to the effect that the Appellant is an exempt organisation under section 2 (bb) of the Income Tax Act.

Judgment

I have carefully considered the Appellant's appeal which came for submissions on 27th June 2016. It was agreed with Counsel that the court will be addressed in written submissions and the Counsels were directed as follows. The Appellant would file and serve its written submissions of not more than 8 pages by 5th July 2016. The Respondent would file and serve its written submissions by 13th July 2016. Any rejoinder of not more than four pages would be filed and served by 18th July 2016 and judgment would be delivered on 26th August 2016 at 2:30 PM. The appeal was adjourned for judgment.

The Appellant's Counsel duly filed written submissions on 6th July 2016. On 10th August 2016 the Appellant's Counsel Messieurs Sebalu and Lule Advocates in a letter dated 9th of August

2016 wrote to the registrar complaining that they had not received any reply from the Respondent. No reply had been filed on court record and they requested the registrar to forward the file for judgment. The file was accordingly forwarded for preparation of the judgment. Where the court directs that written submissions should be filed, Order 43 rule 14 (2) of the Civil Procedure Rules permits the court to proceed ex parte or in the absence of the Respondent if the Appellant appears and the Respondent does not appear. Failure to file written submissions within the stipulated time is analogous to non-appearance on the date fixed for hearing of the appeal. Secondly, Order 17 rule 4 of the Civil Procedure Rules also permits the court to proceed to decide the case forthwith where any of the parties failed to perform any other act necessary for the further progress of the suit for which time has been allowed. The Respondent having failed to file the necessary submissions, the court will proceed to decide the appeal on the basis of the written submissions of the Appellant's Counsel. After I wrote this ruling I was forwarded a letter dated 18th August 2016 forwarding the submissions of the Respondent. The Respondent was required to file and serve its written reply to the Appellant's submissions by the 13th of July 2016. Judgment was fixed for 26th of August. Having written the judgment I am unable to consider the written submissions of the Respondent filed way out of time by more than a month. In the premises, save for addition of these notes the judgment I wrote will be delivered as it is.

The first question that has been raised is procedural in nature. It concerns the question of whether an objection decision can be devoid of any reasons giving the grounds for the decision. The objection decision is at page 14 of the decision and is an electronic data printout. It provides in the decision details that reference is made to the notice of objection of the Appellant and that the objection has been disallowed. Section C which deals with the reasons for the objection decision, there is only the sentence "Please re-apply for exemption".

I have carefully considered the procedural question as to whether there were any grounds contained in the objection decision. The Commissioner General is required under section 99 (6) of the Income Tax Act to serve the taxpayer with a notice of the objection decision. The said subsection provides as follows:

"As soon as is practicable after making an objection decision, the Commissioner shall serve the taxpayer with notice of the decision."

The objection decision notice is found at page 14 of the record of proceedings. It is a form which is filled out and the single reason that is given, which is to reapply for exemption, does not give further grounds. What is an objection decision? An objection decision is made after a taxpayer who is dissatisfied with an assessment lodges an objection to assessment with the Commissioner within 45 days after service of the notice of assessment under section 99 (1) of the Income Tax Act. The Commissioner is required after consideration of the objection to either allow the objection in whole or in part and amend the assessment accordingly or disallow the objection. The Commissioner's decision is referred to as an "objection decision". This is provided for by section 99 (5) of the Income Tax Act cap 340.

The facts of this dispute are that by letter transmitted electronically dated 18th of February 2015 the Commissioner rejected an exemption application. The application was made on 18th of February 2015 to the Commissioner for Domestic Taxes of Uganda Revenue Authority. It was written by Messieurs BRJ Advisory Services on behalf of the International School of Uganda and by letter. They are the Tax Advisers of the Appellant. They informed the Commissioner that their client is an exempt organisation under section 2 (bb) of the Income Tax Act. They further notified the Commissioner that the Commissioner General had issued a letter on 7th April 2005 confirming that their client was indeed an educational institution of a public character and none of its income or assets confers or may confer a private benefit on any person. On 30th October 2015 the Commissioner communicated the decision which was as follows: "We regret to inform you that..." your application for income tax exemption (exemption ruling for income tax) has not been granted. The grounds of the rejection were that the taxpayer does not fall within the provisions of section 2 (bb). The second reason is that the organisation is not educational institution of a public character.

The Appellant through its tax advisers Messieurs BRJ Advisory Services objected to the decision. The form of the objection notice is from any other decision other than from an assessment notice. The tax advisers attached a detailed write-up on the public character of the Appellant as well as the letter of exemption by the Respondent for the period 2004 – 2005.

It is pursuant and to these developments that the Respondent communicated an objection decision. The objection is not from an assessment and the decision is purely on the

characterisation of the Appellant and whether it qualifies for exemption under section 2 (bb) of the Income Tax Act. The characterisation of a person for purposes of exemption is a matter of law. This is because it resolves the issue of whether the income of the person is an exempt income under section 21 of the Income Tax Act Cap 340 laws of Uganda.

Section 21 (f) provides as follows:

"the income of an exempt organisation, other than –

- (i) property income, except rent received by an exempt organisation in respect of immovable property [which is used by the lessee] and the rent is used by the lessor exclusively for the activities of the organisation specified in paragraph (bb) (i) of the definition of "exempt organisation" in section 2; or
- (ii) business income that is not related to the function constituting the basis of the organisation's existence;"

The main question is therefore whether the Appellant is an exempt organisation under section 2 (bb) of the Income Tax Act.

The second question is whether the Appellant is a religious, charitable or educational institution of a public character. Specifically the Appellant claims to be an educational institution of a public character. Thirdly under section 2 (bb) of the Income Tax Act, it is a requirement to be an exempt organisation to have been issued and received a written ruling by the Commissioner currently in force stating that the subject in question is an exempt organisation. Thirdly it is a requirement to be an exempt organisation that none of the income or assets of the organisation confers, or may confer, a private benefit on any person.

I have carefully assessed the questions raised in this appeal and my conclusion is that the Appellant's appeal was not made from a prescribed taxation grievance. It purports to arise from an objection decision. An objection decision is defined by the Tax Appeals Tribunals Act Cap 345 and section 1 (1) (g) thereof to mean a taxation decision made in respect of a taxation objection. Secondly and specific to the Income Tax Act an objection decision is defined by section 99 (5) of the Income Tax Act and it means:

"(5) After consideration of the objection, the Commissioner may allow the objection in whole or in part and amend the assessment accordingly, or disallow the objection; and the Commissioner's decision is referred to as an "objection decision".

In other words an objection decision arises from an objection to assessment under section 99 (1) of the Income Tax Act. There was no assessment of the Appellant for income tax by the Commissioner General by the time a decision was made. In the objection decision notice whereof was given on 7th January 2016 and the date of objection being 5th of November 2015 there are some discrepancies.

At page 14 of the record it is written that the date of the objection is 5th November 2015. Secondly the date of the decision is 30th October 2015. There cannot be an objection decision that is made earlier than the objection itself. Secondly, the decision is that the objection was disallowed. On the next page there are no reasons given for the objection decision. The only writing is an advice given to the Appellant which reads as follows: "please reapply for exemption". It merely meant that the Appellant could reapply for exemption and the doors were not shut.

While I appreciate the first preliminary issue raised by the Appellant's Counsel that no reasons were given, the issue is deeper than that. A decision characterising the Appellant as an exempt organisation or not is not an objection decision but a taxation decision. It is appealable to the Tax Appeals Tribunal. Such a decision had been made and was called an "Exemption Rejection Notice". It shows that the acknowledgement date was 18th February 2015. It clearly communicated that the application for exemption was rejected on some legal grounds namely that the taxpayer does not fall within the provisions of section 2 (bb) of the Income Tax Act. Secondly, the Respondent wrote that the Appellant organisation is not an educational institution of a public character.

That decision was communicated to the Appellant. The Appellant through its tax advisers did not appeal to the Tax Appeals Tribunal. Messieurs BRJ Advisory Services who are the tax advisers of the Appellant had erroneously purported to object to the decision. They also purported to move under section 99 (1) of the Income Tax Act which deals with objections to assessment where an assessment notice for income has been issued. Even if an assessment notice had been

issued giving notice for the Appellant to pay income tax, an objection thereto would still deal with the same issue of whether the Appellant is an exempt organisation but not whether the assessment would be erroneous on other grounds. The same ground would have been whether the Appellant is an exempt organisation whose income is exempt from taxation in terms of section 21 of the Income Tax Act. I do not need to read the letter of Messieurs BRJ Advisory Services dated 6th of October 2015 giving the grounds to consider the Appellant as an exempt organisation under section 2 (bb) of the Income Tax Act. One may say that there was a wrong characterisation of the Appellant. In fact on 18th of February 2015 the applicant applied for renewal of income tax exemption. The decision in that regard seems to be reflected at page 4 of the record of proceedings and is entitled "Objection notice for other tax decision". It shows that a decision had been rendered on 30th October 2015. The notice date of 30th of October 2015 is at page 6 of the record communicating the characterisation of the Appellant as a person who does not fall within the provisions of section 2 (bb) of the Income Tax Act.

The conclusion is that there was no objection decision. In any case there could not have been an objection decision because what was required of the Respondent was to give a ruling characterising or agreeing whether the Appellant is an exempt organisation. That had already been done and what was left was for Messieurs BRJ Advisory Services to apply for review of a taxation decision under the Tax Appeals Tribunals Act within the period prescribed under that Act. The Respondent also purported to make an objection decision. It can be appreciated from the errors made that the notice of appeal purports to challenge the decision of the Respondent dated 7th of January 2016. These errors were merely inherited by the Appellant's counsel who bona fide filed an appeal from what had been characterised as an objection decision. Before concluding on the matter I would cite a few provisions of the law.

Section 1 (1) (k) of the Tax Appeals Tribunals Act Cap 345 defines a "taxation decision" to mean any assessment, determination, decision or notice. As noted earlier an objection decision has not a different definition which is even more specific under the Income Tax Act. An objection decision arises from a taxation objection. In the case of the Income Tax Act it arises from an assessment notice or an assessment for income tax.

Under section 14 of the Tax Appeals Tribunals Act Cap 345 a person aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the Tribunal for a review of that decision. Under section 16 an application for review of a taxation decision is to be lodged with the Tribunal within 30 days after the person making the application has been served with a notice of the decision.

Lastly, this appeal raises an important point of law as to whether the letter of the Commissioner General dated 7th of April 2005 characterising and giving exemption to the Appellant which was then known as Lincoln International School was a sufficient determination of the status of the Appellants as an exempt organisation under section 2 (bb) of the Income Tax Act.

For the moment I do not need to determine any of the controversies raised. The controversy is whether the letter of the Commissioner General dated 7th of April 2005 is sufficient and renders the Commissioner General as a person who has determined the matter. Why does the Commissioner General have periodically to determine same question as to whether an organisation is an exempt organisation? The question of whether an organisation is exempt depends on the provisions of the law. That determination may require a review as to whether the income of the organisation is being used to benefit an individual etc.

Secondly, the question remains whether the Appellant is an Educational Institution of a public character. The first tribunal to determine that question ought to be the Tax Appeals Tribunal. The Appellant is a company limited by guarantee and its objects have been attached. The Respondent has no authority to choose who to tax because the question of who should pay tax is determined by an Act of Parliament under article 152 (1) of the constitution of the Republic of Uganda. While they have previously characterised the Appellant the question of whether the Appellant is an exempt organisation is fundamental to whether they are exempted persons whose income is exempt under section 21 of the Income Tax Act. If they are, it would be unlawful to impose income tax on them. The Commissioner General has powers to establish whether a person is an exempt organisation. The question however cannot be left hanging to avoid charging income tax on an exempt person or to charge income which is exempt from taxation. If the law has not permitted, it cannot be done.

Because this raises a question as to whether the taxation of the Appellant would be an illegality, the taxation decision of the Commissioner General ought to be reviewed. Because the Commissioner General purported to make an objection decision and advised the Appellant to apply for exemption, I am unable to hold that the Appellant's application for review would be time barred. All parties proceeded under a misapprehension of law as to timelines and jurisdiction of the High Court.

Before taking leave of the matter, the High Court has no jurisdiction to determine the questions disclosed in this appeal as an original court and only enjoys appellate jurisdiction from the decision of the Tax Appeals Tribunal where an appeal emanates from a taxation decision. Such an appeal is on points of law only under section 27 of the Tax Appeals Tribunals Act Cap 345 laws of Uganda.

Exercising the powers of this court under section 33 of the Judicature Act and to avoid a multiplicity of proceedings and to further avoid any illegality in case the interpretation of the Commissioner General is not correct, the above questions as to whether the Respondent is an exempt organisation under section 2 (bb) of the Income Tax Act and whether the earlier communication or ruling of the Commissioner General on 7th April 2005 on the tax exempt status of the Appellant exhausted the powers of the Commissioner General on the issues is referred to the Tax Appeals Tribunal. The appeal file and pleadings together with the submissions of both Counsels in this appeal are referred to the Tax Appeals Tribunal for determination on the merits. The Tax Appeals Tribunal will give further directions on whether it will be addressed afresh and any other directions for the disposal of the issue in a just manner and the way forward on the hearing.

Any costs occasioned so far are costs in the cause.

Ruling delivered in open court on the 26th of August 2016

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Joseph Luswata Counsel for the Appellant

Golooba Rodney Counsel for the Respondent appearing with Ajambo Barbara

None of the Parties in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

26th August 2016