

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL APPEAL NO.23 OF 2012**  
**(ARISING FROM TAT APP NO. 16 OF 2011)**

**BIRUNGYI, BARATA & ASSOCIATES ::::::::::::::: APPELLANT**

**VERSUS**

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

**BEFORE: THE HON. JUSTICE DAVID WANGUTUSI**

**J U D G M E N T:**

On the 13<sup>th</sup> January 2011 Birungyi Barata & Associates, the Appellant in this Appeal who are a legal and tax consultant engaged in offering legal and tax services sought a private ruling on behalf of its client Dr.Sudhir Ruparelia. It sought answers to questions arising out of section 54(1)(c);

*“Whether an involuntary disposal of an asset to the extent to which the proceeds are reinvested in an asset of a like kind within one year of the disposal concerning sales and shares in compliance with section 18 of the*

*Financial Institutions Act 2004 fell in the Non-Recognition of Gain or Loss regime”*

The Appellants wrote to the Respondents URA as follows’

*“Our clients are individuals who own majority shares in a financial institution. Under the Financial Institutions Act 2004, and the Financial Institutions (ownership and control) regulations 2005, the shareholders are required to reduce their shareholding in the bank to 49% or less. The final phase of divestiture was completed in December 2010 after which Bank of Uganda was notified of the financial institutions full compliance with the regulations.*

*Our clients are required to sell their ownership to comply with the law. The said shareholders however intend to invest the returns of the sold shares in other financial institutions on the stock exchange immediately after divestiture”*

It was clear that the Appellants were in their professional position seeking a private ruling on behalf of their clients who were not named in this Application of 13<sup>th</sup> January 2011. On the 28<sup>th</sup> January 2011 the Respondents wrote back contending that the information provided was insufficient to enable them make a ruling. They wrote in part ;

*“ After due consideration of the information pertaining to your request, we are unable to provide you with a private ruling, this is because the information provided is insufficient for us to provide you with one, however please provide us with the following in order to enable us do so:*

1. *Full participation of the persons involved in the transaction highlighted in your letter with proof of the divestiture and compliance with the Bank of Uganda Regulations.*
2. *Proof of disposal of the shares and evidence of reinvestment of the proceeds in an asset of a like kind.*

*After full disclosure of the above information has been made, we may provide you with a private ruling with regards to your client's transactions."*

It seems the Appellant on 7 June 2011 again wrote to the Respondent seeking the ruling earlier sought because on 17 June 2011 the Respondent again wrote asking for details of payment, basis of transfer, whether such transfer was in exercise of any pre-emption rights as existing shareholders, his rights and whether the shares were obtainable at par value.

On 28 June 2011 the Appellant wrote back attaching the documents with the details the Respondent had asked for. They in part wrote;

*"Please find the documents requested for:*

1. *Details of payment by Telegraphic Transfer from Rasik Kantaria and Jitendra Sanghani to Dr. Sudhir Ruparelia.*
2. *An Extract of the Articles relating to transfer of shares;*
3. *The other relevant documents related to payment and transfer of the shares.*

*As regards to item 2 of your letter, the transfer of shares was due to the Financial Institutions Act (FIA) 2004 and was not in exercise of any pre-emption right as an existing shareholder but the relevant articles for transfer of shares have been attached.*

*As regards to item 3, the bank and or its shareholders did not have any prior relationship with Mr. Jitendra Sanghani. A copy of share transfer form is enclosed.”*

On the 19<sup>th</sup> October 2011 the Defendant wrote back declining to give a private ruling. It wrote ;

*“It is your contention that the shareholder, Dr. Sudhir Ruparelia, involuntarily sold his shares in Crane Bank Ltd (the company herein after) constituting 8% of the total shareholding of the bank in compliance with the Bank of Uganda directive on dilution of a controlling interest in the Company under the Financial Institutions Act 2004; and the Financial Institutions (Ownership and Control) Regulations 2005.*

*It is also your statement that the disposal was in accordance with the company’s Articles of Association. Further, you state that the shares were sold at their par value and that there is no gain or loss on the disposal.*

*In the submissions, it is stated that the proceeds from the sale of the said shares have been re-invested in assets of the like kind through purchase of shares in other financial institutions on the Uganda stock exchange to wit Stanbic Bank Uganda Ltd and DFCU Bank (U) Ltd and thus the transaction falls within the ambit of Section 54(1) (c) of the Income Tax Act, Cap 340 Laws of Uganda. **Because the transaction is already concluded we find no reason why we should provide a ruling/guidance on the application of the Act at this point in time.”***

On the issue of whether the giving of a private ruling was mandatory the Respondent relying on section 161 (1) of the Income Tax Act which provided;

*“The Commissioner **may** upon application in writing by a taxpayer, issue to the taxpayer a private ruling”*

Stated that the ruling was within their discretion and not mandatory. On 9<sup>th</sup> December 2011 the Appellant filed an application with the Tax Appeals Tribunal under section 17(1) of the Act and rule 14(1) of the Tax Appeals Tribunal (Procedure Rules) 1999. These proceedings were commenced in the Appellant’s names although the party that had sought a private ruling in the first instance was Sudhir Ruparelia.

The Tax Appeals Tribunal in its ruling found that the Respondent erred in refusing to give the private ruling sought by the Appellant’s client. It also found that it could not as an Appeals Tribunal give a private ruling in the first instance. That to do so would amount to turning itself into a tax collecting agency.

On the issue of costs the Tax Appeals Tribunal refused to award them to any of the parties and held that each should bear its own costs. It specifically refused to award them to the Appellant because it did not know how it constituted itself into an Appellant.

Record clearly showed that at the time the matter went to the Commissioner General for a private ruling it was on behalf of Dr. Sudhir Ruparelia. In a letter forwarding required documents and information in the search for a private ruling one Mr. Ajay Kumar wrote;

*“We trust the above information is sufficient to obtain a private ruling in the name of Dr. Sudhir Ruparelia.”*

Declining to award costs the Tax Appeals Tribunal held that the right Applicant should have been Dr. Sudhir Ruparelia, the aggrieved taxpayer. That the only way the Appellants could have taken over would be by a Power of Attorney granted to

them by Sudhir Ruparelia. That even after such Power of Attorney the Appellant could not have instituted it in its own names.

This instant appeal is grounded on the following;

*“That the tribunal erred in law when it held that the Appellant was not entitled to costs.”*

In their submissions the Appellant contended that although they sought the private ruling in the names of their clients, they became personally aggrieved when they were denied a ruling and because of that grievance they appealed as Birungyi Barata and Associates. In this they relied on East African Law Society and 4 others vs the Attorney General and 3 others Application No.9 of 2007.

The distinction however with the case above is that it was a matter of first instance while the Application to the Tax Appeals Tribunal was an appeal against the Respondent’s refusal to give a private ruling.

Relying on Lawrence Musitwa vs Busingye Eunice CA 13/90 Counsel for the Appellant submitted that costs followed the event.

Section 17 presupposes that a taxation decision has been made and an aggrieved party may appeal. The documents the decision maker is expected to lodge with the Tax Appeals Tribunal are in respect of the parties against which for whom the decision was made.

Rule 14(1) of the Tax Appeals Tribunal (Procedure Rules) also presupposes that a matter has been before the Commissioner General and a decision has been given. The wording of section 17 of the Act and Rule 14 makes it clear that the person seeking review must have taken the first steps at Commissioner General and was now seeking a second opinion.

The fact that documents are sought from the Commissioner General in its self-indicated that the Tax Appeals Tribunal is a second level in these matters. The Appellant in this matter was not the one who sought the private ruling. He did not go through the initial stage that would lead him to the Tax Appeals Tribunal. He could not therefore have jumped on to the bandwagon mid journey when the Act and rules made it clear that the Commissioner General's ruling was the starting point.

I find this type of appeal where the Applicant was not a party in the first instance strange and alien to section 17 of the Tax Appeals Tribunal Act and Rule 14 of the Tax Appeals Tribunal (Procedure Rules). Having said so the Appellant should not have taken over their client's case and turned it into theirs. I agree with the Tax Appeals Tribunal that the Appellant in this case was the wrong party and cannot benefit by way of costs in a matter they entered wrongly.

For those reasons the appeal is devoid of merit and is dismissed with costs.

**Dated at Kampala this 13<sup>th</sup> day of September 2017**

**HON. JUSTICE DAVID WANGUTUSI**  
**JUDGE**