

The Republic of Uganda

In The High Court of Uganda Holden at Kampala

Commercial Division

Civil Suit No 1031 of 2019

ILISO Consulting (Pty) Ltd

10 Eng. Dr. Anania Mbabazi

Janepher Mbabazi ::::::::::::::::::::::::::::::::::::::: Plaintiffs

Versus

1. Iliso Consulting (Pty) Ltd t/a Nako Incorporated in South Africa

15 2. Uganda Revenue Authority

3. Grant Thornton Consulting Ltd ::::::::::::::::::::::::::::::: Defendants

Before: Hon. Justice Dr. Henry Peter Adonyo

Ruling On a Preliminary Objection

1. Background:

20 On the 15th December 2020 this matter came up for scheduling.

The 2nd defendant informed court that it intends to make a



5 preliminary point of law on the matter. The matter was
adjourned to 11th January 2021 Counsel for the second
defendant to raise the preliminary point of law. On that date
Counsel for the Second defendant submitted that the said
suit was prematurely instituted against the 2nd defendant on
10 the basis that though this court has an unlimited jurisdiction,
it did not have original jurisdiction to hear tax disputes given
that the dispute between the plaintiffs and 2nd defendant is a
tax dispute in respect of assessment of UGX 1,469,083,334/=
which the 1st plaintiff objected to.

15 That being the case, counsel sought for and requested the
court to have this suit dismissed as the point of law
substantially disposes off the whole suit.

While arguing the point of law, counsel relied on a number of
provisions of the law citing Article 152(3) of the 1995
20 Constitution of the Republic of Uganda which provides for
establishment of the tax tribunal for purpose of setting tax
dispute. And in accordance parliament enacted the Tax
Appeals Tribunal Act cap 345 that established the tax
Appeals Tribunal to handle tax related disputes, section 14(1)
25 of the Act provides for any person aggrieved by a decision



5 made under the taxing Act by the Uganda Revenue Authority
May apply to the tribunal for a review of the decision.

That, the Law does not confer original jurisdiction in tax matters
on the High court with such jurisdiction is only exercised by
the Tax Appeals tribunal and only referred to the High Court
10 on appeal from decisions of the tribunal.

Counsel also cited the case of **Kawuki Mathias V The
Commissioner General URA, Miscellaneous Cause no.14
of 2014** Justice Christopher Madrama Izama while
dismissing the application held that the principle is that
15 where parliament has prescribed a procedure for reviews or
appeals before another judicial or quasi judicial body, the
court should not allow another process to be used...the High
Court should not usurp the powers of the tribunals
prescribed by parliament for setting tax disputes. That
20 position was pointed out by the Supreme Court in **Uganda
Revenue Authority Versus Rabbo Enterprises(u) Ltd
Supreme Court in Civil Appeal No 12 of 2004.**

Furthermore, that under Order 6 Rule 29 of the Civil
Procedure Rules it provides that if in the opinion of the court,
25 the decision of the point of law substantially disposes of the



5 whole suit or of any distinct cause of action, ground of
defense or reply there-in, the court may there upon dismiss
the suit or make such other order in the suit as may be
just. Thus, with the above authorities counsel for the 2nd
defendant prayed that the suit against the 2nd defendant be
10 struck out with costs.

Counsel for the plaintiff opposed submissions made by the
2nd defendant in regards to the preliminary point of law
arguing that :

The Tax Appeals Tribunal does not have jurisdiction to hear
15 and determine the plaintiff suit against the 2nd defendants
and that the facts in the Supreme Court decision in ***Uganda
Revenue Authority V Rabbo Entreprises (u) Ltd &Anor*** are
distinguishable from those in the instant case and thus the
fair and just disposal of the instant point of law requires the
20 evaluation of evidence.

Counsel submitted that the tax appeal tribunal has
jurisdiction to determine only purely tax disputes. That,
where a dispute arises from a misrepresentation of company
law and contract law provisions and principles thereby
25 leading to erroneous issuance of tax assessment as was the



5 case in the instant matter, the tax Appeals tribunal has no legal mandate to determine the same.

Furthermore, that the second defendant's interpretation of section 14(1) of the Tax Appeals Tribunal Act Cap. 345 was erroneous. That, it is not mandatory for a person aggrieved
10 by the 2nd defendant's decision under a taxing Act to appeal to the tribunal if the full and just resolution of the dispute will involve significant consideration of questions in other bodies of law other than tax law. And in such circumstances, the High Court has exclusive original jurisdiction to handle
15 the disputes pursuant to Article 139 of the constitution.

Counsel argued that 2nd defendant's reliance on the decision in ***Kawuki Mathias V the commissioner General, URA HC no.14 of 2014*** is also erroneous and misconceived. That, the case is distinguishable in material particulars since it
20 involved purely a tax dispute that is, quantum of customs duties due from the applicant therein. In the instant facts, this court has to deal with a significantly distinct dispute involving a myriad of contract and company law questions whose resolution will determine whether tax was properly
25 assessed. That in the case of ***Mathias Kawuki***, the court was

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5 dealing with the mandatory language of section 229(1) of the
East African Community Customs Management Act, 2004,
which demands that a person aggrieved by decision of the
commissioner or any officer of URA relating to customs shall
lodge an application for review or omission.

10 **Decision of Court :**

I have taken into account the submissions of both parties on
the preliminary objection.

**Article 139 (1) of the Constitution of the Republic of
Uganda** confers upon the High Court, original jurisdiction in
15 all matters; it provides thus:

Article 139 (1):

***The High Court shall, subject to the provisions of
this Constitution, have unlimited original
jurisdiction in all matters and such appellate
and other jurisdiction as may be conferred on it by
20 this Constitution or other law.***

This means that the High Court is clothed with jurisdiction
and powers of a court of law and equity. That jurisdiction is

5 general and thus the High Court can hear in the first instance,
any suit that is not specifically assigned to another court or
tribunal under the law.

Article 129 of the Constitution, which provides for the
10 hierarchy of courts also provides for the establishment of
subordinate courts as follows;

Article 129

**(1) The judicial power of Uganda shall be exercised by
the courts of**

15 **judicature which shall consist of—**

- (a) the Supreme Court of Uganda;**
- (b) the Court of Appeal of Uganda;**
- (c) the High Court of Uganda; and**
- (d) such subordinate courts as Parliament may by law**
20 **establish, including qadhis' courts for marriage,**
divorce, inheritance of property and guardianship,
as may be prescribed by Parliament.

Like article 129 above, Article 152 (3) of the Constitution also
grants powers to the parliament to establish tax tribunals to

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5 hear and determine tax disputes:

Article 152

1).....

2)

3) Parliament shall make laws to establish tax
10 tribunals for the purposes of settling tax disputes.

The Tax Appeals Tribunals was established by the Tax
Appeals Tribunals Act Cap 345 and under part IV, section 14
of the Act, one of the its functions is to review decisions where
***'any person is aggrieved by a decision of the Uganda
15 Revenue Authority made under a taxing act.***

Additionally, Section 27 of the Tax Appeal Tribunal Act allows
a party proceeding before the tribunal to lodge a notice of
appeal with the High Court, thus granting the High Court
appellate jurisdiction in such matters.

20 Having given that background, it is important to note that
though the tribunal was not given exclusive jurisdiction over
tax matters, however, the reading of the provisions above,
and in an effort to give meaning to the intentions of the
legislature or draftsman, this honourable court has on

5 several occasions asked itself whether it was the intention of
the legislature that the High Court should have both the
original and appellate jurisdiction in tax disputes and it has
invariably held that though the position of the constitution
was clear, the best interest of justice would be better served
10 when a court with particular and specialized jurisdiction is
available thus underlying the intention of the draftsman that
upon the creation of the Tax Appeals Tribunal, such would ,
in the first instance hear and determine such matters as
relating tax disputes, with such matters only coming to the
15 High Court on appeal or review.

Given the above position, I would thus agree with counsel of
the 2nd defendant and the decision in **Kawuki** (above) that
where parliament has prescribed a procedure for reviews or
appeals before another judicial or quasi judicial body, the
20 court should not allow another process to be used to attack
the decision.

I note that this matter also touches other causes of action in
contract law and company law but since the matter primarily
is grounded on a tax dispute then in the interest of justice, It
25 is my opinion that given the position above on the jurisdiction

5 of the High Court and Tax Appeal Tribunal, I would order this case to be referred to the Tax Appeals Tribunal for adjudication over the tax dispute then the other residual issues in regard to company law and contract may, where necessary, be referred back to the High Court.

10 **Order**

- i. This suit is referred to the Tax Appeals tribunal for handling and disposal.
- ii. Any costs so far incurred by any party in respect of this suit shall be in the cause.

15 I so order.



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Dr. Henry Peter Adonyo

Judge

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15th March 2021