THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

CIVIL APPEAL NO. 03 OF 2014

(Arising from TAT APPN. No.7 of 2012)

UGANDA REVENUE AUTHORITY ::::::::::::::::::APPELLANT

VERSUS

SKENYA MOTORS (U) LIMITED::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

JUDGMENT

[1] This is an appeal from a decision of the Tax Appeals Tribunal in TAT Application No.7 of 2012 wherein the majority members of the Tax Appeals Tribunal found for the respondent and agreed that the appellant had been wrong to re-characterize its transaction.

[2] The background of the appeal is that the respondent made payments to its directors, Mr. Nyanzi Nathoo and Mr. Bashir Nurali in the sum of Ugx 390,000,000 and Ugx 712,500,000 for the years 2008 and 2009 respectively. That the said directors are also shareholders of the Respondent Company. The appellant queried the tax treatment of the directors' bonuses and re-characterized the payments as a return on the shareholders' investment and taxed it as a dividend. The respondent objected to the tax treatment of the bonus payments

received by its directors. The appellant made an objection decision maintaining its decision to re-characterize the bonus payments as dividends, vacated the penalties imposed under S.151 but maintained those under S.154 of the Income Tax Act (ITA). The applicant then filed TAT Application No.7 of 2012, challenging the same. The tribunal delivered a majority ruling in favour of the respondent to the effect that; *the nature of the payments to the directors was a bonus; that the respondent had no justification to re-characterize the payments under Section 91 ITA and that the issue of penalty under Section 154 of the ITA was redundant.* However, in a minority ruling the chairman of the tribunal held that; *the respondent failed to prove that the directors were paid a bonus; that the shareholders received a percentage of the profits of the company; that the commissioner was justified to re-characterize the payments under Section 91 ITA and that the respondents were liable to pay a penalty under Section 154 of the ITA.*

[3] The grounds of the appeal are that;

1. The Honourable members of the Tribunal erred in law when they failed to properly evaluate the evidence on record and ruled that the nature of the payments made to the Directors was a bonus.

2. The Honourable members of the Tribunal erred in law when they ruled that there was no tax avoidance scheme to justify the appellant to re-characterize the payments under Section 91(1) (a) of the Income Tax Act.

3. The Honourable members of the tribunal erred in law when they failed to properly evaluate the evidence on record and ruled that the payments made to the directors were not disguised payments, the form not reflecting the substance, to qualify for re-characterization under S.91(1)(c) of the ITA.

4. The Honourable members of the Tribunal erred in law when they ruled that the issue of the penalty imposed thereunder was redundant.

5. The Honourable members of the Tribunal erred in law when they found that it is not the appellant's business to ensure that its taxpayer companies comply with the companies Act.

[4] This is a first appeal. The duty of the first appellate court is to reconsider the evidence and evaluate it by itself. See **Selle and Anor Vs Associated Motor Boat Ltd and Ors (1968) E.A 123 @ page 126** where in discussing the role of the 1st appellate court it was held that;

> *"An appeal....is by way of retrial....the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect."*

[5] An appeal from a decision of the Tax Appeals Tribunal is made under Section 27 (1) of the Tax Appeals Tribunals Act Cap 345. It is to the effect that;

"A party to a proceeding before a tribunal, may within 30 days after being notified of the decision or within such further time as the high court may allow, lodge a notice of appeal with the registrar of the high court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceedings before the tribunal."

[6] Upon reading the record and considering the grounds of appeal as outlined above, I find it imperative to resolve grounds 1,2, and 3 together because they are interrelated and then grounds 4 and 5 separately.

Grounds 1,2 &3

[7] It was submitted for the appellant that the Honourable members erred in law when they failed to properly evaluate the evidence on record and ruled that the nature of payments made to the directors was a bonus. That according to **Section 26 of the Tax Procedures Code Act**, the burden lies on the tax payer to prove that the assessment is excessive. That it is not in dispute that the two directors are also shareholders in the respondent company and yet directorship in a company amounts to employment. See Section 2 ITA. However, that the nature of the payments that were made to the directors was made to them in their capacity as shareholders and thus was a return on income on the shareholders' investment (dividend) and the respondent failed to prove otherwise and as such the said payments cannot be referred to as employment income. That the respondents did not provide any written contracts of

payment contrary to A.17 of the Articles of Association of the said company which requires the first directors of the company to be appointed in writing and also that the said directors were both non-residents thus not providing full time employment services to the respondent to qualify for such enormous rewards termed as bonuses.

[8] That it was the evidence of AW3 Mr. Nurali, one of the directors, that both directors did not have a contract of service with the applicant, were not on the payroll and they never received any salary see page 321 and 346 of the record of appeal. That the respondent received a percentage of the profits which amounts to a dividend. See Article 18 of the respondents Articles of Association and Section 2(w)(v). Also that the two directors who are shareholders are the same who convened meetings in which they were the only members and further agreed and decided to issue themselves bonuses in the stated amounts however there was no resolution from the other employees of the Respondent company to receive bonuses. That the TAT further relied on a resolution which was not registered with the Registrar of Companies to arrive at its decision. The said resolution was also not dated. That the tribunal further relied on an unregistered extract from minutes of a meeting to arrive at its conclusion yet this document could not be relied on as part of evidence. See pages 155 and 176 of the Record of proceedings.

[9] That the dissenting TAT member while relying on **Eley Vs Positive Government Life Security Assurance Co. (1876) 1**

EX D 88, rightly found that if a resolution is not registered it does not have any legal effect on the outside world or public and institutions and that an omission to register a company document makes it difficult to rely on as it was not a public document. See page 285 of the Record of Appeal. That further, the said resolution was made in 2010 whereas the bonuses to the directors were made both in 2008 and 2009. See page 176 of the Record of Proceedings. That the bonus payment made to the two directors was out of proportion compared to all the other employees as no other employee was paid a bonus amounting to even 1/3 of the amount of money which the 2 directors were paid. See Exhibit R14 at page 188 of the Record of Appeal. The respondent while relying on **Uganda Revenue Authority Vs Downtown Forex Bureau & 2Ors, H.C.C.A No.23 of 2013** maintained that the payments made to the directors was not a bonus but a return on investment(dividends).

[10] In response thereof, it was submitted by the respondents that this appeal ought to be struck out with costs for being premised on issues of fact or mixed law and fact which renders the memorandum of Appeal incompetent. That this is in direct contravention of Section 27 (2) of the Tax Appeals Tribunal since this issue is premised on whether the payment was a bonus or dividend.

[11] Further, that notwithstanding the above prayer, it was submitted that the bonus payment made to the directors constitutes employment income. That **Section 2 (aa)** provides

that employment income has the meaning in **Section 19 of the Income Tax Act.**

[12] That **Section 2(z)(ii) of the Income Tax Act** is to the effect that 'employment' means *"a directorship of a company"*. That following this provision, a director of a company is clearly placed and any remuneration earned by virtue of such position constitutes employment income. That as such the payments made to the directors constituted employment income and PAYE was duly paid. That the directorship of the two directors (Nyazali Nathoo and Bashir Nurali) was not in dispute in the TAT and neither is it in dispute in this current appeal. That as such, court should uphold the Tax Tribunal finding that since they are directors, the nature of payment to them was a bonus and not a dividend. That contrary to the averments of the appellant, directorship is a form of employment with or without a contract of service.

[13] That as per the decision of **Uganda Revenue Authority Vs Siraje Hassan Kajura and Ors SCCA No. 9 of 2015**, the authorities relied on by the respondent offers guidance on interpretation and application of tax laws and that Section **2(aa)** and **19(1) of the Income Tax Act** places directors of a company as employees and any such bonuses received by them as employment income for tax purposes. That the appellant's assertion that the amounts paid out to the directors are not bonuses for being out of proportion ought to be ignored since the same has no basis in law. It is not upon the appellant to

determine a range for bonuses and neither does every employee receive the same range of payment in bonuses. That the appellant's reliance on Article 18 of the Respondent's Articles of Association amounts to an argument on facts and not law and therefore should be disregarded by this court since an appeal from the Tax Appeals Tribunal should be on law and not facts. That the payments were bonuses and fall within the scope of "otherwise" and do not fall within the strict construction of "percentage of profits". That the same were earned from performance of special services as a result of mortgaging their bonuses and pledging personal guarantees to enable the company to make profits. That being directors did not disentitle them from receiving remuneration and it has never been un lawful for a director to hold shares. Thus the respondents prayed that the appellant's reliance on A.18 be disregarded. That the case of **Uganda Revenue Authority Vs Down Town Forex Bureau & 2Others, HCCA No.23 of 2013** is distinguishable from this case since there was a resolution allowing the payment of the bonuses. That as such, it was not correct for the appellant to conclude that it was justified to re-characterize a transaction on account of suspicion. That the payments were bonuses and tax was paid at a high rate of 30% PAYE and any further tax would amount to double taxation.

[14] In rejoinder, it was submitted that the issue of whether the payment was a bonus or dividend is one of law and not fact. See **Black's Law Dictionary 8th ed. 2004**. That the issue satisfies

the definition of a question of law since it concerns application/ interpretation of the law and both parties have relied on the Income Tax Act and decided cases while resolving whether the payment was a bonus or dividend which issue is one of law and not fact or mixed law and fact. Further, that reliance on Articles of Association is an argument of law and the Companies Act is to the effect that it constitutes an agreement between members. That the Evidence Act provides that they are admissible in court and that case law also confirms the same. See **Rukikaire Matthew Vs Incafex (U) Ltd, SCCA No. 03 of 2015.**

[15] The appellant reiterated its position that the payments made to the directors was not a bonus but a return on investment or dividends since the respondents did not provide any written contracts of employment, contrary to Article 17 of the Respondents Articles of Association which require for the first directors to be appointed in writing. Also that the bonus payment made to the 2 directors was out of proportion compared to all other employees.

Resolution

[16] A bonus is a financial compensation that is above and beyond the normal payment expectations of its recipient. I have taken time to diligently re-evaluate all the evidence on record. The facts herein do not categorically state what the normal payment expectations of the respondent directors were, since they confirmed not receiving any salaries.

[17] The Tribunal in its majority decision held that;

"The Tribunal notes that from the evidence of AW1 bonuses were given to all staff according to their management levels and performance. The two directors who put up a special effort to raise funds to purchase the trucks and marketed them in Uganda also received bonuses in proportion to their level of contribution. The details of bonuses paid and taxes deducted therefrom were forwarded to the respondent in a letter dated 21st September, 2011 (A4). From the foregoing, the Tribunal Rules that the nature of the payments to the directors was a bonus".

[18] **Section 2(aa) of the Income Tax Act** is to the effect that; (aa) "employment income" has the meaning in Section 19;

[19] **Section 19(1) of the Income Tax Act** is to the effect that;

19. Employment income

(1) subject to this section, employment income means any income derived by an employee from any employment and includes the following amounts, whether of a revenue or capital nature-

(a) any wages, salary, leave pay, payment in lieu of leave, overtime pay, fees, commission, gratuity, bonus or the amount of any travelling, entertainment, utilities, cost of living, housing, medical or other allowance;

(b) the value of any benefit granted;

(c) the amount of any discharge or reimbursement by an employer of expenditure incurred by an employee, other than expenditure incurred by an employee on behalf of the employer which serves the proper business purposes of the employer;

(d) any amount derived as compensation for the termination of any contract of employment, whether or not provision is made in the contract for the payment of such compensation, or any amount derived which is in commutation of amounts due under any contract of employment;

(e)any amount paid by a tax-exempt employer as a premium for insurance on the life of the employee and which insurance is for the benefit of the employee or any of his or her dependents;

(f) any amount derived as consideration for the employee's agreement to any conditions of employment or to any changes in his or her conditions of employment;

(g) the amount by which the value of shares issued to an employee under an employee share acquisition scheme at the date of issue exceeds the consideration, if any, given by the employee for the shares, including any amount given as consideration for the grant of a right or option to acquire the shares;

(h) the amount of any gain derived by an employee on disposal of a right or option to acquire shares under an employee share acquisition scheme.

[20] On the contrary, the dissenting member of the Tribunal held as follows;

"Coming to the question before us, as to whether the payments were dividends or remunerations, the payments to directors can only be seen by looking at the company's memorandum and Articles of

association. The Articles of Association of the applicant are silent on the sitting allowances to be paid to the directors. No evidence was adduced to show that the general meeting which appointed (if any) the directors fixed their remuneration. However, the Articles of Association made a provision were a director performed special services. Article 18 of its Articles of Association reads that; "any director who, by request performs special services..... Shall receive such extra remuneration by way of salary, percentage of profits or otherwise as the board may determine." The said Article refers to the payment for special services as extra remuneration. It does not mention what the first remuneration is or how it is arrived at. Of course what was paid to the directors was not a salary. They were not on the payroll. Mr. Bashir Nurali testified that he was not paid any salary. I have already noted that there is no evidence that a general meeting or a board of directors' meeting fixed the remuneration of the directors. The applicant argued that the payments to the directors were for special services provided. A reading of the above Article does not preclude a director/shareholder from receiving a percentage of profits for special services. If he receives it as a shareholder/director it would still be a dividend.....the applicant tendered in a resolution (Pg 103 of the trial bundle) which purportedly awarded the directors bonus. However, I note that the said resolution was not registered with the registry of companies. Counsel for the applicant

argued that under Art. 27 of the Articles of Association of the applicant, a resolution in writing signed by all the directors shall be valid and effectual as if it had been passed at a meeting of all directors duly convened and held. With due respect to the said submission, I do not think that the issue here is whether a meeting of directors was duly convened and held. It is about the failure to register to register the resolution with the registry of companies. The Articles of Association govern the internal arrangement of the company. It does not constitute a contract between a company and someone who is not a member or signatory to it. In Eley Vs Positive Government Life Security Assurance Co. (1876) 1 EXD @88 Lord Cairnes noted that; "This Article is either a stipulation which could bind the members or else a mandate to the directors. In either case it is a matter between the directors and shareholders and not between them and the plaintiff". Furthermore, the said resolution was made by the board meeting of the applicant on 20/03/2010. The first bonus to the directors was made in 2008 and the second in 2009. The resolution does not mention the payment of 2008. In essence the board did not award the bonus of 2008. But what is important to note is that the resolution was made after the payments. One would not be wrong to assume the said resolution was made belatedly to whitewash the payment of 2009 the directors gave themselves."

[21] Before delving into other matters, I shall first deal with the aspect of the board resolution dated 20/03/2010 that was questioned by the appellant and the TAT minority decision above. A board resolution is a written document created by the board of directors of a company detailing a binding corporate action. So, whether the impugned payments to the directors were bonuses or dividends or otherwise, it is imperative that a decision by the board is made on the modalities regarding the whole transaction i.e. how much should be paid, from which funds (profits), to who, for what purpose (reason), for what period e.t.c.

[22] A perusal of the entire record once again reveals that the two directors in issue received a sum of Ugx 390,000,000/= dubbed as bonus for the year 2008. There is no evidence at all on the record authorizing such payment. In 2009 the same directors received another sum of Ugx 712,500,000/= also as bonuses. For the second payment, however, a board resolution dated 20/03/2010 was tendered purporting to authorize the payment. As seen in the minority decision, the Tribunal was very critical on the aspect of non-registration of the board resolution with the Registrar of Companies. Be that as it may, acting on such a resolution may not be that fatal as a late registration and payment of the prescribed penalty can cure the defect. What is fatal, and incurable however in my view, is the act of effecting payments without authority i.e. a board resolution and or relevant board minutes. I should quickly add

here that the provisions of Article 27 would make it possible for a valid board resolution to be acted on without accompanying board minutes.

[23] It is apparent that the respondent company made profits during the period under scrutiny from which all the salaried employees were paid a bonus depending on their levels in the company. True, the two shareholders, also doubling as directors are employees of the company. From the evidence, I am also inclined to agree with the dissenting opinion that the two directors received a payment but not as a result of their special contribution/services. One is left to wonder, 1st of all, how the decision to pay only the two directors that sum of money in 2008 from the profits made by the company was arrived at and by who. This very critical evidence is lacking, and here it is immaterial whether the money is paid as a bonus or dividends. But that is not all. The payments effected in 2009 seem to derive legitimacy and or authority from a resolution dated 20/03/2010 and tendered in court. Going by this evidence it becomes clear that at the time of making the said payments there was no requisite authorization. Moreover, the purported resolution did not have retrospective effect to ameliorate the anomaly. For instance, had it been an extraction from board minutes which had reached that decision before the date of payment of the monies obviously the position would have been different.

[24] The board resolution referred to reads as follows;

"EXTRACT FROM THE MINUTES OF THE MEETING OF BOARD OF DIRECTORS OF SKENYA MOTORS (U) LTD, HELD AT NAIROBI ON 20TH MARCH, 2010.

IT WAS RESOLVED *that due to the good performance achieved in 2009, the directors should get bonus of USD 380,000/- to be apportioned between Mr. Niaz Nathoo and Mr Bashir Nurali in the ratio of 61.40% and 38.60% respectively.*

(Signed)
Nyazali H Nathoo
DIRECTOR

(Signed)
Bashir Nurali
DIRECTOR"

[25] Therefore, as matters stand here, all these payments can only be treated as advance payments and cannot be transformed into bonuses. I should perhaps add that for bonuses to be paid, first the specific monies have to be declared and ascertained then allocated and paid to the respective recipients in future. What however happened in the instant case was the opposite of the above process. That is why in the dissenting opinion the tribunal stated that *"one would not be wrong to assume that the said resolution was made belatedly to whitewash the payment of 2009 the directors gave themselves"*. See p.28 of the record of Appeal.

[26] In the premises, I am also inclined to agree with the dissenting member of the Tribunal that the impugned payments were not bonuses as the respondents had submitted. By making such un-authorized payments in 2008 and 2009 and later in 2010

attempting to make good the position, in my view, this was an afterthought by the respondents intended to fix the anomaly and justify the said payments as bonuses. It was a very well calculated move or scheme intended to avoid payment of taxes.

[27] **Section 91 of the Income Tax Act states thus;**

> ***91. Recharacterization of income and deductions***
>
> ***(1) For the purposes of determining liability to tax under this Act, the commissioner may –***
>
> ***(a) recharacterise a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;***
>
> ***(b) disregard a transaction that does not have substantial economic effect; or***
>
> ***(c) recharacterise a transaction the form of which does not reflect the substance.***
>
> ***(2) A "tax avoidance scheme" in subsection (1) includes any transaction one of the main purposes of which is the avoidance or reduction of liability to tax.***

[28] A tax avoidance scheme involves bending the tax rules to gain an advantage never intended by parliament. It often involves contrived and artificial transactions that serve little or no purpose, other than to reduce the amount of tax that someone pays. It however deprives public services of the vital funding they need.

[29] I respectfully disagree with the majority decision reproduced herein above. I find that the appellant rightfully re-characterized the respondent's transactions for reasons that this was a disguised transaction. In as much as the law permits

the taxpayer to organize their affairs in such a way that they can reduce their tax burden or liability, care should be taken to ensure that the transaction in question does not have the effect of violating the law. In the appeal before me however, the directors who double as shareholders passed a resolution to pay themselves monies in the year 2008 and 2009 respectively. These happen to be the same years where dividends were not declared in the company. It is now apparent that the payments made out to the directors were disguised payments (as bonuses) in order for the respondents to evade tax which would have accrued had they paid out dividends. Moreover, it should not be forgotten that the payments were effected basing on a resolution that was made way after the said payments. I have no doubt therefore that this was a tax avoidance scheme and the appellant should not be faulted for invoking the provisions of Section 91 (1)(c) and recharacterize the said payments. This discourse sufficiently takes care of the 1st ,2nd & 3rd grounds of appeal.

Ground 4

[30] On ground 4, it was submitted that the members of the tribunal erred in holding that the issue of the penalty imposed thereunder was redundant. That penal tax was imposed under **Section 154** of the **Income Tax Act** which is to the effect that; *"a provisional tax payer whose estimate or revised estimate of chargeable income for a year of income under is less than 90% of the taxpayer's actual chargeable income assessed for that year*

is liable for penal tax." That the respondent's provisional assessment is less than 90% of its actual income, the reason for the respondent's seeking of a waiver for the penalty imposed for under providing tax for the year 2008. That as such, although the respondent argued that it admitted the said liability to obtain a waiver and parliament refused to grant the waiver, it was not in dispute that a penalty was arising and that as such the penalty under Section 154 of the Income Tax Act was rightly imposed by the appellant against the respondent since its provisional assessment was less than 90% of its actual chargeable income.

[31] In response thereof it was submitted that the penalty imposed by the appellant was as a result of its re-characterization which caused the estimated provisional income to be less than 90% of the final chargeable income. (See the holding of the tribunal at page 277 of the Record of Appeal.) That such penalties become automatically redundant on account that the appellant was not justified in re-characterizing the transaction in the first place. The respondent prayed that the court dismisses this ground and re-characterizes the transaction since the appellant was not justified in re-characterizing the transactions.

[32] In rejoinder thereof, the appellant reiterated its position that the members of the tribunal erred in law when they ruled that the issue of the penalty imposed thereunder was redundant. That the penal tax was imposed under Section 154 of the Income Tax Act and as such cannot become automatically redundant where

the applicant admitted to the penalty and sought waiver of the same. That the penalty was rightly imposed by the appellant against the respondent since its provisional assessment was less than 90% of its actual chargeable income.

Resolution

[33] **Section 154 of the Income Tax Act states thus;**

> ***154. Penal tax for understating provisional tax estimates***
>
> ***(1) A provisional taxpayer whose estimate or revised estimate of chargeable income for a year of income under section 112 is less than 90 percent of the taxpayer's actual chargeable income assessed for that year is liable for penal tax equal to 20 percent of the difference between the tax calculated in respect of the taxpayer's estimate, as revised, of chargeable income and the tax calculated in respect of 90 percent of the taxpayer's actual chargeable income for the year of income.***
>
> ***(2) A provisional taxpayer whose estimate or revised estimate of gross turnover for a year of income under section 112 is less than 90 percent of the taxpayer's actual gross turnover for that year is liable for penal tax equal to 20 percent of the difference between the tax calculated in respect of the taxpayer's estimate, as revised, of gross turnover and the tax calculated in respect of 90 percent of the taxpayer's actual gross turnover for the year of income."***

[34] Without much explanation and from the record, it is clear that the respondent agreed to the fact that there was a penalty to be

paid. That penalty arose from taxes that were due. This explains why the respondent went ahead and sought for a waiver from parliament though the same was denied. In this regard, having confirmed that the appellant was right to re-characterize the transaction herein, it is then apparent that the respondent is liable to penal tax. In the same vein it cannot be held that the penalties imposed pursuant to Section 154 (supra) were redundant. Accordingly, I find the respondent's argument that the penalty imposed by the appellant was as a result of its re-characterization which caused the estimated provisional income to be less than 90% of the final chargeable income to be flawed. This issue is answered in the negative.

Ground 5

[35] On ground 5 it was submitted by the appellant that the respondent being a registered company was bound to comply with the companies Act yet contrary to the same it did not register its resolution that allegedly made the payments for bonuses. That the effect of this is that such document has no legal effect on the public and as such is difficult to rely on. That the appellant was only bound to consider resolutions that were registered with the Company registry in compliance with the companies Act. That as such, the tribunal erred in law when they found that it is not the appellant's business to ensure that its taxpayer companies comply with the companies Act. The appellant then prayed that this court allows the appeal and sets aside the Orders of the Tax Appeals Tribunal in **TAT**

Application No.7 of 2012 and that the costs of this appeal and in the Tax Appeals Tribunal be borne by the respondent.

[36] In response, it was submitted that this ground should not stand since this allegation is based on facts and thus should not stand on appeal since it is not useful and is merely academic in nature. Further, that the appellant is not mandated to look into whether or not the respondent complied with the company's Act or any other enactment save those that create a tax obligation. That the tax was paid in form of PAYE. Further, that the law does not require minutes to be filed and resolutions that ought to be filed are those envisioned under **Section 150 of the Companies Act, 2012**. The respondent prayed that the court dismisses the appeal with costs and upholds the Tax appeals tribunal decision.

[37] In rejoinder, it was submitted that the respondent being a registered company is bound to comply with the companies Act. That the respondent intentionally failed to comply with the Companies Act and sought to evade and or avoid payment of taxes in the particular transaction. That the appellant is expressly empowered under Section 91 Income Tax Act to re-characterize such transaction since it was not compliant with the law. That it was a mere disguise. That allowing the respondent to benefit from it is an abuse of court since it is well known that court cannot entertain an illegality. That the respondents did not register the resolution that allegedly made the payment of bonuses and the effect then is that such

resolution has no legal effect on the outside world and such omission makes it difficult to rely on such document because it is not a public document. That the appellant was duly bound to consider resolutions that were registered with the company registry in compliance with the Companies Act. See **Uganda Railways Corporation Vs Ekwaru D & 5104 Ors CACA N0.25 of 2007**. Also, the majority members not considering the illegalities and irregularities by the respondent's non-compliance with the Companies Act leads to an abuse of court process and a miscarriage of justice.

[38] The appellant then prayed that this court allows and sets aside the order of the Tax Appeals Tribunal and the Costs of appeal and the Tax Appeals Tribunal be borne by the respondent.

Resolution

[39] This Court has had the opportunity to analyze and reconsider all the evidence on record. I am in agreement with the appellant that the respondent ought to comply with all the existing laws. Much as the Companies Act does not create a tax obligation, the documents to be relied on by the taxing masters to ascertain the legality of such payments were required not only to have been registered (the resolutions) but also to conform to the prescribed procedures as outlined in the relevant laws. I have earlier on already noted that the said resolutions were even made way after the said funds had been paid to the respondent directors, which was clearly an afterthought. I totally disagree with the majority holding that the appellant is not charged with

the duty of ensuring that the respondent complies with all the laws in place, most especially the Companies Act. This argument is not only flawed but also self-defeating and should be rejected. For it should not be forgotten that a company is a creature of law. In this case, it's the Companies Act that gave rise to the respondent Company (Skenya Motors (U) Ltd). Therefore, how does one expect the respondent company to operate and run its affairs without following and observing the procedures as prescribed in the relevant legal regime, especially the Companies Act. This ground is answered in the negative.

[40] **In conclusion, I find the appeal to have succeeded on all the five grounds. Accordingly, the Tax Appeals Tribunal majority decision of 14/02/2014 is hereby set aside and replaced with this judgment. The appellant is awarded costs of this appeal and before the Tax Appeals Tribunal.**

Dated, signed and delivered at Kampala this 29th day of January 2024.

Duncan Gaswaga

JUDGE