

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CIVIL SUIT No. 0001 OF 2011**

**CHANDOO ENTERPRISES (EA) LIMITED** ..... **PLAINTIFF**

**VERSUS**

**UGANDA REVENUE AUTHORITY** ..... **DEFENDANT**

**Before: Hon Justice Stephen Mubiru.**

**JUDGMENT**

The plaintiff sued the defendant for a declaration that the decision it took not to renew the plaintiff's bonded warehouse licence in Arua was high handed, arbitrary and illegal, an award of general damages, exemplary / punitive damages, interest and costs. It was the plaintiff's case that at all material time between 1<sup>st</sup> January 2007 and 31<sup>st</sup> December 2007 it operated a bonded warehouse No. W0166 at Plot 26, Hospital Road in Arua. Without justifiable cause, the defendant at the beginning of January 2008 closed and sealed off the warehouse with all its contents and it remained closed until 17<sup>th</sup> December 2008. After re-opening it, the defendant did not renew the plaintiffs licence, leading to the closure of the plaintiff's business thereby causing it financial loss of over two hundred seventy million shillings. The plaintiff claims that the decision not to renew the licence was high handed, arbitrary and illegal, hence the claim.

In its written statement of defence, the defendant contended that closure of the plaintiff's bonded warehouse and subsequent refusal to renew its license was justified and necessary for purposes of protecting customs revenue and both were decisions arrived at judiciously.

At the scheduling conference, the following facts were admitted; that the plaintiff operated bonded warehouse No. W0166 at Plot 26, Hospital Road in Arua, that the defendant sealed off that warehouse with all its contents inside from January 2008 to 17<sup>th</sup> December 2008 and that the defendant did not renew the plaintiff's licence for the year 2009 in respect of that warehouse.

The following issues were agreed upon;

1. Whether it was lawful for the defendant to close the plaintiff's bonded warehouse from January 2008 to December 2008.
2. Whether the defendant's refusal to renew the plaintiff's licence for the year 2009 was lawful.
3. Whether the defendant's decision to close the warehouse between January 2008 to December 2008 and refusal to renew the licence of the plaintiff for 2009 caused it any loss and damage.
4. What are the remedies available to the parties?

P.W.1 Mr. Hussein Bashir testified that he is the Managing Director of the plaintiff company. The company operated a bonded warehouse starting in the year 2007. He obtained a licence for the year 2007 but it was never renewed. Before its expiry, he met officials of the defendant who told him there were outstanding queries that had to be cleared before the licence could be renewed. The witness offered to co-operate to have the queries cleared. In his view, the over one billion shillings bond he had executed in favour of the Commissioner General was sufficient to cover any queries and in the meantime the plaintiff's licence ought to have been renewed. The queries related to an outstanding assessment of shs. 3,720,128/=. The defendant declined to renew the licence and instead advised the plaintiff to remove the goods from the warehouse and export them or sell them on the local market after paying all the taxes due on them. The company wrote back denying liability. He provided information to the police regarding the vehicle involved in the dumping for which the plaintiff had been accused by the defendant and the vehicle was impounded. The RDC instead wrote a letter advising the suspects to be set free. Later the plaintiff paid the taxes and the on 17<sup>th</sup> December 2008 the warehouse was opened. As a result of that closure, the plaintiff lost business hence the suit.

P.W.2 Mr. Kijjambu Fred, an Accountant, testified that he was engaged by the plaintiff towards the end of the year 2009 to prepare some financial statements for the company. He prepared a report for each year from the financial years ended 31<sup>st</sup> December 2007, 31<sup>st</sup> December 2008 and 31<sup>st</sup> December 2009. He tendered in evidence copies of the financial statements. The plaintiff closed its case.

The defendant adduced evidence of D.W.1 Mr. Godfrey Balamaga Luzira who testified that between the year 2007 and 2010 he was the Manager in charge of the Law Enforcement Operations of the Customs department. The procedures for licensing customs bonded warehouses were that the customer applies to the Commissioner of Customs and Excise, requesting to have his or her premises licensed. Upon applying the URA officials from the Department inspect the premises, to certify compliance with the requirements and guidelines set by the Department. After the inspection, the Commissioner assesses the suitability and whether all requirements are satisfied. A license is then issued to the applicant to operate for that calendar year. The requirements include; the premises must be safe and secure, the owner must have executed a general bond Customs Form 6. If previously operational, it should not have any outstanding unaccounted for customs transactions. The licence when issued lasts for one calendar year from 1<sup>st</sup> January up to 31<sup>st</sup> December. If the person fails to account, that could be a ground not to renew a licence or if the premises are not secure.

In January 2007 the plaintiff was given a licence for that year as a bonded warehouse from 1<sup>st</sup> January 2007 to December 2007. The plaintiff executed customs bond 6 which is an insurance cover for the goods in the possession of the proprietor. Part of the considerations for renewal of a license include the fact that the proprietor should have paid duties fully for the goods consumed on the open market or have them exported to a foreign destination in accordance with the customs laws and procedures. Once the goods are consumed within Uganda, then taxes are paid. If they are to be consumed outside the country, they must arrive there safely and there must be evidence of such delivery. Around 16<sup>th</sup> April 2007, a truck was loaded with goods from the plaintiff's warehouse in Arua, plot 26 Hospital Road. On 17<sup>th</sup> April 2007 a declaration was made that the goods were for export to Sudan. The plaintiff was the exporter. The consignee was Mohammed in Yei South Sudan. The declarant was the customs agent for the plaintiff and Jupiter Forwarders Uganda Limited.

The goods' description were 73 bags of cement, 150 pieces of iron sheets, country of destination was Sudan. The declaration was processed and released by customs in Arua. The goods did not exit into South Sudan as declared. Around July 2007, the truck that loaded the goods was impounded and seized in Arua on account of conveying un-customed goods, dealt with contrary

to the Act. They underwent a customs offence process and in August 2007 the transporter paid shs. 500,000/= by compounding. That sorted out the issue of the means of conveyance. The goods in issue were left outstanding. Three assessments were issued to the plaintiff as the bonded warehouse owner and as exporter under section 61 (a) of the EACMA. The proprietor was uncooperative in the search for the consignee and URA therefore suspected connivance. The plaintiff denied responsibility and liability. The first assessment was shs. 1,517,358/= that was the penalty. The second one was shs. 1,656,521/= VAT on 150 pieces of iron sheets and the third was for shs. 1,546,249/= VAT on the cement. They were issued on the same day on 17<sup>th</sup> August 2007 for the total amount of shs. 3,720,128/=

The plaintiff denied responsibility and liability. In December 2007, the plaintiff applied for renewal of their licence. The premises were inspected and on 10<sup>th</sup> December 2007 the Commissioner replied to say; the premises had no electronic alarm system, lacked a general insurance cover and they had outstanding un-accounted for balances and they were therefore ineligible for renewal. The goods had to be entered for home consumption or removed into another warehouse or entered for export. They put in place an alarm system, they secured the insurance bond but still maintained they were not liable for the outstanding goods. On 18<sup>th</sup> December the Commissioner acknowledged the improvements done but the outstanding transactions remained. The plaintiff was thus not licensed for the following year, 2008 but since the warehouse had some goods, customs locked up the facility. On 17<sup>th</sup> December 2008 that the premises were opened after the plaintiff had paid its tax liability on the goods found in the warehouse as earlier advised and then customs vacated the premises. The claim that the plaintiff of not liable for the violation. That was the close of the defendant's case.

In his final submissions, counsel for the plaintiff Mr. Paul Manzi argued that closing the warehouse was a high handed act on the part of the defendant in that the queries raised by the defendant, since they were contested by the plaintiff, could not form the basis for denying the plaintiff a licence for 2009. The plaintiff had executed a bond which was sufficient to cover the tax liability constituting the query. Dumping of the goods in Uganda which were meant for export to Sudan could not be blamed on the plaintiff. The offenders were arrested by the police and the customs agent complicit was suspended by the plaintiff. The Commissioner Customs did

not follow the procedure provided for by *The East African Community Customs Management Act, 2004* for imposing a penalty since there was no admission of liability on the part of the plaintiff. They therefore could not rely on the contested liability for denial of a licence for the year 2009. The resultant closure of the plaintiff's warehouse from 1<sup>st</sup> January 2007 to 31<sup>st</sup> December 2007 on basis of the disputed tax liability occasioned the plaintiff loss by way of rent payments incurred and loss of business profits for that year for which reason the plaintiff is entitled to special, general and exemplary damages, interest and costs.

In his final submissions, counsel for the defendant, Mr. Baruku Ronald argued that the plaintiff company was issued with a Bonded Warehouse license for the year 2007 subject to the provisions of *The East African Community Customs Management Act, 2004* and the Business Rules set by the Commissioner of Customs and Excise (hereinafter referred to as the Commissioner). During April 2007, the plaintiff declared itself the exporter of a consignment of hardware to South Sudan only for the merchandise to be found to have been dumped in Arua. The driver of the truck which transported the goods was later arrested and subjected to a tax penalty. By reason of the dumping, the plaintiff became liable to Value Added Tax and penalties amounting to shs. 3,720,128/=. The plaintiff objected to the assessment but the Commissioner maintained the position that the plaintiff was liable. Imposition of the penalty does not require a prior offer to compound the offence as contended by counsel for the plaintiff. In light of the outstanding Tax liability, the Commissioner properly exercised his discretion not to renew the plaintiff's licence for the year 2008. The defendant was consequently constrained to close the warehouse. The plaintiff did not apply for renewal of its license for the year 2009 and therefore the defendant is not liable for any loss incurred by the plaintiff as a result of not being licensed for that year. The financial statements tendered in evidence by the plaintiff indicate that its profitability grew exponentially during the time of closure than when the licence was running. Although special damages were pleaded, no evidence was adduced to establish the claimed loss. The defendant's actions were not unconstitutional, arbitrary, oppressive or calculated to procure the defendant some benefit at the expense of the plaintiff and therefore the plaintiff is not entitled to exemplary damages. He prayed that the suit be dismissed with costs to the defendant.

**The first issue: Whether it was lawful for the defendant to close the plaintiff's Customs Bonded Warehouse.**

Resolving this issue requires a chronological tracing of the events leading to the closure of the plaintiff's warehouse. A bonded warehouse is any warehouse or other place licensed by the Commissioner of Customs and Excise (hereinafter referred to as the Commissioner) for the deposit of dutiable goods on which import duty has not been paid and which have been entered to be warehoused. Section 62 (1) of *The East African Community Customs Management Act, 2004* authorises the Commissioner, on application, to license any building or any other place as a warehouse for the deposit of goods liable to import duty. Under that provision, the Commissioner may, refuse to issue any such licence and may at any time suspend or revoke any licence which has been issued. It was an agreed fact at the scheduling conference that the Commissioner duly issued the plaintiff with such a licence in respect of premises comprised in plot 26 Hospital Road, Arua to operate as a private bonded warehouse for the period running from 1<sup>st</sup> January 2007 to December 2007 (see exhibit P.7).

It is further not disputed that 16<sup>th</sup> April 2007, a truck was loaded with 73 bags of cement and 150 pieces of iron sheets from the plaintiff's warehouse at plot 26 Hospital Road, Arua. On 17<sup>th</sup> April 2007, being the consignor, the plaintiff's customs agent Jupiter Forwarders Uganda Limited, made a declaration that the goods were for export to Sudan to a named consignee, Mohammed in Yei, Sudan. However, during the month of July 2007, the defendant discovered that contrary to the declaration, the goods had not been exported to Sudan (now South Sudan) as declared, but had instead been sold within the domestic market, in Arua.

These were goods which had been warehoused under section 50 (1) (b) of *The East African Community Customs Management Act, 2004* as entered for exportation (re-exports). Under section 16 (1) (a) of the Act, they remained subject to Customs control until their declared re-export and their being sold off on the domestic market instead rendered them "uncustomed goods" within the meaning of the Act since they were dutiable goods on which the full duties due had not been paid, and had instead been dealt with contrary to the provisions of the Customs

laws. According to section 200 (d) (iii) of the Act, any person who acquires, has in his or her possession, keeps or conceals, or procures to be kept or concealed, any goods which he or she knows, or ought reasonably to have known, to be uncustomed goods, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value of the goods involved, or both.

In his testimony, the plaintiff's Managing Director, P.W.1 Mr. Hussein Bashir stated that he provided information to the police regarding the vehicle involved in the dumping for which the plaintiff had been accused by the defendant. The driver of the vehicle was arrested and the vehicle was impounded. The RDC instead wrote a letter advising that the suspects to be set free and therefore the plaintiff is not responsible for any wrongdoing and should not have been penalised by the defendant. D.W.1 Mr. Godfrey Balamaga Luzira on the other hand testified that although the truck that loaded the goods was impounded and seized in Arua on account of conveying un-customed goods, and dealt with in accordance with the Act whereby the underwent a customs offence process and in August 2007 paid shs. 500,000/= by compounding, the question of the tax payable on the goods was left outstanding.

Liability for tax on those goods depended on the answer to the question whether the defendant had any reason to believe that the plaintiff had procured to be kept or concealed, those goods while it knew or ought reasonably to have known them to be uncustomed goods. In *Baden v. Societe Generale pour Favoriser le Developpement du Commerce et de l'Industrie en France SA*, [1993] 1 WLR 509, the court considered the various forms of knowledge which could be attributed to a party and stated;

Knowledge may be proved affirmatively or inferred from circumstances. The various mental states which may be involved are (i) actual knowledge; (ii) wilfully shutting one's eyes to the obvious; (iii) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make; (iv) knowledge of circumstances which would indicate the facts to an honest and reasonable man; (v) knowledge of circumstances which would put an honest and reasonable man on inquiry. A person in categories (ii) or (iii) will be taken to have actual knowledge, while a person in categories (iv) or (v) has constructive notice only.

In the same case, Peter Gibson J, opined that it need not be knowledge of the whole design: that would be an impossibly high requirement in most cases. What is crucial is that the party should know that a design having the character of being fraudulent and dishonest was being perpetrated. Further he must know that his act assisted in the implementation of such design. The basic concepts are “knowing something” which ought to have stimulated enquiry or “wilfully abstaining from inquiry to avoid notice.” Both import that the enquiry, if made, would necessarily have revealed the knowledge, constructive notice of which is to be imported. In the instant case, in order to have this requisite knowledge it was necessary for the plaintiff to know that Jupiter Forwarders Uganda Limited was withdrawing 73 bags of cement and 150 pieces of iron sheets from the plaintiff’s warehouse, naming the plaintiff as the consignor. Being the licensed proprietor of the warehouse, and in absence of evidence to show that the goods were stolen from the warehouse, imputation of the plaintiffs knowledge of this fact is inescapable.

The words “ought reasonably to have known” in section 200 (d) (iii) of *The East African Community Customs Management Act, 2004* prima facie suggest an objective test. Nevertheless, in considering what is reasonable, the court has the duty to inquire, so far as it reasonably can, into the facts alleged to have occurred. In this case the consignor was the plaintiff and Jupiter Forwarders Uganda Limited its customs agent. The information regarding the consignee as declared by the agent must in the circumstances be deemed to have been provided by the plaintiff. As Principal, the plaintiff was under a duty to supervise the ultimate delivery of the goods to the named consignee by its customs agent. There is no evidence that it did so. There is no evidence in this case that supervision was efficiently and regularly done which would have revealed the fact that the goods had not been exported as declared, until the defendant on its own commenced inquiries into the handling of that consignment, three months later. There is no indication as to what steps, if any, the plaintiff as consignor had undertaken during those three months to determine that the consignment had reached the consignee. The plaintiff in effect wilfully and recklessly failed to make such inquiries of its agents as an honest and reasonable consignor would have made. It theretofore by that wilful or reckless omission acquired constructive notice that it had aided disposal of uncustomed goods within the domestic market, falling within the definition of goods, whether dutiable or not, which are imported, exported or transferred or in any way dealt with contrary to the provisions of the Customs laws.

On the facts as established, I find that it was then open to the defendant to hypothesise that with reasonable diligence the plaintiff could have discovered that the goods had not been exported and delivered in Yei South Sudan as per the customs declaration, but rather sold on the domestic market. The fact that the plaintiff assisted in the apprehension of the driver of the truck did not absolve it from criminal liability for its own violation of the Customs laws.

A company is a corporate entity and may not be held criminally liable for a majority of the tax crimes which by their very nature can only be committed by natural persons. For offences of that nature, the directors and officers of the company may be held personally liable for the tax crimes of the company. For example, under section 62 *The Value Added Tax Act* and section, 146 of *The Income Tax Act*, where such offences are committed by a company, every person who, at the time the offence was committed, was a nominated officer, director, general manager, secretary, or other similar officer of the company or was acting or purporting to act in that capacity is, without prejudice to the liability of the company, deemed to have committed the offence. Accordingly, under section 146 (2) of *The Income Tax Act* and section 62 (2) of *The Value Added Tax Act*, the named officers of the company will not incur criminal liability where the offence was committed without that person's consent or knowledge or where the person exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

In *mens rea* offences, if the court finds the officer or managerial level employee to be a vital organ of the company and virtually its directing mind in the sphere of duty assigned him or her so that his or her actions and intent are the action and intent of the company itself, the company can be held criminally liable (see *Lennard's Carrying Co. v. Asiatic Petroleum Co.*, [1915] A.C. 705; *Director of Public Prosecutions v. Kent and Sussex Contractors, Ltd.*, [1944] K.B. 146 and *R. v. I.C.R. Haulage, Ltd.*, [1944] K.B. 551). Criminal liability of a corporation arises where an offence is committed in the course of the corporation's business by a person in control of its affairs to such a degree that it may fairly be said to think and act through him or her so that his or her actions and intent are the actions and intent of the corporation (see *Halsbury's Laws of England*, 3<sup>rd</sup> ed., vol. 11, p. 30, paragraph 34; see also *Halsbury's*, 4th ed., vol. 9, p. 804, paragraph 1379).

A corporation has; the legal entity, the personal shareholders, and the employees. By reason of the identification theory, the criminal penalty will extend, directly or indirectly, to all three which is quite unlike the situation of a natural proprietor where only two of these elements are present. The identity doctrine merges the board of directors, the managing director, the manager or anyone else to whom was delegated the governing executive authority of the corporation, and the conduct of any of those is thereby attributed to the corporation. A corporation may, by this means, have more than one directing mind. It is not necessary that the directing mind, as a prerequisite to the theory's operation, must have acted within the scope of his or her authority, that is, his or her actions must have been performed within the sector of the corporate operation assigned to him or her. Each company has a directing mind and since the corporation and the directing mind become one, the fact that the director or officer may have acted in part for his or her own benefit, or acted in breach of instructions does not remove the company's criminal liability. The identification theory though ceases to operate when the directing mind intentionally defrauds the corporation and when his or her wrongful actions form the substantial part of the regular activities of his or her office.

In the instant case, there is nothing to suggest that P.W.1, the plaintiff's Managing Director, intentionally defrauded the plaintiff when by his wilful or reckless omission to efficiently and effectively supervise the manner in which Jupiter Forwarders Uganda Limited, its customs agent, dealt with the consignment of 73 bags of cement and 150 pieces of iron sheets once they left the warehouse, yet management of the customs Bonded Warehouse and the business of exporting that consignment formed the substantial part of the regular activities of his office. The defendant was therefore right in attributing the Managing Director's constructive knowledge to the plaintiff that the goods had not been exported and delivered in Yei South Sudan as per the customs declaration but rather sold in the domestic market. Offences under section 200 (d) (iii) of *The East African Community Customs Management Act, 2004* not being in the category of tax crimes which by their very nature can only be committed by natural persons, the defendant was right in finding the plaintiff criminally responsible for that tax violation.

Having found the plaintiff criminally responsible, the Commissioner went ahead on 17<sup>th</sup> August 2007 to assess and impose upon the plaintiff, a penalty of shs. 1,517,358/= (exhibit P.2) being

50% fine on 150 pieces of iron sheets and 73 bags of cement; shs. 646,249/= as the Value added Tax due on 150 pieces of iron sheets and 73 bags of cement (exhibit P.2) and shs. 1,556,521/= as the Value added Tax and fine due on 150 pieces of iron sheets the 17 bags of cement (exhibit P.2) making a total of shs. 3,720,128/=. It is contended by counsel for the plaintiff that in imposing the penalty component of that assessment, the Commissioner acted *ultra vires* since the plaintiff did not admit in a prescribed form that it had committed the offence and requested the Commissioner to deal with the offence under section 219 of the Act. Counsel for the defendant argued in reply that compliance with section 219 (2) of the Act is not mandatory.

Section 219 of *The East African Community Customs Management Act, 2004*, empowers the Commissioner, where he or she is satisfied that any person has committed an offence under the Act in respect of which a fine is provided, to compound the offence and order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner may deem fit. Section 219 (2) of the Act provides that the Commissioner is not to exercise his or her powers under subsection (1) unless the person admits in a prescribed form that he or she has committed the offence and requested the Commissioner to deal with such offence under that section.

According to section 200 (d) (iii) of the Act, any person who commits an offence under that provision is liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value of the goods involved, or both. In the instant case the Commissioner imposed a penalty of shs. 1,517,358/= as being fifty percent of the dutiable value due on 150 pieces of iron sheets and the 73 bags of cement. The provision envisages the tax payer coming forward voluntarily and agreeing to settle the irregularities by getting the offence compounded, apart from paying the tax, in order to avoid further penal action. Therefore the power to compound the offence by imposing the penalty could only be triggered by the plaintiff's prior admission in a prescribed form that it had committed the offence and requested the Commissioner to deal with the offence under section 219 of the Act. The defendant did not adduce evidence of such prescribed form comprising the plaintiff's admission and request as required by that provision. In the circumstances, imposition of the penalty was unlawful. Without

the required mandatory admission, the plaintiff should instead have been prosecuted for the violations.

Be that as it may, the parties henceforth descended into controversy over whether or not the plaintiff was liable to pay the tax and the penalty as assessed. This followed the plaintiff's application for renewal of its licence for the year 2008. The defendant had in its letter dated 10<sup>th</sup> December 2007 (exhibit P.3) indicated that the licence would only be renewed after the plaintiff had installed an electronic alarm system at the warehouse, secured a general insurance cover for the goods warehoused thereat and cleared outstanding transactions on reconciliation records (manual and electronic). In its letter dated 14<sup>th</sup> December 2007 and received by the defendant on 18<sup>th</sup> December 2007 (exhibit P.4), the plaintiff responded as follows;

The warehouse has no outstanding transactions (manually and electronic) in our reconciled records; however the only issue known to us in BPAF wrongly issued to us in matter of goods sold to a customer from the bonded warehouse which was dumped, whereby we highlighted the enforcement unit and with their help arrested this vehicle and the concerns locating the goods and its buyers with the help of Arua Police (Police Ref: 41/4/08/07) and also that the operations of concerned clearing agents was suspended by manager Northern. What comprised thereafter is unknown to us only to be surprised with a BPAF issued to us in regard of the same which we have disputed since (copy of BPAF attached). If the outstanding transaction is generated on the merits of the above matter, we would request you to please put up an investigation in the concerned matter for clearance and fact finding and we shall also extend our cooperation therein. (Quoted exactly as it stands in the original).

According to counsel for the plaintiff, this constituted an objection to the assessment in respect of which the Commissioner was required to respond. Under section 229 (1) of *The East African Community Customs Management Act, 2004*, a person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs is required within thirty days of the date of the decision or omission to lodge an application for review of that decision or omission. Section 229 (4) of the Act requires the Commissioner, within a period not exceeding thirty days of the receipt of the application, to communicate his or her decision in writing to the person lodging the application stating reasons for the decision, failure of which under section 229 (5) the Commissioner is deemed to have made a decision to allow the

application. The defendant contends that the Commissioner duly responded by the letter dated 31<sup>st</sup> December 2007 (exhibit P.5). In that letter, the defendant responded as follows;

Reference is made to your appeal for renewal of a customs license for a general bonded warehouse for 2008 for your premises ref. CH:B/GRC/021 dated 14/12/2007 and the meeting held in AC-FS's office with you on the same on 31/12/2007.....However the issue of outstanding assessment of Ug shs. 3,720,128/= is still not addressed. According to our standard requirement for licensing bonded warehouse, one requirement is for the applicant to have a clean record to the extent that they have no outstanding query with URA (*ref.sect.07 as per attached standards*).

Firstly the timeliness of the plaintiff's objection to the assessment is doubtful. The three BPAFs issued to the plaintiff (exhibit P.2) are all dated 17<sup>th</sup> August 2007. In his testimony, P.W.1 stated that by the time the defendant wrote the letter dated 10<sup>th</sup> December 2007 (exhibit P.3), he only knew of the wrong invoices of 17<sup>th</sup> August 2007(exhibit P.2). Although he did not specify the date when the forms were brought to his attention, guided by the date of issue appearing on their face, I am inclined to believe that they were issued to the plaintiff around that date and in any event, well before December 2007. The plaintiff did not adduce any evidence to show that this application for review was made within thirty days of receipt of those BPAFs and hence timely. In any event, the defendant responded by the letter dated 31<sup>st</sup> December 2007 (exhibit P.3) maintaining the plaintiff's liability to the tax as assessed. The plaintiff's objection by way of that application was in essence rejected and under section 230 (1) of the Act, the plaintiff ought to have lodged an appeal to the Tax Appeals tribunal, within forty-five days after being served with that decision. There is no evidence that the plaintiff lodged such an appeal.

The defendant having rejected the plaintiff's application for renewal of the licence for the year 2008, it is contended that the decision was arbitrary, oppressive and high-handed. It is clear that the defendant declined to renew the plaintiff's license on account of the outstanding disputed imposition of shs. 3,720,128/= comprising the Value Added Tax and fifty percent penalty of the dutiable value due on 150 pieces of iron sheets and the 73 bags of cement. The question then is whether the defendant was justified in relying on the disputed amount as a reason for not renewing the plaintiff's license.

Section 62 (1) of *The East African Community Customs Management Act, 2004* authorises the Commissioner, on application, to license any building or any other place as a warehouse for the deposit of goods liable to import duty. The licensing function of this nature has been recognised by courts to be administrative rather than a quasi-judicial function. The licensing authority has to consider the merits of the application as to whether its license should be renewed or not. It is a wide discretion granted to the Commissioner which must be guided not only by the general intent of the Act, but also other factors relevant in the circumstances of each case. To guide the exercise of that discretion, the defendant issued some standard requirements and guidelines for licensing bonded warehouses one requirement of which is that the applicant should have a clean record to the extent that they have no outstanding query with the Uganda Revenue Authority.

In order to successfully challenge the Commissioner's exercise of discretion in accordance with those standards and guidelines, not to renew the plaintiff's licence, it was incumbent upon the plaintiff to show that the decision was tainted with illegality, irrationality or procedural impropriety. Illegality is when the Commissioner is shown to have committed an error of law in the process of taking the decision, the subject of the complaint. Acting without jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality. Irrationality is when there is such gross unreasonableness in the decision taken that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards. Procedural Impropriety is when there is a failure to act fairly on the part of the Commissioner in the process of taking the decision. The unfairness may be in non-observance of the Rules of Natural Justice or failure to act with procedural fairness towards the plaintiff as the entity affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which the Commissioner exercises jurisdiction to make the decision (see *An Application by Bukoba Gymkhana Club [1963] EA 478 at 479*).

It is trite that administrative systems which employ discretion vest the primary decision-making responsibility with the agencies, not the courts. As a result, the judicial attitude when reviewing exercise of administrative discretion must be one of restraint, often extreme restraint, only intervening when the decision is shown to have been unfair and irrational. The principle is that to

invalidate or nullify any administrative act or order would only be justified if there is a charge of bad faith or abuse or misuse by the authority of its power and in matters of administrative decision making in exercise of discretion, the challenge ought to be over the decision making process and not the decision itself. The jurisdiction to decide the substantive issues is that of the authority and the Court does not sit as a Court of Appeal, since it has no expertise to correct the administrative decision, but merely reviews the manner in which the decision is made. It is elsewhere said that, if a review of administrative decision is permitted, the court will be substituting its own decision without the necessary expertise, which itself may not be infallible.

In paragraph 4 (e) of the plaint, it is contended that the decision not to renew the plaintiff's license was high handed, arbitrary and illegal. Renewal of a license is not the same as a grant and it is definitely distinct from suspension or cancellation. A licensing decision taken contrary to the law is open to being set aside by the courts of law. For example in *Dent v. Kiambu Liquor Licensing Court [1968] 1 EA 80*, the appellant in 1966 purchased a club, the premises of which had enjoyed a proprietary club liquor licence since 1952. She had a licence for the year 1967, which she applied to renew for 1968. Her application was rejected by the respondent court on a number of grounds, one of which was that the appellant had refused to supply alcoholic drinks to persons who were not members of the club. An uncontroverted affidavit filed by the appellant showed that none of the facts upon which the respondent court based its decision was formally proved in evidence. No copy of the order of the respondent court was furnished to the appellant in spite of a request by her advocates; and no copy of the minutes of the relevant meeting was produced until called for by the High Court at the hearing of the appeal. On appeal by the appellant, it was held that the circumstances under which the licensing court or the High Court is entitled to refuse to renew an existing licence were expressly confined to those set out in paras. (a) to (f) of s. 16 of *The Liquor Licensing Act*, namely, that the business of the club was conducted in an improper manner. The court found that neither of the grounds relied upon by the respondent court fell within those circumstances and therefore refusal to renew could not be supported on the merits. It held further that a licensing court could refuse to renew an existing licence only when it was satisfied as to one or more of the six matters set out in s. 16 of the Act. In this sense the word "satisfied" meant judicially satisfied and, apart from matters of which the court may take judicial notice within the meaning *The Evidence* and facts admitted by the parties,

this must normally require the production of proof of the matter referred to by evidence on oath or affirmation upon which the opposing party may put questions in cross-examination. The court finally found that apart from the merits, the order of the licensing Court had to be set aside on the ground of irregularities of procedure.

For the validity of a licensing decision, the licensing authority therefore must “consider” the application properly by not only taking into consideration matters that ought to be considered and disregard matters that ought not to be taken into account, but also by abiding by the correct procedure. The word “consider” was defined in *Onyango v. Attorney General [1986-1989] EA 456* in which the Court of Appeal expressed itself as follows:

“To consider” is to look at attentively or carefully, to think or deliberate on, to take into account, to attend to, to regard as, to think, hold the opinion... “Consider” implies looking at the whole matter before reaching a conclusion...It is improper and not fair that an executive authority who is by law required to consider, to think of all the events before making a decision which immediately results in substantial loss of liberty leaves the appellant and others guessing about what matters could have persuaded him to decide in the manner he decided.

Section 62 (1) of *The East African Community Customs Management Act, 2004* gives the Commissioner a wide discretion, and it is his or her discretion to act upon the facts before him or her, and not for the court to sit on appeal so as to impose its judgement on the facts upon the Commissioner. The court can therefore interfere with the decision of Commissioner if the Commissioner does not act in good faith, or if he or she acts on extraneous considerations which ought not to influence him or her, or if he or she plainly misdirects himself or herself in fact or in law. The Commissioner in exercising that statutory power must direct himself or herself properly in law and procedure and must consider all matters which are relevant and avoid extraneous matters. Where the Commissioner takes account of irrelevant considerations, any decision arrived at becomes unlawful. Unlawful behaviour might be constituted by (i) an outright refusal to consider the relevant matter; (ii) a misdirection on a point of law; (iii) taking into account some wholly irrelevant or extraneous consideration; and (iv) wholly omitting to take into account a relevant consideration (See *Padfield and others v. Minister of Agriculture, Fisheries and Food [1968] AC 997*).

It is axiomatic that that a statutory power can only be exercised validly if it is exercised reasonably. No statute can ever allow anyone on whom it confers a power to exercise such power arbitrarily and capriciously or in bad faith. Where the reason given by the Commissioner is not one of the reasons upon which the Commissioner is legally entitled to act, the Court is entitled to intervene since the action by the Commissioner would then be based an irrelevant matter.

In *McInnes v. Onslow-Fane* [1978] 3 All ER 211, [1978] 1 WLR 1520, Megarry VC drew a distinction between “forfeiture cases” where an existing benefit such as a licence is terminated or revoked, and “application cases” where the grant of some new right or privilege is sought, and an intermediate group of “expectation cases” which differ from the application cases only in that applicant has some legitimate expectation from what has already occurred that his or her application, such as for a licence renewal, will be granted. He discussed the critical distinctions between forfeiture, application and expectation cases, thus:

It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases, there is a threat to take something away for some reason: and in such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges.....are plainly apt. In the application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the suitability of the application for membership or a licence. The distinction is well-recognised, for in general it is clear that the courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category, that of the expectation cases, may at least in some respects be regarded as being more akin to the forfeiture cases than the application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for membership or licence for which he was previously thought suitable..... I think that the courts must be slow to allow an implied obligation to be fair to be used as a means of bringing before the court for review honest decisions of bodies exercising jurisdiction over sporting and other activities which those bodies are far better fitted to judge than the courts. This is so even where those bodies are concerned with the means of livelihood of those who take part in those activities. The concepts of natural justice and the duty to be fair must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens. Bodies such as the board

which promote a public interest by seeking to maintain high standards in a field of activity which otherwise might easily become degraded and corrupt ought not to be hampered in their work without good cause.

Non-renewal does not amount to revocation of a license. Revocation or suspension essentially relates to a stage when a license is in force. With revocation, the licensing authority is under an obligation to give a reasonable opportunity to the licensee to show cause against the revocation and suspension. It may have hold an enquiry; consider the explanation and pass orders, after giving a finding based on reasons for such revocation and suspension, if so required.

On the other hand, renewal comes at a stage when the period of currency of the license is over. The non-renewal of a license as distinct from its cancellation or suspension is not the deprivation of a vested right of the holder of an expired license. There is no requirement for a hearing before renewal of a license simply because the plaintiff does not have a right to have the license renewed. A licensee does not have a vested right in renewal whereas in the case of a cancellation, a right vested in the license is taken away. It is for this reason that renewal and cancellation have been treated differently. While the right to hearing incumbent before a vested right is taken away by a cancellation of a license, no such right enures in favour of a licensee while his or her license is being considered for renewal.

However, it is an elementary principle of law that no order involving adverse civil consequences can be passed against any person without giving him an opportunity to be heard against the passing of such order. The *audi alteram partem* rule is applicable in a quasi-judicial as well as an administrative proceeding. Considering the fact that discretion must be employed in a structured and reasonable manner and in the public interest, although there is no right to a hearing with respect to bodies charged with performing purely administrative functions, not of a quasi-judicial nature, in a purely policy-oriented, traditionally administrative sphere of decision-making, however when arriving at decisions with potentially serious adverse effects on someone's rights, interests or status in exercise of a purely administrative power, an administrative authority has a duty to act fairly. This duty is a less onerous than that of observing the rules of natural justice demanded of such bodies when they act in a quasi-judicial capacity.

Article 42 of *The Constitution of the Republic of Uganda, 1995* imposes an obligation on administrative officials or bodies to treat justly and fairly, the people in respect of whom decisions are to be made. The duty to act fairly is specifically applicable to decisions that are likely to have serious adverse effects on someone's rights, interests or status. This duty to act fairly is flexible and changes from situation to situation, depending upon: the nature of the function being exercised, the nature of the decision to be made, the relationship between the body and the individual, the effects of that decision on the individual's rights and the legitimate expectations of the person challenging the decision (see *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (S.C.C.)). In some situations, decision makers will be required to observe a high standard of participatory rights guaranteed by the *audi alteram partem* rule and due process. The purpose of the participatory rights in such situations is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker.

In the circumstances, all that was required is for the Commissioner of Customs and Excise was to have done his or her best to act justly, and to reach just ends by just means, i.e. acting honestly and by honest means. The nature of this standard was explained in *De Verteuil v. Knaggs and Another* [1918] A.C. 557, as “a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.” A high standard of justice is required only when the right to continue in one’s profession or employment is at stake (see *Abbott v. Sullivan* [1952] 1 K.B. 189).

The right to fair treatment in administrative action is a guarantee to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. It may also include the right to be given reasons for any administrative action that is taken against a person, where such administrative action is likely to adversely affect the rights or fundamental freedoms of that person. For the court to intervene, it must be shown that the decision by the Commissioner in the circumstances, was so irrational, unreasonable or procedurally improper.

I have scrutinised the circumstances in which the Commissioner took the decision not to renew the plaintiff's licence for the year 2008. I find that in the letter to the plaintiff dated 10<sup>th</sup> December 2007 (exhibit P. 3) the defendant notified the plaintiff that its licence would not be renewed for the year 2008, inter alia, because "the warehouse has outstanding transactions on reconciliation records (manual & electronic)." The plaintiff had opportunity to respond to that concern in its letter of 14<sup>th</sup> December 2012 (exhibit P. 3) disputing the accusation. It is indicated in the defendant's letter dated 31<sup>st</sup> December 2012 (exhibit P. 5) that on that day a meeting was held in the AC-FS' office to ascertain the status of the plaintiff's compliance with the requirements for licensing. Apparently that meeting did not resolve the controversy since in that letter the defendant indicated that the plaintiff still had an outstanding assessment of shs. 3,720,128/= for which reason the licence would not be renewed.

Having found earlier that the defendant had a reasonable basis for attributing to the plaintiff, the Managing Director's constructive knowledge that the goods had not been exported and delivered in Yei South Sudan as per the customs declaration but rather sold in the domestic market, it follows that a decision not to renew the licence until the plaintiff cleared its tax liability on that account cannot be described as high handed, arbitrary or illegal. That the defendant erroneously included a penalty component in the assessment, from the evidence available, does not seem to have been motivated by any malicious intent, bad faith, or constituted abuse or misuse of authority either, and that of itself therefore does not render the decision one that was arrived at arbitrarily. There is no basis therefore for invalidating or nullifying the decision.

Following the decision not to renew the licence for the year 2008, the Commissioner closed the plaintiff's warehouse from 1<sup>st</sup> January 2008 to 17<sup>th</sup> December 2008, when the plaintiff eventually gave in and paid the tax due on the goods found in the warehouse, upon which the warehouse was opened and the goods therein were released to the plaintiff for home consumption, not for export. In his submissions, counsel for the plaintiff argued that the decision to close the premises too was arbitrary, oppressive and high-handed. In response, counsel for the defendant submitted that upon expiry of the plaintiff's licence on 31<sup>st</sup> December 2007, and since it was not renewed for 2008, the goods therein became uncustomed goods and this entitled the Commissioner to close down the premises for purposes of protecting tax revenue.

A public entity that closes down a business without legal backing opens itself up to civil liability. For example in *Siree v. Lake Turkana El Molo Lodges Ltd* [2000] 2 EA 521, a District Officer directed the local police commander to close the Respondent tourist lodge and ensure that it remained closed until further notice and he gave the reason for the closure as being that its proprietor had failed to pay various rents and fees and was not in possession of certain statutorily required licences. He recommended that the liquor license for the lodge not be renewed. The lodge thereafter commenced proceedings against the District Officer and the Attorney-General seeking damages on the grounds that the closure of the lodge was wrongful, arbitrary and unlawful. The managing director of the lodge testified on its behalf and produced a total of eleven licences proving that he had complied with the relevant laws. The trial Judge found the Appellants liable as the closure was wrongful and done without any reasonable cause and ordered them to pay damages to the Respondent. The Appellants appealed claiming that the trial Judge erred in finding them liable and that in the circumstances, the District Officer, as an employee of the government, was entitled to close down the lodge. It was held that the various licensing statutes governing the operations of a lodge such as the Respondent's, to wit, the Trade Licensing, the Hotels and Restaurants, the Liquor Licensing and the Local Government Acts, contained provisions regarding what procedures were to be followed by the relevant authorities in the event of non-compliance with the requirements therein. None of those statutes empowered the District Officer to close down an operation. Accordingly, in acting as he did, the District Officer not only exceeded his authority, he also misused his powers and behaved like a village tyrant.

In the instant case, counsel for the defendant cited section 157 of *The East African Community Customs Management Act, 2004* as authorising the Commissioner to seal premises in respect of which he or she has reasonable grounds to believe that there is on such premises any uncustomed goods or documents relating to any uncustomed goods. Indeed section 157 (2) (h) thereof authorises a proper officer of the defendant to “lock up, seal, mark, or otherwise secure any such premises, room, place, equipment, tank or container,” harbouring uncustomed goods.

The plaintiff contends further that the Commissioner ought not to have taken that drastic step in light of the fact that the plaintiff had in place a “General Bond for Security of Warehoused

Goods” dated 23<sup>rd</sup> January 2007 (exhibit P. 1) in the sum of one billion shillings, which the Commissioner should have resorted to for recovery of tax on the uncustomed goods in respect of which the tax liability of shs. 3,720,128/=. I have perused that bond and found that it was conditional on all the goods in the warehouse being “exported or dealt with in accordance with the provisions of the customs law” by the plaintiff. In this case, the 73 bags of cement and 150 pieces of iron sheets, the goods in question, had not been dealt with in accordance with the provisions of the customs law so as to trigger liability of the insurance company under that bond.

Prior to the expiry of the license for the year 2007, the defendant in its letter to the plaintiff dated 10<sup>th</sup> December 2007 (exhibit P.3) drew its attention to what are essentially options provided for by section 63 (3) of *The East African Community Customs Management Act, 2004*, i.e. where the licence in relation to any bonded warehouse expires, then within such time as the Commissioner may direct, all goods warehoused therein are required to be entered and delivered for home consumption, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels. The plaintiff did not heed this caution and took neither of the measures provided for by statute. Had it done so, its warehouse would not have been sealed as it was eventually when the license expired. Upon expiry of the licence on 31<sup>st</sup> December 2007, the goods in the plaintiff’s warehouse became uncustomed goods and it was open to the Commissioner, in exercise of his or her discretion, to invoke the provisions of section 157 (2) (h) of *The East African Community Customs Management Act, 2004*, to seal the premises off since they contained uncustomed goods henceforth.

In any event, the function of the court is not to take the primary decision but to ensure that the primary decision-maker has operated within lawful limits. The essential concern of court is with the lawfulness of the decision taken by examining whether the procedure was fair, whether there was any error of law, whether the exercise of judgment or discretion fell within the limits open to the decision-maker, and so forth. Different decision-makers may come up with different answers, all of them reached in an entirely proper application of their discretion. In determining whether the decision was justified and, in particular, whether it was proportionate, the court must bear in mind the fact that the decision-maker has a discretionary area of judgment or margin of discretion. A decision will be unlawful only if it falls outside the limits of that discretionary area

of judgment. Another way of expressing it is that the decision is unlawful only if it falls outside the range of reasonable responses to the question of where a fair balance lies between the conflicting interests. Therefore the key question regarding this issue is whether the decision to seal the plaintiff's premises fell outside the range of reasonable responses available to the Commissioner, specifically whether it was proportionate.

Though the court must not shrink from exercising a supervisory power which it has if the impugned decision affects the plaintiff's economic rights, I find that under section 157 (2) (h) of *The East African Community Customs Management Act, 2004*, the Commissioner, if acting honestly and not capriciously and within his or her powers, is and must be the person better fitted to judge what was needed than me, or any court. Since I have not found evidence that in taking the decision to close the warehouse, the Commissioner took into consideration matters that he or she ought to have considered or that he or she disregarded matters that he or she ought to have taken into account, or any procedural impropriety in the manner the decision was arrived at, this issue is answered in the negative. The decision did not fall outside the limits of the discretionary area of judgment conferred upon the Commissioner by the Act and therefore it was lawful for the defendant to close the plaintiff's Customs Bonded Warehouse.

**Second issue:** Whether the defendant's refusal to renew the plaintiff's licence for the year 2009 was lawful.

In its letter to the plaintiff dated 31<sup>st</sup> December 2007 (exhibit P. 5), the defendant stated; "we are willing and committed to granting you a license after you have cleared all the outstanding queries with URA and customs in particular." In a way this created a legitimate expectation in favour of the plaintiff for the renewal of its license upon compliance. In *Council for Civil Service Unions v. Minister for the Civil Service [1985] 1 AC 374, [1984] 3 All ER 935, [1984] 3 WLR 1174*; Lord Diplock said:

A legitimate expectation may arise from an express promise given on behalf of a public authority, and some benefit or advantage which.....[the applicant] had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity

to comment.....To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision – maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been committed to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

The claim by the plaintiff for renewal of its license on basis of that promise could be a good ground of legitimate expectation since the defendant indicated that the plaintiff would be entitled to renewal of the license in future upon compliance. However, renewal was subject to the established procedures, policies and statutory requirements. One of the requirements is provided for by section 62 (1) of *The East African Community Customs Management Act, 2004*. Under that section, renewal of a license is upon application. Exhibit P.6 dated 9<sup>th</sup> May 2008, indicates that the plaintiff last applied for renewal of its license for the year 2008 and by that date it had not settled its outstanding liability with URA. Indeed there was no evidence adduced at the trial that it ever did clear the hitherto contested outstanding claim of shs. 3,720,128/=. It instead chose to pay taxes on the warehoused goods and this secured the unsealing of the warehouse on 17<sup>th</sup> December 2008. In any event, there is no evidence before court that the plaintiff ever applied for renewal of its license for the year 2009. Legitimate expectation on its own cannot be argued as a matter of right in absence of an application for renewal. The defendant therefore cannot be faulted for not issuing a license that the plaintiff never applied for. On that account this issue too must be answered in the negative.

Having decided the first two issues in the negative, discussion of the remaining issues would be only moot and I do not find it necessary to engage in such an exercise. Suffice it to mention that the plaintiff appears to have adopted a wrong procedure in filing this suit. Under section 229 (1) of *The East African Community Customs Management Act, 2004*, a person directly affected by any decision or omission of the Commissioner or any other officer on matters relating to Customs is required within thirty days of the date of the decision or omission to lodge with the

Commissioner, an application for review of that decision or omission. The evidence before me is that the plaintiff lodged what could suffice as such an application by its letter dated 14<sup>th</sup> December 2007 and received by the defendant on 18<sup>th</sup> December 2007 (exhibit P.4).

However, under section 230 (1) of the Act, a person dissatisfied with the decision of the Commissioner under section 229 is given a right of appeal to a tax appeals tribunal established in accordance with section 231. The only way an appeal from a decision of the Commissioner could come by way of direct appeal to the High Court is under section 252 (6) of the Act; where if at the commencement of the Act, the tax appeals tribunal was not yet established as required by section 231 of the Act. This in my view was intended to encourage authorities involved in tax administration to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decisions are successfully challenged before courts of law. Since the establishment of the Tax Appeals Tribunal by *The Tax Appeals Tribunal Acts Cap (345)*, which was passed in 1997, this court has only appellate jurisdiction by virtue of section 27 thereof, The High Court does not have primary jurisdiction in tax matters anymore but only appellate jurisdiction. An appeal lies to the High Court from the decision of the tribunal within thirty days after notification of the decision of the Tribunal or within such further time as the High Court may allow.

For all the above reasons the Plaintiffs suit is clearly misconceived and incompetent. It is hereby dismissed with costs to the Defendant.

Dated at Arua this 6<sup>th</sup> day of July 2017.

.....  
Stephen Mubiru  
Judge  
6<sup>th</sup> July 2017