

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**CIVIL SUIT NO. 323 OF 2018**

**ATC UGANDA LIMITED ===== PLAINTIFF**

**VERSUS**

**KAMPALA CAPITAL CITY AUTHORITY ===== DEFENDANT**  
**AND**

**MISCELLANOUS CAUSE NO. 302 OF 2018**

**EATON TOWERS UGANDA LIMITED===== APPLICANT**

**VERSUS**

**KAMPALA CAPITAL CITY AUTHORITY ===== RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The Plaintiff brought this suit seeking inter alia; a declaration that the Plaintiff's telecommunication masts are not immovable property within the meaning of the Local Government (Rating) Act 2005 and are therefore not subject to payment of property tax under the said law. The court decided to determine this suit under Order 35 of the Civil Procedure Rules by Agreement of the parties.

Before determination of the earlier case, another company in similar business filed an application for judicial review challenging the assessment for Property rates levied on telecommunication masts in Kampala by Kampala Capital City Authority. Among the orders sought; *An Order of Certiorari do*

*issue to quash the Respondent's Demand Notices addressed to the Applicant demanding for payment of Property Rates in respect of the Applicant's forty-three (43) telecommunication masts ("**Telecom Masts**") as Telecom Masts are not "property" within the meaning of the Local Government (Rating) Act No. 8 of 2005 and accordingly are not subject to property rates;*

The Court decided to determine the two suits jointly and or consolidate the suits since the dispute is the same.

**BRIEF FACTS ATC:**

Sometime before 2005, MTN (U) Limited entered into various short term lease and tenancy agreements for plots averaging 15 by 15 metres with different land lords across Uganda permitting MTN to erect *moveable* telecommunication masts on the said plots. The masts are placed on the land and telecommunications operators host their antennae for telecommunications services on the said masts

The telecommunication masts in question are moveable and the various agreements MTN signed with the landlords expressly stated that upon termination of the leases, the masts, antennae, electronic equipment, fixtures, and fittings would be deemed to be moveable property which would be severed from the ground and remain property of MTN.

The Defendant (Kampala Capital City Authority "KCCA") is the statutory body established to manage the Kampala and Kampala Metropolitan areas in place of a local Government and has a duty to levy property rates and other local government rates and taxes.

Sometime in 2007, the Defendant, Kampala Capital City Authority, attempted to levy property rates on MTN's masts on the assumption that the said masts were immovable property under the Local Government (Rating) Act 2005.

Consequently, on several occasions, the Minister of Local Government through correspondences on **18<sup>th</sup> July 2017** and **20<sup>th</sup> July 2007** with the local government authorities interpreted the Local Government (Rating) Act 2005 and stated that for purposes of the Act, owners of telecommunication masts were not liable to pay property rates on their installations.

Further, on the **3<sup>rd</sup> October 2008**, the Permanent Secretary of the Ministry of Local Government also wrote to all Chief Administrative Officers and Town clerks categorically stating that imposing levies on telecommunications masts was wrong, outside the law and should not continue. Several other correspondences to that effect were made by different Government authorities.

Furthermore the Executive Director Uganda Communications Commission vide a letter dated **13<sup>th</sup> July 2011** to the Managing Director Airtel Uganda quoting the letters earlier written by the Minister for Local Government clearly stated that telecommunications masts are not liable to pay property rates on their installations.

In **2012**, the Plaintiff (ATC (U) Limited) entered into an agreement to take over MTN's business of operating telecommunication masts in Uganda. As part of transfer of that business MTN transferred ownership of all its telecommunication masts to the Plaintiff and assigned all of MTN's lease agreements with the various landlords to the plaintiff with all the attendant rights thereof.

The Plaintiff presently has two hundred and seventy two masts in the Kampala area alone and over one thousand masts country wide.

On the **2<sup>nd</sup> March 2015**, the defendant made assessment of property rates and served the Plaintiff with a *property rates demand note*.

**Agreed Issue for determination**

**WHETHER THE TELECOM MASTS ARE LIABLE TO PAY PROPERTY RATES UNDER THE LOCAL GOVERNMENT (RATINGS) ACT NO. 8 OF 2015.**

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

The plaintiff was represented by Mr *Mudde John Bosco* and the Applicant was represented by Mr *Lugayizi Timothy*, while the defendant/respondent was represented by Mr *Mwanja Brian*, Ms *Namusikwe Priscilla* & Mr *Byaruhanga Denis*

In determining the only issue of these two cases the plaintiff's counsel made extensive submissions and contended that this issue should be found in the negative. He submitted that the Plaintiff's masts in question are not immovable property within the meaning of the Local Government (Rating) Act 2005 but are movable chattels that can easily be moved away from the land.

The terms "mast" and "tower" are often used interchangeably. However, in structural engineering terms, a tower is a self-supporting or cantilevered structure.

According to the *Merriam Webster dictionary*, a mast is a slender vertical or nearly vertical structure (such as an upright post in various cranes).

Broadcast engineers in the UK use the same terminology. A mast is a ground-based or rooftop structure that supports antennas at a height where they can satisfactorily send or receive radio waves. Masts themselves play no part in the transmission of mobile telecommunications.

Telecommunications masts are movable and can be dismantled and are built in such a way that they can easily be moved from one place to another.

As demonstrated in the Plaintiff's Manual on Tower Relocation marked as **Exhibit "F" on page 17 of the Joint Trial Bundle**, unlike immovable buildings, masts can very easily be dismantled and reassembled and relocated on another part of the same parcel of land or different plots of land entirely because they are not fixtures on the land. Masts are akin to tents or poles which can be easily erected and dismantled and moved and assembled elsewhere.

It was further submitted that indeed the Plaintiff has on several occasions relocated its telecommunication masts on other parts of the same leased property or moved the masts to new sites entirely.

According to plaintiff's counsel, the above definition of "masts" is of good guidance in determining the question of whether the telecommunication masts belonging to the Plaintiff actually amount to immovable property/fixtures or not.

The plaintiff's counsel discussed what immovable property is in law. **The Black's Law Dictionary (9<sup>th</sup> Edition 2009) at page 713** defines a **fixture** as personal property that is attached to land or a building and that is regarded as an immovable part of the real property. **Accordingly, if physical fastening is done to enhance utility of the land, then the personal property becomes a fixture. However, if the fastening is done only to enhance the chattel's utility, then the personal property does not become a fixture.**

According to *John T. Mugambwa, Principles of Land Law in Uganda*, at page 52, two broad tests are employed to determine whether an item has lost its character as a chattel and become a fixture. These tests/primary considerations are; **the degree of annexation and the object of annexation.**

a) **The degree of annexation of an object to land.**

This refers to how the object has been fastened to the land and if the object's removal from the land, can be accomplished easily and without serious damage or destruction of some part of the land.

b) **The purpose of annexation of an object to land.**

This refers to the reason for attaching the object to the land. If the object is attached to enhance the value and utility of the land it is usually considered a fixture but if it is attached to enhance the object's utility it usually remains a chattel.

According to the case of *Shah v Shah Vershi Devshi & Co. 17 KLR 20*, the **object of annexation refers to the intention of the person who affixed the thing onto the land.** If his or her intention was to make a permanent and substantial improvement to the land or building, then the item is part of the land. If on the other hand, his or her objective was for a temporary purpose, for more complete enjoyment of the thing as a chattel, then it remains a chattel.

When reference is made to the two tests set out above, that is the degree and purpose of annexation then it is very key in determining whether the Plaintiff's telecommunications masts are movable or immovable property.

From the above two broad tests, it is clear that the purpose of establishing telecommunications masts is not to enhance the value and utility of the land. Furthermore, the said telecommunications masts can be easily removed from the land or building without causing serious damage or destruction of the land on which they are placed.

According to the plaintiff's counsel, the issue as to whether telecommunications masts are immovable property was considered In the Indian case of *Bharti Airtel Limited v State of Karnataka W.P. Nos. 30718-*

30744/2011, where it was held that telecommunication masts are moveable property and it was stated that:

*"..all these items (telecommunication masts) though are fixed to the ground for gravitational purpose to withstand wind pressure and also to ensure safety and security of the operator's equipment at a desired height or direction of the tower, they can easily be detached, transferred or relocated to some other place. Any person of reasonable intellect can understand that active/passive infrastructure can be shifted/relocated without causing harm or damage to the land or building except leaving behind little debris."*

### **The Degree of Annexation**

With regard to the **degree of annexation**, According to the ATC Manual on Tower Relocation marked as **Exhibit "F" on page 17 of the Joint Trial Bundle** it is stated under paragraph 1 (Introduction) it is very possible to relocate telecommunication masts.

Furthermore, the Plaintiff has over the past four years dismantled and moved various masts across the country Uganda.

### **The Object of annexation**

In respect to the test of the **object of annexation**, the purpose of erecting the masts was simply to allow telecom operators to place their transmission equipment at particular heights and facing particular directions in order to safely and securely operate. The mast were never erected to become permanent fixtures on the land or to enhance the value of the land.

To further support this position, according to the leases entered into between MTN Uganda Limited and the land lords, which are on the court file, it was never the intention of MTN nor the Plaintiff to have the masts as permanent structures on the land. In fact the leases entered into by the Plaintiff with the

landlords where these masts are harboured clearly indicate that the Plaintiff maintained the right to remove the masts at the expiration of the leases.

In support of this, reference is made to paragraph 7.1 of **Exhibit A (Sub-lease agreement)** on page 3 of the Joint Trial Bundle which states as follows:

*“the sub-lessor acknowledges that all equipment installed on the premises by the sub-lessee, whether a mast, antenna, electronic equipment, fixtures and fittings (etc), shall be deemed to be moveable, and shall remain the property of the sub-lessee, and that all such property shall not accede to the immovable property of the sub-lessor unless the sub-lessee advises the sub-lessor accordingly in writing.”*

Therefore it is the plaintiff's submission that telecommunication masts are not immovable property due to the following:

- a) The clear object/purpose of the attachment to land is stability and security.
- b) The attachment of the towers was not to improve/enhance the value of the land but to improve the performance of the towers themselves.
- c) The industry usage in the telecom towers sub-sector is that a tower operator rents out a piece of land, places towers on the land for the duration of the tenancy and thereafter either renews the tenancy or relocates/sales off the towers. In either case, the intention is that the telecommunications masts do not become a permanent part of the land.

Furthermore it was the plaintiff's counsel submission that, if court were to hold that telecommunications masts were immovable property then it would mean that even a TV antenna placed on top of a roof to enable the antenna to get a clearer signal would amount to a fixture and therefore immovable property and be subject to be property tax by the Defendant.



It was the plaintiff's submission therefore that the Plaintiff's telecommunication masts are not immovable property.

The plaintiff's counsel also argued whether the Plaintiff's telecommunications masts immovable property within the meaning of the Local Government (Rating) Act 2005?

**Section 2 of the Local Government (Rating) Act, 2005** ("the Act") defines Property as follows:

*"Property" means immovable property and includes a building (industrial or non-industrial) or structure of any kind, but does not include a vacant site;*

The Literal interpretation of the above definition of property is that for purposes of the Act, the use of the work "property" refers to **immovable property and not property generally in the ordinary English meaning.**

It follows therefore that all the words and statements detailed after the statement "immovable property" are a sub-set of immovable property. That is, the building or structure of any kind stated therein can only mean buildings or structures that are immovable. If the buildings or structures are movable then they were not meant to be covered by the definition of "Property" under this Act.

Therefore according to the plaintiff's counsel, Telecommunications masts which are movable property, are not covered by the Local Government (Rating) Act, 2005.

In interpreting Section 2 of the Local Government (Rating) Act, 2005 reliance should be made on the *ejusdem generis* rule of Interpretation.

The **Black's Law Dictionary (8th edition, 2004)** at page 1568, defines the principle of *ejusdem Generis* as a canon of statutory construction that where general words or phrases follow a list of specifics, the general words or

phrases will be interpreted to include only the items of the same type as those listed.

According to the Free Dictionary, *ejusdem Generis* is a Latin term which means "*of the same kind*," and it is used to interpret loosely written statutes.

In the Supreme Court case of *the Registered Trustees of Kampala Institute v Departed Asians Property Custodian Board SCCA No. 23/93*, the Chief Justice indicated that the *ejusdem generis* rule applied

*"when a series of particular words in a statute is followed by general words. The general words are confined by being read as the same scope of genus as the particular words."*

In the High Court case of *Radio Pacis Limited vs the Commissioner General Uganda Revenue Authority (HCCS 8 of 2013)* it was held that;

*"when a list or string of genus-describing terms is followed by wider residuary or sweeping-up words, the latter words are taken to be restricted by implication to matters of the same limited character with the former. It is assumed that the general words were only intended to guard against some accidental omission in the objects of the kind mentioned and were not intended to extend to objects of a wholly different kind."*

According to the definition of property in the Act, we find that the general words 'structure of any kind' are qualified by the specific words "immovable property" which requires that for any structure to qualify for property rates under the Act, the structure would have first to be immovable property; of which the telecommunication masts in question are not.

In accordance with the *ejusdem generis* rule, telecommunication masts are not part of what was envisaged to qualify as property and accordingly cannot be subjected to property rates within the meaning of the Local Government (Rating) Act 2005.

The applicant's counsel submitted that the Applicant is a telecommunications service provider which provides necessary passive infrastructure to mobile and data network operators in Uganda (such as Airtel, Africell and MTN) enabling these operators to in turn provide telecommunication and internet services to their end customers.

The Applicant does this by erecting moveable Telecom Masts, made up of connected steel beams to form a tall steel structure, on small pieces of land on which the Applicant holds contractual licenses from various land owners and hiring out the space at different heights on the Telecom Masts to mobile and data network operators to host antennae and switch equipment.

According to the applicant's counsel, Telecom Masts are, by the nature of their erection and by the manner of the license deeds that relate to them, movable property. Telecom Masts are comprised of steel beams which are assembled through bolts and welding at the commencement of the license period and disassembled and taken away at the end of the license period. The disassembling and taking away of the Telecom Masts is a matter which the License Deeds clearly provide for (see Clause 10.7 of the sample of a standard form License Agreement between the Applicant and one of its landlords attached as "B" to the Applicant's Affidavit in Support) and Telecom Masts are routinely moved from one location to another. Being movables, Telecom Masts are not property within the meaning of the Rating Act.

Further, the categories of property covered by the Rating Act are Commercial buildings, Industrial buildings, Non-Industrial buildings (*see Section 2 of the Rating Act containing these definitions*) and Residential buildings (*see Section 3(7) of the Rating Act*). Telecom Masts do not fall within any of the above four categories of property and for that further reason cannot be said to be property within the meaning of the Rating Act.

To the extent that Telecom Masts are not “property” within the meaning of the Act the Demand Notices should, under the Court’s powers of Judicial Review, be quashed by an order of certiorari as having been issued outside the statutory powers of the Respondent and to that same extent an order of prohibition should issue restraining issuance of any further Demand Notices in relation to the Telecom Masts.

The defendant/respondent submitted that the plaintiff and applicant on numerous occasions sought for and obtained development permission from them for the said telecommunications masts under the Physical Planning Act which according to them evidences that telecommunications masts comprise of immovable property as envisaged under the Physical Planning Act.

The Physical Planning Act of 2010 defines developments as material changes in use of land. Therefore, by virtue of the permission sought for and granted by the defendant/respondent to the applicant to erect the said telecom masts, the applicant and plaintiff concede that masts are erected on the ground as developments and thus subject to levy of property rates.

The defendant’s counsel further submitted that the land on which the telecommunications masts are anchored cannot be deemed as vacant and as such does not exempt the plaintiff nor Applicant in both suits from payment of property rates.

The plaintiff and Applicant’s operations of telecommunications masts generate financial benefit to them from letting space thereon and therefore should be subjected to pay property rates on the same as per Section 7(1) of the local Government (Rating) Act 2005

The mere classification of telecommunications masts as movable property in the lease agreements entered into with the land owners and the plaintiff/applicant does not change their very nature as immovable property.

The defendant/respondent submitted that telecom masts are immovable structures and are particularly trade/business fixtures that form part of the land they occupy. They relied on the general rule, '*quic quid plantatur solo, solo cedit*' (whatever is attached to the land becomes part of it) highlights the notion that all that is attached to the land becomes a part of it notwithstanding that it was the common intention of the parties that there should be no such merger of ownership in that subjective intention of the parties cannot effect the question whether the chattel has in law become part of a freehold.

The defendant/respondent contends that the very base station that are part and parcel of the land as result of the firm annexation to the land and whereas the other metals may be taken away easily; the base station cannot be easily removed without causing damage to the land.

The defendant's counsel further submitted that in the present case we are dealing with trade/business fixtures which have been described as articles attached by the tenant for the purposes of his trade or business and the telecom masts fall under the category of fixtures.

The defendant/respondent raised a preliminary objection in its submissions contending that the plaintiff's /applicant's suit is premature, incompetent, an abuse of court process.

According to them any person aggrieved by the valuation done by the defendant/respondent should have filed a notice of objection under section 15(1)(b) of the local Governments (Rating) Act 2005. Once the valuation is published in the gazette notice, then plaintiff and applicant should have challenged the same through other available channels. They have not exhausted the available fora under the Local Government (Rating) Act 2005.

The applicant's in response to the preliminary objection, submitted that they applied for judicial review challenging the demand notices issued by the respondent

### Determination

The resolution of this case rotates around the interpretation of 'property' within the Local Government (Rating) Act 2005.

*'Property' means immovable property and includes a building (industrial or non-industrial) or structure of any kind, but does not include a vacant site;*

The main question is what does the interpretation of the above word mean; Interpretation is the method by which the true sense or the meaning of the word is understood. The question of interpretation can arise only if the two or more construction are sought to be placed on a provision, one party suggesting one construction and the other a different one.

Where an interpretation clause defines a word to mean a particular manner, the definition is explanatory and prima facie restrictive, and whenever an interpretation clause defines a term to include something, the definition is extensive. An extensive definition extends the meaning of the word defined to include within it what would otherwise not have been comprehended in it, when the word is used in the ordinary sense.

In the present case, the question is about the interpretation of property as set out in the interpretation clause to include telecom masts in immovable property for purposes of imposing or levying rates by Local governments.

It is important to note that Local Government (Rating) Act 2005 is a special Statute which is self-contained code, the Court must consider the intention of the Legislature. The reason for this fidelity towards the legislative intent

is that the Statute has been enacted with a specific purpose, which must be measured from the wording of the statute strictly construed.

In the celebrated case of *Seaford Court Estates v Asher* [1949] 2 All ER 155; Lord Denning had succinctly summarized the principle of the role of the Court. It was said that whenever a Statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. A judge cannot simply fold his hands and blame the draftsman. He must set out to work constructive task of finding the intention of Parliament, and he must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written words to give “force and life” to the intention of the Legislature.

A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, how they would have straightened it out. He/she must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases. See *Vipulbhai M Chaudhary v Gujarat Cooperative Milk Marketing Foundation (3)* SCALE 841: AIR 2015 SC 1960

Court cannot legislate on the subject under the guise of interpretation against the will expressed in the enactment itself. It is not open to the Court to usurp the functions of the Legislature. Nor is it open to the court to place an unnatural interpretation of the language used by the Legislature and impute to it an intention, which cannot be inferred from the language used by it by basing itself on ideas derived from other laws.

In order to ascertain the meaning of a section, it is not permissible for the court to omit any part of it. The whole section should be read together, and an attempt should be made to reconcile both parts. The Statute has to be read as a whole and in its entirety.

It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A Statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

It is a cardinal principal of construction of a Statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute, and it would not be open to the court to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act.

If the words of a Statute are in themselves precise and unambiguous, they should be given their natural meaning. If there are two different interpretations of the words in the Act, the court will adopt that which is just, reasonable and sensible.

In order to come to a decision as to the true meaning of the word used in a Statute, one has to enquire as to the subject-matter of the enactment and the object which the legislature had in view. It is well settled that the words of a Statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. *See CIT v Alsom Extrusions Limited (2010) 1 SCC 489*

This court agrees with the submission of the plaintiff's counsel that the words '*or structure of any kind*' must be understood in terms of entire definition of property to mean immovable property. The principle of *ejusdem generis* will



aid the court in interpreting the meaning of property-‘or structure of any kind’ under the Act.

In the Supreme Court case of *the Registered Trustees of Kampala Institute v Departed Asians Property Custodian Board SCCA No. 23/93*, the Chief Justice indicated that the *ejusdem generis* rule applied

*“when a series of particular words in a statute is followed by general words. The general words are confined by being read as the same scope of genus as the particular words.”*

In the High Court case of *Radio Pacis Limited vs the Commissioner General Uganda Revenue Authority (HCCS 8 of 2013)* it was held that;

*“when a list or string of genus-describing terms is followed by wider residuary or sweeping-up words, the latter words are taken to be restricted by implication to matters of the same limited character with the former. It is assumed that the general words were only intended to guard against some accidental omission in the objects of the kind mentioned and were not intended to extend to objects of a wholly different kind.”*

It was the plaintiff’s submission that the definition of property in the Act, through the general words ‘structure of any kind’ are qualified by the specific words “immovable property” which requires that for any structure to qualify for property rates under the Act, the structure would have first to be immovable property; of which the telecommunication masts in question are not.

The dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted, but where there is no such definition or interpretation, the Court may take aid of dictionaries to ascertain the meaning of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word, and the Court has, therefore, to select the

particular meaning which is relevant to the context in which it has to interpret that word.

The rule of *ejusdem generis* is a principle of construction, meaning that when the general words in statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words.

The *ejusdem generis* principle is a facet of the principle of *noscitur a sociis*. The Latin maxim *noscitur a sociis* (*a thing is known by its associate*) contemplates that a statutory term is recognised by its associated words. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and contents are to be derived from their context. English words derive colour from those which surround them. See *Bourne v Norwich Crematorium Ltd* [1967] 2 All ER 576 at 578

The Supreme Court of India in the case of *Commissioner of Income Tax, Udaipur, Rajasthan v McDowell and Company Limited*, (2009) 10 SCC 755 while discussing the doctrine of *Ejusdem generis*, held that the principle of statutory Interpretation is well known and well settled that when particular words pertaining to a class, category or genus are followed by general words, the latter are construed as limited to things of the same kind as those specified. This rule applies when:

- (a) the Statute contains an enumeration of specific words;
- (b) the subjects of enumeration constitute a class or category;
- (c) that class or category is not exhausted by the enumeration;
- (d) the general terms follow the enumeration; and
- (e) there is no indication of a different legislative intent.

It can be deduced from the above authorities that, this is a principle which arises 'from linguistic implication by which words have literally a wide

meaning (when taken in isolation) are treated reduced in scope by the verbal context.

Thus, if a word is doubtful, its meaning may be ascertained by reference to the meaning it associates with.

The words used in the definition of the 'property' - 'structure of any kind' should be strictly understood in terms of immovable property as the Local Government (Rating) Act 2005 envisaged and the telecom masts would not be in that category since they are movable or could as well be fixed on top of buildings to serve the same purpose.

The Minister responsible has also clarified on the applicability of the Local Government (Rating) Act to Telecom masts and this advice as given upon guidance from the Attorney General binds the respondent and any other government agencies.

The nature of the legislation in issue is a tax legislation which has the effect of collection of revenue for the local governments including the respondents

This court further agrees with the plaintiff's counsel submission that whenever there is any ambiguity tax legislation it should always be interpreted in favour of the tax payer.

It is a cardinal principle of law that if the court is in doubt arising from vagueness or lack of clarity in respect of a tax issue then it has to interpret in favour of the tax payer.

The Supreme Court of Uganda in the case of *Uganda Revenue Authority v. Uganda Taxi Operator and Drivers Association Civil Appeal No. 13 of 2015* where **Justice Faith Mwendha (JSC)** applied the said principle and held on page 15 that

*“It’s trite that where there is any ambiguity in the legislation, the same is interpreted in favour of the tax payer or assessee. (See) CIT v. Vegetable Production (supra) where it was held: “If the Court finds that the language of the taxation provision is ambiguous or capable of more meaning than one of them the Court has to adopt the interpretation that favours the assessee (tax payer). I am persuaded by the above.”*

On the basis of this Supreme Court ruling, even if this court was in doubt as to whether towers were immovable property within the meaning of the Local Government Ratings Act, it should interpret this ambiguity in the tax legislation in favour the Plaintiff who is the tax payer. If the legislature had meant that the rates should be levied telecom masts it would have stated so clearly and with no ambiguity.

Furthermore, in Clifford versus IRC [1896] 2 QB 187, at 193 it was held that where a statute is so indefinite and uncertain that it can be treated in two ways and its true construction of it is open to confuse, the one more favourable to the Crown and the other to the subject, the construction favourable to the subject should be adopted.

In Commissioner of Income Tax Vs Westmont Power(K) Limited (2006)1 EA 54 it was held that:

*“Taxation laws that have the effect of depriving citizens of their property by imposing pecuniary burdens resulting also in penal consequences must be interpreted with great caution. In this respect, it is paramount that their provisions must be express and clear so as to leave no room for ambiguity. Any ambiguity in such a law must be resolved in favour of the taxpayer and not the public revenue authorities which are responsible for their implementation. Inland Revenue v Scottish Central Electricity Company [1931] 15 TC 761 followed.”*

The plaintiff’s submission that if the state was really interested in taxing telecommunications masts then it should have legislated specifically so is

very valid and this court agrees with it. In the Indian case of *Ahmedabad Municipal Corporation vs. GTL Infrastructure Ltd and Others Supreme Court of India Civil Appeal No. 5360- 5363 of 2013*, the court held that state of Gujarat was required to pass legislation clearly indicating that there would be a tax on Mobile Towers and not rely on vague tax legislation.

This issue is resolved in the negative.

### ISSUE TWO

*What remedies are available to the parties?*

- 1.) *The plaintiff and applicant are not liable to pay property rates under the Local Government (Rating) Act since Telecommunication masts are not immovable property within the meaning of the Act.*
- 2.) *The demand notices for property rates issued against by the respondent's to the plaintiff and applicant are illegal and contrary to the Local Government (Rating) Act.*
- 3.) The plaintiff and applicant are awarded costs of the suit and application.

**I so order**

**SSEKAANA MUSA**

**JUDGE**

**16<sup>th</sup>/08/2019**