

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

5 **(CORAM: ODOKI CJ, TSEKOOKO, KATUREEBE, OKELLO,
B.KITUMBA, TUMWESIGYE, KISAAKYE, JJ.S.C.)**

CONSTITUTIONAL APPEAL NO.2 OF 2009

10 **BETWEEN**

**UGANDA PROJECTS IMPLEMENTATION
AND MANAGEMENT CENTRE::: PETITIONER**

15 **AND**

UGANDA REVENUE AUTHORITY::: RESPONDENT

20 *Constitutional Law - constitutionality of section 34 (c) (3) of the
Value Added Tax Act, cap 349 as amended by the Finance Act,
2001- whether section 34 c (3)of the Value Added Tax Act,
contravenes Articles 21 and 126 (2) (a) of the 1995 Constitution in
so far as it requires a person to pay 30% of the tax in dispute
before filing an application before the tax Appeals Tribunal -
25 Access to court - whether the requirement under section 34 C(3)
of the Value Added Tax as amended by the Finance Act 2001 to
pay 30% of the tax in dispute before lodging an appeal is a denial
of the right of access to court, in*

30 *contravention of articles 21(1) and 126 (2) (a) of the Constitution -
whether section 34 of the Value Added Tax Act is discriminatory -
Article 43 of the Constitution - whether limitations imposed by
articles 34 C(3) of the Value Added Tax are arbitrary, unreasonable
and undemocratically unjustifiable in a free and democratic
35 society.*

(Appeal from the Ruling of the Constitutional Court of Uganda at

Kavuma, . Nshimye JJ.A.] dated 10th February, 2009 in Constitutional Petition No.18 of 2007) (Reference)

JUDGMENT OF KITUMBA JSC

5 *(Appeal from the Ruling of the Constitutional Court of Uganda at Kampala . Mukasa - Kikonyogo ,DCJ, Engwau, . Byamugisha, Kavuma, . Nshimye JJ.A.] dated 10th February, 2009 in Constitutional Petition No.18 of 2007) (Reference)*

10 This appeal is from the ruling of the Constitutional Court on reference from the Tax Appeals Tribunal.

In its ruling the Constitutional Court declared that the impugned section 34 C (3) of the Value Added Tax Cap 349 as amended by the Finance Act, 2001 does not contravene Articles 21 and 126 (2)
15 (a) of the Constitution. The impugned section requires a person before lodging an application with the Tax Appeals Tribunal to pay to the Commissioner General 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater. The appellant was dissatisfied with the decision and appealed to this
20 Court.

The following is the background to the appeal. Uganda Projects Implementation and Management Centre, hereinafter referred to, as “the appellant”, is a Non Governmental Organization. The
25 appellant carried out a number of community activities mobilizing the population during the National Housing and Population Census 2002 and voter education during the National Referendum 2005.

Uganda Revenue Authority hereinafter referred to as “the
30 Respondent” audited the appellant’s accounts. The respondent made a demand of Ug. Shs. 394,700,051/= as Value Added Tax (VAT) arising out of the appellant’s community mobilization and

on the grounds that VAT could not be charged on the said projects as there were not taxable supplies and that in any event, even if there was, the monies would be collectable from the Electoral Commission.

5

The respondent disallowed the objection and issued third party agency notices upon the appellant's bankers. All the appellants monies were taken by respondent but the notices were not satisfied for lack of sufficient funds.

10

The appellant filed an application before the Tax Appeals Tribunal seeking a review of the Respondent's decision. When the hearing of the application before the Tax Appeals Tribunal began, the respondent raised a number of preliminary objections. One of those objections, which is the subject of this appeal, was that the application which had been filed by the appellant was premature and incompetent because the appellant had not complied with section 34 C (3) of the Value Added Tax Act Cap 349 as amended by the Finance Act of 2001 by paying 30% of the tax in dispute or that part of the tax assessed not in dispute whichever is greater.

20

The appellant contended before the Tribunal that the requirement to pay 30% of the tax assessed before it could lodge an appeal against the assessment contravenes Articles 21 and 126 (2) (a) of the Constitution as it amounted to a denial of the right to access justice. The appellant requested that the matter be referred to the Constitutional Court, for resolution according to Article 137(5) of the Constitution. The Tax Appeals Tribunal granted the request. The following question was framed for determination and interpretation by the Constitutional Court:

30

“Whether S.34 C (3) of the Value Added Tax Act Chapter 349 as amended by the Finance Act 2001 contravenes Articles 21 and 126 (2) (a) of the 1995 Constitution of Uganda in as far as it requires a person, before lodging an application with the Tax Appeals Tribunal, to pay to the Commissioner General 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater”.

The Constitutional Court ruled, as already stated, that the impugned section of the law is constitutional.

The appellant was dissatisfied with the decision and has appealed to this Court on the following grounds:

1. ***The learned Justices of the Constitutional Court erred in law when they held that under section 33(1) of the Value Added Tax Act Cap. 349 a notice of assessment is conclusive evidence that the amounts stated therein are correct.***
2. ***The learned Justices of the Constitutional Court erred in law when they held that the requirement to pay 30% of the tax in dispute before filing an application before the Tax Appeals Tribunal is premised on the fact that the assessment done by the tax authority is correct in accordance with section 33 of the Value Added Tax Cap. 349.***
3. ***The learned Justices of Appeal erred in law when they failed to hold that Section 34 (C) (3) of the Value Added Tax Act Cap. 349 as amended by the Finance Act 2001 denies the Appellant access to court.(sic)***

4. ***The learned Justices of the Constitutional Court erred in law when they held that the impugned section did not contravene any of the cited Articles of the Constitution.***

5 5. ***The learned Justices of the Constitutional Court erred in law when they held that the impugned section of the Value Added Tax Cap. 349 as amended by the Finance Act 2001 was not discriminatory against the Appellant.***

10 6. ***The learned Justices of the Constitutional Court erred in law when they held that the limitations imposed by the impugned section were not arbitrary, unreasonable and demonstrably unjustifiable in a free and democratic society.***

15 During the hearing of the appeal in this Court, learned counsel, Mr. Birungyi Chephas and Enoch Barata of Birungyi Barata and Associates appeared for the appellant.

The respondent was represented by learned counsel Peter Muliisa and Charles Ouma. Ms Margaret Nabakooza represented the Attorney General who had been served.

20 Counsel for the appellant had filed in this Court written submissions according to rule 94 of the Judicature (Supreme Court Rules). Directions S1 - 13 -11. Counsel for the respondent made oral submissions.

25

In his written submissions appellants' Counsel argued grounds 1 and 2 together 3 and 4 together, and 5 and 6 together and in that order. Mr. Muliisa argued grounds 1 and 2 together, 3, 4 and 5 jointly and 6 separately.

In this judgment I shall first deal with grounds 1 and 2 together followed by grounds 3, 4 and 5 jointly because there are interrelated and finally consider ground 6.

5 The complaint by the appellant's counsel on grounds 1 and 2 is that the learned Justices of the Constitutional Court erred in holding that section 33(1) of the Value Added Tax Act provides that the amounts stated in the notice of assessment by the tax authority is correct and that, the requirement to pay 30% of the
10 tax in dispute before filing an application before the Tax Appeals Tribunal is, therefore, constitutional.

Counsel submitted that the issue before the Constitutional Court was only about the constitutionality of payment of 30% of the
15 tax in dispute before making an appeal to the Tax Appeals Tribunal and that is the gist of section 34 C (3) of the Act. Counsel argued that the fact of assessment was not in issue because it was never disputed that the assessment was made. It was the assessment that precipitated the proceedings before
20 Court. He submitted further that section 33(1) of the Act is relevant where there appears to be a dispute in the proceedings as to the making of the assessment.

Counsel criticized the learned Justices of the Constitutional Court
25 for referring further to section 34(3) of the Act and holding that the said subsection emphasizes the correctness of the assessment and that is the reason why the tax authority continues to collect taxes, whether or not there is an objection or an appeal against the assessment.

According to counsel the learned Justices of the Constitutional Court mixed up the issue of collection of correctly assessed amounts with the issue of access to court which is the subject of section 34 C (3) of the Act and thereby misdirected themselves.

5 Based on that misdirection they wrongly held that the impugned section was not unconstitutional.

Mr. Muliisa, for the appellant, contended that the complaint by appellant's counsel in grounds 1 and 2 is not a constitutional issue and was not before the Constitutional Court. He submitted that the Justices of the Constitutional Court correctly stated the provisions of section 33(1) of the Act but did not make it a basis of their decision.

10 He submitted further that the Constitutional Court ruled that the impugned section imposed restrictions on the tax payers' right to access court to complain about the assessment by the tax authority, but found that it was constitutionally justifiable.

Respondents' counsel contended that the argument by the appellant's counsel that the Justices of the Constitutional Court misdirected themselves in relying on the correctness of the assessment is a misinterpretation of the judgment and a misunderstanding of the courts' ruling.

20 I have considered the submissions of both parties and the record of appeal. The Justices of Constitutional Court in their ruling first of all referred to the principles of the Constitutional interpretation which they had to follow to determine whether the impugned section was unconstitutional. Then they gave the background of the process of payment of VAT by stating thus.

“The payment of tax usually commences with the tax payers filing tax returns with the respondent. This is a voluntary act on the part of the taxpayer. This process is followed by the payment of the relevant tax as assessed

5 ***by the respondent in accordance with information contained in the returns filed by the tax payer. In the case of Value Added Tax, the filing of returns is provided for under section 31(1) of the Act.***

In the event of a tax payer failing to file necessary

10 ***returns or where returns filed do not satisfy the Commissioner-General or where the Commissioner General has reasonable grounds to believe that a person will become liable to pay tax but is unlikely to pay the amount due, the Commissioner -General may make an***

15 ***assessment. This is provided for under Section 32(1)***

The Constitutional Court quoted the provisions of section 33(1) of the Act which provide:

“The production of a notice of assessment or a

20 ***certified copy of a notice of assessment shall be received in any proceedings as conclusive evidence of the due making of the assessment, and except in proceedings relating to objections and appeals relating to the assessment, that the amount and all particulars***

25 ***of the assessment are correct.”***

The Justices of the Constitutional Court referred to the provisions of the section 34(3) of the Act and stated as follows:

“Where an objection to or a notice of appeal against an

30 ***assessment has been lodged, the tax payable under the***

assessment is due and payable and may be recovered, notwithstanding that objection or appeal.”

In my view the court simply gave a background to the payment of 30% of the assessed tax. The correctness of the assessment was not the reason why the court concluded that the payment of 30% is constitutional. This was preamble to its decision. After that the court went on to consider whether the payment of 30% is an infringement of the tax payer’s fundamental human rights. In conclusion to the question of constitutionality of the impugned section the learned Justices of the Constitutional Court stated as follows:

“There is no doubt that access court is one of the fundamental rights and freedoms that every individual in society is entitled to. It is connected to the rule of law and the universally accepted standards of justice which are observed by civilized nations which observe the rule of law. There is no doubt that the impugned provisions impose restriction to the enjoyment of a fundamental right. In order for the petitioner to succeed it has to show that the impugned section is arbitrary, unreasonable and unjustified.”

Counsel for the respondent has correctly submitted that grounds 1 and 2 are not matters of Constitutional interpretation and were not before the Constitutional Court. Grounds 1 and 2 are devoid of merit. I would accordingly dismiss them.

We now turn to grounds 3 and 4 and 5. The appellant’s counsel complaint is grounds 3,4 and 5 is that the learned Justices of the Constitutional Court erred in law when they failed to hold that

section 34 C (3) of the Value Added Tax Act as amended by the Finance Act 2001 denies the appellant access to court.

Further Counsel complains that the learned Justices of the
5 Constitutional Court erred in law when they held that the impugned section did not contravene Articles 21(1) and 126(2) (a) of the Constitution and was not discriminatory against the appellant.

Counsel contended that the right to access court is a fundamental
10 right in any free and democratic society. It is the foundation of the right to a fair hearing and therefore, the foundation of equal protection of the law. According to counsel without access to court, one cannot get a fair hearing and equal protection of the law. Counsel referred to Articles 21(1), (2), 28(1) and 126 (2) (a) of the
15 Constitution. He submitted that the appellant had under Articles 21 and 126 (2) (a) the right to access the Tax Appeals Tribunal. He argued that, therefore, requiring the appellant to pay 30% of the tax in dispute as a pre condition to being heard denies it of that right and contravenes the above mentioned Articles. Counsel
20 argued that the appellant's right to access court becomes dependant on the appellant's economic status whereas Article 21(1) provides for equality before and under the law.

He submitted that one must first access court in order to have
25 access to equal protection of the law and have fair hearing as is provided by Article 28(1) of the Constitution. Counsel argued that although certain obligations are usually imposed on a person accessing court, such as filing fees and security of costs these are intended to prevent abuse of process and to ensure effective
30 administration of justice. However, where such obligations have

to court such restrictions become unconstitutional. He argued that the impugned section 34 C (3) of the Value Added Tax Act as amended by the Finance Act 2001 is in such a category.

5 Counsel argued that according to the principles of constitutional interpretation a Constitution must be given generous and liberal interpretation having in mind that the Constitution is a durable instrument that must stand the test of time and not subject to amendments as often as other legislations. He further submitted
10 that another principle governing constitutional interpretation is that all provisions of the Constitution concerning an issue must be considered together and the Constitution must be looked at as a whole. In support of the above submission he referred on the judgment of Oder JSC (RIP) **Attorney General Vs Major General Tinnyefuza Constitutional Appeal No 1 of 1997.**
15

He submitted, therefore, that Article 21(1) cannot be separated from Article 28(1) and 126 of the Constitution and that none of these can be given effect unless they are read together.

20

It was counsel's contention that the right of access to court is one of the most fundamental rights in a free and democratic society. He quoted a number of authorities in support of that contention and one of them was the Tanzanian case of **Ndyanabo Vs Attorney General (2001) 2 EA.485.**
25

In that case the Constitutional Court held that the right of access to justice was fundamental. That the limitation which was imposed by section 11(2) of the Parliamentary Election Act which required a petitioner to deposit five million shillings before the hearing of an
30 election petition was arbitrary and inflicted an unjustified disability

those whose petitions could be heard and those whose petitions could not be heard because of poverty. He also relied on **Krenz Vs Poland (2000)** ECHR Application No 28249/98 of the European Court of Human Rights for the holding that the limitation imposed
5 must not have the effect to restrict or to reduce the access afforded to a person to such an extent that the right given is taken away.

Counsel argued that protection of the law includes access to
10 appellate process and the test in determining whether a restriction has taken away a litigants right to access to justice is the effect of the provision imposing the restriction rather than the basis of the restriction. He supported that submission with the authority of **Olum and Another Vs Attorney General (2002) 2 EA 508.**

15

Counsel contended that requiring the appellant to pay thirty percent before filing the appeal to the Tax Appeals Tribunal is unconstitutional as it does not treat the parties before court equally. The appellant and respondent are not treated equally as
20 there is a presumption that the appellant is guilty and owes the respondent money. He argued that the parties are not equal before and under the law and there appellant is discriminated on economic grounds which is contrary to Article 21(1) and (2) of the Constitution. Additionally the requirement to pay 30% of the
25 assessed tax by the appellant contravenes Article 126(2) (a) of the Constitution which provides that the principles to be followed by Courts in administering justices are that justice has to be done to all irrespective of their social or economic status. According to counsel the payment of 30% of the assessed tax only applies to
30 one party which is unlike filing fees and thus the parties are not

Appellant's counsel criticized the learned Justices of the Constitutional Court for ascribing to the word discrimination a most limited and restrictive interpretation. According to Counsel though
5 the respondent was not a tax payer it was a party against whom proceedings were brought before the Tax Appeals Tribunal. The learned Justices of the Constitutional Court did not, therefore, appreciate that parties before any court of law or tribunal are equal before such a body. In counsel's view section 34 C (3) of the Value
10 Added Tax as amended by the Finance Act 2001 is discriminatory. He prayed court to find the section unconstitutional and in contravention of Articles 21 and 126 (2) (a) of the Constitution.

On the other hand, Mr. Muliisa, learned counsel for the respondent,
15 fully supported the decision of the Constitutional Court. He contended that the impugned section did not deny the appellant access to court. He argued that during the hearing both in the Constitutional Court and in the Tax Appeals Tribunal there was no evidence to show that the appellant was incapable of paying 30%
20 of the tax assessed and could not, therefore, access court.

Counsel contended that the constitutional provisions dealing with access to court are under Article 28 of the Constitution. According to Counsel Article 28 provides for the right to fair hearing and
25 access to court is embedded therein.

It was his argument that under Article 43 of the Constitution enjoyment of fundamental human rights and freedoms may be limited provided that such limitation is not beyond what is
30 acceptable and demonstrably justifiable in a free and democratic

requirement to pay 30% of the tax assessed before accessing the Tax Appeals Tribunal is justified in a free and democratic society.

He argued further that if the appellant was incapable of paying
5 30% of taxes he could have applied to the Commissioner General of the respondent according to section 34(4) of the Act, to extend the time within which to pay or to make other appropriate arrangement. In case the Commissioner General unreasonably refused the application, under section 14 of the Tax Appeals
10 Tribunals Act the appellant could have applied to the Tax Appeals Tribunal to review the Commissioner General's decision. He submitted further that the appellant could also have applied to the High Court for judicial review of the Commissioner's decision.

15 In support of his submission counsel relied on ***Metcash Trading Co. Ltd Trading Co Ltd Vs Commissioner for South African Revenue Services and Another.***

In that case Metcash Trading Co Ltd owed money to the revenue
20 authority. Both parties disagreed about the amount. Metacash Trading Co. Ltd challenged the constitutionality of section 36(1) of the Vat Act of South Africa. (Act No 89 of 1999)

The question was whether the said provision limits the right to
25 access to court provided by section 34 of the Constitution.

The section provided that the assessment by the Commissioner of South Africa Revenue Services (the Commissioner) and notwithstanding the noting of an "appeal" a tax payer is obliged to
30 pay the assessed tax called Value Added Tax (VAT) plus

refunds being left for dispute and determination later. By section 40 (2) (a) of the said Act the Commissioner has powers, where payment of an assessment is over due to file a statement at court which has the effect of a judgment for a liquidated debt.

5 According to section 40(5) the correctness of assessment is beyond challenge in such execution.

When the Commissioner threatened the use of section 40, (2) (a) Metecash Trading Co. Ltd urgently applied to block the threatened

10 action, and some interim arrangement was made. The High Court judge delivered judgment declaring the sections unconstitutional as blocking access to court.

When the matter was taken up to the Constitutional Court for

15 confirmation that court held that the said section did not block access to court.

The Constitution Court of South Africa discussed the nature of the Value Added Tax (VAT). The court stated that VAT is a special tax which depends of the self assessment by a tax payer. The tax

20 payer is afforded sufficient opportunities to be heard on the assessment. The tax payer may object to the assessment, ask the Commissioner to grant an extension of time for payment in case the Commissioner refuses the tax payer may ask the court to set aside the refusal on review. The court held that the restrictions on

25 access to court by the tax payer were justifiable under of the constitution because of the public interest. The court emphasized that “pay now, and argue later” principle is followed in many democratic and open societies

The Constitutional Court of South Africa held that the limitation

30 provided by the section was justified in public interest to ensure

run. Counsel implored this court to follow the above decision.
Further

counsel for the respondent agreed with the decision of the
Constitutional Court that the authority of **Ndyanabo Vs Attorney**
5 **General** (Supra) is distinguishable from the instant appeal.

In conclusion he submitted that the impugned section limit the
right to access court but does not deny the right. There are other
avenues open to the tax payer who is unable to pay 30%.

10

In reply Mr. Birungyi, learned Counsel for the appellant, contended
that the option for judicial review by the High Court was not open to
the appellant because the requirement to pay 30% of the assessed
tax was set by the impugned section and was, therefore,
15 mandatory. He argued further that section 34 applies to a situation
where the taxpayer does not dispute the assessed taxes and
wishes to pay in installments. Counsel submitted that **Metcash**
Trading Co. Ltd (Supra) is distinguishable from the instant appeal.
He argued that according to the law in South Africa there is no need
20 to deposit money before one challenges the decision of the
Revenue Authority, though revenue authority continues collecting
the taxes.

Before dealing with the submissions by counsel for both parties its
25 necessary to set out in this judgment the provisions of the Articles
of the Constitution that are alleged to be contravened by the
impugned section of the Act namely Articles 21(1) (2) and (3) and
126 (2) (a) of the Constitution and Article 28 (1) to which reference
has been made in the arguments. They provide as follows:

30

(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

5 **(2) Without prejudice to clause (1) of this Article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.**

10 **(3) For the purposes of this Article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic, origin, tribe, birth, creed or religion, social or economic standing political opinion or disability.**

15 Article 126(2) (a) provides as follows:

126 (2) in adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles:-

20 **(a) Justice shall be done to all irrespective of their social or economic status.**

Finally Article 28(1) States:

(28 (1) Rights to a fair hearing).

25 **In determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.**

I respectfully agree with the principles on constitutional interpretation referred to by the Constitutional Court and Counsel.

30 In determining whether the impugned section is unconstitutional

The Constitutional Court on this point referred to this court's decision in ***Attorney General Vs Sivatori Abuuki Constitutional Appeal No 1 of 1998***

5 The Constitutional Court quoted the authority of Ndyanabo case (supra) on the point that fundamental human rights have to be given a liberal interpretation. The Constitutional Court was alive to the principle that in interpreting the Constitution it must be looked as one integral whole and thus all provisions of the constitution having a bearing on the subject must be considered together and
10 no provision destroying another but sustaining each other. This has been said to be a rule of harmony or completeness.

See ***Paul Semwogere Vs Attorney General Constitutional Appeal No. 1 of 2002.***

15 The submissions by appellant's counsel were that the impugned provisions completely restricted access to court and were not justifiable but the Constitutional Court held otherwise. Counsel for the respondent fully supports the holding of the Constitutional Court.

20

I should begin with the common position that access to court is one of the fundamental human rights as stated in the Ndyanabo case. (***Supra***). The issue for determination in the instant appeal in grounds 3,4, and 5 is whether the appellant's access to court was
25 completely restricted by the impugned section and the appellant was discriminated against.

Counsel for the respondent has argued that the appellant had other avenues open to access to court. I agree.

In the first place section 34 (4) of the Value Added Tax (VAT) Act makes provision for an application to the Commissioner in the following terms.

5 ***“Upon written application by a person liable for tax the Commissioner General may where good cause is shown extend the time for payment of tax beyond the date on which it is due and payable or make such other arrangements as appropriate to ensure the payment of***
10 ***taxes”***

Where the taxpayer is unable to pay the 30% of the assessed tax before filing the appeal to the Tax Appeals Tribunal he or she could apply to the Commissioner General of the Respondent. The
15 appellant did not make use of this section. The argument that the above section does not apply to someone like the appellant would, in my view, be a misunderstanding of the role of the tax authority. The role of tax authority is to get the right taxes paid but not to extort unfair payments from taxpayers

20

I am of the considered view that this section does not apply only to those taxpayers who do not dispute the taxes assessed, as counsel for the appellant has submitted. Before the taxpayer files an application to Tax Appeal Tribunal, 30% of the assessed tax is due
25 for payment. The section allows the Commissioner to extend time of payment of taxes ***“where good cause is shown beyond the date which it is due and payable”***.

In the event of the Commissioner General having unreasonably
30 disallowed the appellant’s application the appellant could have

argument by appellant's counsel that because the impugned section has stipulated 30% of the tax to be paid, the Commissioner General has no powers to vary that and the High Court is not seized with judicial review powers.

5

According to Article 139 (1) of the Constitution,

"The High Court shall subject to the provisions of this Constitution have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this constitution or any other law".
(Emphasis added)

Judicial review of administrative actions is, in my view, original jurisdiction of the High Court and cannot be taken away by any other law because it is conferred on it by the Constitution, which is the supreme law of the land. ***See Article 2 of the Constitution.***

On the issue of discrimination against the appellant the Constitutional Court held that the appellant had not brought forward any evidence to prove discrimination. I agree. The appellant was entitled to produce affidavit evidence, if there was discrimination against it. Counsel's attack on the Constitutional Court, that it gave restrictive meaning of the word discrimination because the appellant and the respondent were both parties to a dispute before the Tax Appeals Tribunal and that both of them should have been required to pay 30% of assessed the taxes is not tenable.

The respondent could not have paid the 30% of the assessed tax to itself. It was not assessed to pay any taxes The Constitutional

Court considered discrimination to be treatment between tax payers and rightly so, in my view.

Counsel for the appellant has criticized the Constitutional Court for holding that the case of **Ndyanabo Vs Attorney General (Supra)** is distinguishable from the instant appeal without giving reasons whereas, in his view, both cases are not distinguishable. The Constitutional Court did not give reasons but a close examination of the two cases reveals that they are distinguishable. Unlike in the instant appeal in **Ndyanabo (Supra)** the petitioner had no other avenue to have his petition heard unless he deposited the security for costs in court. In the instant appeal the appellant had other avenues, which I have mentioned in this judgment.

The Constitutional Court did not consider these other avenues. However, it considered other arguments and the principles of constitutional interpretation and stated:

***“There is no dispute as we stated earlier that the impugned section imposes a restriction on the taxpayer’s right of accessing court to air whatever grievances he or she might have about the assessment of tax by the tax authority. Payment of tax is a duty of every citizen under the Constitution - See Article 17. Taxes must not only be paid but they must be paid promptly for the public good.*”**

I have no reason to disagree with the above holding. The impugned section did not contravene Articles 21(1) (2) and 126 (1) of the Constitution by completely blocking the appellants access to court. Grounds 3,4 and 5 must, therefore, fail.

I now consider ground 6 in which the complaint by appellant's counsel is that the limitations imposed by the impugned section on the appellant were arbitrary unreasonable and demonstrably unjustifiable in a free and democratic society.

5

On this ground appellant counsel repeated his submission on grounds 1 and 2. He contended that the learned Justices of the Constitutional Court misdirected themselves because they reassured that the assessment was correct and, that therefore,
10 constitutional. In counsel's view the imposition of payment of 30% was arbitrary unreasonable and demonstrably unjustifiable in a free and democratic society. Appellants counsel re-iterated his submission on the ***Ndyanabo Vs Attorney General (Supra)***

15 Mr. Barata second counsel for the appellant questioned the necessity of the impugned section because section 34 of the Value Added Tax VAT Act provides that inspite of objections and appeals collection goes on. According to him there is therefore, no need for the appellant to pay 30% of the assessed tax since collection still
20 goes on.

In reply, counsel for the respondent supported the ruling of the Constitutional Court. He relied further on ***Metcash Trading Co. Ltd Trading Co Ltd Vs Commissioner for South African
25 Revenue Services and another (Supra)*** where the court considered public interest vis a vis tax payers reluctance to paying taxes and frivolous objections. He submitted that the pay now argue later, is followed in free and democratic societies.

30 I have stated earlier on in this judgment that the court did not base

The Court followed the rules of Constitutional interpretation. The Justices of the Constitutional Court considered all Articles of the Constitution that were relevant to the matter before them, namely
5 Article 21, 28, (1) 43, 126(2) and 17 of the Constitution.

It is rather odd that counsel for the appellant complained that the impugned section contravened Articles 21,126 (2) (a) of the Constitution and his argument was that those two Articles must be read together with Article 28 of the Constitution which provides for
10 access to justice and fair hearing. On the other hand he argued that the exception in Article 43 referred other rights other than access to court in matters of payment of taxes. These rights and freedoms are Article 43 of the Constitution provided for in the same chapter.

15

Article 43 provides.

***“In the enjoyment of the rights and freedoms prescribed in this Chapter no person shall prejudice the fundamental or other human rights and freedoms of others or public
20 interest.***

Public interest under these Articles shall not permit-

(a) Political persecution

(b) detention without trial

***(c) any limitation of the enjoyment of the rights and
25 freedom prescribed under this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided under this
Constitution.***

30

The appellants said right of access to court was limited within the limitation allowed by Article 43 of the Constitution as rightly found by the Constitutional Court.

5 The issue of collection of taxes inspite of objection which was raised by Mr. Barata is not an issue for constitutional interpretation. It may be hardship on the taxpayer but according to Article 17 of the Constitution a citizen has a duty to pay taxes and to do so promptly, so that government business can go on. This is what was
10 discussed in the ***Metcash Trading Co. Ltd case (Supra)***. “***The principle of pay now and argue later***” The tax payer has to pay his tax then argue later.

I am unable to fault the ruling of the Constitutional Court that the limitation on the appellant’s right of access to court was
15 constitutionally justified under Article 43 of the Constitution. Ground 6, too should fail.

In the result, I would dismiss the appeal with costs to the respondent in this court and the court below.

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Dated at Kampala this 28th day of October 2010

25

**C.N.B. KITUMBA
JUSTICE OF THE SUPREME COURT**

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**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

5 **(CORAM: ODOKI CJ, TSEKOOKO, KATUREEBE, OKELLO,
 KITUMBA, TUMWESIGYE, KISAAKYE, JJ.SC)**

CONSTITUTIONAL APPEAL NO.2 OF 2009

BETWEEN

10 **UGANDA PROJECTS IMPLEMENTATION
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AND

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20 *[Appeal from the ruling of the Constitutional Court of Uganda at
 Kampala (Mukasa - Kikonyogo, DC), Engwau, Byamugisha, Kavuma,
 and Nshimye JJ.A.] dated 10th February, 2009 in Constitutional Petition
 No.18 of 2007 (Reference)]*

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared
25 by my learned sister, Kitumba, JSC, and I agree with her that this
appeal should be dismissed. I concur in the order she has proposed
as to costs.

As the other members of the Court also agree, this appeal is
dismissed with costs in this Court and in the Courts below.

30 **Dated** at Kampala this **28th** day of **October**, 2010

B J Odoki
CHIEF JUSTICE

35

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

5 **(CORAM: ODOKI CJ., TSEKOOKO, KATUREEBE, OKELLO,
KITUMBA, TUMWESIGYE, KISAAKYE, JJ.SC)**

CONSTITUTIONAL APPEAL NO.2 OF 2009

BETWEEN

10 **UGANDA PROJECTS IMPLEMENTATION
& MANAGEMENT CENTRE:::::::::::::::::::::::::::: PETITIONER**

AND

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

*[Appeal from the Ruling of the Constitutional Court at Kampala -
Kikonyogo, DCJ, Engwau, Byamugisha, Kavuma, and Nshimye JJ.A.] in
Constitutional Reference No.18 of 2007 dated 12th Feb., 2009]*

20 **JUDGMENT OF JWN TSEKOOKO, JSC**

I have had the advantage of reading in advance the draft judgment
of my learned sister, the Hon. Lady Justice C.N.B Kitumba, JSC. I
25 agree with her conclusions that this appeal should be dismissed
with costs both here and the Constitutional Court.

Delivered at Kampala this **28th** day of **October**, 2010

30 **JWN Tsekooko
Justice of the Supreme Court**

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

5 **(CORAM: ODOKI CJ, TSEKOOKO, KATUREEBE, OKELLO,
 KITUMBA, TUMWESIGYE AND KISAAKYE, JJ.SC)**

CONSTITUTIONAL APPEAL NO.2 OF 2009

BETWEEN

10 **UGANDA PROJECTS IMPLEMENTATION
& MANAGEMENT CENTRE::::::::::::::::::::::::::::: PETITIONER**

AND

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

20 *{Appeal from the Ruling of the Constitutional Court at Kampala
 [(Mukasa - Kikonyogo, DC), Engwau, Byamugisha, Kavuma, and
 Nshimye JJ.A.] in Constitutional Reference No.18 of 2007 dated 12th
 February, 2009}*

JUDGMENT OF BART M KATUREEBE, JSC.

25 I have had the benefit of reading in draft the judgment of my
 learned sister, the Hon. Lady Justice Kitumba, JSC.

 I agree that for the reasons she has given this appeal should be
 dismissed with costs both in this Court and in the Constitutional
30 Court.

Delivered at Kampala this **28th** day of **October** 2010.

35 Bart M. Katureebe
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

AT KAMPALA

**(CORAM: ODOKI, CJ., TSEKOOKO, KATUREEBE, OKELLO,
KITUMBA, TUMWESIGYE, KISAAKYE, JJ.SC)**

5

CONSTITUTIONAL APPEAL NO.2 OF 2009

BETWEEN

UGANDA PROJECTS IMPLEMENTATION

10

AND MANAGEMENT CENTRE::: PETITIONER

AND

UGANDA REVENUE AUTHORITY::: RESPONDENT

15

[Appeal from the Ruling of the Constitutional Court Mukasa - Kikonyogo, DCJ, Engwau,. Byamugisha, Kavuma, and Nshimye JJA] dated 10th February, 2009 in Constitutional Reference No.18 of 2007.

JUDGMENT OF OKELLO, JSC.

20

I have had the opportunity to read in draft the judgment of my learned sister Kitumba, JSC, and I agree that the appeal must fail. I also concur in the orders she has proposed.

25

Dated at Kampala this **28th** day of **October** 2010.

**G.M. OKELLO
JUSTICE OF THE SUPREMEM COURT**

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

5 **(CORAM: ODOKI CJ, TSEKOOKO, KATUREEBE, OKELLO,
KITUMBA, TUMWESIGYE AND KISAAKYE, JJSC)**

CONSTITUTIONAL APPEAL NO.2 OF 2009

BETWEEN

10 **UGANDA PROJECTS IMPLEMENTATION
& MANAGEMENT CENTRE :::::::::::::::::::::::::::::: PETITIONER**

AND

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

*{Appeal from the ruling of the Constitutional Court at Kampala
[Mukasa - Kikonyogo, DC], Engwau, Byamugisha, Kavuma, and
Nshimye JJA] in Constitutional Reference No.18 of 2007 dated 12th
20 February, 2009}*

JUDGMENT OF TUMWESIGYE, JSC

I have read the draft judgment of my learned sister, Hon. Lady
25 justice Kitumba, JSC.

I agree that this appeal should be dismissed with costs in this court
and in the court below.

30 **Dated** at Kampala this **28th** day of **October**, 2010.

**JOTHAM TUMWESIGYE
JUSTICE OF THE SUPREME COURT
THE REPUBLIC OF UGANDA
35 IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**(CORAM: ODOKI C.J, TSEKOOKO, KATUREEBE, OKELLO,
KITUMBA, TUMWESIGYE, KISAAKYE, JJ.S.C)**

CONSTITUTIONAL APPEAL NO.2 OF 2009

BETWEEN

UGANDA PROJECTS IMPLEMENTATION

5 **AND MANAGEMENT CENTRE::: PETITIONER**

AND

UGANDA REVENUE AUTHORITY::: RESPONDENT

10 *{Appeal from the Ruling of the Constitutional Court at Kampala
(Mukasa Kikonyogo, DCJ., Byamugisha and Nshimye JJ.A.) dated 12th
February, 2009 in Constitutional Reference No.18 of 2007}*

JUDGMENT OF DR. E. M. KISAAKYE, JSC

15

I have had the privilege to read in draft the judgment of my learned
sister, Justice Kitumba, JSC.

I concur with her that this appeal should be dismissed. I also agree
20 with the orders she has proposed.

Dated at Kampala this **28th** day of **October** 2010.

25

.....
DR. ESTHER M. KISAAKYE
JUSTICE OF THE SUPREME COURT