

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

10 **CORAM: (Mwangusya, Mwondha, and Buteera, JJSC;**
Nshimye and Tumwesigye, Ag. JJSC.)

CIVIL APPEAL NO 07 OF 2018

BETWEEN

15 **UTODA::: APPELLANT**

AND

20 **UGANDA REVENUE AUTHORITY ::::::::::: RESPONDENT**

(Arising from the ruling of Court of Appeal in Miscellaneous Application No. 152 of 2017(Owiny Dollo DCJ, Kasule JA (Kavuma JA dissenting) delivered on 29th March, 2018 at Kampala)

25 **JUDGMENT OF TUMWESIGYE, AG. JSC**

This appeal arises from the ruling and orders of the Court of Appeal in Miscellaneous Application No. 152 of 2017 that sought for the correction of that court's judgment in Civil Appeal No. 15 of 2013 under Rule 36 of the Rules of the Court of Appeal.

Background to the Appeal

The appellant, a company limited by guarantee, sued the respondent for refund of monies retained by the respondent as

5 Value Added Tax (VAT) since 2001 in respect of the appellant's taxi parks operations which the appellant company carried out on behalf of the then Kampala City Council (KCC) now Kampala Capital City Authority (KCCA). By 2010, the respondent had retained from the appellant Uganda Shs.3, 903,136,565/= as
10 Value Added Tax.

In the High Court, the issue for determination was "**whether the plaintiff was liable to pay VAT for its services of management of taxi parks and Taxi Operators in Kampala City.**" The High Court resolved the issue in favour of the respondent (URA). Being
15 dissatisfied with the decision of the High Court, the appellant appealed to the Court of Appeal vide Civil Appeal No. 15 of 2013. The Court of Appeal allowed the appeal, set aside the decision of the High Court , and ordered the respondent to refund all the VAT amounting to shs3,903,136,565/= collected from the appellant.
20 Court further ordered the refundable amount to carry interest at the rate of 2% per month compounded from the time it was paid until the date of the judgment and thereafter the decretal amount to carry interest at the rate of 10% p.a. from the date of the judgment till payment in full.

25 The respondent being dissatisfied with the decision of the Court of Appeal appealed against the decision to the Supreme Court vide Civil Appeal No. 13 of 2015. This Court upheld the judgment and orders of the Court of Appeal in their entirety. A decree of the court was extracted in order to commence execution of the said order.
30 However, while computing the amount payable by the respondent,

5 there arose a dispute between the parties regarding the interest the respondent was required to pay to the appellant.

The appellant argued that the compound interest at the rate of 2% should run from the time it was paid till the whole amount was paid in full. The respondent on the other hand argued that the
10 court ordered interest of 2% to run from the time of payment till the date of judgment and thereafter the decretal sum to carry interest of 10% p.a from the date of the judgment till payment in full.

The appellant then filed in the Court of Appeal Miscellaneous
15 Application No. 152 of 2017 Uganda Taxi Operators & Drivers Association vs. Uganda Revenue Authority under Rule 36 of the rules of the Court of Appeal. The appellant sought the Court of Appeal to correct its judgment in Civil Appeal No. 15 of 2013 in respect of the alleged mistake/error arising out of an alleged
20 accidental slip or omission with regard to the issue of payment of interest on the decretal sum. The Court of Appeal dismissed the application by a majority of 2 to 1.

The appellant being dissatisfied with the decision of the Court of Appeal, then lodged this appeal challenging the decision of the
25 Court of Appeal on the following grounds:

1. The learned Justices of Appeal erred in law and fact when they misconstrued the law pertaining to accidental slip or error on the part of the court, thus arriving at the wrong conclusion of dismissing the application.

30 **2. The learned Justices of Appeal erred in law and fact when they overlooked the fact that there was intention in the**

5 preparation of the court judgment thus arriving at wrong
decision of dismissing the application, the subject of
appeal.

3. The learned Justices of Appeal erred in law and fact when
they omitted to address themselves specifically to the
10 intention of the dispute between the parties to wit
seeking payment of a refund, as set out in the judgment,
thus arriving at a wrong decision.

4. The learned Justices of Appeal erred in law when they
applied a law (section 44(1) VAT Act as of 2002) which
15 had been repealed by the VAT Amendment Act that
replaced/substituted it, by a whole new law (section 44
(1) (c) VAT Act as amended) thus coming to wrong
decision that interest of 2% compounded until the refund
is made was not applicable in the circumstances and that
20 there was no accidental slip.

5. The learned Justices of Appeal erred in law and fact in
relying on and applying section 28 of the Tax Appeals
Tribunal well aware that in their main judgment Court of
Appeal Civil Appeal No. 15 of 2013 resort was only
25 premised on section 44 (1(c) to the exclusion of the Tax
Appeals Tribunal Act making it independent of section
44(1(a) VAT.

6. The learned Justices of Appeal erred in law when they
applied a law not in force, thus coming to a wrong
30 exercise of their judicial power thus a wrong conclusion,
including among others that there was no justification
for exercise of court's inherent power.

- 5 At the hearing, the appellant was represented by Mr. Moses Kabega and Mr. Abbas Bukenya. The respondent was represented by Mr. George Okello, Assistant Commissioner Litigation, Uganda Revenue Authority and Ms. Gloria Twinomugisha, Supervisor Litigation Uganda Revenue Authority.
- 10 Both counsel filed written submissions and made oral highlights of their submissions at the hearing.

Counsel's submissions on grounds 4, 5 and 6

Counsel for the appellant argued that the Court of Appeal invoked a repealed provision in disposing of the application; that the VAT
15 regime is wholly governed by the Value Added Tax Act which had undergone several amendments and that section 44(1) of the Act that was relied upon by the Court of Appeal in making its decision was repealed and was substituted by a new provision vide the VAT (Amendment) Act No. 2 of 2002.

20 Counsel further argued that the court's reliance on section 28 of the Tax Appeals Tribunal Act was erroneous and that it had the effect of leading court to make an incorrect analysis of the application.

Counsel for the respondent conceded to the appellant's complaint
25 about the citation of repealed provisions of the VAT Act. He however, submitted that the error did not affect the outcome of the case. He stated that the dismissal of the appellant's application in the Court of Appeal was premised on other considerations especially the jurisdiction of the court. Counsel argued that the
30 award of interest by the court was in exercise of its discretionary

5 powers and that it cannot be argued that section 44(1) of the VAT Act took away the court's discretion.

Counsel thus prayed the court to find that errors by one member of the court in citing a repealed provision inadvertent and should not be the basis for overturning the conclusions reached in the
10 majority decision.

Counsel's submissions on grounds 1, 2 and 3

Counsel for the appellant submitted that it was erroneous for court to make findings that there was no mistake to be corrected, that the appellant ought to have appealed and that the application
15 amounted to an abuse of court process by rendering litigation endless in the matter and further that the court misapplied the principles governing the exercise of court's powers to issue slip orders or to correct its judgment.

Counsel also argued that the court misapplied the principles
20 relating to bringing litigation to an end and relied on the decision of **British American Tobacco (Uganda) vs. Sedrach Mwijabuki & 4 others SCCA No. 07 of 2013** to support his argument.

Counsel contended that the application properly fell within the ambit of rule 36 of the Court of Appeal Rules which deals with
25 correction of clerical and arithmetical mistakes and or errors in court decisions that are due to accidental slip or omission. Counsel further argued that the need to correct an error or mistake of the court superseded any other principle. He relied on Article 126 (2(e)) of the Constitution and the case of **Hotel Balaji vs. State of A.P**
30 **AIR 1993 SC 1048 & Sanjiv Datta Dy. Secy vs. Ministry of Information & Broadcasting (1995) 3 SCC 619** for the

5 proposition that courts were duty bound to correct wrong orders passed by them.

Counsel argued that the facts of this case are that the mistake was noted at the time of execution of the decree on the 16th of June, 2017 before any payment in settlement of the judgment debt had
10 been made, and that the application was brought without undue delay on the 19th day of June, 2017 and that the appellant's application was therefore not intended to prolong litigation.

On the issue regarding the appellant's failure to appeal against the courts award of interest, counsel submitted that there was no need
15 to appeal because the mistake made by the court did not constitute a ground of appeal and that on the contrary there existed a self-evident error on the face of the record arising out of an accidental slip or omission by court which did not require reappraisal of the evidence.

20 Counsel argued that from the judgment, it was clear that the intention of the court was to award interest in a manner that was grounded in law. He referred this court to the decision of the Court of Appeal in Civil Appeal No. 15 of 2013 where interest was awarded in accordance with section 44(1(c) of the VAT Act of 2002
25 as amended which allowed interest at the rate of 2% per month compounded until payment in full. He submitted that the inadvertent substitution of the time within which the interest was to run that is "until payment in full" with "until the date of judgment" had the effect of amending the provision of the VAT Act
30 which goes against the spirit of the enactment.

5 Counsel thus prayed this court to allow the appeal, set aside the ruling and orders of the Court of Appeal and correct the judgment in Civil Appeal No. 15 of 2015 by replacing the following words “until the date of this judgment, thereafter, the decretal sum shall carry interest at the rate of 10% p.a. from the date hereof “till
10 payment in full” with “until it is refunded in accordance with section 44(1)(c) of the VAT Act.”

Counsel for the respondent’s submissions on grounds 1, 2, and 3.

Counsel argued that the Court of Appeal properly construed and
15 applied the law relating to correction of errors in a court judgment as provided in rule 36 of the Court of Appeal rules. He cited **Mulla on the Code of Civil Procedure** and the case of **Lakhamshi Brothers Ltd vs. R. Raja & sons** (1966) E.A 313 in respect of the conditions which must be satisfied before a court can apply the
20 slip rule. These conditions were that the court should be satisfied that it is giving effect to the intention of the court at the time when the judgment was given; or in case of a matter which was overlooked or where the court is satisfied beyond doubt as to the order which it would have made had the matter been brought to
25 its attention. Counsel argued that the appellant’s application did not satisfy the above conditions.

Counsel submitted that the appellant’s application in the Court of Appeal was misconceived firstly because the Court of Appeal’s jurisdiction in the matter had ceased at the point of affirmation of
30 the decision by the Supreme Court. He submitted that rule 36 of the Court of Appeal rules is inapplicable because it is limited to

5 judgments of the Court of Appeal. Counsel relied on **Sukummar Ray: The Code of Civil Procedure, 2nd Ed. Pp. 135** to support his argument that when a decree has been affirmed in appeal, the trial court no longer has jurisdiction to correct the decree.

Secondly, counsel submitted that there were no clerical or
10 arithmetic errors in the judgment that was sought to be corrected. He relied on **Black's Law Dictionary 8th Edition pg. 582 & Sakumar Ray: The Code of Civil Procedure** for the definition of the term "clerical error" which he argued is limited to an error arising out of or occurring from accidental slip or omission due to
15 careless mistake on the part of the court. He stated that the appellant failed to demonstrate a clear error on the face of the record and instead labored to show the erroneous nature of the decision which would have been best handled through an appeal the right of which was not exercised.

20 On the issue of interest, counsel contended that the award of interest was discretionary and that the appellant's application had the effect of questioning the exercise of court's discretion which was not envisaged under the slip rule. Counsel argued that the appellant's application did not seek to correct an arithmetical or
25 clerical error but rather a substantial point of law relating to the award of compound interest on VAT refunds under section 44 of the VAT Act. Counsel further argued that the application was a disguised appeal which this court cannot sanction.

Counsel relied on the case of **Banco Arabe Espanol vs. Bank of**
30 **Uganda** SCCA No. 8 1998 and **British American Tobacco (U) Ltd vs. Sedrach Mwijabuki & 4 others**, SCCA No. 01 of 2012 & **Adam**

5 **Vassiladis vs. Libyan Arab (U)** SCCA No. 2 of 1992 for the proposition that an appellate court can only interfere with the trial court's exercise of discretion if it is satisfied that the trial court misdirected itself in some matter leading to a miscarriage of justice. Counsel implored this court to apply these principles to
10 reject the appeal.

Consideration of the Appeal

The bone of contention in this appeal is that, on one hand, the appellant asserts that the Court of Appeal made an error in awarding interest payable on the amount to be refunded to the
15 appellant by the respondent by differentiating the interest payable, that is 2% per month interest to be paid up to the time of judgment, and 10% p.a. interest to be paid from the time of judgment till payment in full; and further, that the Court of Appeal was wrong to refuse to correct what the appellant called an obvious error
20 when it applied to that court for review of its decree arising from its judgment.

The respondent, on the other hand, rejected the appellant's contention by stating that the court was not wrong to award the interest payable—one type of interest before its judgment and
25 another type after its judgment,—because the court had the discretion to do so, and further, that the court lacked jurisdiction to correct its judgment after that judgment and its orders were confirmed by this court.

In rejecting the appellant's application for review, Kasule, JA., who
30 wrote the lead judgment with which Owiny Dollo, DCJ, agreed, stated:

5 Their Lordships of this court, in their wisdom and in the
judicial exercise of their discretion, awarded the interest
in the terms they considered appropriate in their
judgment of 15th June, 2015... It is significant that the
applicant never appealed to the Supreme Court against
10 that award. Indeed when the respondent appealed against
the whole decision, the applicant never cross appealed,
but instead proceeded to oppose the appeal by supporting
the judgment appealed against in its entirety. This
resulted in the majority judgment of the Supreme Court
15 of 4 to 1 confirming the Court of Appeal judgment
including the orders as related to payment of interest.

By pursuing this application, the applicant is purporting
to question what he ought to have done by way of appeal
or cross appeal to the Supreme Court, as to whether or
20 not their Lordships of the Court of Appeal acted properly
and within the law, when they awarded interest in the
terms that they did in their judgment of 15th June, 2015.
Having not appealed, and also now that the Supreme
Court has confirmed the said judgment of the Court of
25 Appeal, the applicant has no cause whatsoever to pursue
this application.

In its judgment in Civil Appeal No. 13 of 2015 dated 5th May, 2017
this court held: **"The judgment and orders of the Court of
Appeal are upheld"**.

30 The basic issue in this appeal, in my view, is whether the Court of
Appeal had jurisdiction to correct its decree after it had been

5 confirmed by this court. Learned counsel for the respondent argued that the Court of Appeal lacked jurisdiction to correct its decree after this court had on appeal confirmed it. Counsel cited **Sukumar Ray: The Code of Civil Procedure, 2nd Ed. P. 135** where it is stated: **“However, when a decree has been affirmed**
10 **in appeal, the trial court has no jurisdiction to correct the decree...”**

Learned counsel for the appellant, on the other hand, did not agree with the proposition. His view was that the authority which counsel for the respondent cited did not apply to this appeal
15 because the word which was used in that authority was “affirmed” and not “confirmed”, the word that the appellant claimed was used in this court’s judgment; that under rule 88 of the Rules of this court the word “affirm” is used to refer to a respondent filing grounds other than grounds relied upon by the lower court to
20 support its judgment, and that, therefore, the process of “affirming” is different from that of “confirming”.

This argument by counsel is obviously fallacious. Words are often used within contexts and it is not right to remove a word from one context and place it in a different context for purposes of its
25 definition. Words often mean different things depending on the context in which they are used. **Black’s Law Dictionary** defines **“Affirm”** to mean **“1. To confirm (a judgment) on appeal,”** among other definitions of that word.

Moreover, the word which was used in the lead judgment of
30 Mwondha, JSC, that the majority members of the court agreed with was not “confirmed” but “upheld”. According to **“The Shorter**

5 **Oxford English Dictionary**” p. 2436, the meaning of “uphold” is
“4. **To maintain or confirm the validity or truth of.**”

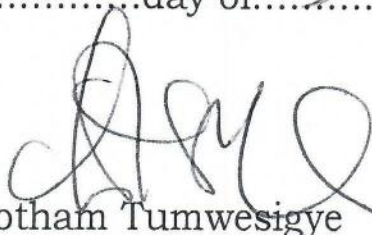
The principle quoted in **Sukumar Ray: The Code of Civil Procedure** is obvious. If a decree is altered by a lower court after it has been confirmed on appeal by a higher court, the altered
10 decree ceases to be the same as the decree that the higher court confirmed. A decree which has been confirmed in effect ceases to be the decree of the lower court but that of the higher court which confirmed it.

The Court of Appeal was, therefore, right to refuse to accede to the
15 appellant’s prayer to correct its decree after it had been upheld by this court for that court had no jurisdiction to correct it. It is trite that a decree which is passed by a court lacking jurisdiction is a nullity, so if the court had altered its decree, the corrected decree would have become a nullity.

20 For this reason, I find it unnecessary to go into consideration of other grounds which the appellant raised against the decision of the Court of Appeal for the question of jurisdiction is fundamental and overrides all other issues that the appellant raised in its appeal.

25 Accordingly, I find that this appeal lacks merit and I would dismiss it with costs.

Dated this19th.....day of.....September.....2019


Jotham Tumwesigye

AG. JUSTICE OF THE SUPREME COURT

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

Coram: Mwangusya, Mwondha, Buteera, JJSC, Nshimye, Tumwesigye, AG.
JJSC

Civil Appeal No 67 of 2018

Between

UTODA APPELLANT

And

UGANDA REVENUE AUTHORITY RESPONDENT

JUDGMENT OF MWONDHA JSC

I have had the benefit of reading in draft the judgment of Tumwesigye Ag. JSC

I agree that the appeal has no merit and would be dismissed with costs.

Dated at Kampala this 19th day of September 2019


Mwondha

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA

(CORAM: MWANGUSYA, MWONDHA, BUTEERA, JJSC; NSHIMYE,
TUMUWESIGYE, AG. JJSC)✓

CIVIL APPEAL NO.67 OF 2018

BETWEEN

UTODA.....APPELLANT

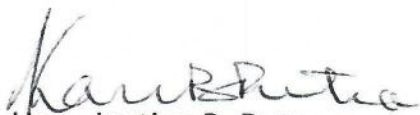
AND

UGANDA REVENUE AUTHORITYRESPONDENT

JUDGMENT OF BUTEERA, JSC

I have had the benefit of reading in draft the Judgment of Tumwesigye Ag.
J.S.C. I concur with it that the appeal be dismissed with costs for lack of merit.

Dated this 19th day of September 2019.



Hon. Justice R. Buteera

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: *Mwangusya, Mwondha, and Buteera, JJSC; Nshimye and Tumwesigye, Ag. JJ.S.C.*

CIVIL APPEAL NO.07 OF 2018

BETWEEN

UTODA.....APPELLANT

AND

UGANDA REVENUE AUTHORITYRESPONDENT

[Arising from the Ruling of the Court of Appeal in Misc. Application No.152 of 2017) Owiny Dollo, DCJ, Kasule, JA, (Kavuma JA dissenting) delivered on 29th March 2018 at Kampala)

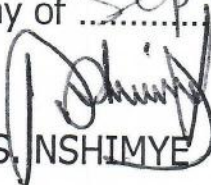
JUDGMENT OF A.S NSHIMYE, JSC

I have had the benefit of reading the lead judgment of my brother, Justice Jotham Tumwesigye Ag. JSC, while in draft. I agree with it. Once a decision of the Court of Appeal is appealed to the Supreme Court, and is upheld, it becomes a decision of the Supreme Court.

The Court of Appeal ceases to have any jurisdiction whatsoever to vary the said upheld decision. The Court of Appeal was therefore right to reject the appellant's application for variance of its upheld decision on ground of alleged mistake/error, omission resulting from an alleged incidental slip.

I would also dismiss the appeal with costs

Dated at Kampala, this 19th day of September 2019.


A.S. NSHIMYE

AG. JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: *Mwangusya, Mwendha, and Buteera, JJSC; Nshimye and Tumwesigye, Ag. JJ.S.C.*

CIVIL APPEAL NO.07 OF 2018

BETWEEN

UTODA.....APPELLANT

AND

UGANDA REVENUE AUTHORITYRESPONDENT

[Arising from the Ruling of the Court of Appeal in Misc. Application No.152 of 2017) Owiny Dollo, DCJ, Kasule, JA, (Kavuma JA dissenting) delivered on 29th March 2018 at Kampala)

JUDGMENT OF A.S NSHIMYE, JSC

I have had the benefit of reading the lead judgment of my brother, Justice Jotham Tumwesigye Ag. JSC, while in draft. I agree with it. Once a decision of the Court of Appeal is appealed to the Supreme Court, and is upheld, it becomes a decision of the Supreme Court.

The Court of Appeal ceases to have any jurisdiction whatsoever to vary the said upheld decision. The Court of Appeal was therefore right to reject the appellant's application for variance of its upheld decision on ground of alleged mistake/error, omission resulting from an alleged incidental slip.

I would also dismiss the appeal with costs

Dated at Kampala, this 19th day of September 2019.


A.S. NSHIMYE

AG. JUSTICE OF THE SUPREME COURT

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

Coram: Mwangusya, Mwondha, Buteera, JJSC, Nshimye, Tumwesigye,
AG. JJSC

Civil Appeal No 67 of 2018

Between

UTODA..... APPELLANT

And

UGANDA REVENUE AUTHORITY RESPONDENT

(Arising from the ruling of Court of Appeal in Miscellaneous Application No. 152 of 2017 (Owinyi Dollo DCJ, Kasule JA, (Kavuma JA dissenting) delivered on 29th March, 2018 at Kampala)

JUDGMENT OF MWANGUSYA, JSC

I have had the benefit of reading in draft, the judgment of my learned brother Hon. Justice Tumwesigye, Ag. JSC.

I agree with his decision and orders proposed.

Since all the other Justices are in agreement, the appeal is dismissed with costs.

Dated at Kampala this 19th day of September
2019


Mwangusya Eldad

JUSTICE OF THE SUPREME COURT