

**THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF UGANDA AT KAMPALA  
CIVIL APPEAL NO. 032 OF 2020**

**COMMISSIONER GENERAL  
UGANDA REVENUE AUTHORITY:.....APPELLANT  
VERSUS**

**AIRTEL (U) LTD:.....RESPONDENT**

*(Appeal and Cross-Appeal from the decision of the Court of Appeal (Kakuru, Muhanguzi and Madrama, JJA) in Civil Appeal No. 40 of 2013 dated 12<sup>th</sup> November, 2019)*

**CORAM: HON. MR. JUSTICE ALFONSE OWINY-DOLLO, CJ  
HON. LADY JUSTICE FAITH MWONDHA, JSC  
HON. MR. JUSTICE MIKE CHIBITA, JSC  
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC  
HON. MR. JUSTICE STEPHEN MUSOTA, JSC**

**JUDGMENT OF ELIZABETH MUSOKE, JSC**

This is an appeal and cross appeal from the decision of the Court of Appeal (Kakuru, Muhanguzi and Madrama, JJA) in Civil Appeal No. 40 of 2013 dated 12<sup>th</sup> November, 2019.

**Background**

The respondent is a company engaged in the business of providing various telecommunication services. It started operating in Uganda after acquiring the assets and assuming the liabilities of Celtel Uganda Ltd which was also engaged in the same business. On 26<sup>th</sup> February, 2004, the appellant served on Celtel a tax assessment consisting of excise duty, Value Added Tax (VAT) and penal tax in the amount of Ug. Shs. 1,024,209,566/=. The outstanding tax had been arrived at following an audit by the Uganda Revenue Authority into Celtel's tax affairs. Celtel accepted liability in relation to only part of the tax debt and disputed the other part. The disputed tax debt consisted of VAT in the amount of Ug. Shs. 358,652,458/= and penal tax of Ug. Shs. 253,161,660/= for a combined total of Ug. Shs. 611,814,118/=.

• Celtel lodged objections against the tax debt in the Tax Appeals Tribunal. Before filing of the suit, Celtel, in accordance with the law, paid 30% of the tax debt, in the amount of Ug. Shs. 183,544,235/=. The Tax Appeals Tribunal considered and dismissed the Celtel's objection. Subsequent appeals by Celtel to the High Court and the Court of Appeal were dismissed and the decision of the Tax Appeals Tribunal was upheld.

In 2010, the respondent acquired the assets and assumed the liabilities of Celtel including the tax debt referred to above. The respondent then opted to pay the unpaid balance left by Celtel or 70% of the disputed tax which amounted to Ug. Shs. 428,269,883/=. However, the appellant informed the respondent that during the pendency of the tax objection proceedings, the unpaid tax had been accruing interest and that its tax liability had increased to Ug. Shs. 1,555,836,915/=. The respondent disputed this assessment but paid the amount as assessed by the appellant but reserved its right to challenge the validity of the assessment in court.

The respondent subsequently lodged a suit in the High Court to challenge the appellant's assessment that interest had accrued on the unpaid tax during the tax objection proceedings. The respondent sought for a declaration that the interest was unjust and was also imposed by the appellant contrary to the law; an order directing the appellant to refund the sum collected as interest; interest, general damages and costs of the suit. The High Court (Kiryabwire, J (as he then was) found that the interest imposed on the respondent was penal tax and was imposed for failing to pay outstanding VAT by the due date stipulated under the Value Added Tax Act. The High Court further found that although the respondent had a right to lodge an objection to the tax assessment as it did, the mere fact of lodgment of the objection did not absolve the respondent from paying penal tax from the due date if the respondent's objection was unsuccessful. The High Court therefore found no merit in the respondent's suit and dismissed it with costs. The respondent appealed to the Court of Appeal.

The Court of Appeal considered that the appeal raised a question of whether a tax payer who objects to a tax assessment in the Tax Appeals Tribunal ought to be subject to a penal tax in the event that the tax payer's objection