REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 03 OF 2017

EDDIE KAZZI .....APPLICANT

V

UGANDA REVENUE AUTHORITY.....RESPONDENT

RULING

This ruling is in respect of an application contesting the seizure of 450 bags of rice by the respondent.

Briefly, the applicant is a businessman dealing in general merchandise. On 16th September 2015, the respondent's officers searched the applicant's stores and seized 450 bags of rice on grounds that it was smuggled.

The following issues were agreed by the parties;

1. Whether the respondent lawfully seized the applicant's rice?
2. Whether the continued seizure and the sale of the applicant's rice were lawful?
3. What remedies are available to the parties?

The applicant was represented by Mr. Richard Nsubuga and Ms. Monica Namuli while Ms. Nakku Mwajuma represented the respondent.

The applicant's first witness was himself. He testified that on 12th September 2015, he purchased 250 bags of Pakistani rice packed in 50 kgs bags from Haji Sayifi Kabali of Kalanzi Retailers. He then requested Haji Kabali to re-pack the rice into bags of 25 kgs. He consequently transported 500 bags of 25 kgs to his place. However, on 16th September 2015, the respondent's officers seized 450 bags from his store on grounds that he was smuggling them. When the applicant informed Haji Kabali about the seizure, the latter explained that the taxes on the seized rice had already been paid, this being part of the 300 bags imported through Mutukula and impounded, but later released after payment of the taxes due.

The second applicant's witness was Haji Sayifi Kabali a businessman of Masaka. He testified that in August 2015, he imported 300 bags of Pakistani rice packed in 50 kgs

bags through Mutukula. The respondent seized this rice on the ground that he was smuggling it. On payment of the relevant taxes, the rice was released. He later sold 250 bags of the rice packed in 50 kgs bags to the applicant which was repacked in 25 kgs bags. However, on 16th September 2015, the applicant informed him of the seizure of some of the rice on grounds of smuggling. The witness explained that he, together with the applicant, proceeded to the respondent and reported that this was the same rice that had been impounded and released after payment of the taxes due but repacked in 25 kgs bags.

The respondent's first witness was by Mr. Julius Bwonyo, a Deputy Assistant Inspector of Police (D/AIP) attached to Customs Intelligence Unit, Customs Department of the respondent. The witness explained that on 16th September 2015 he with others seized the applicant's 450 bags of Thailand rice packed in 25 kgs bags in the presence of the applicant's wife, the LC.1 Chairman and other Police Officers. He issued a Seizure Certificate to the wife, gave a copy to the L.C.1 Chairman and ferried the rice to customs warehouses in Nakawa.

The witness explained that on 20th September 2015, when he and Mr. Twaha Mitango (D/AIP), the Scene Crime Officer, travelled to Masaka and interviewed the Customs Officers Ivan Kakaire and one Gilbert Kwanya, they were informed that what was seized from Haji Sayifi Kabali was Pakistani rice and not Thailand rice. The witness testified that together with Mr. Twaha Mitango (AIP), moved around Masaka to see if there were any shops selling empty bags labeled Rice 'Made in Thailand' but they did not see any. Lastly, he testified that on 29th September 2015, he together with Mr. Twaha Mitango, examined the applicant's seized rice and observed that the bags appeared new bearing no sign of having been previously used or re-packaged. All the receipts and other documents presented by the applicant and Haji Kabali were for Pakistani rice and not Thailand rice.

The second respondent's witness was by Mr. Gilbert Kwanya (RW2), its Customs Officer. He deponed that in August 2015, he was the In-Charge, Enforcement in Masaka. He further deponed that on 21st August 2015, Mr. Ivan Kakaire, the In-Charge Mutukula, called and informed him of smuggled rice being kept in Buwunga, Masaka, Mr. Kakaire requested the witness to proceed to the place. At the place, the witness found two Lorries, UAM 079X and UAP 108F at the suspect's residence. UAP 108F was fully loaded with rice in yellow bags while most of the rice on the

other lorry had been offloaded. Haji Sayifi Kabali identified himself as the owner of the place. All the bags of rice were labeled Pakistani Milled White Rice with a net weight of 50 kgs. Since Haji Kabali could not show proof of Customs clearance, the rice was loaded on the trucks—220 bags from the stores and 80 bags on one truck—and taken to the respondent's offices in Masaka. On 22nd August 2015, the witness issued a Seizure Notice and impounded 300 bags packed in 50 kgs bags labeled Pakistani Milled White Rice.

The witness further deponed that Haji Kabali admitted the offence of possessing uncustomed Pakistani rice and paid Shs. 25,651,414 and Shs. 11,400,629.50 in taxes and penalties respectively. The impounded rice was released on 31st August 2015. Lastly, the witness testified that during the time he worked in Masaka he never came across any store or person selling empty bags labeled 'Made in Thailand' rice.

The applicant submitted that on 12th September 2015 he purchased 250 bags of Pakistani Rice packed in 50 kgs bags from Haji Kabali. He requested Haji Kabali to re-pack the rice in 25 kgs bags, making it 500 bags of 25 kgs each. Haji Kabali re-packaged the rice bags with Thailand labels. On 16th September 2015, the respondent impounded 450 bags from the applicant's stores in Nateete on grounds of smuggling. A Seizure Notice was issued on 23rd September 2015. The applicant and Haji Kabali went to the respondent and explained that those taxes had already been paid on the impounded rice. The respondent however insisted that the rice was different from that on which Haji Kabali had paid the taxes. On 6th October 2015, the applicant took steps to claim the seized rice as required by the law The respondent, however, failed to serve the Statutory Notice within the stipulated time for the applicant to start the process of recovering the rice nor did it itself institute proceedings. The rice was never released in accordance with the law.

The applicant submitted that although the respondent had seized the rice under S. 200(d)(111) of the East African Common Customs Management Act (EACCMA) allegedly for smuggling and a seizure notice was issued on 23rd September 2015, its Pakistani rice could not have been uncustomed and therefore liable to seizure because the taxes had been fully paid. Haji Kabali imported 300 bags of Pakistani rice packed in 50 kgs bags which were impounded on 21st August 2015 on grounds of smuggling. The rice was released after Haji Kabali had paid Shs. 25,651,414 and

Shs. 11,400,628 in taxes and penalties respectively. Hence the rice ceased being uncustomed.

The applicant contended that the respondent failed to use its powers under S.157 (2) of the EACCMA to verify and satisfy itself as to the type of rice. The applicant cited *Uganda Revenue Authority v Remegious Patrick Paul* High Court Civil Appeal No.0008 of 2005 where Justice Egonda-Ntende cited *Bhagwanji v Commissioner for Customs and Excise* (1969) E.A. 184 at 188 and stated that:

> "in my view, the Courts should be slow indeed to accord a government officer any right to interfere with the liberty or property of an individual unless it is manifest that such right is given by statute or common law and even then such interference should only be permitted in accordance with the requirement of the Statute or the common law conferring such a right".

The applicant submitted that the seizure of its 450 bags of Pakistani rice was unlawful as the taxes had already been paid by Haji Kabali.

On whether the continued seizure and sale of the applicant's rice was lawful, the applicant submitted that the respondent's failure to adhere to the law amounted to an illegal seizure. The applicant submitted that he complied with S. 214 (4) of EACCMA by lodging a Notice of Claim dated 7th October 2015 (Exhibit AE.7). The notice gave the respondent 7 days within which to release the rice.

The applicant submitted also that the respondent failed to comply with S. 216 (1) of EACCMA which requires it, within two months from the date of the Notice of Claim to do one of the following: 1) By notice in writing to require the claimant to institute proceedings for the recovery of the seized goods within two months from the date of the Notice, or 2) The Commissioner to institute proceedings for condemnation of the seized goods. The applicant cited S. 216 (2) of EACCMA which stipulates that where the Commissioner fails to comply with S.216 (1), the seized goods should be released. In support of his submission, that the continued seizure of its rice amounted to illegal seizure, the applicant cited the following authorities: 1) *Uganda Revenue Authority v Congo Tobacco Co. Ltd*. High Court Civil Appeal No. 03 of 2006 arising from TAT No. 20 of 2005. 2) *Kayumba Emile Ogone T/A Ets Ogone Company v Commissioner of Customs, Uganda Revenue Authority* High Court Misc. Cause No. 49 of 2013 where Court held that the continued seizure by the Commissioner of goods after having failed to take the necessary steps in S. 216 (2) is wrong seizure.

The applicant prayed for the release of the rice or compensation at the current market value. At the current market value of Shs. 110,000 per bag of 25 kgs, the 450 bags will amount to Shs. 49,500,000. In addition, the applicant prayed for interest at the market rate of 22% per annum from the date of seizure. The applicant prayed also for general damages of Shs. 100,000,000, interest at the market rate of 22% per annum. and costs.

In reply, the respondent submitted that on 22nd August 2015, its officers seized 300 bags of Pakistani rice belonging to Haji Kabali for being uncustomed. The offence was compounded and after payment of the relevant taxes by Haji Kabali, the rice was released. On 16th September 2015, its officers seized 450 bags of Thailand rice packaged in 25 kgs bags found in the applicant's shop and a Seizure Notice was issued. The applicant claimed that he had bought the said rice from Haji Kabali and that it was Pakistani rice re-packaged in Thailand bags and that the taxes thereon had already been paid by Haji Kabali. The respondent however contended that the 450 bags of Thailand rice seized were different from the 300 bags of Pakistani rice belonging to Haji Kabali that had been impounded. The respondent maintained that the 450 bags of Thailand rice were smuggled into the country and that no taxes were paid by the applicant.

The applicant did not lodge a Notice of Claim for the 450 bags of Pakistani rice seized. If, however, any Notice was lodged, it was on behalf of Haji Kabali who is not party to this suit. Lastly, the applicant filed this application out of time and had no locus to appear before the tribunal. The respondent raised a preliminary objection that this application was filed out of time and therefore the applicant had no locus to appear before the Tribunal. It was time barred.

The respondent submitted that although it never raised the issue during trial, this did not preclude it from raising the preliminary objection at any time before the parties had concluded their submissions. It cited *Eng. Yashwant Sidpra and another v Sam Ngudo Odaka and 4 others* HCT-00-CC-CS-365-2007 where Justice Geoffrey Kiryabwire observed that not raising the objection at the beginning of the trial is not fatal. The respondent also cited *Mukisa Biscuits Manufacturing Co. Ltd. v End Distributors Ltd*. (1969) EA 696 at page700 where Justice J.A. Law stated:

> "….so far as I am aware, preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea on limitation"

The respondent also relied on S. 229(1) of the EACCMA which requires any person dissatisfied with the decision or omission of the Commissioner on matters relating to customs to lodge an application for a review of the decision or omission within 30 days from the decision or omission. In addition, S.16 (1)(c) of the same Act, provides for 30 days after being served with a notice of the decision. The respondent submitted that where a person has not been able to lodge an application within 30 days, that person may apply to the Tribunal to file the application out of time. The respondent submitted that the applicant filed this application on 20th January 2017, a period of 13 months after it issued a Notice of Claim to the respondent on 6th October 2015. The applicant did not apply to the Tribunal to file this application out of time. The respondent cited *Salume Namukasa v Yozefu Bukya* (1993) v1 KLA 14 where the Supreme Court held that if the action is time barred, then that is the end of it. The respondent submitted that since this application was filed out of time, it was time barred. The respondent thus prayed for the dismissal of the application with costs.

On whether the respondent lawfully seized the applicant's rice, the respondent submitted that it lawfully seized the 450 bags of Pakistani rice found in the applicant's store. It referred to the testimony of its first witness, Mr. Julius Bwonyo, RW1, who, during cross-examination, testified that the rice was seized and a Seizure Notice (Exhibit A.E.2) was issued to the applicant indicating that the goods were seized under S. 200 of the EACCMA on grounds of smuggling. The respondent explained that under S. 200 (d)(111), a person in possession of uncustomed goods commits an offence and such goods are liable to forfeiture under S. 210. It further explained that the applicant's wife failed to provide documentary evidence of payment of the taxes on the rice when asked by the witness. Haji Kabali however, maintained that this was the same rice that had earlier been impounded but released after payment of the taxes that was sold to the applicant. Haji Kabali produced proof of payment of the taxes.

The respondent contended that the rice seized from the applicant was Thailand Rice (Exhibit AE.2) the applicant failed to show evidence of having purchased Thailand

Rice from Haji Kabali. The applicant failed to avail to it or the Tribunal the empty bags of Pakistani rice from which the said rice was repackaged. Haji Kabali could not remember the shop or place from which he purchased empty bags. He never even produced evidence of purchase in the form of receipts.

The respondent submitted further that it lawfully seized 450 bags of Thailand rice from the applicant in accordance with S. 213(1) of the EACCMA which empowers an officer to seize and detain any goods liable to forfeiture under the Act because the applicant failed to provide documentary evidence of payment of the taxes. In addition, according to S. 223 of the Act, there was onus on the applicant to prove that the rice seized was Pakistani and that it was not unacustomed and proper taxes were.

On whether the continued seizure and sale of the applicant's rice was lawful, the respondent submitted that the applicant had not met the requirements of S.18 (6) of the TAT Act to prove that the decision made should not have been made or should have been made differently. The respondent explained that according to S. 214 (4) of the EACCMA, anything liable to forfeiture and has been seized, its owner may claim it in writing within one month of such seizure. The respondent argued that basing on the definition of ownership in S.2 of the EACCMA, ownership shifted to Haji Kabali when he repurchased the interest in the rice from the applicant as indicated in para 5 of Exhibit AE7. Even during cross-examination, Haji Kabali confirmed that he was the owner. The respondent accordingly argued that the applicant should not have written the notice. Hence it could not conform to the procedure in the Act to release the rice first because there was no documentary evidence of payment of the taxes and secondly because there was no proper ownership of the goods. The respondent contended that since the applicant had not filed any notice of claim, it had no locus to file this application and, further, as it was not the owner of the rice, it had no cause of action against it. On the other hand, Haji Kabali should have been the right person since he was the declared owner/claimant of the rice. In support of its submission, the respondent cited *Samson Ngwalida v Commissioner General* (2008) 1 TTLR 72 where the Tribunal held that the respondent could not conform to the procedure found in the EACCMA as there was lack of a proper notice of claim.

The respondent also cited S. 214 (5) of the same Act which provides that where a Notice of Claim has been issued, what is seized shall be detained by the

Commissioner and be dealt with in accordance with the Act. S. 214 (2) provides that the Commissioner may direct where any goods are of perishable nature, the sale of such goods and the proceeds of the sale to be retained and be dealt with as if they were the seized goods. During cross-examination, RW1 testified that the 450 bags of Thailand rice were sold because the rice was of a perishable nature. In conclusion, the respondent submitted that it acted lawfully by complying with S. 214 (2) of the EACCMA.

In rejoinder, in relation to the preliminary objection, the applicant submitted that its application was not based on Sections 229(1) and 230 of the EACCMA and therefore the issue of time limitation could not arise. The application was based on S.15 of the Tax Appeals Tribunals (TAT) Act which provides for an application for a review to be lodged with the Tribunal where a person is aggrieved by a decision made under a taxing Act by the respondent. S. 19(2) of the same Act empowers the Tribunal to review any taxation decision in respect of which an application is made. The applicant argued that S. 2 of the TAT Act defines a taxation decision as any assessment, determination, decision or notice. It therefore filed this application as an aggrieved person by the decision of the respondent to continue seizing its rice after lodging a notice of claim.

S. 17(1)(a) of the TAT Act provides that an application shall be lodged with the Tribunal within thirty days after the person making the application has been served with a notice of the decision. The applicant was aggrieved by the failure to act on the Notice of Claim within two months. Noting that the Act is silent on what happens in such a situation, the applicant left it to the discretion of the Tribunal under S. 23 of the Act to rely on ordinary statutes in regard to time limitations. The applicant argued that inherent power is emphasized in Rule 31(1) of the TAT (Procedure) Rules which provides for the rules of practice and procedures of the High Court to apply on any matter relating to the Tribunal proceedings for which the Rules do not provide. In this respect, the applicant relied on S.4 of the Limitation Act which stipulates:

> "Where in any case in respect to conversion or wrongful detention of a chattel has accrued to any person and before he or she receives possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of 6 years from the accrual of the cause of action in respect of the original conversion or detention."

The applicant submitted that since the respondent failed to act on the Notice of Claim as required by law on 7th November, 2015, two months after the date of receipt of the applicant's Notice of Claim, its application was accordingly still within the 6 years' time limit provided under the Limitation Act.

The Tribunal, having listened to the evidence, perused the exhibits and read the submissions rules as follows:

The respondent raised a preliminary objection in its submission that the application was filed out of time and that the applicant had no locus to appear before the Tribunal. In *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd*. (1969) E.A.696 at page 700, J.A. Law stated: " a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit". *In Eng. Yoshua Sidpra & Others v Sam Ngudo Odaka and Others HCT 000-CC-365-2007Justice Geoffrey Kiryabwire* stated that "a preliminary objection should be made if the party so raising it is convinced that when raised the objection so raised will dispose of the whole claim and thus save the parties expense and embarrassment in trying facts that will not determine the rights of the parties". The objection raised by the respondent was at the end of the trial. However this is not fatal as this goes to the cause of action and time limits which the Tribunal cannot ignore.

The respondent argued out that this application was filed on 20th January 2017 thirteen months after the applicant had lodged a Notice of Claim to the respondent on 6th October 2015. It further submitted that the applicant did not apply to the Tribunal to file this application out of time.

A perusal of the exhibits tendered before the Tribunal shows that the respondent seized 450 bags of 25 kgs of Thailand rice on the 23rd September 2015 as indicated in the notice of seizure. S. 214 of the ECCMA provides that where anything has been seized under the Act the office effecting the seizure shall within one month of the seizure give notice in writing of the seizure. This was done as shown by exhibit AE2.

S. 214(4) of the EACCMA provides that where anything is liable to forfeiture the owner may within one month of the date of the seizure or the date of any notice given as the case may be by notice in writing claim such thing. A claim, exhibit AE7 dated 6th October 2015 was served on the Commissioner Customs on the 7th October

2015. It states that the Commissioner's office seized rice where import tax had not been paid. However what is surprising is that the claim states that Haji Kabali has since repurchased the interest in the rice from the applicant. This means that the applicant has no interest in the rice and does not have any locus or claim to bring this application before the Tribunal. The right party which ought to have brought this application is Haji Kabali as the owner of the rice.

Under S. 214(6) of the EACCMA where a claim has been made, the Commissioner may deliver the items to the person making the claim subject to the claimant giving security. This was not done. Under S. S 216(1) of the EACCMA where a notice of claim has been given to the Commissioner he may within a period of two months from the receipt of the claim either 1) by notice in writing to the claimant require the latter to institute proceedings for the recovery of such thing within two months from the date of the notice or 2) himself or herself institute proceedings for the condemnation of such thing. Where the Commissioner fails to do the above he or she should release the thing seized to the claimant. The Commissioner did not comply with S. 214(6) of EACCMA. The Commissioner ought to have released the seized rice to the claimant Haji Kabali. Haji Kabali is not before the Tribunal. The Tribunal cannot help him.

S. 229 of the EACCMA provides that where a person is dissatisfied with the decision or omission of the Commissioner on matters relating to customs to lodge an application for review of the decision or omission within 30 days from the day of the decision or omission. Also S. 230 of the same Act requires a person aggrieved by a decision of the Commissioner to appeal to the Tax Appeals Tribunal within 45 days after being served with a decision. S.16 (1) of the Tax Appeals Tribunals Act provides for 30 days after being served with a notice of a decision. The applicant does not inform the Tribunal when the rice was sold by the respondent. What is clear is that the rice was seized around the 23rd September 2015. The respondent within two months from receipt of the notice of claim, around 23rd November 2015, ought to have requested the applicant to institute proceedings against it, or the respondent should have instituted the proceedings. Failure to institute proceedings, the Commissioner ought to have released the goods. Haji Kabali ought to have filed his application within 30 days from the 23rd November 2015 which was not done. The Tribunal notes that this application was filed on 20th January 2017 thirteen months after the Notice of Claim dated 6th October 2015. It is therefore time barred. In *URA v*

Uganda Consolidated Properties Ltd. Civil Appeal N0.31 of 2000, Justice Twinomujuni, observed “Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with” Likewise, in *Francis Nancio Michael v Nuwa Walakira* (1993) V1 KLA 14 the Supreme Court maintained that if the action is time barred then that is the end of it. The applicant ought to have filed an application to extend time as provided in the Tax Appeals Tribunals (Procedure) Rules 2012.

The applicant argued that the relevant Act should have been the Limitation Act. S. 4 of the Limitation Act provides for a time limit of 6 years in respect of conversion or wrongful detention of a chattel. While the Limitation Act deals with wrongful detention and or conversion of a chattel as a tort the EACCMA deals with customs matters. There is no doubt that the applicant is contesting the respondent’s decision to seize its rice on ground of it being uncustomed under S. 200(d)(111) of EACCMA. This being the case, it is only logical that one can only seek redress following the procedures set out in the EACCMA. These are set out in Part XX1 of the Act which includes Sections 229 (1) and 230 amongst others. In *URA v Rabbo Enterprises* Civil Appeal 4 of 2004 it was the respondent’s contention that the act of the appellant’s seizing their vehicle was a civil wrong. A tort was defined to be a civil wrong. On the other hand the appellant contended that the seizure of the goods and vehicles arose out of a statutory remedy provided under S. 144 of the East African Customs and Transfer Management Act. The court noted that the dispute between the parties arose out of an attempt by URA to use power granted to it by statute to enforce payment of what the tax body perceived as taxes owed. The respondent denied liability. The court noted that what was to be adjudicated before the court was whether or not the respondent in fact and in law owed tax to URA. The court noted that said question involved interpretation of a tax law. It went ahead to find that the seizure arose out of a tax assessment on the imported goods. Therefore the Court of Appeal erred when they categorized the seizure of goods as a tort. The Tax Appeals Tribunal is a court of first instance in adjudication of tax disputes. Likewise the seizure and sale of the rice arose out of a tax dispute and cannot be considered as tort. The Tribunal can only handle the application before it as a tax matter in accordance with the time limits set out in the tax laws.

The applicant contended that it was not served with any notice of a decision by the respondent after the seizure of the rice. The Tribunal has already stated that the Commissioner failed or omitted to take the necessary step after a notice of claim was served on him. S. 229(1) states:

> "A person directly affected by the decision or an omission of the Commissioner or any other officer on matters relating to customs shall within thirty days of the decision or omission lodge an application for review of the decision or omission"

The omission by the commissioner was actionable. The thirty days begin to run from the date of omission.

At the time the applicant filed this application, the rice had been sold by the respondent. In the absence of the rice, a sample or a report on its origin, the Tribunal is not in a position to state whether it was from Pakistan or Thailand. That would be a matter of conjecture or speculation. The applicant's application is shrouded in mystery. The ownership of the rice is not clear. Did the rice actually belong to the applicant or Haji Kabali? Was the rice Pakistan or Thailand rice? If we are to the believe that the applicant or Haji Kabali repackaged the rice from Pakistan to bags showing that it was from Thailand that would be an admission that the said individuals were trying to hoodwink the public that they were selling rice of a better quality. It is these deceptions by the applicant and Haji Kabali that come to haunt their application and deny them justice. He who comes to Equity must come with clean hands. See *Gill v Lewis* (1956) Q.B. 1. The applicant and Haji Kabali have a lot of cleaning to do.

In the circumstances, this application is dismissed with costs to the respondent.

Dated at Kampala this ……. day of …… 2019.

MR. ASA MUGENYI **MR. GEORGE W. MUGERWA** **MR. SIRAJI ALI**
CHAIRMAN **MEMBER** **MEMBER**