

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 59 OF 2018

ERAM UGANDA LIMITED ===== APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY =====RESPONDENT

RULING

This ruling is in respect of a preliminary objection raised by the respondent on the non-payment of the 30% deposit of the tax in dispute before the matter could proceed to be heard by the Tribunal as provided for under S. 15 of the Tax Appeals Tribunal Act.

The respondent submitted that S. 15 of the Tax Appeals Tribunal Act provides that a tax payer who has lodged a notice of objection to an assessment shall pending the final resolution of the objection pay 30% of the tax assessed or the part of the tax assessed not in dispute whichever is greater. The respondent submitted that the amount of tax in dispute is Shs. 55,865,565. 30% of the said amount is Shs. 16,759,669. It has not been paid by the applicant. Hence the application is premature.

The respondent cited *Samuel Mayanja v Uganda Revenue Authority* HCNC 17 of 2005 where the court stated that once a taxpayer has lodged an application for review under S. 15 of the TAT Act he is obliged to deposit at least 30% of the tax assessed. The respondent also cited *Elgon Electronics v Uganda Revenue Authority* HCCA 11 of 2007 where it was held that provisions of S.15 of the TAT Act are mandatory. The respondent also cited *Uganda Projects Implementation and Management Centre v Uganda Revenue* Constitution Appeal 2 of 2009 where the court held that before a taxpayer files an application to the Tax Appeals Tribunal 30% of the assessed tax is due for payment. The respondent also cited *Metcash Trading Co. Ltd v Commissioner for South African Revenue Services* and another where the principle of 'pay now argue later' was emphasised.

The applicant in reply submitted that the respondent fully recovered 100% of the tax assessed. He referred to a letter dated 3rd December 2018 where the latter submitted that it had recovered the PAYE liability of Shs. 55,865,565 in accordance with S. 42(2) of the VAT Act. The applicant submitted that the respondent's action of recovering the PAYE liability by way of set off was done in bad faith and with impunity. It was illegal. The applicant cited *Makula International Limited v His Eminence Cardinal Nsubuga* Civil Appeal 4 of 1981 where it was held that once an illegality is brought to the attention of court it overrides all matters of pleading. Therefore the request by the respondent for the applicant to pay 30% would mean that the latter would be paying 130% of the amount of the tax in dispute.

Having read the submissions of the parties this is the ruling of the Tribunal.

S. 15 of the Tax Appeals Tribunal Act reads

“(1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.”

This Section was discussed in *Uganda Project Implementation and Management Centre v Uganda Revenue Authority* (supra) where the Court decided that the above Section does not infringe on the constitutional rights of taxpayers. In *Samuel Mayanja v Uganda Revenue Authority* (supra) the court decided that S. 15 of the above Act obliged a tax payer to pay at least 30% of the tax in dispute. There is no doubt that the requirement to pay 30% of the tax in dispute of that part of the tax assessed not in dispute, whichever is greater is mandatory.

The applicant in reply submitted that the respondent obtained all the amount of the tax in dispute from an offset. The applicant relied on the letter of the respondent to the applicant's managing director dated 3rd December 2018. The relevant portion reads:

“In addition, Eram Uganda Limited had a PAYE liability of Shs. 55,865,565. This liability was recovered from the above recommended refund of Shs. 56,374,700 leaving a balance of Shs. 509,135 which is due to you. This is in accordance with Section 42(2) of the VAT Act.”

Dated at Kampala this day of 2019.

MR. SIRAJ ALI