

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 079 OF 2020**

**YUNUS SOCIAL BUSINESS FOUNDATION UGANDA LIMITED =====APPLICANT**  
**VERSUS**  
**UGANDA REVENUE AUTHORITY ===== RESPONDENT**

**BEFORE: DR. ASA MUGENYI, MS. CHRISTINE KATWE, MR. SIRAJ ALI**

**RULING**

This ruling is in respect of an application whether an applicant that embodies both business and charitable characteristics, qualifies for tax exemption status under the Income Tax Act.

On 7<sup>th</sup> February 2019, the applicant applied to be considered as an exempt institution or organization under the Income Tax Act which the respondent rejected on the grounds that it was not a charitable organization. The applicant objected and the respondent disallowed the objections.

Issues

1. Whether the applicant is a charitable institution and qualifies to be exempt under the Income Tax Act?
2. What remedies are available?

The applicant was represented by Mr. Gerald Padoko, Ms. Annet Nanfuma and Mr. Medard Lubega Ssegona while the respondent by Mr. Tony Kalungi and Ms.Tracy Basiima.

The applicant`s sole witness, Mr. Richard Tugume Tulyahikayo, it`s Country Director, stated that the applicant is part of a network of Yunus Social Business initiatives which is in six other countries with headquarters in Germany. Yunus Social Business GmbH was

co-founded by the Nobel Laureate, Professor Muhammad Yunus, as a German charitable corporation. The witness stated that the applicant was incorporated as a company limited by guarantee with the main objective to address social and environmental problems in Uganda by promoting and empowering social businesses through the provision of financial and technical support. The applicant had so far supported 14 companies whose activities have an inherent social impact. The applicant also provides strategic and other support to social businesses in Uganda with the ultimate goal of alleviating poverty and related social and environmental problems. He testified that the applicant's parent company, Yunus Social Business Germany, is registered as a charity in Germany and is accordingly exempt in that country for Income tax purposes.

The witness stated that the applicant receives funding from its parent company which it pays with interest. It also receives funding from other donors. The monies received are lent to businesses in Uganda to cater for the applicant's administrative expenses. The witness confirmed that the applicant was in possession of a money lending license which is used by it to lend money at interest. The witness also confirmed that the applicant has a trading license and an investment license but does not have a Non- Governmental Organizations (NGO) license. The applicant makes donations in some cases. He testified that its application was rejected by the respondent on the ground that it charged interest on loans offered by it.

Ms. Dorothy Okulo Oroma, the respondent's sole witness testified that the application for exemption was rejected because the loans given out by the applicant are required to be repaid in full and with interest. Secondly, that the applicant has trading and money lending licenses to conduct the business of financial services as a non-deposit taking microfinance institution in Uganda. Thirdly, the claim by the applicant that the interest income it receives to cover its operational expenses was not supported by its application for tax exemption dated 7<sup>th</sup> February 2019. The applicant indicated that its operational expenses were covered by funding from external donors such as USAID. Fourthly, the loan agreements between the applicant and the different borrowers provided for the deposit of security which implies that the applicant's aims to recover monies lent and that failure to repay such monies in full, would result into imposition of penal interest.

The applicant submitted that it qualified as a charitable organization with a public character under S. 2 (bb)(i)(B) of the Income Tax Act and consequently its income was exempt from tax under S. 21(1)(f)(i) of the Income Tax Act. The applicant relied on a Practice Note issued by the respondent on 24<sup>th</sup> July 2006 setting out what ought to be proved before an organization could be considered as charitable.

The applicant cited *Crane Bank v URA* HCT-OO-CC-CA-18-2010 where Kiryabwire J., stated that the rules of interpretation require that where a term is not defined under a statute it should be given an ordinary literal meaning. In determining such meaning the courts could have recourse to dictionaries. The applicant cited the definition of `charitable` in *Black's Law Dictionary* 10<sup>th</sup> Edition p. 283 which reads: "dedicated to a general public purpose, for the benefit of needy people who cannot pay for benefits received" while a charitable organization is defined as

"(a) organized and operated exclusively for religious , scientific, literary, educational, athletic, public safety or community service purposes, (2) does not distribute earnings for the benefit of private individuals and (3) does not participate in any way in political candidate campaigns or engage in substantial lobby."

The applicant also cited the definition of a charity as set out in the Charities Act of the United Kingdom, where under S. 1(a) thereof a charity has been defined to mean "an institution established for charitable purposes only" and a charitable purpose has been categorized in S. 3(a-m) as inter alia;

"...the prevention or relief of poverty, advancement of education, advancement of religion, advancement of health advancement of environmental protection or improvement, the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage ... and the said activities should be for the public benefit..."

The applicant submitted that apart from providing concessional and soft loans, the applicant provides strategic and other support to social businesses in Uganda with the ultimate goal of alleviating poverty and related social and environmental problems in Uganda. The applicant submitted further that Yunus Social Business Germany is registered as a charity in Germany and is exempt for income tax purposes in that country. The applicant also availed tax exemption certificates from Columbia and Brazil

respectively as proof of the charitable status of the Yunus Social Business Foundations in those jurisdictions. The applicant submitted that its Memorandum and Articles of Association restricts the conferring of private benefits to its members.

The respondent submitted that the applicant did not qualify as an exempt organization under S. 2 (bb)(i)(B) of the Income Tax Act. The applicant does not provides services for alleviation of poverty since the persons they lend to are not poor and are capable of paying interest. The respondent cited definition of 'charity' in *Black's Law Dictionary* 11<sup>th</sup> Edition "dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received." The respondent also used the definition of 'charity' in *Oxford Advanced Learners Dictionary*, 5<sup>th</sup> Edition p. 187 as: "A society or an organization for helping people in need". 'Needy' is defined to mean "... without things are needed for life, food, clothes, etc. very poor..." The respondent submitted therefore that the applicant's clients are not needy and its activities are therefore not charitable. The respondent contended that the charging of interest by the applicant and the measures taken to recover unpaid loans are not consistent with charitable organizations.

The respondent submitted that the applicant has a trade license certificate issued by Kampala City Council Authority (KCCA) where its business is licensed as "money lending and savings institution." The applicant has a money lending license issued by the Uganda Microfinance Regulatory Authority authorizing it to conduct the business of financial services as a non-deposit taking micro finance institution. It has an investment license from the Uganda Investments authority. The respondent submitted that charitable organizations are governed under the (NGO) Act of 2016. S. 31 of the Act stipulates that an organization shall not operate in Uganda without a permit. The applicant's witness, Mr. Tugume conceded that the applicant did not have an NGO permit. The respondent contended that in the absence of an NGO permit, the applicant cannot claim to be a charitable organization whose activities are exempt. The respondent submitted that if the applicant was a charitable organization it would have obtained an NGO permit instead of a money lending license, trade license and Investment license. The respondent submitted therefore that the applicant was involved in the business of providing financial services and was therefore not a charitable organization.

The respondent cited *Better Business Bureau v United States*, 326 U.S .279, where the court held that the existence of a single non-educational purpose, destroyed the exemption granted to a charitable organization. The respondent submitted that the element of financial services destroyed the applicant's eligibility for an exemption.

Having heard the evidence and read the submissions of the parties, this is the ruling of the Tribunal.

The first issue was: whether the applicant is a charitable institution and qualifies to be exempt under the Income Tax Act? In resolving this issue the tribunal is required to determine whether the applicant is a charitable institution under S.2 (bb)(i)(B) of the Income Tax Act. The income of an exempt organization is not liable to tax under S. 21(1)(f) of the Act which states as follows:

“The following amounts are exempt from tax-

(f) The income of an exempt organization, other than-

- i. Property income, except rent received by an exempt organization in respect of immovable property and the rent is used by the lessor exclusively for the activities of the organization specified in paragraph (bb)(i) of the definition of `exempt organization` in Section 2, or
- ii. Business income that is not related to the function constituting the basis for the organization`s existence.”

S. 2(bb) states as follows:

“An exempt organization means any company, institution, or irrevocable trust:

- i. Which is-
  - A. An Amateur sporting Association
  - B. A religious, charitable, or educational institution of a public character, or
  - C. A trade union, employees association, an association of employers registered under any law of Uganda, or an association established for the purpose of promoting farming, mining, tourism, manufacturing, or commerce and industry in Uganda, and
- ii. Which has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organization, and
- iii. None of the income or assets of which confers, or may confer a private benefit to any person.”

In defining an exempt organization under S.2 of the Act, Practice Note No. 3 issued by the Commissioner General 24<sup>th</sup> July 2006, provides the following guidance:

“In order to be considered-

- a) `Charitable` an organization must be proved to provide services for public benefit falling under any of the following categories:
  - i. The relief of poverty
  - ii. The advancement of education
  - iii. The advancement of religion or
  - iv. Other purposes beneficial to the community within the legal understanding of charity.
- b) `An institution of a public character` - the benefit provided must be to the public at large or at least to a sufficient number of the community.”

The applicant contended that it is a charitable organization under S. 2 (bb)(i)(B) of the Income Tax Act because it provides concessional loans and strategic and other support to social businesses with the ultimate aim of alleviating poverty. The alleviation of poverty, the applicant argues, is one of the categories to be considered in determining whether an entity qualifies as a charity and therefore entitled to an exempt status, for the purposes of S. 2 of the Act. The respondent on the other hand objects to the applicant's characterization as a charitable organization on the grounds that the provision of loans at interest by the applicant to the businesses it supports constitutes a financial business and not the provision of charitable activities.

The question which arises from these two opposing arguments, is whether an organization, whose constitution permits it to carry on both business and charitable activities can qualify for tax exemption status under S. 21(1)(f)(i) of the Income Tax Act. This question should be seen in light of the recent emergence of social enterprises and the problems they present for tax policy. The following excerpt from a paper entitled “*Social Enterprise: Some Tax Policy Considerations*” by Jonathan Barret and John Veal sheds some light on this phenomenon.

“In recent decades, almost all industrialized countries have experienced a phenomenal growth in `socio-economic initiatives that belong neither to the traditional private for-profit sector nor to the public sector`. This broad concept of social enterprise is notoriously

difficult to categorically define, particularly given the many variations in form and goals of the different entities operating in the field, and the diverse contexts in which the term is used across jurisdictions.`

The problem the emergence of social enterprises presents for tax policy is that it blurs the previously clear distinction between charity and business.

In order to determine whether an organization, whose constitution permits it to carry on both business and charitable activities can qualify for tax exemption status under S. 21(1)(f)(i) of the Income Tax Act, we must define the terms `charity` and `charitable activities`. *Black's Law Dictionary* 10<sup>th</sup> Edition p. 283 defines `charitable` as, "Dedicated to a general public purpose, for the benefit of needy people who cannot pay for benefits received" while a `charitable organization` is defined as:

(a) organized and operated exclusively for religious , scientific, literary, educational, athletic, public safety or community service purposes , (2) does not distribute earnings for the benefit of private individuals and (3) does not participate in any way in political candidate campaigns or engage in substantial lobby`. (Emphasis added).

The applicant also cited the definition of `charity` under the Charities Act of the United Kingdom, where under S. 1 (a) thereof a charity has been defined to mean; "an institution established for charitable purposes only and a charitable purpose has been categorized in S. 3 (a-m) as inter alia:

"the prevention or relief of poverty, advancement of education , advancement of religion , advancement of health advancement of environmental protection or improvement , the relief of those in need because of youth , age , ill-health, disability , financial hardship or other disadvantage .....and the said activities should be for the public benefit..."(Emphasis added).

From the above authorities the definition of the terms `charity` and `charitable activities` refer to an organization that is operated exclusively for charitable purposes and not an organization operated for both charitable and business purposes. It follows therefore that an organization operated for both business and charitable purposes would not qualify as a charitable organization for the purposes of the S. 2 (bb) (i) (B) of the Act and would accordingly not be entitled to a tax exemption status.

The applicant argued that its Memorandum of Association forbids it from distributing dividends, profits and or assets and requires assets and proceeds be reinvested in activities designed to achieve the applicant`s goals. While it is conceded that this consideration distinguishes a charity from other organizations, this fact on its own cannot clothe an organization with a charitable status. In Supreme Court of Canada decision of *The King v Assessors of Sunny Brae (Town)*, [1952] 2 S.C.R. 76. Rand J., said

“We have today many huge foundations yielding revenues applied solely to charitable purposes: they may consist, as in one case, of a newspaper business: even if these foundations themselves carried on their charitable ministrations, to characterize them as charitable institutions merely because of the ultimate destination of the net revenues, would be to distort the meaning of familiar language: and to make that ultimate application the sole test of their charitable quality would introduce into the law conceptions that might have disruptive implications upon basic principles not only of taxation but of economic and constitutional relations generally. If that is to be done, it must be by the legislature...”

While current legislation may prohibit the grant of tax concessions, reserved for charities, to social enterprises, the emergence of social enterprises have shown that society needs to keep up with the changing times. In order to effect changes that recognize the invaluable contributions being made to the charitable sector by social enterprises there is need for enactment of laws that are in step with the changes that have taken place in the charitable sector over the years. These changes can only be made by the legislature.

Having found that the applicant is not a charitable organization within the meaning of S. 2 (bb)(i)(B) of the Act, this application is dismissed with costs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

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**DR. ASA MUGENYI**  
**CHAIRMAN**

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**MS. CHRISTINE KATWE**  
**MEMBER**

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**MR. SIRAJ ALI**  
**MEMBER**