

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 64 OF 2020**

**KANSAI PLASCON UGANDA LIMITED.....APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

**BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE.**

**RULING**

This ruling is in respect of an assessment of penalty and interest that the applicant claims were waived by the Tax Procedure Code Act.

On 26<sup>th</sup> February 2020, the respondent issued an assessment of Shs. 68,927,551,084 on the applicant and that the applicant objected to the penalty and interest.

**Issues**

1. Whether the applicant is liable to pay the penalty and interest assessed?
2. What remedies are available?

The applicant was represented by Mr. Philip Karugaba and Mr. Patrick Turinawe while the respondent by Mr. George Okello and Mr. Tony Kalungi.

This dispute revolves around penalty and interest that was imposed on the applicant. The applicant contends that it was waived which the respondent denies.

The applicant's first witness, Mr. Max Odong, a Senior Superintendent of Police, testified that he handled a criminal investigation involving the applicant. On 10<sup>th</sup> July 2019, Ms. Abby Kalpana, the applicant's Vice Chairperson, in charge of its operations lodged a complaint and recorded a statement before the Assistant Inspector General of Police, Grace Akullo involving theft of company funds and tax fraud. The witness testified that he

did not commence investigation on tax matters as they were technical. The police wrote to the Commissioner General to handle the tax element. The complaint did not disclose any amount.

Mr. Anil Patel, the applicant's second witness, a tax consultant working with the applicant's consultants, Grant Thornton Taxation Services limited testified that the applicant wrote a letter dated 18<sup>th</sup> September 2019 disclosing offences, as a result of which, the respondent issued a tax assessment of Shs. 68,927,551,084 comprising of principal tax, interest and penalties. He also testified that the applicant made a voluntary disclosure in a letter of 18<sup>th</sup> September 2019, exhibit AE1. The respondent used the voluntary disclosure to make a tax assessment. Between 26<sup>th</sup> February and 14<sup>th</sup> April 2020, the applicant paid principal tax of Shs. 14,229,295,922. On 20<sup>th</sup> March 2020, the applicant applied to the respondent for a waiver of interest and penalties under S. 66 (1a) of the Tax Procedure Code Act. The respondent rejected the application on the grounds that the disclosure was not voluntary and there was no disclosure. On 13<sup>th</sup> May 2020 and 3<sup>rd</sup> July 2020, the respondent issued agency notices on the applicant's bankers and collected Shs. 7,402,527,009 and Shs. 1,000,000,000 respectively. The applicant entered into a memorandum of understanding with the respondent to pay taxes. The applicant paid a total of Shs. 31,408,155,402. He contended that under S. 66(1a) of the Tax Procedure Code Act the applicant is entitled to a waiver of interest and penalties. On 1<sup>st</sup> April 2020, the Tax Procedure Code (Amendment) Act 2020 came into force waiving any interest and penalty as at 30 June 2020. As at 30 June 2020, the applicant had a penal liability of Shs 38,519,395,682. He testified that penalty paid should be refunded because of the waiver.

The applicant's third witness, Ms. Prejay Lalia, the Chief Executive Officer of Kansai Plascon Africa testified that the applicant was previously called Sadolin Paints Uganda limited. It was subject of an acquisition with former shareholders. Around 2018, Ms. Abe Kalpana became the managing director of the applicant. The new management became aware of several tax anomalies in the operation of the applicant. The applicant hired Bowmans and later PwC to verify the findings which revealed the tax irregularities. In June 2019, Ms. Abe Kalpana reported the tax irregularities to the police. Some of the

irregularities included raw materials being purchased in bulk and under declarations. On 11<sup>th</sup> September 2019, the applicant held meetings with the respondent to disclose the irregularities. On 18<sup>th</sup> September 2019, the applicant disclosed the tax liabilities and irregularities to the respondent. The tax irregularities included: Not accounting for withholding tax on a number of professional services, incorrect corporate income tax and VAT treatment of sale of immoveable property, incorrect claiming of debt amounts, and incorrect tax treatment of benefits to staff. On 26<sup>th</sup> February 2020, the respondent issued a management letter to pay taxes of Shs. 68,927,551,084 comprising of principal tax, interest and penalties. On 20<sup>th</sup> March 2020, the applicant applied for a waiver. Between 26<sup>th</sup> February and 14<sup>th</sup> April 2020, the applicant paid the principal tax of 14,229,295,922.

The applicant's fourth witness, Mr. Avind Shekhawat, its board chairman testified that the applicant received a tax review report by PwC, Kenya. The applicant passed on the report to its lawyers Cristal Advocates. The lawyer specifically one Denis Kakembo passed on the report by email to one Henry Kironde, an employee of the respondent, who acknowledged receipt. The witness was copied in the said communication.

The respondent's witness, Ms. Jolly Mutesi Uhiriwe, testified that on 18<sup>th</sup> July 2019, the respondent was informed by police Criminal Investigation Directorate (CID), in exhibit RE1 that it was investigating tax evasion by the applicant for the period 2013 to 2019. The CID requested the respondent to avail it with a tax compliance report of the applicant. During the course of investigation and tax compliance review, the applicant informed the respondent of its intention to voluntarily disclose its tax liability in exhibit AE1 of 18<sup>th</sup> September 2019. On 10<sup>th</sup> October 2019, the respondent reminded the applicant to make its disclosure. On 23<sup>rd</sup> October 2019, the applicant requested the respondent to send a team to the formers' premises for information and to audit its tax affairs. In a letter of 30<sup>th</sup> October 2019 the respondent nominated a team which visited the premises on 1<sup>st</sup> November 2019, but did not access it. In a letter of 22<sup>nd</sup> November 2019, the respondent requested for information but the applicant requested for more time in a letter of 25<sup>th</sup> November 2019. In a letter of 13<sup>th</sup> December 2019, the respondent requested PwC Uganda to avail it a forensic audit report of the applicant. On 18<sup>th</sup> December 2019, PwC Uganda informed the respondent that it had never been engaged by the applicant. On

14<sup>th</sup> January 2020, the respondent fined the applicant penal tax of Shs. 20,000,000 for failure to provide information. On 26<sup>th</sup> February 2020, the respondent wrote a management letter to the applicant claiming taxes of Shs. 68,927,551,084. On 20<sup>th</sup> March 2020, the applicant wrote to the respondent accepting to pay the principal tax of Shs. 14,288,954,488 and applied for a waiver of interest and penalty on the grounds that it made a voluntary disclosure. On 14<sup>th</sup> April 2020, the respondent rejected the request for a waiver. On 8<sup>th</sup> June 2020, the applicant objected and the respondent made an objection decision on 26<sup>th</sup> June 2020.

The applicant submitted that it made a voluntary disclosure to the respondent. Therefore, it is entitled to a waiver of any penalties. The applicant submitted that voluntary disclosure is not defined under the law. It is set out under S. 66 of the Tax Procedure Code Act as compounding of offences. The applicant cited *Kasibo Joshua v URA* High Court MA 44 of 2007 where Justice Kiryabwire J. likened compounding to plea bargaining. The applicant submitted that S. 66(1a) of the Tax Procedure Code Act provides that where a person who has committed an offence under a tax law voluntarily discloses the commission of that offence to the Commissioner at any time prior to the commencement of court proceedings, the Commissioner may enter into an agreement with the offender to compound the offence if the offender agrees to pay to the Commissioner the outstanding unpaid tax, and that person shall not be required to pay any interest or fine due. The applicant cited *Purveyors South Africa Mine Services (PTY) Ltd v the Commissioner for the South African Revenue Service* (Case No. 61689 of 2019), which quoted *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 SCA to illustrate the purpose of voluntary disclosure by stating that:

“Its purpose is to enhance voluntary compliance in the interests of good management of the tax system and the best use of SARS’ resources. It seeks to encourage taxpayers to come forward on a voluntary basis to regularize their tax affairs with SARS and thus avoid imposition of understatement penalties (and, in certain circumstances, criminal prosecutions).”

The applicant submitted that the requirements of S. 66 (1a) of the Tax Procedure Code Act are: There is a voluntary disclosure to the Commissioner before commencement of

court proceedings and the offender agrees to pay the outstanding unpaid tax. The applicant submitted that the law does not specify the procedure for voluntary disclosure and timelines. S. 66 (1a) only provides that the disclosure is made to the Commissioner General. At the time of this suit, the respondent had not issued any public guidance on the implementation of the voluntary disclosure provisions under the Act. They were issued on 16<sup>th</sup> July 2020, and have no bearing to the instant case.

The applicant cited *Black's Law Dictionary 6<sup>th</sup> Edition* page 32 which describes 'voluntary' as "Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself. ... Resulting from free choice, without compulsion or solicitation." The applicant submitted that its intention to disclose tax irregularities are shown in the email correspondences from the Head of Finance, Lourens De Kock to Vivek Ramsaroop of Bowmans as follows:

"We want to approach the Uganda Revenue Authority to conduct an audit and make an assessment and disclose to us our true liabilities. (We want them to tell us which practices are wrong and how much payment is due to them as a result). We have discovered these discrepancies. KP is now coming voluntarily to the RA asking to be pardoned, pay dues and we want to recover from ex owners."

The applicant made a voluntary disclosure on 18<sup>th</sup> September 2019, through a letter headed: "Voluntary disclosure of tax liability". There were meetings and correspondences between the applicant and the respondent where further information was exchanged. Other communication leading to disclosure include the respondent's letters of 10<sup>th</sup> October 2019 and of 22<sup>nd</sup> November 2019 and the applicant's letter of 4<sup>th</sup> December 2019 and the email correspondence of January 2020. The applicant submitted that from the onset it wanted to make a voluntary disclosure and apply for waiver of interest and penalties. The applicant submitted that sharing the PwC Tax Review report with the respondent on 27<sup>th</sup> January 2020 was the last action to complete full disclosure. The applicant submitted that the information provided by PwC enabled the respondent make its assessment.

The applicant submitted that it is disingenuous for the respondent to seek to rely on the alleged CID investigations to deny 'voluntariness' of the applicant's disclosures. The

applicant submitted that when new management took over, an audit was commenced and a tax review report was made by PwC suggesting possible tax exposure. The applicant sought to comply with the law and put its affairs in order. The applicant cited *Worsfold v The Minister of National Revenue (2012) FC 644*, where a Voluntary Disclosure Programme (VDP) application was filed an hour after the Canadian Revenue Authority notified the company of an impending audit. There was evidence that the applicant had been contemplating a VDP application for several months and had even discussed it with tax lawyers. The court considered that the chain of events showed that the VDP application was not prompted by the impending company audit.

The applicant submitted that the power of the Commissioner General must be exercised judiciously and with rationality in accordance with the Constitution of Uganda. In *Uganda Revenue Authority v Remigious Patrick Paul*, High Court Civil Appeal No. 8 of 2005, Justice Egonda-Ntende noted that;

“The Commissioner-general is given awesome power in which he is in effect the investigator, prosecutor and the judge. The Commissioner-General is a judge in his own cause.”

The judge questioned whether such discretionary powers would pass the constitutional test. The applicant also cited *MTN Uganda Limited v Uganda Revenue Authority* (TAT Application No. 15 of 2018) where the Tribunal held that; “it had jurisdiction to review the exercise of discretion by the Commissioner General.”

The applicant submitted that the voluntary disclosure of 18<sup>th</sup> September 2019 was addressed to the respondent’s Assistant Commissioner Large Tax Payers Office. It contended that the Assistant Commissioner was exercising delegated powers. He handled the voluntary disclosure without objection and acted on behalf of the Commissioner General. The applicant submitted that the respondent is estopped from denying that it made a voluntary disclosure. It cited S. 114 of the Evidence Act which provides that:

“When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she or his or her representative shall be allowed in any suit or proceeding between

himself or herself and that person or his or her representative, to deny the truth of that thing.”

It also cited *Pan African Insurance Company (U) Ltd v International Air Transport Association (High Court Civil Suit No. 667 of 2003)*, Justice Lameck Mukasa held that;

“The doctrine of estoppel by conduct prevents a party against whom it is set up from denying the truth of the matter. The principle is that where a party has by his declaration, act or omission intentionally caused the other to believe a thing to be true and to act upon such belief he cannot be allowed to deny the truthfulness of that thing.”

The applicant submitted that the respondent did not indicate that there were any reservations against the applicant’s voluntary disclosure until its letter of 24<sup>th</sup> April 2020.

In reply, the respondent submitted that the applicant has not discharged the burden of proof that it was not liable to pay the interest and penalty assessed. The respondent submitted that the law relating to compounding of offences is in S. 66(1a) of the Tax Procedure Code Act that where a person has committed an offence under a tax law and he voluntarily discloses the commission of the offence to the Commissioner, at any time prior to the commencement of court proceedings, the Commissioner may enter into an agreement with the offender to compound the offence if the offender agrees to pay to the Commissioner the outstanding unpaid tax and that person shall not be required to pay any interest or fine due. Under S. 66(2), the Commissioner may compound an offence only if the offender admits, in writing, to committing the offence and requests the Commissioner to enter into a compounding agreement in relation to the offence.

The respondent contended that in order to trigger the compounding of offences under S. 66(1a) of the Tax Procedure Code Act, the following conditions must be satisfied:

- 1) A person has committed an offence under a tax law other than S. 63 of the said Act.
- 2) The person voluntarily discloses the commission of the offence to the Commissioner.
- 3) The offender admits, in writing to having committed the offence
- 4) The offender requests the Commissioner to enter into a compounding agreement in relation to the offence.

- 5) The offender agrees to pay the commissioner the outstanding unpaid tax,
- 6) The Commissioner enters into an agreement with the offender to compound the offence.

The respondent cited *Attorney General V Salvatori Abuki*, Constitutional Case 2 of 1997, where it was stated that:

“The word offence is not defined in our law. The word seems to me to be of no fixed or technical meaning. It denotes an act contrary to, offending against, and punishable by law but particularly one made by statute rather than by common law, the latter being usually called crimes and also particularly one punishable on summary conviction. Obviously the distinction between crimes and offences is a matter of common usage of words rather than of legal definition. Thus, the usual terminology is of “road traffic offences...”

The respondent submitted that it is a cardinal principle of penal law that before one can be punished for a criminal contravention the offence attracting the punishment must be defined. The respondent also cited *Kasibo Joshua v The Commissioner of customs, URA* (HCT-OO-CC-MA 44 of 2007, where Kiryabwire J. stated that:

“... Compounding an offence in my understanding is a form of settlement of the offence without prosecution that results into a settlement order. It is a form of plea bargain with the offender that results in an admission of the offence in the expectation, no doubt, of a lighter sentence. This is because no prosecution has taken place saving all concerned valuable time and resources.”

The respondent submitted that the police did not show which tax offence was reported by the applicant's chairperson. There is no communication which reveals tax offences committed by the applicant. The applicant reported a case against Mr. Christopher Nugent for embezzlement of company funds and fraud against it. The applicant had non-compliance and tax irregularities which are not specific offences in law. The letter of 18<sup>th</sup> September 2019 does not state the tax offence the applicant committed. It only refers to an intention to voluntarily disclose tax liabilities or tax irregularities but not an offence.

The respondent contended that Rowlatt J. in *Cape Brandy Syndicate v IRC (1921) K.B 64* stated that “In a taxing Act, one has merely to look at what is clearly said...” It also cited *R v The Judge of City of London Court [1892] 1 and 13, 273*, where the rationale for the literal rule was stated as “To prevent Court's from delving into the political arena, in



order to preserve the dichotomy between the functions of Parliament and Courts, the former creating the law and the latter in theory applying the law". The respondent submitted that if the intention of the legislature was to provide that the tax liabilities and irregularities that do not amount to offences could be compounded, then it would have stated so. It is clear from the wording of S. 66 (1a) that the intention of parliament was to limit it to offences and not mere tax liabilities or irregularities. The respondent can only compound if the offender admits in writing to committing an offence and the former must specify the offence committed. The respondent also cited *Attorney General V Salvatori Abuki*, (Supra), where it was stated that:

"Legally a person cannot concede to an offence whose particulars are not fully disclosed however much the said person claims to know the said offence. In the said case, one of the accused had pleaded guilty to an offence under the Witchcraft Act but the court went ahead to hold that this was irrelevant since the particulars of the said offence were ambiguous and not proper in law."

The respondent cited *Black's Law Dictionary, 11<sup>th</sup> Edition*, p. 583 which defines voluntary disclosure of offence as "a person's uncoerced admission to an undiscovered crime." The respondent contended that the CID letter triggered a compliance review by the respondent of the applicant's operations in Uganda. The respondent further contended that a disclosure has to be made to the Commissioner and not the CID.

The respondent submitted that the letter of 18<sup>th</sup> September 2019 indicated an intention. It read

"... By copy of this letter we would like to give notification of our intention to voluntarily disclose the tax liability due on Kansai Plascon Uganda Limited.

The applicant sent an email, AEX 29, to the respondent stating that:

"As mentioned to you, our client Kansai Plascon is preparing to make a voluntary disclosure of tax liability to URA. A forensic review to determine the full extent of liability is ongoing and is expected to be concluded in a period not exceeding one month from today. We are dispatching a letter to the URA today or tomorrow addressed to yourself in this regard."

The respondent contended that the applicant attempted to circumvent tax compliance review by purporting to voluntarily report itself to escape the legal sanctions of penalty and interest on taxes due.

The respondent submitted that it issued a penalty assessment on the applicant dated 14<sup>th</sup> January 2020 for failure to provide records in respect of the PwC due diligence report. This was not objected to by the applicant. It shows that the applicant did not voluntarily disclose the commission of an offence to the Commissioner.

The respondent submitted that there is no written admission by the applicant to having committed any offence. The applicant did not make any request to the commissioner to enter into a compounding agreement in relation to the offence. The applicant's request was for waiver of interest and penalty but not one to compound an offence.

In rejoinder, the applicant submitted that there was no set procedure for disclosure. It contended that in absence a disclosure process, the applicant's disclosure should not be used against it. The applicant submitted that it made a voluntary disclosure with no prompting. The applicant contended that the prerequisites for voluntary disclosure are that there is a voluntary disclosure to the Commissioner before commencement of court proceedings; and the offender agrees to pay the outstanding unpaid tax.

The applicant submitted that the tribunal should apply a purposive interpretation approach in reading and interpreting letters and evidence. The applicant and the respondent exchanged letters, emails and had meetings. The respondent did not inform the applicant of any offence that required compounding. The respondent is now seeking to state that the applicant committed offences.

The applicant contended that voluntary disclosure form does not require the taxpayer to specify the law that has been violated. The public notices of 25<sup>th</sup> March 2020 and 17<sup>th</sup> July 2020 still do not require disclosure of the exact offences.

The applicant stated that though it did not request the Commissioner to enter a compounding agreement in its letter of 20<sup>th</sup> March 2020, it applied for a waiver of penalties and interest. The respondent is estopped from denying that the applicant made a voluntary disclosure. The applicant cited the principle of legitimate expectation as cited in

*Andrew Kilama v Uganda Coffee Development Authority* MC 270 of 2019 where Justice Ssekana explained that legitimate expectation envisages that once a representation had created an expectation in a person, it will be unfair to whittle down or take it away.

Having listened to the evidence and read the submissions of the parties, this is the ruling of the tribunal.

The respondent issued an assessment on the applicant of Shs. 68,927,551,084 being tax, interest and penalties in a management letter of 26<sup>th</sup> February 2020. The applicant paid the principal tax of Shs. 14,229,295,922. The respondent through agency notices collected Shs. 16,178,859,478 as penalties and interest. The applicant disputes the collection and claims it made a voluntary disclosure. The remaining amount on penalties of Shs 38,519,395,682 which was not paid nor collected was waived by the Tax Procedure Code (Amendment) Act. The applicant is seeking to claim a refund of the Shs. 16,178,859,478 on the grounds that it is entitled to a waiver under S. 66 of the Tax Procedure Code Act.

The law governing voluntary disclosure is provided in S. 66 of the Tax Procedure Code Act which states that:

“(1) If a person has committed an offence under a tax law, other than under section 63, the Commissioner may, at any time prior to the commencement of court proceedings, enter into an agreement with the offender to compound the offence if the offender agrees to pay to the Commissioner—

(a) any unpaid tax; and

(b) an amount not exceeding the maximum fine imposed by the tax law for the offence.

(1a) Where a person has committed an offense under a tax law, other than under s. 63 of this Act and that person voluntarily discloses the commission of the offense to the commissioner, at any time prior to the commencement of court proceedings, the commissioner may enter into an agreement with the offender to compound the offence if the offender agrees to pay to the commissioner the outstanding unpaid tax and that person shall not be required to pay any interest or fine due.

- (2) The Commissioner may compound an offence under this section only if the offender admits, in writing, to committing the offence and requests the Commissioner to enter into a compounding agreement in relation to the offence.
- (3) If the Commissioner compounds an offence under this section, the compounding agreement in relation to the offence —
  - (a) shall specify the name of the offender, the offence committed, the sum of money to be paid, and the date for payment;
  - (b) shall have a copy of the written admission referred to in subsection (2) attached;
  - (c) shall be served on the offender;
  - (d) is not subject to any appeal;
  - (e) may be enforced in the same manner as a decree of any court for the payment of the amount stated in the order; and
  - (f) on production to any court, is treated as proof of the conviction of the offender for the offence specified.
- (4) Where the Commissioner compounds an offence under this section, the offender is not liable for prosecution or penal tax in respect of the same act or omission that was the subject of the compounded offence.”

The Tax Procedure Code Act does not define ‘voluntary disclosure’. The word “disclose” is defined by *Oxford Advanced Learner’s Dictionary* 9<sup>th</sup> Edition p. 423 as: “1. To give to somebody information about something, especially something that was previously secret.” Therefore an offender is required to disclose information in respect of tax liability which was not previously done. The word “Voluntary” is defined by *Black Law Dictionary* 11<sup>th</sup> Edition p. 1808 as: “1. Done by design or intention <voluntary act>2. Unconstrained by interference; not impelled by outside influence < voluntary statement>.” *Black’s Law Dictionary* 10<sup>th</sup> Edition p. 563 defines disclosure of offense as: “a person’s uncoerced admission to an undiscovered crime.” The respondent has guided on voluntary disclosure as a process where the taxpayer discloses information related to tax liabilities, misstatements or omissions in his or her tax declarations to Uganda Revenue Authority (URA) without being prompted by any action or threat of action by URA. Our understanding of voluntary disclosure under S. 66 of the Tax Procedure Code Act would be where a taxpayer discloses tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest of the tax

disclosed. For a disclosure to fall under the Section the taxpayer must be seeking relief from penal tax or interest. The tax liabilities should have not been declared before. Otherwise, there would be no difference between a self- assessment or self-declaration when tax is due and a voluntary disclosure. The purpose of a voluntary disclosure to a taxpayer would be to put what was wrong as right and paying the right amount of tax. To the tax-collecting body, the purpose of voluntary disclosure is to enhance tax collection and encourage taxpayers to pay taxes. It also saves time and resources in tax collection.

S. 66 of the Tax Procedure Code Act mentions compounding of an offence. The word “compounding” is not defined in the Act. In *Kasibo Joshua v The Commissioner of Customs*, URA HCCS 44 of 2007 Kiryabwire J. stated that:

“Compounding an offence in my understanding is a form of settlement of the offence without prosecution that results into a settlement order. It is a form of plea bargain with the offender that results in an admission of the offence in the expectation, no doubt of a lighter sentence. This is because no prosecution has taken place saving all concerned valuable time and resources.”

*Black’s Law Dictionary* 11<sup>th</sup> Edition p. 346 defines ‘compound’ as:

“1. To put together, combine, or construct. 2. To compute (interest) on the principal and the accrued interest. 3. To settle (a matter, esp., debt) by a money payment, in lieu of other liability; to adjust by agreement. 4. To agree for consideration not to prosecute (a crime). •Compounding a felony in this way itself a felony. 5. Loosely, to aggravate; to make (a crime etc.) more serious by further bad conduct.”

The Act does not mention which of the said definitions is appropriate. S. 66 of the Tax Procedure Code Act applies before the commencement of court proceedings. The Act does not define which court proceedings. The intention of the legislature was for the Commissioner to combine all the offences allegedly committed by the taxpayer. To compute interest on the principal and settle the matter by agreement involving adjusting or waiving the interest or fine. Under S. 66(2) & (3) the parties must enter into a compounding agreement where the offender admits the offence and agrees to pay a sum of money and the date of payment. Such an agreement can be enforced in the same manner as a decree of any court and is treated as a conviction of the offender for the offence specified. S. 66(4) states that where the Commissioner compounds an offence the offender is not liable to prosecution or penal tax thereafter.

Having stated the law, the Tribunal must ask itself: Did the applicant ever make a voluntary disclosure? To understand what transpired one needs to look at the chronology of events in light of S. 66 of the Tax Procedure Code Act.

The applicant lodged a complaint at the Criminal Investigation Department (CID) against Mr. Christopher Nugent for embezzlement of company funds and tax fraud. Neither party treated the complaint at the police as a voluntary disclosure. The Director of CID wrote to the Commissioner General on 19<sup>th</sup> July 2019, requesting the latter to provide a report on the tax compliance of the applicant from 2013 “to date”. The said letter was received on the same day and was followed by a reminder on 10<sup>th</sup> December 2019 for the respondent to furnish an audit report to the Police. Therefore, one cannot rule out that at the time the applicant requested to make a voluntary disclosure of 18<sup>th</sup> September 2019 it was not aware the respondent had been requested to carry out an audit on the former, as it was the one that lodged the criminal complaint.

The applicant wrote to the Assistant Commissioner Large Taxpayers office on 18<sup>th</sup> Sept 2019 but letter was received the next day. The said letter was headed “voluntary disclosure of tax liability”. The said letter informed the respondent about the acquisition of Sadolin Paint Limited by the shareholders of the applicant. It mentioned tax irregularities and the steps taken after their discovery. However the applicant was not able to disclose any offences as it needed to do a forensic review on its operations. It made its intention to make a disclosure to the respondent within one month from the date of the letter.

On 10<sup>th</sup> October 2019, the respondent wrote to the applicant requesting for a full and detailed disclosure of any facts related to unpaid tax, payment of taxes due, financial details of the applicant for the period 2017 to 2019. On 23<sup>rd</sup> October 2019, the applicant responded that the respondent should obtain the said information from the formers’ premises. The applicant stated that it would provide a PwC audit at an appropriate time. On 30<sup>th</sup> October 2019, the respondent replied informing the applicant of a team to obtain records. On 22<sup>nd</sup> November 2019, the respondent wrote to the applicant requesting for

additional information in relation to the voluntary disclosure. On 25<sup>th</sup> November 2019, the applicant wrote to the respondent committing to provide all the information by 3<sup>rd</sup> December 2019. On 4<sup>th</sup> December 2019, the applicant submitted information to the respondent with the exception of a tax review report from PwC. On 13<sup>th</sup> December 2019, the respondent wrote to PwC Uganda requesting for a due diligence report. On 18<sup>th</sup> December 2019, PwC Uganda writes to the respondent stating that it was PwC Kenya handling the applicant's issues. On 23<sup>rd</sup> December 2019, the respondent invited the applicant for a reconciliation meeting. The issues identified for discussion were the same as disclosed by the applicant's disclosure. On 22<sup>nd</sup> January 2020, the applicant and the respondent had a meeting to discuss the matters at hand. On 27<sup>th</sup> January 2020, the PwC tax review report is submitted to the respondent. On 31<sup>st</sup> January 2020, there was a meeting between the parties. The minutes of the meeting were not signed. On 26<sup>th</sup> February 2020, the respondent issued a management letter to the applicant which had the assessment of Shs. 68,927,551,084 comprising of the principal tax, penalties and interest. On 20<sup>th</sup> March 2020, the applicant applied for a waiver of interest and penalties. From 30<sup>th</sup> March 2020 to 14 April 2020, the applicant paid the principal tax of Shs. 14,229,295,922. On 24<sup>th</sup> April 2020, the respondent rejected the appeal to revise the assessments and to waive interest and penalties. In May 2020, the respondent issued agency notices on the applicant's banks recovering monies. On 18<sup>th</sup> May 2020, the applicant wrote to the respondent requesting it to lift the agency notices. On 20<sup>th</sup> March 2020, the respondent agreed to lift the agency notices but requested the applicant to sign a memorandum of understating with it.

Looking back at the chronology of events, we come back to the question: Did the applicant make a voluntary disclosure? We already stated that the letter of 18<sup>th</sup> September 2019 did not amount to a voluntary disclosure. The irregularities mentioned in the said letter were not the offences purportedly admitted and assessed for payment of taxes. The irregularities in the letter are:

- a) Not accounting for withholding tax on professional services.
- b) Incorrect corporate income tax and value added treatment of sale of immoveable property.
- c) Incorrect claiming of doubtful debts

- d) Incorrect tax treatment of fringe benefits to staff
- e) Irregularities may lead to payment of penalties and interest.

Ms. Prejay Lalla the applicant's witness during cross examination stated that they did not report tax offences because they did not have their details and they were still under investigation. The offences of which the applicant paid taxes as stated in the management letter were:

- a) Staff lunches and school fees
- b) Cash drum sales
- c) Foreign freight invoices.
- d) Payment of bonuses for the year 2017
- e) Disposal of property.
- f) Inflated material costs.
- g) Payment of local professional service providers
- h) Royalties paid to Akzo Noble and ICU Dulux.

There is a dichotomy between the irregularities the applicant mentioned in its letter and the offences it paid taxes on. Therefore, though the letter of 28<sup>th</sup> September 2019 was an intention to voluntarily disclose it did not amount to a voluntary disclosure. Furthermore, the law does not provide for an intention to voluntarily disclose.

The most revealing act to what transpired is contained in the letter of 23<sup>rd</sup> December 2019, from Mr. Silajji B. Kanyesige, Assistant Commissioner Large Taxpayers Office, to the managing director of the applicant. The second paragraph below the heading reads:

"We write to draw your attention to certain issues which we identified during the review of the records submitted which require detailed explanation as to why they were not considered in the tax declarations made to URA for the period in question."

The said letter was part of the exhibits of the applicant, implying it does not dispute its contents. The issues the Assistant Commissioner identified are those which lead to the tax assessment by the respondent. They were the same as disclosed by the applicant's disclosure on 22<sup>nd</sup> January 2020. If the Assistant Commissioner and his team identified the issues during a review of the records, the applicant cannot claim to have made a voluntary disclosure of the same. The applicant may have made an admission but it was after issues had been identified by the respondent during a review of the records. At the



time of the disclosure the issues were not hidden. This would fall short of a voluntary disclosure under S. 66 of the Tax Procedure Code Act.

The applicant contends that voluntary disclosure was completed by sending of the PwC tax review report to the respondent. The PwC report was sent on 27<sup>th</sup> January 2020 after the respondent's team had identified the offences in the letter of 23<sup>rd</sup> December 2019. The said PwC report was not disclosing anything new. Secondly it was sent to one Henry Kironde an employee of the respondent but not the Commissioner General.

S. 66 of the Tax Procedure Code Act requires an offender to make a voluntary disclosure to the Commissioner. S.1 of the Act defines a Commissioner to be the Commissioner General. The applicant cited *Cable Corporation v URA* (Civil Appeal 1 of 2011) where the Tribunal held that the Commissioner General can delegate his duties. S. 66 of the Tax Procedure Code Act vests in the Commissioner General statutory duties. The powers to waive interest and penalties after a voluntary disclosure involves waving taxes. Parliament specifically empowered the Commissioner General to exercise those powers. It is only the Commissioner General who can delegate his duties. It is doubtful whether a statutory duty can be delegated. That is an issue for another day. But what is most important to note is that an offender cannot choose the person the Commissioner General should delegate his duties to. It may give rise to abuse of the system. Such duty should be exercised by the Commissioner General or to a person he has clearly delegated the duties. Offenders should address their disclosure to the Commissioner General. Where an offender addresses a letter to any officer of the respondent and not the Commissioner General who has been entrusted a statutory duty, the Tribunal will treat the letter as a routine letter, which it actually was and not a disclosure under the Act.

Before the Tribunal can put down its pen, we wish to state the following on voluntary disclosure: A voluntary disclosure cannot be ascertained by looking at circumstantial evidence only. In order for one to determine what amounts to a voluntary disclosure one has to read S. 66 of the Tax Procedure Code Act as a whole. A statute has to be given the effect and purposes it was intended. S.66 (1a) should not be read in isolation. The title of S. 66 is 'compounding of offences'. The insertion of S. 66(1a) was to make it clear

that an admission when compounding offences is no longer sufficient. An offender should also make a voluntary disclosure. The insertion of Sub-Section (1a) in the Section was deliberate to make voluntary disclosure part of S. 66 of the Tax Procedure Code Act. If the legislature had intended that one needs to make a voluntary disclosure to waive penal tax without the requirement of compounding or fulfilling the other requirements of S. 66, the legislature would have given voluntary disclosure a separate Section on its own.

A reading of the S.66 of the Tax Procedure Code Act shows that there are some conditions that have to be met before a voluntary disclosure made and penal tax is waved. These include:

- 1) A person should have committed an offence under a tax law other than S. 63 of the Tax Procedure Code Act.
- 2) A voluntary disclosure should be made at any time before the commencement of court proceedings. The term court proceedings is not defined. Given it an ordinary meaning court proceeding would refer to proceeding in either criminal or civil courts or tribunals.
- 3) The offender should voluntarily disclose the commission of the offence to the Commissioner. This involves first, the person disclosing the information voluntarily. It should not be at the prompt of the tax collecting agent. For instance after an audit, inquiry, or review. Secondly, the voluntary disclosure should be made to the Commissioner, in this case the Commissioner General.
- 4) The offender should admit to having committed the offence. The offender does not necessarily need to cite the Sections of the law that have been breached. However the facts the offender discloses should enable the Commissioner know which laws have been breached. To avoid doubts or any ambiguities the Section requires that the admission should be in writing.
- 5) The Commissioner and the offender should enter into an agreement to compound the offence.
- 6) Under the Agreement the offender agrees to pay the outstanding unpaid tax and the Commissioner agrees that the offender shall not be required to pay any interest and fine. The compounding agreement has the effect of law. It is treated as proof of the conviction of the offender for the offence specified. The offender is not liable to

prosecution in respect of the same act or omission that was subject to the compound offence.

The process is not complete unless there is an admission in writing and a voluntary disclosure and an agreement to compound the offence. If an offender voluntarily discloses and the Commissioner does not enter into an agreement to compound, the refusal to exercise his discretion may be challenged.

Having stated the above, the Tribunal notes that in this case there was no clear admission and a voluntary disclosure by the applicant. There was no compounding agreement between the parties. In *Uganda Breweries Limited v URA TAT 38 of 2019*, the tribunal stated that;

“Therefore, if the applicant has voluntarily admitted the offense in the prescribed form before any proceedings in court commenced and had signed an agreement with the commissioner to pay the principal tax it would not be required to pay interest and or any fine...once a tax payer voluntarily discloses a commission of an offense to the commissioner and an agreement is entered into with the respondent a taxpayer is not required to pay any interest or fine”.

Likewise, in this matter the parties did not comply fully with S. 66 of the Tax Procedure Code Act. In the absence of a compounding agreement, the Tribunal cannot state that the applicant was not liable to pay any interest and fine. If the applicant voluntarily disclosed its offences, there is no explanation as to why it did not enter into an agreement to compound the offence. The process of disclosure is completed by entering into an agreement to compound the offence and not submitting an audit report. The applicant did not fulfil the requirements under S. 66 of the Tax Procedure Code Act. It did not complete the process. Therefore, the Shs. 16,178,859,478 collected by agency notices as penalties was justified and the Tribunal cannot waive the penal tax which is done by the compounding agreement.

The Tribunal notes that the Tax Procedures Code (Amendment) Act 2020 S. 40 waived any interest and penalty outstanding as at 30<sup>th</sup> June 2020. Therefore the outstanding penal tax of Shs. 38,519,395,682 was waived by law. The said Section came into force after the respondent had issued the management letter. Therefore the management letter

has been overtaken by events. There is no evidence that the respondent insists on collecting it.

Taking all the above into consideration, this application is dismissed with costs.

Dated at Kampala this                      day of                      2022.

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

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**DR. STEPHEN AKABWAY**  
**MEMBER**

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