

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION 104 OF 2021**

**MINGDONG GLOBAL INVESTMENT LIMITED..... APPLICANT**  
**VERSUS**  
**UGANDA REVENUE AUTHORITY .....RESPONDENT**

**BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MR. SIRAJ ALI**

**RULING**

This ruling relates to an application challenging a Withholding Tax (WHT) assessment of Shs. 177,600,000 arising from the purchase of land by the applicant.

The applicant purchased 10 acres of land at Namanve Industrial Park. The respondent carried out a return examination on the applicant and raised an income tax assessment of Shs. 177,600,000 on ground of failure to withhold tax on purchase of a business asset. The applicant contends that the actual price it paid was US\$ 200,000 and WHT should be on the actual price paid. The applicant objected and the respondent disallowed the objection.

The following issues were agreed upon for determination by the tribunal.

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

The applicant was represented by Mr. Bernard Olok while the respondent by Ms. Charlotte Katuntu.

This dispute relates to what the actual value was paid on purchase of land and the amount that should have been paid as WHT.

The applicant's first witness, Ms. Xue Wenjun, its officer, testified that the applicant deals in general trade, warehousing and storage. On 1<sup>st</sup> November 2020, the applicant

purchased 10 acres of land comprised in LRV 4657 Folio 22 Plot 3352 at Namanve Industrial Park. The applicant paid Shs. 43,752,000 as WHT for the purchase of the said land. The applicant completed payment of the purchase price in July 2021. The respondent raised an assessment of Shs. 177,600,000 based on the Chief Government Valuer's valuation of 2,960,000,000 and disregarded the actual amount paid by the applicant. The applicant contends that it paid WHT despite the seller having a WHT exemption. The applicant paid WHT after the respondent had assessed WHT.

The applicant's second witness, Ms. Lin Yu, the managing director of Double Q Company Limited testified that her company entered into a lease agreement with Uganda Investment Authority. According to the agreement, her company was exempted from tax in a bid to attract and promote investment in Kampala Industrial and Business Park. On 29<sup>th</sup> June 2020, the company became a registered proprietor of land comprised in Kyadondo Block 236 Plot 3352 at Namanve. On 1<sup>st</sup> November 2020, the applicant purchased the land from her company. He stated that the applicant paid Shs. 43,752,000 as WHT plus interest of Shs. 695,657.

The respondent's witness Ms. Amony Eunice Kalimaido, an officer in its Objections, Domestic tax department, testified that a return examination on the applicant revealed that the latter purchased property worth Shs. 2,960,000,000 from Double Q Company Limited. On 24<sup>th</sup> March 2021, the respondent raised an assessment of Shs. 177,600,000 on the applicant for failure to pay WHT. The applicant objected to the assessment and the respondent disallowed the objection. She stated that the applicant never objected to the stamp duty assessed based on the Government valuer's valuation. The applicant's bank statement did not bear payments by the applicant to the seller. The applicant did not provide payment of the purchase price. She testified that parties to a transaction may agree on a value which may not be the same as that of the Chief Government Valuer.

The applicant submitted that the respondent based its assessment on Shs. 2,960,000,000 which was declared by the Chief Government Valuer as the value of the land for payment of stamp duty to effect transfer of property. The applicant argued that this is contrary to S.1182(B) of the Income Tax Act which provides that a person who purchases a business shall withhold at a rate specified in Part VIII of the Third

Schedule which provides for 6% of the gross payments. The applicant submitted that gross payments are not defined in the Act. It submitted that Black's Law Dictionary defines payment as the performance of an obligation by delivery of money or some other valuable thing accepted in partial or full discharge of an obligation. The applicant cited *Cape Brandy Syndicate v IRC* (1921) 1 KB 64 where Rowlatt J stated "In a taxing Act, one has to look merely at what is clearly stated." It also cited *Parlington v Attorney General* 21 where the court stated if the person sought to be taxed comes within the letter of the law, he must be taxed. If the crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free. The applicant further cited *Hullett and Sons Ltd. v Resident Magistrate Lower Tugela* 1912 AD 760 where the court stated that "but in a taxing statute the proper course is, in cases of doubtful construction, to give the benefit of the doubt to the person sought to be charged."

The applicant contended that it paid US\$ 194,000 by cash to Double Q Company Limited which issued receipts. The applicant's witness testified that the payment of the purchase price was made in seven instalments. The applicant submitted that the respondent did not present evidence of any other mode of payment. It also submitted that the respondent's witness admitted that it is possible for parties to agree on a value different from the one declared by the Chief Government Valuer. The applicant also submitted that the respondent assessed and demanded WHT before the due date. The applicant submitted that under S. 123 of the Income Tax Act payment of WHT should be after the end of the month in the which the payment subject to WHT was made by the Withholding agent. The respondent assessed Shs. 171,037,200 before payment of the purchase price was completed by the former. The applicant further submitted that the respondent wrongly assessed the applicant without considering the gross payments by the applicant to Double Q Company Ltd.

In reply, the respondent submitted that the applicant is liable to pay Shs. 177,600,000 as assessed. The respondent submitted that the tax assessed was based on a stamp duty certificate which had the value of the land at Shs. 2,960,000,000. The respondent contended that S. 16(4) of the Tax Appeals Tribunal Act provides that an applicant is unless where the Tribunal orders limited to the grounds stated in the objection to which the decision relates. The lease agreement between Double Q Company Limited and

Uganda Investment Authority was not part of the objection. The respondent prayed that the Tribunal disregards it.

The respondent further contended that the sale agreement between the applicant and Double Q Company Limited did not have evidence of payment of stamp duty nor being registered. The applicant did not object to payment of stamp duty assessed. The respondent further submitted that the applicant's bank statements did not have evidence of the payment of the purchase price of US\$ 200,000. The applicant did not provide payment of the purchase price. The respondent further submitted that the receipts the applicant tendered in were inconsistent.

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

The applicant purportedly purchased 10 acres of land comprised in LRV 4657 Folio 22 Plot 3352 at Namanve Industrial Park from Double Q Company Limited for US\$ 200,000. It is not in dispute that the land sold was a business asset. What is in dispute is whether the applicant withheld the proper tax. The applicant paid Shs. 43,752,000 as WHT. The respondent raised an assessment of Shs. 171,600,000 based on the Chief Government Valuer's valuation of Shs. 2,960,000,000

The law relating to WHT is under S. 118B(2) of the Income Tax Act which provides that 'a resident person who purchases a business or business asset shall withhold tax at a rate specified in Part VIII of the Third Schedule.' Part VIII of the Third Schedule provides under Paragraph 3 that "the withholding tax rate for purposes of S. 118B(2) is 6% of the gross payment." The parties do not seem to agree on what is the gross payment.

The applicant tendered in a sale agreement dated 1<sup>st</sup> November 2020 which states that the vendor sold the suit property for US\$ 200,000. The respondent contends that at the time it raised the WHT assessment of Shs. 171,600,000 on 22<sup>nd</sup> July 2021 the applicant had not paid WHT. The applicant paid WHT of Shs. 6,562,800 and Shs. 37,189,200 on 7<sup>th</sup> July 2021 and 2<sup>nd</sup> September 2021 respectively.

The respondent contends that the sale agreement by the applicant was an afterthought after the former had raised its assessment of Shs. 171,600,000. It contended that the applicant did not pay stamp duty.

The Tribunal has to determine whether payment of stamp duty is crucial. S. 32 of the Stamp Duty Act 2014 states:

“(1) An instrument chargeable with duty shall not-

- a) Be admitted in evidence for any purpose by a person who has by law or consent of the parties authority to receive evidence: or
- b) Be acted upon, registered, or authenticated by a person, or by a public officer, unless the instrument is duly stamped.”

The said Section is twofold. Firstly, an instrument cannot be admitted as evidence. The applicant does not deny that it did not pay stamp duty. It means the Tribunal cannot allow a sale agreement where no stamp duty has been paid as admissible in evidence. Secondly, the sale agreement cannot be acted upon by a public officer unless it is duly stamped. Since the applicant did not pay stamp duty the respondent was justified not to act upon or consider it. In *Cosmic Investments v Uganda Revenue Authority* Application 54 of 2020 the Tribunal noted that “The intention of Parliament was that if a party does not pay stamp duty on a document, then he should not rely on it in court, nor should a public officer act on it.” Therefore, the assessment raised and paid by the applicant basing on an instrument not duly stamped did not have any legal basis before the Tribunal or a public officer.

At the time the applicant paid the whole stamp duty, the respondent had raised an assessment. The applicant had not availed the sale agreement to the respondent. In any case, even if it had availed the agreement to the respondent, it would not have been considered as the applicant had not paid stamp duty. In the absence of a duly registered instrument the respondent had the discretion to reach at the correct tax payable. In *Gakou and Brothers Enterprises limited v Uganda Revenue Authority* Application Nos. 109 and 113 of 2019 the Tribunal stated that “The law does not provide how the Commissioner may reach at what the correct tax a tax payer must pay. In *Tembo Steels (U) Ltd v Uganda Revenue Authority* Civil Appeal 77 of 2011 Justice Kakuru stated that:

"... The law does not specify the methods the Commissioner General must use. Therefore, the Commissioner General is at liberty to use any method of assessment he or she considers desirable or justifiable on the basis of the best information available to him..."

Since the applicant did not provide information as to the correct stamp duty payable, the respondent used the Chief Government valuer's assessment to obtain a correct valuation of the land. During the hearing the respondent's witness stated that the value by the Chief Government valuer does not have to be that agreed by the parties. In this case, the respondent and the tribunal have disregarded the purported purchase price stated in the sale agreement as it is inadmissible due to failure to pay stamp duty. The only valuation remaining is that of the Chief Government Valuer.

Without prejudice, the tribunal notes that the applicant purchased 10 acres of prime land at Namanve Industrial park for US\$ 200,000 in November 2020. At the exchange rates then prevailing this amounted to Shs. 736,600,000. The value given to the said land by the Government Valuer is Shs. 2,960,000,000 for 10 acres of the same land. The disparity between the value given by the applicant and that arrived at by the Government Valuer is too wide to be ignored. While it is appreciated that parties have the freedom to enter into contracts, the purchase price stated by the applicant is too low as to raise doubts as to whether the sum of US\$ 200,000 was the actual purchase price. In the American decision of *Tyler et UX v. Black* 54 U.S 230 (185), the court cited with approval the following excerpt from *Osgood v Franklin*, 2 Johns. Ch.1.

"Although it may be impossible, by any general proposition, to define what is to be understood by gross inadequacy of consideration, as it must, in a great measure, depend upon the circumstances of each individual case in which the question may arise, yet if it be so gross and palpable, it may of itself afford evidence of actual fraud ..."

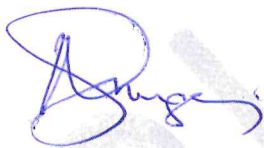
What is apparent from the evidence before us is that the applicant purchased the land in question for a different price but inserted the sum of US\$ 200,000 in the transfer form so as to reduce the amount of stamp duty payable upon the transfer of the land. In *Betty Kizito v David Kizito Kanonya & others* SCCA 8 of 2018, the Supreme Court cited with approval the following excerpt from *Samuel Kizito Mubiru & Another vs. G.W. Byensiba & Another* HCCS No. 513 of 1982.

“A buyer is not a bona fide purchaser where he inserts a lesser figure on the transfer form as consideration when he actually paid more in order to defraud government of revenue. The mode of acquisition becomes tainted with fraud and illegality...”

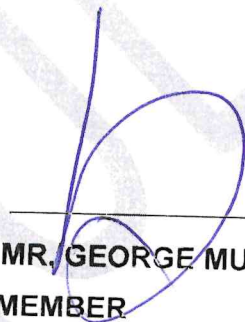
Relying on the above decisions we are not persuaded that the purchase price set out in the agreement of sale was the actual purchase price. Further there is no evidence adduced by the applicant to show that the valuation by the Chief Government Valuer was arrived at improperly or without justification so that the Tribunal should not rely on it. S. 18 of the Tax Appeals Tribunal Act places the burden of proof on a taxpayer to show that an assessment is excessive or that the respondent ought to have reached the decision differently. The applicant has not discharged this burden.

The Tribunal notes that the respondent raised a WHT assessment of Shs. 177,600,000. The applicant paid WHT of Shs. 43,752,000. Therefore, the applicant should pay the balance of Shs. 133,848,000. The applicant should also pay the costs of the application to the respondent. We so order.

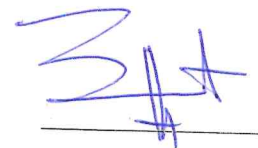
Dated at Kampala this 16<sup>th</sup> day of November 2022.



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



**MR. GEORGE MUGERWA**  
**MEMBER**



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