

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 021 OF 2022**

**1. SAMUEL EJIDRA**

**2. EZALE ALI =====APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY =====RESPONDENT**

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

**RULING**

This ruling is in respect of an application challenging the seizure by the respondent of the 1<sup>st</sup> applicant's motor vehicle and the 2<sup>nd</sup> applicant's goods.

The 1<sup>st</sup> applicant was the owner of motor vehicle UAP 183H while the 2<sup>nd</sup> applicant was the consignee of goods that were seized by the respondent while being transported in the vehicle. On 3<sup>rd</sup> December 2021, the 1<sup>st</sup> applicant's vehicle was impounded by the respondent at Elegu customs post. The goods and the vehicle were released to the applicants upon the payment of taxes and penalties. The taxes and penalties are disputed by the applicants.

During scheduling the following issues were set down for determination.

1. Whether the taxes and penalties paid were proper?
2. Whether the vehicle and goods were lawfully kept by the respondent?
3. Whether the applicant's complaint discloses a cause of action and is proper before the tribunal?
4. What remedies are available to the parties?

The applicants were represented by Mr. Bernard Olok and Ms. Nalugya Haifa while the respondent by Mr. Sam Kwerit.

The applicants' first witness, Mr. Okuma Swadik testified that the 1<sup>st</sup> applicant was the owner of motor vehicle UAP 183H, which was unlawfully detained by the respondent while the 1<sup>st</sup> applicant was the consignee of the goods being transported in the said motor vehicle. The witness testified that the goods comprised of dried fish, Big G bubblegum, Colgate, powdered milk, and medicine from South Sudan for delivery in Arua. He testified that the respondent seized the 2<sup>nd</sup> applicant's goods without issuing a seizure notice to the applicants as required under the law. It was the witness' testimony that upon seizure of the goods and the vehicle the applicants made an appeal to the Commissioner Customs for the motor vehicle to be released on compassionate grounds. On 13<sup>th</sup> January 2022, the Commissioner customs issued a letter releasing the motor vehicle. The letter was ignored. The 1<sup>st</sup> applicant was issued a penal tax of Shs. 15,355,774 but contended it was unlawful since he was not the owner of the goods. The 1<sup>st</sup> applicant eventually paid Shs. 17,462,199 and a further penalty of Shs. 3,572,580. The witness testified that the payment of the taxes did not follow the compounding of offences as required under the law. The goods were released by a letter of 3<sup>rd</sup> January 2022 upon payment of taxes and penalties. However, the vehicle was not allowed to exit until 1<sup>st</sup> February 2022 after the applicants had filed an application challenging the continued detention of the truck and the goods. He stated that the applicants were aggrieved by the conduct of the respondent who did not compound the offence and levied customs duty and penal tax on the wrong taxpayer. The 1<sup>st</sup> applicant lost business estimated at Shs. 35,200,000 computed at Shs. 8,800,000 per week for 28 days while the truck was under detention.

The applicants' second witness, Mr. Zaidini Khuzafa Kemis, the turnboy of the impounded vehicle testified that the vehicle was impounded at Elegu customs post. He witnessed the 2<sup>nd</sup> applicant record his statement after the seizure of the goods. He followed up the payment of the taxes and the penalty together with Okuma Swadik. The release order was issued on 3<sup>rd</sup> January 2022. Lt. Colonel. Nkunda, declined to give the vehicle to the 1st applicant. He testified that the vehicle operated between Arua and Juba. It would make Shs. 4,000,000 per trip every week. The vehicle would also carry

60 bags of sweet potatoes at a cost of Shs. 80,000 per bag. The 1<sup>st</sup> applicant would earn Shs. 19,200,000 per month.

The respondent's first witness Mr. Enock Miiro, a supervisor in its enforcement division, customs department testified that the 1<sup>st</sup> applicant is the owner of a motor vehicle UAP 183 while the 2<sup>nd</sup> applicant the consignee of goods seized by the respondent. The goods, fish and assorted medicine which were in the vehicle were seized by the respondent. On 12th December 2021, the respondent issued a seizure notice which were signed by the applicants. On 13<sup>th</sup> December 2021, Ms. Sukole Regina Pita Anderia, a South Sudanese claimed the dried fish which was handed over to her. The respondent issued assessments for taxes and penalties which the applicants paid.

The respondent's 2<sup>nd</sup> witness, Mr. Kato Boaz, an officer in its custom's department confirmed that the 1<sup>st</sup> applicant was the owner of motor vehicle UAP 183H which was impounded by the respondent for transporting uncustomed goods. The 2<sup>nd</sup> applicant was the consignee of the goods. On 3<sup>rd</sup> December 2021, the goods were impounded at Elegu on the ground that they had not been cleared according to customs laws and procedures. On 7<sup>th</sup> December 2021, a verification exercise revealed the undeclared goods as 1,410 kilograms of fish, medicine, 6 cartons of assorted cigarettes, shisha, powdered milk and assorted items. On 12<sup>th</sup> December 2012, the respondent issued seizure notices for the motor vehicle and the goods. A general inquiry file was opened by the respondent. On 31<sup>st</sup> December 2021, on the settlement of the offence and upon the payment of taxes by the 1<sup>st</sup> applicant, the goods were released except for the medicine which was deposited in the customs warehouse because it was a restricted item that can only be released upon clearance from the National Drugs Authority. The witness clarified that the motor vehicle was impounded in Elegu but the goods were seized at Nakawa. The witness clarified that the fish was seized because its weight had been under-declared. The witness clarified that the tax assessment was issued to the 1<sup>st</sup> applicant. The taxes and penalties in respect of the goods was paid and the goods released. The witness stated that the goods were released on 1<sup>st</sup> February 2022 because there was nobody to hand them over to before that date.

The applicants submitted that the 1<sup>st</sup> applicant was the owner of motor vehicle UAP 183H which was unlawfully detained by the respondent with goods belonging to the 2<sup>nd</sup> applicant. The vehicle was impounded by the respondent on 3<sup>rd</sup> December 2021 at Elegu customs post on the ground that the goods had been under-declared. The applicants did not sign the seizure notices. On 14<sup>th</sup> December 2021 the applicants appealed to the Commissioner Customs for the release of the motor vehicle and the goods on compassionate grounds. The Commissioner Customs did not respond to their appeal within 30 days as required under the law. The applicants notified the Commissioner in writing that since no response had been received in respect of the appeal, it had been allowed. The Commissioner did not comply with the decision and the applicants filed the application for the release of the motor vehicle and the goods. The applicants submitted that they paid penal taxes of Shs. 17,464,499 and Shs. 15,358,074.

The applicants submitted that it was unclear under which provisions of the law the penal taxes had been paid by the 1<sup>st</sup> applicant. The respondent did not adduce evidence to show how it assessed customs duty. The applicant submitted that because the taxes were lumped together, they were paid by the 1<sup>st</sup> applicant instead of the 2<sup>nd</sup> applicant. The proper party to pay the taxes was the 2<sup>nd</sup> applicant. The penal taxes must be levied on the party who has committed the offence and that it was illegal to penalize the applicant for offences committed by the 2<sup>nd</sup> applicant who did not request for the compounding of the offence in respect of his goods as a consignee.

The respondent did not adduce evidence to show how the taxes and penalty were arrived at nor present any tax computation sheet showing the tax base and the relevant rate of duty in respect of each item seized. Citing S. 229 of the East African Community Customs Management Act (EACMMA) the applicant submitted that there was no rationale for charging any penal tax. The appeal was lodged on 14<sup>th</sup> December 2021 and by 13<sup>th</sup> January 2022, the Commissioner had not yet responded. Under S. 229(5) of the EACMMA the Commissioner is deemed to have allowed the appeal. The 2<sup>nd</sup> applicant requested for a caution because he was remorseful. The respondent ignored

this appeal and proceeded to levy an illegal penal tax on the 1<sup>st</sup> applicant. The applicant submitted that settlement of offence did not mention of any offence except S. 200 and 202 of the EACCMA. The applicants submitted that the 1<sup>st</sup> applicant was coerced into signing the offence settlement on the promise that his motor vehicle would be released, and he did not understand what he was signing. The applicants submitted the respondent did not make a compounding order in respect of the alleged offences.

The respondent submitted that the dispute before the tribunal was whether it lawfully seized the goods and vehicle of the applicants and released them to the applicant upon payment of the taxes and penalties. It submitted that it lawfully levied the taxes and upon payment released the applicants' goods and vehicle. It submitted further that the application did not disclose a cause of action. To prove a cause of action, the applicants had to prove that they had sole right to the goods and the vehicle, that its right had been violated, that the respondent is liable for the loss of the goods resulting in economic loss.

The respondent submitted that it was the obligation of each citizen to pay tax. Tax authorities are duty bound to collect revenues. It cited the Supreme Court decision of *Uganda Revenue Authority v. Siraje Hassan Kajura* Civil Appeal 09/2015. The respondent also submitted that it seized the vehicle and goods within the ambit of the law and did not violate the rights of the applicants. It cited S. 199 and S. 200(d) of the EACCMA which deals with the means of conveyance which penalty for a person found with uncustomed goods respectively. The applicants were in possession of uncustomed goods, which it seized and kept in its custody as mandated by law. The applicants had failed in its pleadings to show the right that it enjoyed which was violated.

The applicants had not declared 1,410 kgs of fish, assorted medicine, cigarettes and shisha, powdered milk, and other assorted items. On 12<sup>th</sup> December 2021, the respondent issued seizure notices for the truck, dry fish, and uncustomed goods, which were signed for by the applicants on 13<sup>th</sup> December 2021. The respondent submitted that the tax paid by the applicants were lawfully levied. The goods seized from the

applicants were uncustomed and prohibited goods which attracted tax. The applicants acknowledged their duty to pay the taxes when they requested for settlement under S. 219(2) of the EACCMA. The respondent compounded the offence and issued assessments which the applicant paid and the goods were released on 3<sup>rd</sup> January 2022. Citing *Opia Moses v Chukia Lumago*, the respondent submitted that the 1<sup>st</sup> applicant, Samuel Ejidra, is estopped from denying that he signed the Request for Settlement of Case form due to coercion from the respondent.

The respondent submitted that the goods and the vehicle were lawfully detained by it. The EACCMA grants it powers to seize and detain any vessel used in contravention of the law. The respondent's witness, Mr. Boaz Kato testified that the vehicle was found to possess uncustomed and prohibited goods and restricted goods and were impounded in Elegu and seized under Sections. 200, 202, 203 of EACCMA. The seizure notices were duly issued. The goods were only released upon the settlement of the case and the payment of taxes. The respondent submitted that the first applicant had failed to adduce any evidence to prove that it had been coerced into paying the taxes and the penalty.

The respondent denied that the goods were unlawfully detained beyond 3<sup>rd</sup> January 2022. The applicants became entitled to pick the goods on 3<sup>rd</sup> January 2022 upon payment of the taxes and penalties. The goods were not picked up by the 1<sup>st</sup> applicant until 1<sup>st</sup> February 2022. The 1<sup>st</sup> applicant did not adduced evidence to prove that access to the goods was denied to him. The goods were released on 3<sup>rd</sup> January 2022 because there was nobody to whom the goods could be handed over. The respondent denied that the goods were released to a Sudanese woman without the authorization of the 2<sup>nd</sup> applicant. The respondent stated that the goods had different owners, one of whom was Sukole Regina Pita Anderia who was able to prove ownership of the fish by proof of a cargo manifest in her names, her identification and an affidavit

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

Before this matter is decided on merits there is a preliminary matter that must be determined. The 1<sup>st</sup> applicant was the owner of motor vehicle UAP 183H while the 2<sup>nd</sup> applicant was the consignee of goods that were seized by the respondent. None of the applicants appeared in the Tribunal for hearing. Evidence was given by Okuma Swadik. He claimed that he was a holder of power of attorney for the 2<sup>nd</sup> applicant. The said power was not attached to the application, nor was it tendered in court as an exhibit. There was no person who held powers of attorney for the 1<sup>st</sup> applicant. The assessments were issued against the 1<sup>st</sup> applicant who has the locus standi to challenge. The respondent submitted that the seizure notices were issued against the applicants. It needs the applicants personally to appear in the Tribunal and deny the service of the seizure notices on them. The 1<sup>st</sup> applicant did not appear in court to testify on his case nor deny receipt of the seizure notices. On that ground, alone the case by the 1<sup>st</sup> applicant is dismissed. He had no interest in the matter. In respect of the 2<sup>nd</sup> applicant, Mr. Okuma Swadik did not tender the power of attorney. He does not have locus stand to represent the 2<sup>nd</sup> applicant. The Tribunal does not know him. His evidence on the seizure notices is hearsay. He was not party to the seizure. Since the 2<sup>nd</sup> applicant did not appear in court, his case was not set out. On this ground the application is dismissed. The applicants having admitted the offences and paid the taxes, they seem to have lost interest in the matter.

Without prejudice to the above dismissal, the Tribunal will discuss some of the issues that were brought on merit.

The first matter for determination is whether the Commissioner Customs was deemed to have made a decision allowing the application for a review. The applicant submitted that they appealed to the Commissioner Customs in a letter of 14<sup>th</sup> December 2021 for the release of the vehicle and the goods on compassionate grounds. By 13<sup>th</sup> January 2022, the Commissioner had not yet communicated its decision to the applicants. The applicants submitted that under S. 229(5) of the EACCMA, where the Commissioner has not communicated his or her decision to the person lodging the application for

review within the time specified the Commissioner shall be deemed to have made a decision to allow the application.

The letter written by the applicants, exhibit A1, has been reproduced in its entirety for ease of reference

“14/12/2021  
Commissioner Customs Department  
Uganda Revenue Authority  
P.O Box 7279 Kampala

Dear Sir,

**APPEAL FOR RELEASE OF MOTOR VEHICLE REGISTRATION NUMBER UAP 183H BELONG TO SAMUEL EJIDRA AND FOR RELEASE OF SEIZED GOODS.**

We refer to the above matter.

We represent Samuel Ejidra the owner of the motor vehicle mentioned above and Ezale Alli the consignee of the goods.

The motor vehicle was hired from the owner who is based in Arua City by the owner of the goods. The goods comprise a consignment of fish, Big G bubblegum, Colgate, powdered milk and medicine from South Sudan for delivery to Arua City.

We are informed that the vehicle was seized on the 3<sup>rd</sup> December 2021 and no reasons were given in writing for the same to the owner of the goods nor the owner of the motor vehicle.

We appeal to your office for release of the motor vehicle on compassionate grounds that the owner of the vehicle was not involved in any offence leading to the seizure of the motor vehicle and its contents.

Secondly, we appeal to you to pardon the owner of the goods under offence settlement provisions in the law and release the goods to him upon such conditions as you the Commissioner may deem fit. If not to release the goods to the owner and issue a caution since the owner of the goods is remorseful and has told me he will never be involved again in the commission of any customs offence.

We appeal to you to kindly have lenience on the owner of the motor vehicle as well as the owner of the goods. The motor vehicle is the source of livelihood for the family and the owner of the goods as at a high risk of losing his entire capital and the family will suffer gravely.

We shall await to hear from you as soon as practicable”

S. 229 of the EACCMA states:



- “(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.
- (2) The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged...
- (4) The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.
- (5) Where the Commissioner has not communicated his or decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application.
- (6) During the pendency of an application lodged under this section the Commissioner may at the request of the person lodging the application release any goods in respect of which the application has been lodged to that person upon payment of duty as determined by the Commissioner or provision of sufficient security for the duty and for penalty that may be payable as determined by the Commissioner.”

Under S. 229(1) an aggrieved party, on an omission of the Commissioner or his officer on matters relating to customs must lodge an application to him for the review of the omission.

The question which arises from a perusal of the law and the letter reproduced above is what effect does a settlement of an offence have on the requirement by the Commissioner to communicate his or her decision within 30 days under S. 229 (4). A perusal of exhibits R3(1) and R3 (2) shows that on 31<sup>st</sup> December 2021, during the pendency of his review application to the Commissioner Customs, the first applicant signed a Request for Settlement of Case form in respect of Case C35/12/2021-5655 and C35/12/2021-5656. In signing the said forms the first applicant admitted to having contravened S.199 and Ss. 200 and 202 of the EACCMA and proceeded to pay the requisite penalty as determined by the respondent. S. 199 of the EACCMA states as follows.

“A master of any aircraft or vessel, and any person in charge of a vehicle, which is within a Partner State and –

- a) Which has any secret or disguised place adapted for concealing goods, or any device adapted for smuggling goods; or
- b) Which has in it, or in any manner attached to it, or which is conveying, or has conveyed in any manner, any goods imported, or carried coastwise, or intended for exportation, contrary to this Act; or
- c) From or in which any part of the cargo of such aircraft, vessel or vehicle has been thrown overboard, destroyed or staved, in order to prevent seizure, commits an offence.”

A relevant excerpt of S. 200 states as follows:

“A person who-

- a) Imports or carries coastwise-
  - i. Any prohibited goods, whether or not the goods are unloaded; or
  - ii. Any restricted goods contrary to any condition regulating the importation or carriage coastwise of such goods, whether or not the goods are unloaded;”

S. 202 states as follows:

A person who imports or exports any goods-

- a) Which are concealed in any way.
- b) Which are packed in any package, whether or not together with other goods in a manner likely to deceive any officer;
- c) Which are contained in any package of which the entry or application for shipment does not correspond with such goods, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the value of the goods involved.”

It is relevant to note at this point that exhibit R1, which is the re-verification account states as follows under the first remark at page 10 of the joint trial bundle.

“1.The only documents presented in respect of this Box Body truck had fish as the declared item and as such all other goods found on the trucks as per the re-verification were concealed. ``

Exhibit R1 which was uncontroverted and exhibits R3(1) and R3(2) show that the first applicant had committed offences under Sections 199, 200 and 202 of the EACCMA. Having admitted to the commission of these offences, was the Commissioner of

Customs still under an obligation to communicate his or her decision to the first applicant as required under S. 229(4)? It would seem that by admitting to the offences and paying the penalties levied, the first applicant had by implication withdrawn his application for a review before the Commissioner of Customs with the result that there was no decision for the Commissioner to communicate. What about the second applicant? Exhibit A1 shows that the second applicant had admitted to the commission of certain customs offences and his application to the Commissioner was limited to seeking a pardon for the offences committed. Does an appeal for leniency arising from an admission constitute an application for a review under s. 229? S. 229 presupposes that an unlawful decision has been made and the purpose of the review is for the Commissioner to determine whether the decision has been made in accordance with the law or not. An admission that an offence was committed shows that the decision in question was made in accordance with the law and that therefore there is nothing for the Commissioner to review. It follows that the appeal for leniency by the second applicant did not constitute an application for review under S. 229 and the Commissioner was under no obligation to respond to it. Where the Commissioner omits to make a decision after 30 days under S. 229(1) an aggrieved party is supposed to lodge an application before him to review the omission which the applicants do not seem to have made. This application before the tribunal is premature.

The next issue for determination is whether the taxes and penalties were properly paid by the first applicant. The 1<sup>st</sup> applicant submitted that the obligation to pay the taxes and penalties lay on the 2<sup>nd</sup> applicant and that he was coerced by the respondent into paying the taxes and the penalties. Since both applicants did not appear in court to testify that they were coerced, the Tribunal cannot act on rumors. The assessments were issued on the 1<sup>st</sup> applicant. Before the Tribunal can determine whether the assessment can be challenged it has to determine whether there was a cause of action. The test for determining what constitutes a cause of action was set out in *Auto garage & others v Motokov* (No. 3) (1971) EA 519. The test is summarized as follows:

1. The plaintiff enjoyed a right.
2. The right has been violated.

3. The defendant is liable.

Mr. Okuma Swadik did not enjoy a right that was violated. It needed both the applicants to show how their rights were violated. The 1<sup>st</sup> applicant who is the owner of the truck did not object to the assessments. There is no objection decision. The 1<sup>st</sup> applicant signed settlement of offence forms and agreed to pay the penalties. Therefore the 1<sup>st</sup> applicant's right could not have been violated.

In respect of the detention of the goods, the Tribunal needed the evidence of the 2<sup>nd</sup> applicant who was the consignee of the goods to establish their ownership. It would be difficult for the Tribunal to say the goods belonged to the South Sudanese or any other person, in the absence of the evidence of the 2<sup>nd</sup> applicant. When the import documents show the 2<sup>nd</sup> applicant was the consignee. Since he did not testify, nor grant any visible power of attorney, he was not aggrieved. Mr. Okuma Swadik who has failed to show a power of attorney and is not an owner of any of the goods or the truck impounded cannot cry louder than the bereaved. We fail to see what right of the applicants was violated by the respondent in the absence of evidence from the applicants. We accordingly find that the application discloses no cause of action against the respondent.

For the reasons given above this application is dismissed with costs.

Dated at Kampala this                      day of                      2023

---

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

---

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

---

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