

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 17 OF 2021**

**MAKERERE UNIVERSITY RETIREMENT BENEFITS SCHEME  
LIMITED ..... APPLICANT**

**VERSUS**

- 1. UGANDA REVENUE AUTHORITY.....1<sup>ST</sup> RESPONDENT**  
**2. POKINO PROPERTIES LIMITED .....2<sup>ND</sup> RESPONDENT**

**BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE.**

**RULING**

This ruling is in respect of withholding tax assessment of Shs. 600,000,000 issued by the respondent to the applicant arising out of land purchased by the applicant.

In September 2019, the applicant purchased 50 acres of land in Kyaggwe Block 577 Plot 24 at Ssonde, Kasiriyize from Pokino Properties Limited. The applicant did not withhold tax under S. 118(2) of the Income Tax Act on the ground that the property purchased was purportedly not a business asset. On 13<sup>th</sup> December 2019, the respondent issued an income tax assessment of Shs. 600,000,000. On 16<sup>th</sup> December 2020, the applicant objected to the assessment and the respondent disallowed it.

Issues:

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

The applicant was represented by Mr. Henry Nyegenyi and Mr. Paul Kutesa while the 1<sup>st</sup> respondent by Mr. Donald Bakashaba and Mr. Sam Kwerit and the 2<sup>nd</sup> respondent by Mr. Odokel Opolot.

The applicant's first witness, Mr. Wilber Grace Naigambi a lecturer at the department of mathematics at Makerere University and a member of the board of trustees of the applicant testified that the applicant is a retirement benefits scheme which was

established under an irrevocable trust licensed under the Uganda Retirement Benefits Regulatory Authority. The applicant and the 2<sup>nd</sup> respondent executed an agreement for sale of 50 acres of land comprised in Kyagwe Block 557 Plot 24 at Kasiriyize for Shs. 10,000,000,000. The 2<sup>nd</sup> Respondent represented that its principal business was buying and selling real estate and that land sold was stock for its business. Based on the representation, the applicant paid the entire consideration. The 1<sup>st</sup> respondent wrote to the applicant stating that it should have withheld Shs. 600,000,000 on the payment of the purchase of the business asset under S. 118 B (2) of the Income Tax Act. The 1<sup>st</sup> respondent did not inquire from the 2<sup>nd</sup> respondent how the land was treated demanding WHT from the applicant.

The 2<sup>nd</sup> respondent's witness, Mr. Francis Buwule, its company secretary testified that that the 2<sup>nd</sup> respondent deals in the purchase, lease, building, developing and selling of land and property it holds as stock. He stated that the transaction between the 2<sup>nd</sup> respondent and the applicant was a sale of land in its stock of trade which is not subject to any tax.

The 1<sup>st</sup> respondent's witness, Mr. Fred Kyomuhendo, an officer in its objections and appeals unit stated that the applicant is a retirement benefits scheme comprising of staff of Makerere University Uganda. He stated that the applicant purchased the abovementioned property for Shs. 10,000,000,000 in the financial year 2019/2020. On 21<sup>st</sup> November 2019, the respondent in a management letter requested the applicant to settle a tax of Shs. 600,000,00 and Shs. 12,000,000 as accumulated interest. The assessment of Shs. 600,000,0000 was issued on the ground that the applicant did not withhold tax on the purchase of property from the 2<sup>nd</sup> respondent. The applicant objected and the objection decision was disallowed. He contended that the land was a business asset and there was no justifiable reason for the applicant not to have withheld and remitted the 6% of the sales proceeds as WHT to the 1<sup>st</sup> respondent.

The applicant submitted that S. 118 of the Income Tax Act provides that; "a resident person who purchases a business or a business asset shall withhold tax at a rate specified in part VIII of the third schedule." The applicant cited S. 2(h) of the Income Tax Act which defines a business asset to mean; "an asset which is used or held ready

for use in the business and includes any asset held for use in a business and any asset of a partnership or company". The applicant submitted that for an asset to qualify to be a business asset for purposes of property income, it must be an asset held ready for use in the business and any asset, including assets of a company or partnership. It contended that the said Section doesn't envisage a situation where the seller is in the business of buying and selling property as its principal business.

The applicant submitted that the respondent claims that the sale of 50 acres of land comprised in Kyaggwe Block 557 Plot 24 at Kasiriyize by the 2<sup>nd</sup> respondent to the applicant was the sale of a business asset. It submitted that S. 2 (ttt) of the Income Tax Act defines trading stock to include; "anything produced, manufactured, purchased or otherwise acquired for manufacture, sale or exchange, as well as consumable stores". It submitted that it is not in dispute that the 2<sup>nd</sup> respondent is in the business of acquiring land for sale. The above land was acquired by the 2<sup>nd</sup> respondent for sale and was trading stock.

The applicant submitted that S. 18(c) of the Income Tax Act defines business income to mean; "any income derived by a person in carrying on a business and includes the gross proceeds derived by a person from the disposal of trading stock". It submitted that under S. 18(4) of the Income Tax Act, a business asset does not include trading stock or depreciable asset. The applicant cited *Luwaluwa Investments v Uganda Revenue Authority* Application 39 of 2021 where the tribunal held that.

"S. 118B deals with withholding tax on property which is property income. Business income and property income are not one and the same and are treated differently under the Income Tax Act".

The applicant submitted that it was the intention of the framers of the law that income derived from the sale of an asset used in business or a one-off sale is the one that should be categorized as property income and from which tax can be withheld. The framers did not intend that where the property is stock, income tax should be withheld. It submitted that S. 46(2) of the Income Tax Act states.

"The cost of trading stock disposed of during a year of income is determined by adding to the opening value of trading stock for the year, the cost of trading stock acquired during the year and subtracting the closing value of the stock for the year".



The applicant submitted that trading stock in any business for purposes of income tax is taxable upon disposal in accordance with S. 18(1)(c) of the Income Tax Act.

The applicant submitted that the 1<sup>st</sup> respondent was not justified in appointing it to collect Shs. 600,000,000 as income tax due to the 2<sup>nd</sup> respondent from the transaction of sale of land. S. 118 B of the income Tax Act, requires a resident person who purchases a business or a business asset to withhold tax at a rate specified in part VIII of the third schedule. The applicant submitted that an asset purchased must be a business asset in the hands of the vendor at the time of purchase.

The applicant submitted that S. 128 of the Income Tax Act states.

- "a. The amount of tax withheld under this Part is treated as income derived by the Payee at the time it is withheld.
- b. A withholding agent who has withheld tax under this part and remitted the amount withheld to the commissioner is treated as having paid the withheld amount to the payee for purposes of any claim by that person for the payment of the amount withheld.
- c. Tax withheld from a payment under this part is deemed to have been paid by the payee"

The applicant submitted that it is clear that the ultimate person responsible to pay the tax withheld is the payee, who in this case is the 2<sup>nd</sup> respondent, the recipient of the payment. The applicant's duty is merely to withhold.

The applicant submitted that before the 1<sup>st</sup> respondent declares the Asset as a business asset requiring withholding of tax, it ought to examine the business affairs of the 2<sup>nd</sup> respondent, something which it did not do. During cross-examination, Mr. Fred Kyomuhendo conceded that he did not investigate the affairs of the 2<sup>nd</sup> respondent before confirming that tax was due. The applicant submitted that it is not in dispute that the 2<sup>nd</sup> respondent disclosed to it that the asset sold was part of its stock in trade and therefore would be treated as such for purposes of tax. The fact that the asset sold was declared as stock in trade by the 2<sup>nd</sup> respondent whose affairs the 1<sup>st</sup> respondent did not investigate inevitably means that the 1<sup>st</sup> respondent is not justified in assessing the applicant for failure to withhold on the alleged sale of a business asset. The applicant submitted that the sold land was trading stock in the hands of the 2<sup>nd</sup> respondent. Such sale is not the subject of any withholding tax.

The applicant submitted that S.114 of the Evidence Act Cap 6 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." The applicant submitted that the principle was re-emphasized by Justice Lameck Mukasa in *Pan African Insurance Company (U) Ltd v International Air Transport Association* HCCS 667 of 2003 where the learned Judge 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 failure to withhold tax was based on the representation of the 2<sup>nd</sup> respondent regarding the land was stock. The 2<sup>nd</sup> respondent cannot turn around and ask the applicant to pay the tax it didn't withhold. The 2<sup>nd</sup> respondent took benefit of the representation and was paid the entire purchase price for the land. Bearing in mind the principles in S.128 of the Income Tax Act, that the 2<sup>nd</sup> respondent is the ultimate tax payer.

The applicant cited S. 124(1) of the Income Tax Act, where a withholding agent fails to withhold tax and make payment to the Commissioner, he becomes entitled to recover the money from the payee.

In reply, the respondent submitted that S. 1188 (2) of the Income Tax Act (ITA) provides that; "A resident person who purchases a business or business asset shall withhold tax at a rate of 6% on the gross payments made". It submitted that in this case the applicant is a resident person who purchased a business asset and thus ought to have withheld tax on the gross payments made for the transaction. S. 124 of the Income Tax Act requires a WHT agent who fails to withhold tax to be personally liable to pay the tax which has not been withheld. Since the applicant did not withhold any tax on purchasing the property, it is liable to pay the WHT of Shs. 600,000,000 assessed.

**The respondent submitted that S. 1188 (2) of the Income Tax Act states 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." Under Part VIII of the Third Schedule, the WHT rate for purposes of S. 118B (2) is 6% of the gross payment. The respondent cited *Luwaluwa Investments Limited v URA* HCCA 43 of 2022. It submitted that a person is defined in S. 2 (yy) of the Income Tax Act to include an individual, a partnership, a trust, a company, a retirement fund, a government, a political subdivision of a government and a listed institution. S. 2(hhh) of the ITA defines a resident person to mean a resident individual, resident company, resident partnership, resident trust, resident retirement fund, the Government of Uganda or a political subdivision of the Government of Uganda.

The respondent submitted that according to S. 11(a) of the Income Tax Act, a trust is a resident trust for a year of income if it is established in Uganda, or at any time during the year of income, a trustee was a resident person or the trust has its management and control exercised in Uganda at any time during the year of Income. It is not in contention that the applicant is a resident person. Indeed, the applicant in its submissions states that it is established under irrevocable trust with effect from 1<sup>st</sup> April, 2009 and is licensed with URBRA. The applicant is therefore a resident person for purposes of the Income Tax Act, specifically S. 118.

The respondent submitted that it is not in dispute that the applicant, being a resident person, purchased property from the 2<sup>nd</sup> respondent. It submitted that according to *Black's Law Dictionary*, the word "sale" connotes 'transfer of property or title for a price' whereas the word "purchase" connotes 'the act or an instance of buying' and 'the acquisition of real property by one's own or another's act rather than by descent or inheritance'. The respondent submitted that in *Heritage Oil and Gas Ltd vs. Uganda Revenue Authority* Application 26 of 2010 the tribunal had to determine whether there was a purchase of interest in oil blocks. The tribunal noted that;

"Before the Tribunal can address the issue of tax liability it shall first ascertain what was sold to Tullow. What was sold can only be ascertained by looking at the four corners of the pages comprised in the Sale- Purchase Agreement. Article 2.1 of the SPA provided that; -Subject to the terms and conditions of this Agreement, the Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller for the Consideration set out in Article 3.1 the Assigned Interest with effect from and Including the Closing Date.... The Tribunal notes that the assessment was issued after the Sale



and Purchase Agreement had been signed. It is not disputed that the transaction was eventually consummated by payment of consideration."

The respondent submitted that a sale and purchase agreement is convincing evidence to the nature of the transaction between the parties. The applicant entered into an agreement for sale of land between itself and the 2<sup>nd</sup> respondent for the purchase of 50 acres of Land for land comprised in Freehold Register Volume 93 Folio 18, Kyaggwe Block 577, Plot No. 24 situated at Kasiyirize Sonde. A consideration of Shs.10,000,000,000 was paid. The applicant further admitted that

"In September, 2019, MURBS purchased 50 acres of land comprised in Kyaggwe Block 557 Plot 24 at Kasirize from Pokino Properties Limited for the sum of Shs. 10,000,000,000..."

This consideration consummated the sale-purchase agreement. The 2<sup>nd</sup> respondent's witness admitted that it received all the money as per the agreement.

The respondent submitted that S. 2(h) of the Income Tax Act defines a business asset to mean; "an asset which is used or held ready for use in a business and includes any asset held for sale in a business and any asset of a partnership or company". It submitted that the asset does not have to fall within all the categories thereunder before it is considered as a business asset. It cited *Comfort Homes (U) Ltd v Uganda Revenue Authority* Application 66 of 2020 where the Tribunal stated

"In construing the term business asset as under S.2(h), it must be established, either:

- a) That the land in question was an asset which was being used in a business, or
- b) That the land in question was an asset held ready for use in a business, or
- c) That the land in question was an asset held for sale in a business, or
- d) That the land in question was an asset of a partnership or a company".

The respondent submitted that *Black's Law Dictionary* defines an asset as "An item that is owned and has value." This definition has been cited with approval in *Vivo Energy Uganda Limited v. Uganda Revenue Authority* Application 29 of 2017. The respondent submitted that in *Luwaluwa Investments v Uganda Revenue Authority* (supra) the High Court held that "An asset is held ready for use in a business if it is available to be put to use in the business. In *Niranjan Chandra v Commissioner of Income Tax* 1963 49 ITR 177, the court considered whether idle assets were being "used for the purposes of the business".

The respondent submitted that the suit property was an asset as it was an item that was owned and had business value. Under S. 2(h) of the Income Tax Act, an asset can be classified as a business asset if the asset is owned by a partnership or company. From the facts at hand, the 2<sup>nd</sup> respondent owned the land. The sale-purchase agreement shows the 2<sup>nd</sup> respondent as registered proprietor. The respondent submitted that it is trite law that a person named on a certificate of title as a proprietor of land is the owner thereof. This is in line with S. 59 of the Land Act. The 2<sup>nd</sup> respondent was the owner of the land before it sold it to the applicant. The respondent submitted that the 2<sup>nd</sup> respondent is a company. S. 10(a) of the Income Tax Act provides that a company is a resident company for a year of income if it is incorporated or formed under the laws of Uganda. As a result, assets owned by it are business assets pursuant to S. 2(h).

The respondent submitted that it is trite law that in interpretation of a taxing statute, one has to merely look at what is clearly said. In the *Supreme Court case of Uganda Revenue Authority v Kajura* SCCA 9 of 2015, which cited *Cape Brandy Syndicate v Inland Revenue Commissioners* [1920] 1 KB 64 with approval stated that;

"In a taxing Act, clear words are necessary in order to tax the subject. In a taxing Act, one has merely to look at what is clearly said. There is no room for intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in it, nothing to be implied. One can only look fairly at the language used."

The respondent submitted that S. 118(2) shows that a person who purchases a business or a business asset should withhold at a rate of 6% of the purchase price. It has been established that the applicant purchased a business asset for Shs. 10,000,000,000 from the 2<sup>nd</sup> respondent. The applicant had an obligation to withhold tax in accordance with the law. S. 118(2) of the Income Tax Act states 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"

The respondent submitted that S. 127(2)(b) of the Income Tax Act provides that;

"Every amount which a withholding agent is required under this Act to withhold from payment is withheld prior to any other deductions which the withholding agent may be required to make by virtue of an order of any court or any other law."

The respondent submitted that this duty to withhold arose on the 15<sup>th</sup> day of the month in which the payment was made. The sales agreement was entered on 20<sup>th</sup> August,



2019 and payments made. The respondent cited S. 123 of the Income Tax Act which states that;

"Subject to subsection (2), a withholding agent shall pay to the commissioner any tax that has been withheld or that should have been withheld under this part within 15 days after the end of the month in which the payment subject to withholding tax was made by the withholding agent."

The respondent submitted that failure to withhold tax creates a liability on the withholding agent to pay the amount that was not withheld to the Commissioner. This is provided for under S. 124 of the Income Tax Act which states that;

"A withholding agent who fails to withhold tax in accordance with this Act is personally liable to pay to the commissioner the amount of tax which has not been withheld, but the withholding agent is entitled to recover this amount from the payee."

The respondent submitted that having found that the applicant was liable to withhold tax at a rate of 6%, the Tribunal should uphold the WHT assessment and the objection decision by the respondent and dismiss this application for lacking merit. The applicant had an obligation to withhold taxes under S. 124 of the Income Tax Act.

The respondent submitted that it is trite law that in absence of an explicit exemption, where a tax payer falls within the ambit of the law, they ought to be taxed. It cited *Siraje Hassan Kajura v. URA* (supra) where the Supreme Court concluded that. "In conclusion, the duty to pay taxes is sanctioned by the Constitution. Unless exempted, the obligation to pay income tax is mandatory." The respondent submitted that the applicant falls within S. 118B (2) and S. 124 of the Income Tax Act and therefore ought to have withheld taxes in accordance with the law.

The respondent submitted that the land in question was not a trading stock. The section that the applicant seeks to rely on as S. 18(4) is inapplicable to the facts at hand. It provides thus;

"In this Section "business asset does not include trading stock of a depreciable asset".

The respondent submitted that this provision clearly restricts the above subsection to S. 18 alone. The Section is plain, clear and unambiguous which is the literal rule. The cardinal rule of construction of Statutes is to read the Statute liberally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning.

The respondent submitted that the land in question cannot be treated as trading stock. S. 2(ttt) as;

"Trading stock includes anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange, as well as consumable stores;"

The respondent submitted that the above section clearly applies to items that can be produced, manufactured or acquired for manufacture. According to the ejusdem generis rule of interpretation, only items of a similar nature can be included in that definition. Land cannot be acquired for manufacture and land cannot be produced. The said definition cannot be extended to include land. As a result, S. 46 as cited by the applicant does not apply to the instant facts. The respondent submitted that thirdly, even if land were to be defined as stock-in-trade, the same cannot be used to exempt the applicant from WHT. The 2<sup>nd</sup> respondent did not include any of its assets as stock in its books of accounts. During cross examination, the 2<sup>nd</sup> respondent's witness was asked whether he included the land as an item of stock in his books of accounts to which he said that he was unaware. No evidence was availed to show that the respondent had the land as its stock-in-trade. The respondent submitted that the 1<sup>st</sup> respondent's witness testified that the respondent did not file any returns and a review of its tax profile revealed that it had not indicated any stock in its financial statements. The said argument cannot be relied on and is therefore inconsequential in absence of any evidence to the effect that the said land was the 2<sup>nd</sup> respondent's stock-in-trade.

The respondent submitted that much as the 2<sup>nd</sup> respondent deals in real estate, not all the property it owned was or could be categorized as its stock-in-trade. There was no evidence availed during proceedings that the respondent kept the land for trade. The objectives of the company indicate that land belonging to it would be sold at the terms determined by the Company, Paragraph 3(a) of the Memarts (p.3 of the respondent's trial bundle) indicates

"To purchase, take on lease or otherwise acquire for the purposes of the company, any estates, lands, buildings, easement or other interest in real estate and to sell, let on lease, or otherwise dispose of or grant rights in or over any real property belonging to the Company on such terms as the Company shall determine".

The sale-purchase agreement shows that the land was in the names of the 2<sup>nd</sup> respondent. For land to be ascertained as a stock-in-trade, it must be purchased for the sole purpose of resale. It contended the land was bought and registered in the

names of the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent therefore held this land as its fixed asset which, for purposes of S. 2(h) of the Income Tax Act was its business asset. There was a sale of a business asset that attracted WHT of Shs. 600,000,000.

In rejoinder, the applicant submitted that the purchased 50 acres of land did not constitute a business asset under S. 118 (b)(2) of the Income Tax Act. The applicant submitted that the 2<sup>nd</sup> respondent is a company in real estate business and that the land was acquired for purposes of sale in course of trade. It is circulating capital/trading stock it sells on a daily basis in the course of trade. The 1<sup>st</sup> respondent was not justified in assessing WHT on a sale of trading stock of the 2<sup>nd</sup> respondent to the applicant. The income derived therein constitutes business income under S. 18 of the Income Tax Act

The applicant submitted that S. 118B of the income tax act requires a resident person who purchases a business or business asset to withhold tax at a rate specified in part VIII of the Third schedule. Whether the asset purchased falls within the meaning of a business asset in the hands of the vendor. It must be a business asset in the hands of the vendor at the time of the purchase.

The applicant submitted according to S. 128 of the Income Tax Act, the ultimate person responsible to pay the tax withheld is the payee, who in this case is the 2<sup>nd</sup> respondent the recipient of the payment. The applicant's duty is merely withholding the same for payment. The applicant prayed that the Tribunal directs the 2<sup>nd</sup> respondent to refund the paid 30% to the applicant under S. 124(1) of the income Tax Act.

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

The applicant purchased 50 acres of land comprised in Kyaggwe Block 557 Plot 24 at Kasiriyize from the 2<sup>nd</sup> respondent. The respondent issued the applicant with a WHT assessment of Shs. 600,000,000 being 6% on the purchase of an asset worth Shs. 10,000,000,000 under S. 118(2) of the Income Tax Act. The respondent submitted that the applicant is a resident person who purchased a business asset and ought to have withheld tax on the gross payments made for the transaction. S. 124 of the Income



Tax Act requires a WHT agent who fails to withhold tax to be personally liable to pay the amount of tax which has not been withheld. Since the applicant did not withhold any tax upon purchasing the property, it was deemed to be personally liable to pay WHT of Shs. 600,000,000 assessed.

The applicant submitted that the transaction was not a sale of business asset but a disposal of a trading stock under S. 18(1)(c) of the Income Tax Act. It submitted that the 1<sup>st</sup> respondent was not justified in appointing it to collect Shs. 600,000,000 being income tax from the transaction of sale of land. It submitted that the ultimate person responsible to pay WHT is the 2<sup>nd</sup> respondent. The applicant further submitted that the failure to withhold tax was based on the representation of the 2<sup>nd</sup> respondent that the sold land was stock.

The requirement to withhold tax on purchases of land is set in S. 118B (2) and S. 124 of the Income Tax Act. S. 118B(2) of the Income Tax Act 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 Scheme."

S. 124 of the Act states that.

"A withholding agent who fails to withhold tax in accordance with this Act is personally liable to pay to the commissioner the amount of tax which has not been withheld, but the withholding agent is entitled to recover this amount from the payee."

Part VIII of the Third Schedule provides that "The withholding tax rate for purposes of S. 118B (2) is 6 % of the gross payment". The respondent submitted that the applicant was liable to pay WHT at a rate of 6%. The tribunal has to determine whether the applicant had an obligation to withhold taxes under S. 118B of the Income Tax Act.

The beginning point is whether the applicant purchased a business asset where it ought to have withheld taxes. The 2<sup>nd</sup> respondent who sold the suit land to the applicant contended that the property sold was not a business asset but its stock in trade. S. 2(h) of the Income Tax Act defines a business asset to mean; "an asset which is used or held ready for use in a business and includes any asset held for sale in a business and any asset of a partnership or company". It is not in dispute that the 2<sup>nd</sup> respondent who sold the property to the applicant deals in real estate.

So, the issue at the root of the dispute is whether the property sold was a business asset. S. 118B(2) states that a person who purchases a business or business asset should withhold tax. S. 2(h) states that includes any asset held for sale in a business. The addition of the word business to asset means that not all assets of a company attract WHT. It is only those that are business assets. In *Cape Brandy Syndicate v Inland Revenue Commissioners* [1920] 1 KB 64 which was cited in *Uganda Revenue Authority v Kajura* SCCA 9 of 2015 and other authorities states that:

"In a taxing Act, clear words are necessary to tax the subject. In a taxing Act, one has merely to look at what is clearly said. There is no room for intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read in it. Nothing to be implied. One can only look fairly at the language used."

The word 'business' is defined under S. 2(g) to include "any trade, profession, vocation or adventure in the nature of trade, but does not include employment." It is not in dispute that 2<sup>nd</sup> respondent is in the business of real estate. The question is whether property used in its business of real estate can be deemed to be its assets? The word 'asset' is not defined in the Income Tax Act. In *Crane Bank v URA* HCT-00-CA-18 while citing *Cape Brandy Syndicate v IRA* (supra) the High court stated that.

"Where the act does not define a word or term, then the word or term must be given its ordinary literal meaning. The courts may have recourse to dictionaries, though with care."

*Black's Law Dictionary* 10<sup>th</sup> Edition p. 140 defines an asset as an "1. Item that is owned and has value." It cannot be disputed that the property sold to the applicant was in part of the business of the 2<sup>nd</sup> respondent but was it owned by it?

S. 2(h) of the Income Tax Act defines a 'business asset' as "an asset which is used or held ready for use in a business, and includes any asset held for sale in a business and any asset of a partnership or company." In business, there is what is known as stock in trade which is defined by *Black's Law Dictionary* (supra) p. 1644 as.

- "1. The inventory carried by a retail business for sale in the ordinary course of business.
2. The tools and equipment owned and used by a person engaged in a trade.
3. The equipment and other items needed to run a business."

There is that inventory that is used in the ordinary course of the business but is not in the strict sense an 'asset' of the business. If the Tribunal was to hold that business assets includes all items used in the ordinary course of business, because they are 'sold' or 'ready for sale', are to attract WHT, it would mean that the definition of 'business assets' extends to stock in trade. If the Tribunal were to hold so, it would imply that all vendors including street vendors such as tomato sellers whether they are registered or not, should start withholding tax on all goods they sell. The question is how would the respondent enforce such collection of WHT? It would create a problem of interpretation, uncertainty and implementation. This would defeat the intention and purpose of the Income Tax Act and the legislature. The definition of 'assets' in *Black Laws Dictionary* (supra) is limited to ownership and value. The ordinary meaning would imply that for an asset to be a business asset it would need to be owned by the business in the strict term of 'ownership'. It would exclude inventory for sale in the ordinary course of business. In *Crane Bank v Uganda Revenue Authority* HCT-00-CA-18-2010 Justice Kiryabwire stated that:

"The position of the law is that if any doubt arises from the words used in the statute where the literal meaning yields more than one interpretation, the purposive approach may be used, to determine the intention of the law maker in enacting of the statute."

There are 'business assets' and 'assets' of the 'business.' Therefore, there is need to distinguish between assets of a business which do not belong to the business but are part of its business operation, merchandise or trading stock to generate income and business assets which belong to the business. Assets that belong to the business (usually put in the balance sheet of the financial statement as assets of the company) is what is referred to as 'business assets.' Items or goods used for trading purposes, merchandise or ordinary course of business known as stock in trade though are used in the business, but are not owned by the business in the strict sense of 'ownership' do not comprise business assets. Business assets and stock in trade comprises assets in a business. However, it is only business assets, assets belonging to the business. and not stock in trade that attract WHT.

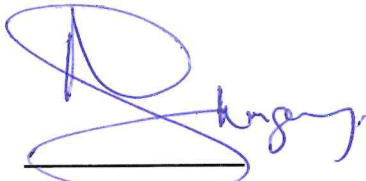
S. 2(ttt) of the Income Tax Act defines trading stock. It states that it includes "anything produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange, as well as consumable stores." The said definition is clear. Where land is



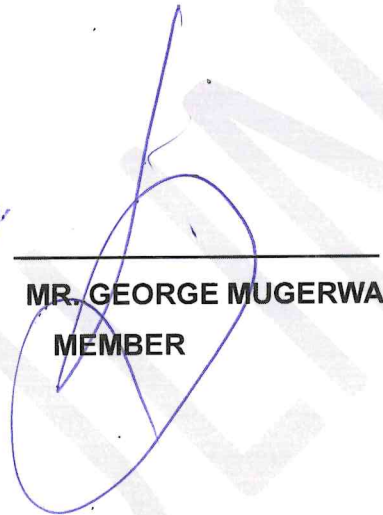
acquired for sale in the course of the business of a taxable person it become trading stock.

Since it is not in dispute that the 2<sup>nd</sup> respondent was selling a stock in trade, the applicant acted on the said representation, the applicant did not have to withhold tax. The respondent was not justified to issue a WHT assessment of Shs. 600,000,000. This application is allowed with costs to the applicant and 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent is ordered to refund 30% of the tax in dispute deposited by the applicant.

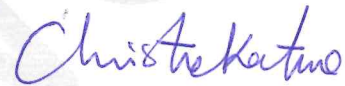
Dated at Kampala this 20<sup>th</sup> day of December 2023.



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



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



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