

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION 079 OF 2020

MUSIMTEX ENTERPRISES LTD ===== APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY ===== RESPONDENT

BEFORE: DR. ASA MUGENYI DR. STEPHEN AKABWAY MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging an additional rental income assessment of Shs. 36,753,003 issued by the respondent on the applicant on basis of information provided by RippleNami Uganda.

The applicant lets out property and imports second hand clothes. On 24th November 2021, the respondent issued an administrative amended additional assessment of Shs. 36,753,003 against the applicant for 1st July 2019 to 30th June 2020 arising from purported undeclared rental income received by the applicant from Radison Hotel Limited as per Ripplenami data. On 1st February 2022, the respondent also issued a Withholding Tax (WHT) assessment of Shs. 84,000,000. for 1st December 2022 to 31st December 2022. On 17th June 2022 and 18th June 2022, the applicant objected to both assessments. On 15th September 2022, the respondent issued objection decisions disallowing the objections. On 20th July 2023, the parties filed a partial consent settlement where the administrative default WHT assessment of Shs. 84,000,000 was maintained leaving the question of the assessment of Shs. 36,753,003 for determination by the tribunal.

Issues

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

The applicant was represented by Mr. Onesmus Mwesigwa and Mr. Ponsiano Turyamureeba while the respondent by Ms. Hilda Atusimire and Mr. Oseku Samuel.

The applicant's witness, Mr. Mpamire Rajab, its general manager testified that Radison Hotel Limited was renting three out of the four floors of the applicant's property located at Plot 87, Kyadondo Block 2 Bukesa along Hoima Road, Kampala. The applicant and Radison Hotel Limited entered into contract where the former would run a business of a hotel in the said building at a monthly rent of Shs. 3,000,000. Radison Hotel Limited became the applicant's tenant on 10th October 2019 and did not default for the duration of the tax period and made total rental payments of Shs. 24,000,000 from November 2019 to June 2020. On 24th November 2021 the respondent issued an additional income rental tax assessment of Shs. 36,753,003 for 1st July 2019 to 30th June 2020 for undeclared rental income received from Radison Hotel building based on Ripplenami data.

He testified that the applicant objected to the additional assessment on the ground that Radison Hotel Limited was a duly registered taxpayer who filed its own taxes. It had other tenants on the said property who were not part of the Radison Hotel business and had been declared in the applicant's annual return. On 26th July 2022, the respondent requested for information, which was submitted. On 15th September 2022, the respondent issued an objection decision disallowing the applicant's objection. The applicant is dissatisfied with the respondent's objection decision on the grounds that it filed its rental income tax return for the tax period in dispute and declared rent to Shs. 24,000,000 from Radison Hotel Limited which was Shs. 3,000,000 per month. The amount corresponds with that in the contract between the applicant and Radison Hotel Limited. He stated that the respondent's basis for making the assessment was Ripplenami data. The applicant had no knowledge of the source of its tax liability at the time of the assessment and during the objection period. The applicant learnt from the respondent's statement of reasons that it failed to declare rental income of Shs. 122,510,006 allegedly earned from Radison Hotel Limited. He contended that to earn Shs. 122,510,006 it should have charged Shs. 18,313,750 per month. He stated that the applicant has the right to be informed of the source of its tax liability at the time of assessment. The assessment has no basis and ought to be vacated. He stated that the assessment was purely speculative and

unreasonable. He stated the applicant had another tenant Baguma restaurant which paid Shs. 1,500,000 per month.

The respondent's witness, Mr. Josphe Semanda, an officer its objection unit testified that the respondent issued the applicant with an administrative amended additional assessment of Shs. 36,753,003. The assessment was due to undeclared rental income and disallowed expenses. The rent declared was based on a memorandum of understanding between Radison Hotel Limited and the applicant where the former paid monthly rent of Shs. 3,000,000 and 40% of residual profits as commission. He stated that it was established that Radison Hotel Limited filed a presumptive return without the declaration of the landlord and the amount paid to the landlord. It was also established further that a director of the applicant was also a director of Radison Hotel Limited. The witness stated that it was resolved that since the rent assessed was for the property on which Radison Hotel Limited was situated, the review team needed to conduct an inspection to confirm the status of the building, and establish the presence of other tenants on the same building and whether rent declared was as per the market rent for similar space. The witness stated that the applicant refused to facilitate the arrangements for the site visit leaving the respondent with no option but rely on the available data to disallow the objection and uphold the assessment.

The Tribunal made a site visit of the premises in dispute in the presence of both parties. Mr. Andrew Akatukwasa the sales manager of Baguma and family restaurant testified that the restaurant paid a monthly rent of Shs. 1,500,000 to the applicant. It occupies three rooms and a kitchen. He had no idea of the tenants on the premises from July 2019 to June 2020. Mr. Gaddafi Mukwaya, the manager of Radison Hotel testified that the hotel occupies 2 floors. He contradicted himself when he said it pays rent for 3 floors. It pays rent of Shs. 3,000,000 per month since 2019. The hotel has 57 rooms. Customers pay Shs 25,000 to Shs. 40,000 per month in 2019. He said the occupancy per room in 2019 was around 30% per month.

The applicant submitted that it had two tenants on the said property namely; Baguma Restaurant occupying the ground floor and paying a monthly rent of Shs. 1,500,000 and

Radison Hotel Limited paying a monthly rent of Shs. 3,000,000 and occupying three floors. The memorandum of understanding between the applicant and Radison Hotel Ltd shows the monthly rent agreed was Shs. 3,000,000. The receipts, exhibits EX 12, prove that the applicant received rent from Radison Hotel Limited from 1st November 2019 to 30th June 2020. Mr. Mukayaga Gadaffi, the manager of the Hotel testified that there were no other tenants on the applicant property. The applicant submitted that it had discharged its burden which shifted to the respondent to prove that the rent paid by the applicant was too low. The applicant cited *Steel Corporation of East Africa v URA* and *J.K Patel v. Spear Motors Limited* SCCA 4 of 1999.

The applicant submitted that the information from the Ripplenami data was never disclosed at assessment, during the objection process nor at the trial. It submitted that the rental income assessment was based on property value estimates of KCCA and not on the basis of space occupied by tenants in occupation. The applicant submitted that the respondent did not present any evidence showing that it received more rental income from Radison Hotel Limited than the amount it declared. The assessment by the respondent was based on a lack of knowledge of the applicant's property. The applicant submitted that the respondent relied on a photograph, exhibit 3A of a building showing Comfort lodge and Hotel and Baguma restaurant. The applicant submitted that during the locus in quo visit, the manager of Baguma Restaurant, one Akatukwasa Andrew identified that the building in the photograph as located in the new taxi park which was not the subject of the assessment in this application.

The respondent submitted that before the financial year 2019/2020, the applicant was not filing any rental tax returns nor making any rental tax payments. The respondent raised an amended additional assessment based on property rates computed by KCCA provided to it by Ripplenami. The respondent submitted that the applicant admitted that it had not declared rental income tax for the property. The applicant disputed the assessment of Shs. 36,753,000 for 1st July 2019 to 30th June 2020 on the grounds that the rent from the said building was Shs. 37,392,000 for the period and not Shs. 122,510,006. The respondent submitted that the applicant provided them with a memorandum of understanding which confirmed that Radison Hotel was required to pay the applicant

monthly rent of Shs. 3,000,000 and 40% of the residual profits. A review of the returns of Radison Hotel Ltd showed that it did not declare rental expense, despite the tenancy agreement and the receipts of rental payments to the applicant. The respondent established that Radison Hotel Limited and the applicant are related companies as they have the same director. The respondent submitted that the applicant did not allow it to visit the rented building to ascertain whether there was one tenant for the assessed period.

The respondent submitted that the applicant ought to have declared the right rent paid and income tax. The respondent submitted that it was justified in disallowing Shs. 37,392,000 as rental income as declared by the applicant. The respondent argued that Sections 5(4) and 5(5) of the Income Tax Act and the Income Tax (Rental Rates) Regulations provide that the rental rates under Schedule 1 of the said Regulations should apply to property located on Namirembe Road within Kampala Central region. The respondent submitted further that there were inconsistencies in the evidence presented by the applicant. Firstly, the applicant stated that Radison Hotel Limited was renting three floors at a monthly rent of Shs. 3,000,000 whereas Baguma restaurant was paying a monthly rent of Shs. 1,500,000 for four rooms on the first floor. The respondent contended that for an entire floor Radison Hotel Limited pays Shs. 1,000,000 which is Shs. 500,000 less than the amount paid by Baguma Restaurant. Secondly, Mukayaga Gadaffi stated during the period in question there was a tenant who occupied a room on the 1st floor. This was confirmation that the building was not only occupied by two tenants during the period. Thirdly, the photo shows that the applicant started earning rental income from the building before November 2019. Fourthly, the applicant's witness, Mpamire Rajab, confirmed that there were other tenants in the building who were not part of the Radison Hotel business. The above inconsistencies raised questions; firstly, whether the monthly payment of Shs. 3,000,000 for three floors of the building in question is logical? Secondly, why did the applicant decline the request for a site visit of the building during assessment and at mediation. Thirdly, why was the revenue for Baguma Restaurant and the other tenant who occupied a room on the second floor is not accounted for?

The respondent contended that the assessment of Shs. 122,000,000 translates to a suitable rent of Shs. 10,200,000 per month. The respondent submitted that S. 21(1) of the Tax Procedures Code Act states that where a taxpayer fails to furnish a self-assessment return for a period as required under the law, the Commissioner may at any time make an assessment. The respondent submitted that Ripplenami data was not the sole basis for the assessment but a tool in helping the respondent arrive at a decision. The respondent submitted that Ripplenami, is company which was contracted by the Government to conduct field data and provide it to the respondent. Ripplenami established that the applicant was not declaring the right rental income for the property. The position of the respondent was based on the property rates values provided to Ripplenami by KCCA. The respondent submitted that the additional assessment of Shs. 36,753,002 was raised due to the applicant's failure to file its returns.

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

The dispute between the parties boils down to the question whether the respondent was justified in issuing an administrative amended additional assessment of Shs. 36,753,003 against the applicant. In resolving this question, the tribunal needs to consider how the respondent arrived at the said assessment and whether it was justified in doing so. S. 26 of the Tax Procedures Code Act places the burden of proof in relation to any proceeding upon the taxpayer. It states as follows;

"In any proceeding under this Act-

- (a) For a tax assessment, the burden is on the taxpayer to prove that the assessment is incorrect, or
- (b) For any other tax decision, the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently."

S. 18 of the Tax Appeals Tribunals Act states:

"In a proceeding before the tribunal for review of a taxation decision, the applicant has the burden of proving that-

- a) Where the taxation decision is an objection decision in relation to an assessment, the assessment is excessive, or

- b) In any other case, the taxation decision should not have been made or should have been made differently.”

Therefore, the burden is on the applicant to prove that the assessment was excessive of should have been made differently.

It is not in dispute that the applicant is the proprietor of a building at applicant's property located at Plot 87, Kyadondo Block 2 Bukesa along Hoima Road, Kampala. The applicant and Radison Hotel Limited entered into a contract where the latter would run a hotel in the said building. On 24th November 2021, the respondent issued an administrative amended additional assessment of Shs. 36,753,003 against the applicant for 1st July 2019 to 30th June 2020 arising from purportedly undeclared rental income basing on Ripplenami data. The applicant objected and contended that the assessment is excessive and that the correct rent ought to have been Shs. 37,392,000 for the period.

The applicant adduced an agreement dated 10th October 2019, between it and Radison Hotel Limited. Under the terms of the agreement, Radison Hotel Limited was required to pay the applicant rent of Shs. 3,000,000 per month. The contract also stated that Radison Hotel Limited would pay 40% residual profit as its annual commission. Although the contract did not state the space which was being let by Radison Hotel Limited. The applicant's witness, Mr. Rajab Mpemwire testified that the hotel was renting three floors.

The respondent submitted that the applicant failed to file returns of its rental income. To arrive at its assessment the respondent relied on Schedule 1 of the Income Tax (Rental Rates) Regulations and on data provided by RippleNami. The Income Tax (Rental Rates) Regulations 2020 are made under Sections 5 and 164 of the Income Tax Act. Regulation 2 limits its application to.

- a) A taxpayer who fails to file a return in accordance with the Act; and
- b) A taxpayer whose return is contested by the Commissioner.

Regulation 4 (1) states as follows;

“A person who rents out property located along a road, lane or street specified in the first column of Schedule 1 to these Regulations shall be deemed to earn rental income from that property at the rate specified in the second, third, fourth, fifth and sixth columns of

Schedule 1 to these Regulations, corresponding to the location in the first column respectively.”

Schedule has been reproduced here below for ease of reference.

SCHEDULE 1 RENTAL RATES IN THE CENTRAL DIVISION OF KAMPALA CITY

Street/Road/Lane Name	Rent Per Square Meter in Uganda Shillings per month				
	Ground Floor	1 st Floor	2 nd Floor	3 rd Floor	4 th Floor and above
Kampala Road	142,857	101,409	73,112	58,824	49,822
Jinja Road, Station Approach, Station Road, Dewinton Road	104,762	84,347	63,774	44,642	32,000
Ben Kiwanuka Street, William Street, Wilson Road, Johnson Street	128,571	90,000	62,108	41,875	23,039
Bombo Road, Lumumba Avenue, George Street, Kyagwe Road, Nakasero Lane, Nakasero Road Queens Lane Buganda Road, Lumumba Avenue, Wandegeya Road	90,476	68,441	51,461	45,463	36,370
Colville Street, Speke Road, Pilkington Road, Kimathi Avenue, Nile Avenue, Apollo Kagwe Road, Parliament Avenue, Said Barre Avenue and Portal Avenue	95,238	82,194	71,349	62,294	54,700
Entebbe Road	95,238	67,075	45,474	34,235	23,871
Kikuubo Lane	166,667	103,969	61,268	40,923	20,802
Luwum Street, Market Street, Market Square, Sikh Street, Burton Street, Snay Bin Amir Rise.	123,810	81,388	54,462	33,555	25,000
Nakivubo Place, Nakivubo Road Allen Road	119,048	72,960	51,547	34,943	25,338
Nkrumah Road, Nasser Road, Rosebury Road	95,238	62,177	36,291	21,864	18,861
Rashid Khamis Road, Mackay Road, Martin Road, Berkley Lane, Ginnery Road, Old Kampala Road	114,286	70,490	31,331	23,089	15,236
First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Streets and Old Port Bell Road		81,428	72,048	72,190	75,207

The Regulations apply where a taxpayer has failed to file a return in accordance with S. 4 of the Income Tax Act or where the Commissioner contests the return. The first column of the Schedule sets out the names of streets, roads or lanes. Properties located on these streets, roads or lanes are deemed to earn the rental income at the rate specified in the second, third, fourth, fifth or sixth columns. The respondent stated that the property in

question is located on Namirembe Road within Kampala Central region hence the rental rates under Schedule 1 of the Income Tax (Rental Rates) Regulations should apply. The applicant's witness, Mr. Mpamire Rajab testified that the property is located at Plot 87 Kyadondo Block 2 Bukesa, along Hoima Road in Kampala. As seen from the Schedule above, neither Namirembe Road nor Hoima Road are among the streets, roads or lanes specified under the first column of the Schedule. Regulation 4(1) expressly states that the rates specified in the second, third, fourth, fifth or sixth columns of the first schedule will only apply to properties located along a road, lane or street specified in the first column of Schedule 1. Since neither Namirembe Road nor Hoima Road are among the roads, lanes or streets specified in the first column of the first schedule these Regulations do not apply to the property in question. The respondent ought not to have relied on it.

The respondent also relied on a photo of the premises to determine whether the rent payable by the applicant was due. There is no nexus between the photo and the rent payable by the applicant. The assertion by the respondent that the picture of the building in question taken in March 2015, was proof that the applicant started earning rental income from the building long before November 2019, is not borne out by the evidence before us. The photo referred to by the respondent is not clear enough for such a conclusion to be drawn. From the photo provided by the respondent it is impossible to state with certainty when the businesses started operating in the building. It is impossible to state by looking at the photo what other businesses are operating in the building. The evidence before us is too ambiguous for a finding to the effect that the applicant started earning rental income in 2015. The respondent also relied on RippleNami data which showed that rental income derived by the applicant from the building in question as per KCCA property rates was Shs. 122,510,006. The respondent stated that RippleNami is a company contracted by the Government to provide the respondent with field data in respect of persons who are non-compliant with their rental tax obligations. RippleNami provided it with data in regard to the applicant in 2021 and upon verification, the respondent issued the additional assessment in question. RippleNami was able to establish that the applicant was not declaring the right amount of rental income for the property in question. The respondent stated however that it does not rely entirely on the data provided by RippleNami to make its assessments but uses the said data as a guide

in conducting its audits. The respondent has not provided us with the data from RippleNami which was used by it as a guide in arriving at the assessment in question nor did it lead evidence from the officers of RippleNami to explain the basis of its conclusion that the applicant did not declare rental income for the period in question.

The Tribunal already stated that the burden to prove that an assessment is excessive or should not have been made is placed on the taxpayer, in this case the applicant. The Tribunal has to establish if the applicant has discharged that the additional assessment was excessive or ought not to have been made.

If the applicant's premises was not included on the roads and lanes mentioned in the Scheule under the Regulations, the Tribunal has to ask was the respondent justified to issue an additional assessment based on the agreement the parties signed. The said exhibit, though the parties refer to it as a tenancy agreement was actually a memorandum of understanding. It was more than a tenancy agreement. According to the memorandum the applicant was supposed to pay rent of Shs. 3,000,000 per month and 40% residual profits. The memorandum does not state what residual profits are. However, using an understanding of a common man on the streets, residual profits would connote profits. If the applicant was receiving rent of Shs. 3,000,000 per month, its rental income per annum would be Shs. 36,000,000, giving rise to tax of Shs.10,026,000. This does not seem to be in dispute. However, it is the additional assessment of Shs. 36,753,003 for 1st July 2019 to 30th June 2020 for undeclared rental income received from Radison Hotel building which is in contention. While the applicant may have been paying taxes on the rental income of Shs. 3,000,000. It is silent on the taxes of the 40% residual profit. The applicant did not tender in its financial statements for the financial years 2019 and 2020 to show that it did not receive the 40% residual profit. It did not tender in the financial statements of Radison Hotel to show that it did not make net profits in the said financial years.

Though the applicant stated the rent from the said building was Shs. 37,392,000 for the period, it does not show how it arrived at the said amount. The memorandum put the rent at Shs. 3,000,000 per month. For two years the rent would have come to Shs. 72,000,000 and not Shs. 37,392,000 The memorandum allowed the tenant not to pay rent of 5 months

where it incurred losses. There is no evidence to show that the applicant was suffering losses as no financial statement and returns of Radison Hotel were tendered in evidence.

This brings us to the second leg of the dispute. The landlord was sharing in the profits of the tenant. It also allowed the tenant not to pay rent when the latter was making loss. This indicates a relationship which was more than that of a landlord-tenant relationship. The relationship of the landlord-tenant was not at arm's length. S. 3 of the Income Tax Act defines an associate as.

"For the purpose of this Act, where any person, not being an employee, acts in accordance with the directions, requests, suggestions, or wishes of another person, whether or not they are in a business relationship and whether those directions, requests, suggestions, or wishes are communicated to the first mentioned persons, both persons are treated as associates of each other."

The clauses in the memorandum which allow the tenant to pay 40% of the residual profit and not to pay rent for 5 months when the tenant incurs losses amount to directions, requests and wishes of a tenant to the applicant, and both should be treated as associates of each other. S. 90 of the Income Tax Act allows the Commissioner to deal with transactions between associates. It states that.

"(1) in any transaction between associates or persons who are in an employment relationship, the Commissioner may distribute, apportion, or allocate income, deductions, or credits between the associates or persons who are in an employment relationship, as the case may be, as is necessary to reflect the chargeable income realized by the taxpayer in an arm's length transaction."

The applicant and its tenant shared a director. Therefore, if the applicant as a landlord was entitled to 40% of the residual profit of its tenant and shared a director, the Commissioner ought to have considered it as an associate and taxed the residual profit. Irrespective of that the Commissioner was justified to issue an assessment as the applicant did not file any tax returns. The Tribunal has to consider whether the assessment amount of Shs. 36,753,003n was justified.

At the locus, it was revealed that Baguma restaurant paid rent of Shs. 1,500,000 for four rooms while Radison Hotel paid Shs. 3,000,000 for 57 rooms. One cannot fail to discern

that the rent by Radison Hotel if put at Shs. 3,000,000 per month for 57 rooms is not proportionate to the rooms it was occupying, when compared to what the restaurant was paying for 4 rooms. This confirms the suspicion that the applicant was not dealing Radison Hotel at arm's length because they were associates.

The respondent based its assessment on rent of Shs. 122,000,000 which translates to Shs. 10,200,000 per month which it alleged was the most suitable rent for the property based on its location, its use and the fact that it had been in use for a period longer than declared. At the locus, Mr. Gaddaffi, the manager of Radison Hotel stated that the Hotel earned Shs. 25,000 to Shs. 40,000 per room per day in 2019. It had an occupancy of 30%. It is not disputed that Radison Hotel was occupying 57 rooms. If the Tribunal was to consider the minimum daily rent of Shs. 25,000 per room at 30% occupancy it would mean the Hotel was earning Shs. 155,610,000 per annum. The applicant did not adduce evidence to show expenses the hotel incurred in the said business. 40% of Shs. 155,610,000 would come to Shs. 62,244,000. If the Tribunal was to consider a maximum rent of Shs. 40,000 for the 57 rooms, using the same treatment as above it means the applicant may earn gross income of Shs. 66,393,600. Because the applicant did not indicate the allowable expenses of the Hotel it is difficult to arrive at chargeable income or residual profits and tax payable. Instead of presenting evidence to dispute the assessment, the applicant relied on the loopholes in the respondent's case to challenge the assessment, which do not seem to have helped it.

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

Dated at Kampala this 24th day of November 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MR. SIRAJ ALI
MEMBER