

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 62 OF 2018

UNIWORKS TRANSPORTERS AND LOGISTICS 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 a Pay As You Earn (PAYE) assessment of Shs. 437,734,000 issued on the applicant by the respondent.

The applicant is in the business of transport and logistics. The respondent conducted an audit on the applicant from June 2016 to June 2018 and issued an additional PAYE assessment of Shs. 437,734,000 on the ground that there was a variance between the salary expenses in the income tax returns and those of PAYE.

The following issues were set down for determination.

1. Whether the applicant is liable to pay the additional PAYE of Shs. 437,734,000/?
2. What remedies are available to the parties?

The applicant was represented by Mr. William Were and Ms. Hajara Namwanga while the respondent by Mr. George Ssenyomo, Mr. Oseku Samuel and Ms. Tayahwe Sheba.

The applicant's witness, Mr. Nathan Mwesigye Rubangura, its managing director, testified that the respondent issued an assessment of Shs. 437,734,000 on the applicant. It arose from a variance between the salary expenses in the income tax returns and those in the PAYE returns for financial years June 2016 to June 2018. He testified that the respondent seized documents and financial statements of the applicant prepared by

Gemaco & Associates, which were of no value. The respondent relied on the documents despite the applicant insisting they were unauthentic. The applicant objected to the assessment. The respondent requested the applicant to provide audited accounts and payrolls from 2015 to 2018. He informed the respondent that it was not practicable to provide documents for a period before the incorporation of the company. The respondent made its objection decision disallowing the objection on the basis that the applicant existed prior to 2016. He testified that its auditors failed to deliver the financial statements for the period 1st November 2016 to June 2018 before the objection decision. The witness testified that it completed its financial statements for the period in question after the objection decision.

Mr. Nathan Mwesigye Rubangura contended that the respondent was wrong to compute PAYE for a period where the applicant did not have any employees by relying on unauthentic financial statements. He testified that the applicant's records are not reconcilable with the unauthentic financial statements. He stated that the applicant was incorporated on 22nd September 2016 and was registered for tax on 1st November 2016. The unauthentic financial statements indicate that the applicant was incorporated in June 2015 and incurred costs of Shs. 1,252,915,310. He testified that the applicant commenced business several months after incorporation but was assessed for PAYE for July 2015 to 30th June 2016 when it was not incorporated. The respondent's assessment was not based on actual business records of the applicant. The documents seized did not support the financial statements relied on by the respondent. The monies claimed as causing the variance was not earned by the applicant.

The respondent's witness, Ms. Maria Goretth Nassamula, a supervisor in its Tax Investigations Department, testified that around August 2020, she reviewed documents seized from the applicant's premises and conducted a tax audit on it. The seized documents included bank statements, bid documents, and audited financial statements for 2015 to 2018. She discovered discrepancies between the applicant's PAYE returns and its audited financial statements. In particular, the salary expenses in the audited financial statements did not tally with those in the PAYE returns. For the financial year

2016 there was a variance of Shs. 408,000,000, for 2017 - Shs. 460,800,000 and 2018 - Shs. 234,000,000. As a result, the applicant was issued an additional PAYE assessment of Shs. 437,734,000. The applicant objected on the ground that its PAYE returns were based on actual payrolls. It claimed that it had no permanent employees. It admitted to paying its directors a minimum monthly salary of Shs. 4,200,000 as shown by its director's return for July 2017 to June 2018. The witness testified that the applicant failed to provide audited accounts in time. It only provided the payroll for August 2017, which showed salaries paid of Shs. 230,000.

The witness further testified that the assessment was based on audited financial statements approved by its director and auditors, Gemaco & Associates Certified Public Accountants. The newly audited financial statements presented by the applicant were not supported by its bank statements and prequalification documents. The witness stated that the applicant had more employees than it admitted. It incurred more salary expenses than portrayed in the newly audited financial statements and earned more revenue than declared. She stated the audited financial statements relied on by the respondent were signed and approved by the applicant's director and auditors as a correct representation of its finances. The applicant is bound by them and only seeks to evade tax. She concluded that the applicant has two sets of conflicting audited financial statements which tell a contradictory story. It claims it did not have employees. It concealed important financial information by providing only that on one of its bank accounts. The new audited accounts do not reflect the transactions in the applicant's bank statements.

The applicant submitted that the assessment was based on the documents seized by the respondent from its premises. The applicant's witness Nathan Mwesigye (AW1) testified that documents and the financial statements seized were for a bid to Hima Cement. When the applicant recognized that documents were not authentic it abandoned the bid. It is not controverted that the documents the respondent seized were not authentic. The respondent's witness admitted that the respondent did not find any payment from Hima Cement. The applicant also submitted that RW1 admitted that the date of commencement of the applicant's business was 22nd September 2016, which was corroborated by the

evidence of AW1. Therefore, the respondent had knowledge that the applicant did not exist before that date and ought to have found that the audited financial statements were unauthentic.

The applicant submitted that S. 4(1) of the Income Tax Act provides that "income tax is charged for each year of income and is imposed on every person who has chargeable income for the year of income. S. 19 creates the duty to pay tax on employment income. It submitted that proof of payment of employment income to the employees is required to support any assessment for PAYE. It cited *Multiple ICD Limited v URA* Application No.61 of 2021, where the tribunal quoted the dictum, in *Cape Brandy Syndicate v Inland Revenue Commissioners* [1920] 1KB, that if a person sought to be taxed comes within the letter of the law, he must be taxed. It also cited *Chestnut Uganda Limited v URA* Application 94 of 2019 which quoted *Post Bank (U) Limited v URA* Application 18 of 2008 where it was held that the effective date of registration is determined by reference to the date set out in the certificate of registration. The applicant submitted that the assessment was illegal because it was issued before its incorporation. The applicant submitted that it was not taxable under Sections 1(yy) ;4(1) and 15 of the Income Tax Act. It also submitted it did not have the employees claimed to have been paid the sums in the unauthentic financial statements and the respondent did not adduce evidence to show that it had employees from 1st July to 2015 to June 2018 who were paid. It submitted further that the respondent admitted that the applicant's effective date for PAYE is 1st August 2017.

The applicant submitted that S.16(5) of the Tax Procedure Code Act places obligations on certain companies to file audited financial statements. It states:

"A taxpayer with an annual turnover of the amount prescribed in Schedule 3 shall furnish with the taxpayer's return of income audited financial statements prepared by an accountant registered by the institute of Certified Public Accountant of Uganda,"

The applicant submitted that there was no evidence led to show that it had the legal duty to prepare audited financial statements or that it was within the threshold in the 3rd Schedule of the Tax Procedure Code Act. Its audited financial statement, exhibit AEX3, shows that its turnover through the audited period is below the threshold.

The applicant submitted further that it cannot be faulted for the wrong opinions of its auditors, Gemaco & Associates and the failure by Mwanje & Company Certified Public Accountants and Izimba & Co Certified Public Accountants to audit its books of account in time. It submitted that it instructed LM Associates who audited its work, but the authentic financial statement prepared by it was declined by the respondent. The applicant submitted that it was arbitrary for the respondent to issue an assessment based on a wrong opinion of auditors despite its protests.

In reply, the respondent submitted that that it conducted a search and seizure on the applicant's premises in August 2020. It submitted that it assessed tax based on those audited financial statements authenticated by the applicant's director. The applicant is thus liable to pay the tax assessed. It submitted that PAYE is charged under S. 19 of the Income Tax Act. S. 116 of the Act places a duty on an employer to withhold PAYE from payment of employment income to an employee. It is trite law that the tax payable by a taxpayer is determined by its records including books of accounts like audited financial statement. S.15(1) of the Tax Procedures Code Act requires all taxpayers to keep records necessary to determine their tax liability. S. 41 of the Tax Procedure Code Act grants the commissioner full and free access to the premises of taxpayers and empowers him to seize any record that are instrumental in determining the correct tax liability of any person. The respondent submitted that it conducted a search and seizure at the applicant's official place of business. Amongst the documents seized were bank statements, bid documents and audited financial statements. The documents were reviewed alongside the returns filed by the applicant in a comprehensive tax audit. It was discovered that there were variances in the salary expenses declared by the applicant and those in the seized audited financial statements. This culminated in the issuance of the PAYE assessment of Shs. 437,734,000.

The respondent submitted that the applicant introduced new audited financial statements which it claims are the correct presentation of its affairs. The respondent contended that the seized audited financial statements are the only correct representation of the applicant's affairs and the best evidence to determine its correct tax liability. The

respondent submitted that though the applicant's director, Nathan Mwesigye Rubangura alleged that he did not participate in the preparation of the erroneous financial statements they were signed by the applicant's director, who acknowledged that the information therein is a true and fair view of the applicant's financial affairs.

The respondent submitted that the applicant held on to the allegedly erroneous signed and audited financial statements for about 3 years. It took no steps to rectify the alleged errors and prepare new audited accounts for 3 years. The applicant obtained new audited books after it filed this suit before the Tribunal. The respondent submitted that the claims that exhibit REX1 was prepared in error was an afterthought to mislead the tribunal. The respondent submitted that REX1 constitutes books of accounts kept by the applicant under S. 15 (1) of the Tax Procedures Code Act and S.154 (1) of the Companies Act. It was justified in relying on them to determine the applicant's tax liability. The respondent submitted that the new audited financial statements (AEX 3) were not availed to it during the tax audit. The respondent witness, Maria Gorreth Nassamula testified that the applicant failed to avail audited financial statements when requested at the objection stage. The respondent submitted that the new audited financial statements AEX 3 are dated 11th July 2022 while the request was issued on 16th December 2021 after the objection decision on 14th February 2022. Under S. 16(4) of the Tax Appeal Tribunal Act the applicant is limited to the grounds in the taxation objection to which the decision relates.

The respondent further submitted that two sets of conflicting audited financial statements signed and approved by the applicant's director points to fraudulent accounting. Both documents report financial positions that are opposites. While REX 1 portrays a thriving entity AEX 3 shows a struggling entity that registered only losses. REX 1 records a revenue of Shs. 3,304,312,000 for the period ended June 2018 while AEX 3 shows that the applicant had no revenue for the same period. REX 3 indicates that the applicant had a total of 9 employees with 5 trained and skilled permanent employees and 4 trained temporary employees. AW1 stated that the company did not exist in 2017 and that the REX 3 was prepared in error. The respondent submitted the applicant was incorporated

on 22nd September 2016. REX 3 bears AW1's signature which he did not deny. The respondent submitted that the income tax returns filed by AW1 for July 2017 to June 2018 contradict the representation in AEX 3 that the applicant only incurred employment expense of Shs. 230,000 for the same period. REX 4 shows that AW1 declared employment income of Shs. 4,200,000 for July which is not reflected in AEX 3. AEX 3 records no revenue for the period of July 2017 to June 2018. The bank statements, exhibit REX 6 show that the applicant received Shs. 100,967,500 on its KCB account on 7th July 2017 and Shs. 480,000,000 in its Equity bank account on 10th July 2017. None of these monies or part is recognized in the audited financials of July 2017 to June 2018.

The respondent submitted that it is common for entities to engage in business activities before incorporation. This is contemplated by the Companies Act, 2012 which allows companies to adopt pre-incorporation contractual obligations. S. 54(2) of the Companies Act provides that a company may adopt a pre-incorporation contract on its formation and registration without need for novation. It submitted further that the certificate of incorporation is conclusive proof of existence of the applicant but not of its business affairs. It cited *Luitingh Lafras & Anor v Special Services Limited Company Cause 11 of 2019* and *MTN Uganda Ltd v Stallion Group of Companies Ltd and another HCMA 431 of 2016*.

In rejoinder, the applicant submitted that the extracts of the bank statements do not relate to the period in issue and thus cannot be a basis to ascertain the applicant's correct tax liability. It insisted that the financial statements and bank statement seized by the respondent were unauthentic. The applicant stated that it did not fall under S. 15 of the Income Tax Act. The applicant contended that the respondent misconstrued S. 54 of the Companies Act as there was no proof that the former had any pre-incorporation contracts. The applicant submitted that *Luiting Lafras and another v Special Limited Company Cause 11 of 2019* was quoted out of context by the respondent. In that case registrar of Companies had failed to interrogate or obtain testimonies of the appellants and relied on her record in deciding and arrived at a wrong conclusion. In this case, the respondent is

relying on the unauthentic audited financial statements to conclude that the applicant is liable to pay tax, but it did not interrogate the applicant's auditors.

The applicant submitted that the respondent erroneously relied on S. 15(1) of the Income Tax Act, as the audited financial statements are not books of accounts under the said Section. The law did not require the applicant to prepare audited financial statements, When the legislature enacted S. 16(5) of the Tax Procedure Code Act, S. 15(1) of the Income Tax existed.

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

The respondent conducted an audit on the applicant for June 2016 to June 2018 and issued an additional PAYE assessment of Shs. 437,734,000 on the ground that there was a variance between the salary expenses in the income tax returns and those of PAYE. The assessment was based on income stated in the applicant's audited financial statements, exhibit REX1, which the respondent seized from the former's premises. The applicant contended that the financial statements relied on by the respondent were prepared in error and ought not to be relied upon. Its witnesses testified that they were unauthentic. It contended that the Tribunal should rely upon audited financial statements prepared by LM & Associates, exhibit AEX3. This application therefore turns on the question as to which of the two audited financial statements should be relied upon by the tribunal in resolving this dispute. The applicant also argued that it is not required to prepare audited financial statements.

The first contention the Tribunal is required to address is whether the applicant was required to prepare audited financial statements. S.16(5) of the Tax Procedure Code Act states that:

"A taxpayer with an annual turnover of the amount prescribed in Schedule 3 shall furnish with the taxpayer's return of income audited financial statements prepared by an accountant registered by the Institute of Certified Public Accountant of Uganda,"

Schedule 3 states that the amount of turnover in respect of which audited financial statements are required is Shs. 500,000,000 and above. The only question the Tribunal can ask is if the applicant's turnover was not above Shs. 500,000,000 why was it preparing audited financial statements? By preparing financial statements, the applicant implicitly admitted that its turnover was Shs. 500,000,000 and above. When the respondent relied on the first audited financial statements, instead of the applicant denying that its turnover was not Shs. 500,000,000 and above it went on to prepare other audited financial statements. By preparing the said audited financial estimates the applicant is estopped from denying that its turnover is not Shs. 500,000,000 and above. S. 114 of the Evidence Act states 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 nor 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.”

By tendering two sets of audited financial statements prepared by its auditors, the applicant cannot deny that it is not allowed legally to prepare them.

The second contention the tribunal will address relates to the applicant's averment that its first audited statements were issued in error and were unauthentic. “Error” is defined in *Black's Law Dictionary* 10th Edition p. 658 as “1. An assertion or belief that does not conform to objective reality; a belief that what is false is true or what is true is false; MISTAKE.” The applicant's witness also stated that the audited reports were unauthentic. Bring unauthentic is different from containing errors. The word ‘authentic’ is defined by *Oxford Advanced Learner's Dictionary* 9th Edition as “1. Known to be real and genuine...” Unauthentic means the audited financial statements were not genuine. The unauthentic financial statements indicate that the applicant was incorporated in June 2015 and not September 2016 and it incurred costs of Shs. 1,252,915,310. One who inserts the wrong date of incorporation in an audited financial statement of a taxpayer for a year when it was not incorporated cannot be said to be making an error. It is deliberate. The applicant's managing director testified that the documents seized by the respondent and the bank records do not support the financial statements relied on by the latter. This indicates that

the problem was more than errors in the financial statements. The said audited financial statements were signed and approved by the applicant's directors and auditors. There is no person who signs a document that has errors in it and is not authentic and certifies that it is a correct and proper document unless it is attempting to hoodwink the public. If the audited financial statements had errors and were unauthentic, the applicant's director and auditors ought not to have signed them as a true and correct view of the financials of the company. The applicant held on to the allegedly erroneously signed and authentic audited financial statements for about 3 years. They should have disposed them of as soon as the errors were noticed and that they were unauthentic instead of holding onto them.

There was a glaring difference between the first set of audited statements seized at the applicant's premises and the second set prepared when the matter was before the Tribunal. While the first audited financial statements, Exhibit REX1 portray a thriving entity, the second one AEX 3 tendered in the tribunal shows a struggling entity that registered only losses. The first unauthentic audited financial statements were prepared for the applicant when making a bid to Hima Cement. How would the applicant have bid when it was not incorporated? The first set was prepared to hoodwink Hima Cement while the second one was to hoodwink the Tribunal as it was not given to the respondent when requested for at the time of objection. Should audited financial statements presented for bids be different from those presented to Uganda Revenue Authority for tax purposes? The Tribunal does not think so. Audited financial statements are the financial statements of an organization that have been examined by a certified public accountant (CPA). When a CPA audits a financial statement, they will ensure that the statement adheres to general accounting principles and auditing standards. An audited report involves a thorough review of each item on a financial statement. Both the auditor and directors of the company vouch for the correctness of the financial information contained in the audited financial statements by appending their signatures on the completed document. The purpose of a financial audit is to provide assurance that financial statements are presented accurately and in conformity with generally accepted accounting principles (GAAP) allowing business owners to make confident business decisions. They also are

supposed to be relied on by third parties who want to make decisions in respect of the company. The purpose of the independent audit is to provide assurance that company management has presented financial statements that are free from material error. If there are no material errors in the financial statements, then the auditor gives an audit opinion that the financial statements represent a true and fair view of the company's performance and position. The applicant's auditors in the first audited financial statements gave an opinion to that effect. Therefore, it defeats logic and common sense for a director to testify before the Tribunal that the audited statements were issued in error and were not authentic. An audited statement being a proper and correct statement of a company should serve all purposes whether it is issued to the respondent or for bid purposes. Once issued, it would be difficult to withdraw them when a third party has made a decision based on them as they are certified to be correct.

Under the Income Tax Act, a revenue authority should be able to rely on audited financial statements to assess and arrive at the correct tax payable. S.15(1) of the Tax Procedures Code Act requires taxpayers to keep records necessary to determine their tax liability. S. 154 of the Companies Act requires companies to keep books of account at their premises. S. 41 of the Tax Procedure Code Act grants the commissioner full and free access to the premises and empowers him to seize any record that is instrumental in determining the correct tax liability of any person. S. 41(c) of the Tax Procedure Code Act states that the Commissioner may seize any record, which in his opinion affords evidence which may be material in determining the correct tax liability of any person. Therefore, the Tribunal cannot fault the respondent for entering the applicant's premises and seizing the first audited financial statements to determine its correct tax liability.

After the objection decision, the applicant presented a second set of audited financial statements. The Tribunal has to ask itself whether the respondent was justified in relying on the first audited financial statements. If there are two conflicting financial statements which one should the respondent have relied on?

At the time of the objection, the second set of audited financial statements were not in existence. Therefore, the applicant could not have relied on them when making its objection and the respondent when making its objection decision. S. 16(4) of the Tax Appeals Tribunal Act limits the Tribunal to the ground raised in the objection decision. By allowing in new financial statements the Tribunal will be addressing grounds that were not brought up at the time of the objection and objection decision. The new audited statements show that the turnover of the applicant is below Shs. 500,000,000. This contradicts S. 16(5) of the Tax Procedure Code Act. Evidence which is contradictory cannot be relied upon. If the turnover of the applicant was below Shs. 500,000,000 it is not required to present audited financial statements. The Tribunal cannot be seen to be ignoring the law. By presenting two conflicting audited statements of finance the integrity of the applicant and its auditors becomes doubtful. One cannot have two correct conflicting positions. If the applicant is in the business of issuing unauthentic audited financial statements, how will the Tribunal ascertain that the second set is authentic. Once again, the doctrine of estoppel comes into play to estop the applicant from denying the correctness of the first set of audited financial statements. The applicant did not come to the Tribunal with clean hands. The applicant ought to have sought legal redress against its auditors if there were any errors in its audited financials. There is no evidence to that effect.

In respect of the first set of audited financial statements the Tribunal has to ask whether the respondent was justified in relying on them. The decision of the respondent to rely on the first audited financial statements is administrative. Such decision should be exercised with discretion. *Halsbury's Law of England* 3rd Edition Vol. 30 p. 687 para. 1326 states that

“Where public bodies are given a discretion in the exercise of powers conferred upon them by statute, the courts will not interfere with the exercise of that discretion so long as it is exercised bona fide and reasonably; nor will the decision of an administrative body be interfered with by the courts if there is anything on which that body could reasonably have come to its conclusion.”

In *Breen v Amalgamated Engineering Union* [1971] 2. Q.B 1 Lord Denning underlined the importance of an unfettered discretion by stating that:

“The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant consideration and not by irrelevant. If its decision is influenced by extraneous consideration which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless, the decision will be set aside.”

The Tribunal has to determine whether the discretion was exercised illegally, irrationally or with procedural impropriety. In *Twinomuhangi Pastoli v Kabale District Local Government Council, Katarishangwa Jack & Beebwajuba Mary* [2006] HCB Vol. 1 p. 30 Kasule J. held inter alia that:

- “2. Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality.
3. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.
4. Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.”

A tribunal will not interfere with an administrative body when exercising its administrative powers unless it acts illegally, irrationally or with procedural impropriety.

The first audited statements, exhibit REX1, contained information for the period prior to June 2016. The applicant was incorporated on 22nd September 2016. The applicant argued no tax could accrue against it for the period prior to its incorporation. S. 4(1) of the Income Tax Act states that “Income tax is charged for each year of income and is imposed on every person who has a chargeable income for the year of income.” S. 19 creates the

duty to pay tax on employment income. S. 116 of the Act places a duty on an employer to withhold PAYE from payment of employment income to an employee. S. 2 (yy) of the Income Tax Act states that “a person includes, an individual, a partnership, a trust, a company, a retirement fund, a government, a political subdivision of a government and a listed institution.” An entity that is not incorporated cannot be said to be a limited company under the Companies Act. Under S. 2 of the Companies Act a “company” means a company formed and registered under this Act or an existing company or a re-registered company under this Act. The applicant was none of the aforesaid before its incorporation on 22nd September 2016. The respondent contended that S. 54(2) of the Companies Act provides that a company may adopt a pre-incorporation contract on its formation and registration without a need for novation. This is different from employing persons. While a contract for employment may be made before a company has been incorporated, the company can only employ after it has been incorporated. It is not a legal entity under the Income Tax Act to employ persons until after its incorporation. Therefore, the respondent acted illegally when it considered the audited financial statements of 2016 when assessing the applicant’s income tax for 2016 before it was incorporated. The question relating to the incorporation of the applicant was brought to the respondent’s attention prior to the rendering of the objection decision and it ignored it. By ignoring the said information, the respondent acted illegally.

In respect of the audited financial statements of 2017 and 2018, by that time the applicant was incorporated as a private limited company. It was a legal entity capable of employing people. It cannot be said that the decision to consider such financial statements in assessing the income tax due is illegal. The said audited statements were certified to be a correct view of the applicant’s financials. The applicant tendered in a fresh set of audited financial statements after it had filed this matter. The second set of audited financial statements had lower chargeable income. A rational and prudent tax collector would use financial statements that yield or collect more taxes. The respondent submitted that the said financial statements did not reflect the bank statements of the applicant. The Tribunal cannot say that the decision by respondent to assess income tax using the first set of financial statements was irrational. At least the Tribunal cannot say that the decision of

the respondent in using the said financial statement was so gross that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision or it was in defiance of logic and acceptable moral standards.

We already stated that the integrity of the applicant was in doubt as there were two conflicting audited financial statements. In *Greenland Bank Limited v Richard Ssekiziyivu t/a Global General Auctioneers* Civil Suit 0501 of 2001 Justice Yorokamu Bamwine stated that

“The law as I understand it is that no claim arises from a base cause. This policy was well summarized by Lord Mansfield C.J. in the 18th Century when he declared:

No Court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. If the cause of action appears to arise ex turpi causa the Court says he has no right to be assisted.”

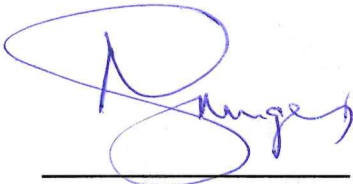
It is a principle of equity that one cannot come before the law with unclean hands. There is also a Latin maxim – *Allegans contraria non est audiendus* – A person making contradictory allegations is not to be heard. The Tribunal will not consider the second set of audited financial statements presented after the filing of this matter.

Taking the above into consideration. The first set of audited financial statements for 2017 and 2018 showed salaries of Shs. 460,800,000 and Shs. 234,000,000, respectively. According to the testimony of the respondent's witness, Maria Gorreth Nassamula there was a variance of Shs. 460,000,000 for the financial year 2017 and Shs. 233,770,000 for 2018. The said figures were not disputed. The applicant did not explain the variances between what was in the returns and in the first audited financial statements. The total amount for the variance between the audited financial statements and the returns comes to Shs. 693,770,000 which would attract a tax liability of about Shs. 208,131,000 (when applying 30% to all earnings or the variance). It is not possible to compute the correct PAYE the applicant ought to have remitted as it did not disclose the number of its employees and their earnings in its returns and audited financial statements and before the Tribunal. Because the assessment was based on figures in audited financial statements which are not reflected in the audited returns, the actual tax payable cannot

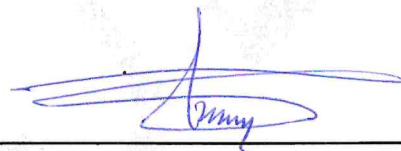
be computed. Most probably, because the figures in the financial statements were inserted by the applicant to enable it to win a bid, they may not be accurate. When the applicant tendered in a fresh set of audited financial statements it did not amend the returns. Which it cannot as it is time barred. The applicant did not adduce evidence to show the correct tax payable in the event its first set of audited financial statements were not rejected. Under S. 18 of the Tax Appeals Tribunal Act the applicant has the burden of proving where a taxation decision is an objection decision, that the assessment is excessive. The applicant has failed to prove this. Under S. 19(b) of the Tax Appeals Tribunal Act the Tribunal is allowed to vary a decision under review. The Tribunal cannot allow an assessment for 2016 that is illegal to stand. Therefore, the Tribunal will reduce the tax liability from the PAYE assessment of Shs. 437,734,000 to Shs. 208,131,000.

In the circumstances, this application is dismissed with costs to the respondent. The applicant is ordered to pay PAYE of Shs. 208,131,000.

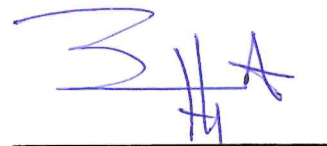
Dated at Kampala this 3rd day of May 2023.



**DR. ASA MUGENYI,
CHAIRMAN**



**DR. STEPHEN AKABWAY,
MEMBER**



**MR. SIRAJ ALI
MEMBER**