

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 25 OF 2021**

**TECNO INVESTMENTS LIMITED ..... APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY ..... RESPONDENT**

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

**RULING**

This ruling is in respect of a preliminary objection raised by the respondent that the applicant did not pay 30% of the tax in dispute before filing its application as required by law.

The applicant imports and sells mobile phones and related merchandise. The respondent conducted an audit on the applicant for 2014 to 2018 and raised two assessments totaling to Shs. 80,918,959,793. The respondent contended that the applicant had under declared the purchase and selling prices. The respondent collected Shs. 275,407,594 by third party agency notices and Shs. 25,000,000 deposited by the applicant being a total of Shs. 300,407,594.

**Issues.**

1. Whether the applicant paid the 30%?
2. What remedies are available?

The applicant was represented by Ms. Hajara Namwanga while the respondent by Mr. George Ssenyomo.

The respondent submitted that this application is not properly before the Tribunal as the applicant did not pay the 30% of the tax assessed or that part of the tax assessed not in dispute. The respondent submitted that on 6<sup>th</sup> and 16<sup>th</sup> April 2021, the Tax Appeals

Tribunal ordered the applicant to pay 30% of the tax in dispute. The applicant has only paid Shs. 300,407,594 out of Shs. 24,275,687,937.9 as 30% which represents 0.0123%.

The respondent submitted that S. 15 of the Tax Appeals Tribunal Act provides that:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

The respondent cited *Uganda Projects Implementation and Management Centre v. Uganda Revenue Authority*, Supreme Court Constitutional Appeal 2 of 1999 where it was ruled that.

"The statutory requirement in the then VAT Act (similar to S.15 of the TAT Act), requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, is constitutional, and did not infringe on the right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law."

The Supreme Court followed, with approval, the South African case of *Metcash Trading Co. Ltd v. Commissioner for South African Revenue Services and another*, wherein it was held that, a taxpayer has to pay his tax and argue later. The Supreme Court also underscored the constitutional duty of a citizen to pay taxes, under article 17 of the Constitution, and to do so promptly, so that Government business can go on. The respondent further cited *Commissioner General Uganda Revenue Authority v Meera Investments Ltd*, Supreme Court Civil Appeal 22 of 2007, where Kanyeihamba JSC noted that, the Government needs taxes paid expeditiously for national interest. The respondent submitted that the applicant has a constitutional duty as a citizen to pay taxes and to do so promptly, so that Government business can go on. So, failure to comply with a mandatory procedure will frustrate growth and development of this country hence the need to pay and collect taxes as soon as possible.

The respondent also cited *Elgon Electronic v Uganda Revenue Authority* HCCA 11 OF 2007 where Justice Geoffrey Kiryabwire held that.

"The provisions of S. 15 (1) of the Tax Appeals Tribunal Act are mandatory. Accordingly, the requirement to pay 30% of the tax assessed or that part of the tax assessed not in dispute is a legal doctrine which is in line with the "pay now and argue later principle".

The respondent further cited *Samuel Mayanja v Uganda Revenue Authority* HCT-00-CC-MC-0017-2005, where Justice FMS Egonda-Ntende stated that.

"Once a taxpayer has lodged an application for review under Section 15 of the Tax Appeals Tribunal Act, he is obliged to deposit at least 30% of the tax assessed".

The respondent submitted that in *A Better Place Ltd v URA* High Court Civil Appeal 37 of 2019, the High Court held that the applicant did not apply to the Tax Appeals Tribunal to enforce any alternative means of payment of the 30% tax in dispute, and therefore the Tribunal cannot be faulted for dismissing the matter. Court further held that S. 15(1) of the Tax Appeals Tribunal Act which provides for payment of 30% is still good law and the Tax Appeals Tribunal has the mandate to enforce that law.

The respondent submitted that the tax assessed in this matter is Shs. 80,918,959,793, therefore the applicant ought to have paid Shs. 24,275,687,937.9 as 30%. However, the applicant has only paid Shs. 300,407,594 as 30% of the tax assessed or that part of the tax not in dispute. The respondent prayed that the application be dismissed for failure to comply with the mandatory requirements of the Tax Appeals Tribunal Act.

The applicant did not file a reply to the respondent's preliminary objection.

Having read the submissions of the respondent this is the ruling of the tribunal.

The respondent raised a preliminary objection that the applicant did not pay 30% of the tax in dispute before filing this application. The respondent contended that the applicant paid a sum of Shs. 300,407,594 which is less than the expected 30%. According to the application, the amount in dispute is Shs. 80,918,959,793. This means that the 30% is Shs. 24,275,687,637.9. The applicant does not dispute that it did not pay the entire amount.

Preliminary objections are provided for under Order 6 Rule 28 of the Civil Procedure Rules which provides that.

“Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court a or after the hearing; except that by consent of the parties, or by order of court on the application of either party, appoint of law may be set down for hearing and disposed of at any time before the hearing”.

In *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] EA 696, Sir Charles Newbold stated that.

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”

In *Yaya v Obur and Ors* Civil Appeal 81 of 2018 the court stated that.

“It is always in the interest of justice to listen to such objections on dispositive points of law at the earliest so as to save time and costs and to avoid a trial in nullity. Court has discretion to dispose of the preliminary objection immediately ...”

The preliminary objection was raised before the parties could even go for trial. The earlier the better hence saving both court and parties' time.

Payment of 30% is a prerequisite before a party files a matter before the Tribunal.

S.15(1) of the Tax Appeals Tribunal Act provides that.

“A taxpayer who has lodged a notice of objection to an assessment shall pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute whichever is greater”.

In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* SCCA No. 2 of 2009 [2010] the Supreme Court affirmed that the requirement to pay 30% of the assessed tax was not unconstitutional when balanced with the citizen's duty to pay taxes. The court also stated that taxes must not only be paid but they must be paid promptly for the public good. In *Metcash Trading Co. Ltd v Commissioner for South African Revenue Services* and another, it was stated that “A taxpayer has to pay his tax and argue later.” In *Bullion Refinery Limited v URA* Application 36 of 2021, this tribunal held that.


"The requirement to pay the 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a taxpayer files a matter in the Tax Appeals Tribunal. This means that by the time the matter is filed in the tribunal, the 30% ought to have been paid".

The tribunal further stated that; "where the 30 % has not been paid the taxpayer loses its right to access the tribunal as it shows it does not have any intention of paying any tax in dispute. It does not come to the tribunal with clean hands."

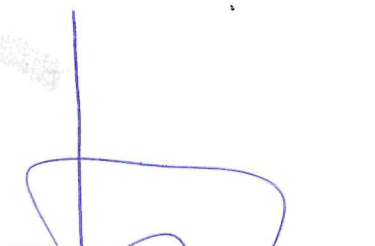
The applicant wrote a letter dated 18<sup>th</sup> May 2023 to the Tribunal requesting to extend time to pay 30%. In the letter, the applicant informed the tribunal that they did not have the money to meet the 30% and appealed to the tribunal to determine this matter on its merits and address the legality of the assessment. However, the payment of 30% is a statutory requirement of all taxpayers, and the applicant is not an exception.

In *The Rangers Limited v URA* Application 171 of 2020, this tribunal dismissed the matter even after the respondent had collected some money by agency notice. Similarly, in this matter the respondent collected Shs. 275,407,594 by third party agency notices and Shs. 25,000,000 deposited by the applicant, bringing it to a total of Shs. 300,407,594. This amount does not cover the 30% tax in dispute which should be Shs. 24,275,687,937.9. In the circumstances, this application is dismissed with costs to the respondent.

Dated at Kampala this 19<sup>th</sup> day of June 2023.

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

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

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