

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 152 OF 2023
ARISING OUT OF APPLICATION NO. 105 OF 2023

UAP OLD MUTUAL UGANDA LIMITED APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, MS. KABAKUMBA MASIKO, MS. GRACE SAFI

RULING

This ruling is in respect of an application seeking an order to add Uganda Insurers Association as a party to Application 105 of 2023.

This application is brought under Rule 30 of the Tax Appeals Tribunal Rules and Order 1 rule 10 (2) of the Civil Procedure Rules seeking orders that the Uganda Insurers Association (UIA) be added as a party to Application 105 of 2023 and costs of the application be in the cause. The applicant stated that the Uganda Insurers Association is an association of all persons engaged in insurance business in Uganda. The issues in Application 105 of 2023 affect the insurance industry in Uganda.

Issue:

1. Whether the Uganda Insurers Association (UIA) should be added as a party to the main application?
2. What remedies are available?

The applicant was represented by Mr. Joseph Luswata while the respondent by Ms. Eseza Victoria Sendege.

The applicant submitted that the addition of UIA is necessary for the effectual and complete determination of all questions in Application 105 of 2023 and for the avoidance of a multiplicity of suits between the respondent and other insurance actors. The applicant cited Rule 30 of the Tax Appeals Tribunal Procedure Rules which provides that:

"In any matter relating to the proceedings of the Tribunal for which these Rules do not provide, the rules of practice and procedure of the High Court shall apply subject to such modifications as the Tribunal may direct."

The applicant submitted that where the Rules of the Tribunal do not provide for an addition of a party to an application before the Tribunal, recourse must be made to the Civil Procedure Rules. Order 1 Rule 10(2) of the Civil Procedure Rules provides that:

"The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."

The applicant submitted that only the latter part of the rule is applicable to this application. It cited *Departed Asians Property Custodian Board v Jaffer Brothers Limited* [1999] 1 EA 55 Kanyeihamba JSC observed at pages 63-64 that:

"This rule is similar to the English R.SC Order 16 r. 11 under which the case of *Amon v. Raphael Tuck & Sons Ltd.*, (1956) 1 ALLER p. 273, was considered and decided and in which it was said that a party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the cause or matter."

The applicant submitted that it is clear that a party without a cause of action *stricto sensu* may be added to the application for as long as its presence is necessary to enable the Tribunal to effectually and completely adjudicate upon and settle all questions involved in the matter.

Mulenga JSC laid down the parameters that are considered in determining whether the presence of a party is necessary for the effectual and complete determination of the questions in the suit. He stated at pages 67-68 as follows:

"For a person to be joined on the ground that his presence in the suit is necessary for the effectual and complete settlement of all questions involved in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit."

The applicant submitted that the addition of UIA to Application 105 of 2023 satisfies both conditions.

The applicant submitted that the issues in the Application 105 of 2023 are whether an endorsement is an instrument under the Stamp Duty Act and whether stamp duty is payable for every actor or beneficiary under group policies. The applicant submitted that that the decision in Application 105 of 2023 has industry wide implications and will therefore affect the operation of all insurance industry players in Uganda. The outcome in the main Application will affect the interests of the UIA and its members. It submitted that it is in the interest of justice that UIA is added as a party to represent the interests of its members besides UAP. This will also help to avoid a multiplicity of suits between the respondent and all insurance industry players they will be bound by the decision in Application 105 of 2023. The public policy requires that the Tribunal avoids multiplicity of proceedings as far as possible.

The applicant submitted that in practice, if UIA is not added as a party there is a risk that the respondent would continue to make similar assessments against other insurance companies particularly while the matter goes through the different appeal processes. The applicant prayed that UIA, to whom membership by all insurance companies operating in Uganda is compulsory, is joined as a party. The respondent does not contend in its affidavit in reply that the addition of UIA will prejudice it in anyway. The applicant prayed that UIA be added as a party and costs in the cause.

In reply, the respondent submitted that in May 2023, it conducted a review into the stamp duty affairs of the applicant for the period January 2017 to June 2021 and found that the applicant had issued 182,255 medical insurance policies attracting stamp duty of Shs. 6,378,925,000 but had only remitted Shs. 4,652,123,018 as stamp duty. The respondent assessed the applicant for the difference. The applicant objected to the assessment and the same was upheld. The applicant then filed the main application challenging the objection decision.

The respondent cited Order.1 Rule 10 (2) of the Civil Procedure Rules which the applicant already reproduced. The respondent submitted that the applicant seeks to rely on the later part of the Rule to add UIA as a party on the ground that its presence will enable the court effectually and completely adjudicate and settle all questions involved in the suit.

The respondent submitted that in *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* SCCA 9 of 1998 it was stated that a party may be joined as a party to a suit if its presence is necessary in order to enable the court effectually and completely adjudicate and settle all questions involved in the cause or matter. The respondent submitted that for a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit.

The respondent submitted that the dispute in Application 105 of 2023 relates to a review on the applicant's stamp duty affairs which is unique to the applicant. It does not extend to the other players in the industry. Contrary the first issue for determination by the Tribunal is whether the applicant is liable to pay stamp duty as assessed? The second is what remedies are available to the parties? Uganda Insurers Association does not need to be a party for it to give evidence in this matter, the same can be called as a witness. The respondent submitted that the applicant has not demonstrated what interest UIA has

in the applicant's assessment of unremitted Stamp Duty. It also contended that the possibility of multiplicity of suits is highly improbable.

Having read submissions of both parties, this is the ruling of the tribunal;

The applicant filed this application seeking to add Uganda Insurers Association (UIA) as a party. It contended that UIA consists all persons engaged in insurance business in Uganda. The applicant's application was supported by the affidavit of Mr. Jonan Kisakye, the Chief Executive officer of UIA. He stated that insurance companies in Uganda issue group policies to cover various risks such as professional indemnity policies, medical insurance, group accident, workers compensation, funeral policies and others. They provide insurance cover to several actors and beneficiaries. The issue is that whether stamp duty is payable for actor or beneficiaries under a group policy. He stated that the UIA will explain the processes and procedures followed in issuing group insurance to companies in Uganda.

Rule 31 of the Tax Appeals Tribunal (Procedure) Rules provide that in any matter relating to the proceedings of the Tribunal for which these Rules do not provide, the rules of practice and procedure of the High Court shall apply. The Civil Procedure Rules which apply to the High Court provide for addition of parties. Order 1 Rule 10(2) of the Civil Procedure Rules provides;

"The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."

Order 1 Rule 13 of the Civil Procedure Rules provides that;

"Any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner".

Order 1 Rule 1 of the Civil Procedure Rules also provides that;

"All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise".

It is not in dispute that this application is on whether stamp duty is payable under a group policy. The applicant contends that since UIA is an association of all persons engaged in insurance in Uganda adding it as a party would prevent all insurance businesses from bringing multiple suits on the said issue as it would be resolved once and for all. The applicant cited *Departed Asians Property Custodian Board v Jaffer Brothers Limited* (supra) where Justice Mulenga JSC stated that

"For a person to be joined on the ground that his presence in the suit is necessary for the effectual and complete settlement of all questions involved in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit."

In the said decision, for a party to be added it has to show that the suit would legally affect its interest.

In order to add a party to this application one has to understand the nature of tax disputes and look at the taxing laws. S. 25(1) of the Tax Procedures Code Act provides that:

"A person dissatisfied with an objection decision may, within 30 days after being served with a notice of objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision".

S. 14(1) of the Tax Appeals Tribunal Act states

"(1) Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision."

While the Tax Procedure Code Act limits the person who may lodge an application with the Tribunal to a person dissatisfied with an objection decision, the Tax Appeals Tribunal Act allows any person aggrieved by a decision made under a taxing Act. Therefore, the first step the Tribunal has to take is to determine whether the application before the Tribunal was an objection decision or a decision made under a taxing act. If it is an objection decision only the person dissatisfied with it may lodge an application. While if it is a decision any person aggrieved may apply for a review.

Black's Law Dictionary 10th Edition p. 1241 defines an objection as; "A formal statement opposing something that has occurred, or is about to occur, in court and seeking the judges immediate ruling on the point". S. 1(g) of the Tax Appeals Tribunal Act defines an objection decision to mean: "the taxation decision made in respect of a taxation objection". The deponent acting on behalf of UIA did not attach the decision of the respondent in which the Association seeks to be added in his affidavit. However, the main application shows that the respondent wrote an objection decision addressed to the Chief Finance Officer of the applicant dated 22nd June 2023. The said objection decision was not addressed to UIA. *Oxford's Advanced Learner's Dictionary* New 9th Edition p.432 defines 'dissatisfied' as "not happy or satisfied with somebody or something." The UIA cannot be dissatisfied with a decision that is not addressed to it. Furthermore, there is no evidence that UIA pays stamp duty. Though UIA is an association of all insurance companies, there is no evidence that it held a meeting of all the insurance companies who expressed that they were dissatisfied with the objection decision which was not addressed to them.

An objection decision is a decision under S. 14(1) of the Tax Appeals Tribunal Act. Where the law is specific, the court has to apply the specific provision. S. 14(1) of the Tax Appeals Tribunal Act refers to a decision, S. 25(1) of the Tax Procedure Code Act is specific to an objection decision.

The respondent contended that tax assessments are unique to each taxpayer. Tax matters are confidential in nature. This confidentiality extends not only to the taxpayer but

also the taxing authority. There are reasons best known to the respondent as to why it may have wanted the applicant to pay a certain tax which may not apply to other taxpayers. For instance, it may give a taxpayer a concessionary treatment, which may not extend to other taxpayers. Bringing strangers on the boat may upset the balance. In order to respect the confidentiality of tax disputes, a Tribunal will be reluctant to add a party where the taxing authority is not comfortable with its addition.

The applicant contended that the issue in controversy extends to all persons engaged in insurance in Uganda and adding it as a party would prevent all other insurance businesses from bringing multiple suits. The Tribunal notes that there is no tax that is personal in nature. All taxes imposed by the legislature affect all members of the public. It is difficult to find a tax that targets only one individual. Therefore, if the Tribunal were to allow any party who is affected by an objection decision to be added as a party it may be opening a Pandora's box where the doors of litigation may be opened to anybody who may be affected but has no interest. The Tribunal would fall back to the test of a cause of action stated in *Auto Garage & others v Motokov* (No.3) (1971) EA 519 which was summarised as

- “1. The plaintiff enjoyed a right.
2. The right has been violated.
3. The defendant is liable.”

In respect of tax disputes, a party has to show that it was assessed a tax, it was not heard or if so it was not proper, its right to proper taxation may be violated. It has to show that the respondent was not justified to assess the tax. In this case, as already stated there is no evidence to show that UIA pays stamp duty. There is also no evidence that in the event the applicant's application is dismissed that UIA will pay the tax. The party that the applicant wants to add does not satisfy any of the above conditions. UIA has no cause of action for appearing before the Tax Appeals Tribunal. This means that it has no reason to be in the tribunal.

In *Zee Pharmaceuticals Limited App No. 287 of 2022*, this tribunal ruled that;

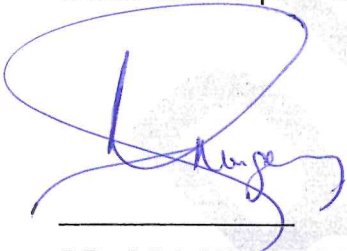
"The tribunal cannot proceed to hear a matter where the right steps were not followed.....if the procedure is not followed, the tribunal would have no jurisdiction".

The rules of procedure to appear before the Tax Appeals Tribunal require that there is an assessment, an objection and an objection decision or taxation decision. There are none in respect of UIA. In this case, the intended party cannot be heard since it has not followed the procedure to the tribunal. Furthermore, adding UIA will slow the resolution of the dispute as any evidence or submission it intends to adduce may be presented as a witness or by the applicant. This would defeat the purpose of the tribunal which is to resolve tax disputes expeditiously.

Not adding UIA as a party does not prevent it from participating in the dispute. If it feels that it has any contribution it can make, it may do so by being a witness or by being the representation of the applicant. It can also provide other consultation to the applicant without necessarily being a party.

In the circumstances, this application is dismissed, costs in the main cause.

Dated at Kampala this 22nd day of December 2023.



DR. ASA MUGENYI
CHAIRMAN



MS. KABAKUMBA MASIKO
MEMBER



MS. GRACE SASI
MEMBER