



**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION. NO. 227 OF 2022**

AC YAFENG CONSTRUCTION CO. LTD .....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, HON. EDWARD BIRYETEGA,  
MS. CHRISTINE KATWE**

**RULING**

**I. Introduction**

1. The Applicant challenges the Respondent's objection decision dated 20 October 2021, which upheld an additional Pay As You Earn (PAYE) assessment of Shs. 322,024,319. The dispute centres on whether certain payments made by the Applicant to its employees constituted taxable employment income or exempt employment-related expenses under the Income Tax Act.

**II. Background facts**

2. The Applicant is a company engaged in the business of construction services in Uganda. Following investigations into the Applicant's tax affairs for the period July 2019 to December 2020, the Respondent communicated its findings through a management letter dated 8 June 2021. The investigations revealed alleged PAYE non-compliance arising from payments made to the Applicant's employees.

3. Consequently, on 22 June 2021, the Respondent issued an additional PAYE assessment of Shs.322,024,319. The Respondent's position was that the Applicant had paid various allowances and benefits to employees without accounting for PAYE on those payments.
4. Dissatisfied with the assessment, the Applicant lodged an objection on 16 August 2021. The Applicant contended that the amounts assessed largely related to travel expenses and allowances paid to employees in the course of performing their duties and were therefore not subject to PAYE. The Applicant further maintained that the Respondent had included individuals who had ceased employment following staff lay-offs occasioned by the COVID-19 pandemic, thereby overstating the Applicant's tax liability.
5. The Respondent considered the objection and, by an objection decision dated 20 October 2021, upheld the assessment on the ground that the disputed payments formed part of the employees' remuneration and were therefore chargeable to PAYE. Aggrieved by that decision, the Applicant lodged the present Application before the Tribunal.

### **III. Representation and evidence**

6. Mr. Sydney Ojwee appeared for the Applicant while Doreen Amutuhair, Tonny Kalungi, Simon Peter Orishaba and Desire Mulindwa-Muwonge, all from the Respondent's Legal Services and Board Affairs appeared for the Respondent.

#### **Applicant's evidence**

7. The Applicant adduced affidavit evidence of its Director, Mr. Emeka Okoye, who deponed that following a tax investigation covering July 2019 to December 2020, the Respondent raised a PAYE assessment of Shs.222,356,987. The Applicant objected on the basis that a substantial portion of the assessed amounts comprised allowances and per diem payments rather than taxable employment income. The deponent further

stated that the Applicant sought but was not provided with the workings underlying the assessment.

8. He averred that the Applicant's construction project was significantly affected by COVID-19 restrictions, resulting in staff lay-offs, salary reductions, suspension of site activities, and eventual termination of the construction contract in December 2020. Consequently, employee remuneration reduced considerably and the company only paid limited salary and allowance arrears thereafter.
9. The deponent further maintained that the impugned travel, meal and site allowances were incurred by employees in the performance of their duties and therefore did not constitute taxable benefits for PAYE purposes.

#### **The Respondent's evidence**

10. The Respondent's Manager, David Dongo, deposed that the Respondent conducted a search and seizure operation at the Applicant's premises and obtained employment, payroll and contractual records which formed the basis of its investigations. Following the analysis of the retrieved documents, the Respondent assessed the PAYE of Shs. 222,356,987 and VAT of Shs. 750,970,601.
11. Regarding PAYE, the deponent stated that employment contracts, salary schedules, pay slips and site allowance records revealed that the Applicant paid employees both basic salary and cash site allowances. While PAYE and NSSF were deducted from salaries paid through the bank, cash payments categorised as site allowances were allegedly not declared for tax purposes. The Respondent contended that these payments constituted taxable employment income and that undeclared cash payments amounting to Shs.604,075,352 were identified during the investigations.
12. The Respondent therefore maintained that the PAYE assessment was lawfully raised and that the Applicant remained liable for the assessed taxes.

### **The Applicant's affidavit in rejoinder**

13. In rejoinder, Emeka Okoye maintained that the VAT-related allegations raised by the Respondent were irrelevant to the present PAYE dispute, noting that VAT was being challenged in separate proceedings. He further contended that the employment records relied upon by the Respondent did not reflect the effects of COVID-19, which led to staff reductions and salary cuts.
14. The deponent asserted that the cash payments identified by the Respondent were facilitative allowances paid to certain employees for organising company documents in relation to arbitration proceedings and were not salary. He maintained that these payments were incurred for travel and meal expenses in the course of employment and therefore did not constitute taxable employment benefits.
15. He further averred that the Respondent assessed PAYE beyond December 2020 despite the termination of the construction contract and the cessation of substantive business operations. Accordingly, he maintained that the Applicant declared all salary and allowance payments and was not liable for the assessed PAYE.

#### **IV. Issues for determination**

16. The Tribunal considers that the following issues arise for determination:
  - (i) Whether the Applicant is liable to pay the taxes assessed by the Respondent?
  - (ii) What remedies are available to the parties?

#### **V. Submissions of the Applicant**

17. The Applicant submitted that the PAYE assessment was excessive and unlawful because it included income that was never paid to employees and allowances which were exempt from tax under the Income Tax Act. The Applicant therefore prayed that the assessment be vacated with costs.

### Taxation of income not paid to employees

18. The Applicant submitted that the Respondent unlawfully assessed PAYE on income that was never received by certain employees. It argued that although the Respondent relied on employment contracts and salary schedules prepared at the commencement of the Living World Assembly church construction project, it disregarded subsequent developments arising from the COVID-19 pandemic, which significantly affected the Applicant's business operations.
19. According to the Applicant, the pandemic led to employee lay-offs and salary reductions, evidence of which was availed through company resolutions and employee communications but was ignored by the Respondent. The Applicant therefore maintained that the assessment was based on projected remuneration rather than actual payments made to employees.
20. The Applicant relied on Sections 4, 15, 17 and 126 of the Income Tax Act and submitted that PAYE is only chargeable on employment income actually paid to an employee. It argued that where no payment is made, no employment income arises and consequently no obligation to withhold PAYE can exist. The Applicant therefore contended that the Respondent had no legal basis to assess PAYE on sums that were never earned or received by employees.
21. In support of this position, the Applicant relied on ***Safaricom PLC v Commissioner of Domestic Taxes (Tax Appeals E826 of 2023)***, where it was held that the obligation to deduct PAYE is dependent upon an employer making a payment. The Applicant further relied on ***Guaranty Trust Bank Limited v URA, TAT Application No. 20 of 2024***, in which the Tribunal held that PAYE is a tax on employee income and that the Income Tax Act does not permit the Respondent to deem income in the absence of actual receipt.

**PAYE on transport and meal allowances**

22. The Applicant further submitted that the disputed transport, meal and sundry allowances did not constitute taxable employment income. It contended that the allowances were paid to facilitate employees' travel between the Applicant's offices and the construction site in Kajjansi, as well as to cover meals and related expenses incurred by employees while performing their duties at the site. The Applicant maintained that these payments were not personal benefits but were intended solely to facilitate the performance of employment duties.
23. The Applicant relied on S.19(2)(d) of the Income Tax Act, which excludes from employment income any allowance that does not exceed the actual or anticipated cost of accommodation, travel, meals and refreshments incurred while undertaking travel in the course of employment. It was submitted that the allowances satisfied the requirements of the provision because they were paid to employees undertaking duties away from the Applicant's offices and were commensurate with the expenditure likely to be incurred in performing those duties.
24. In support of its interpretation, the Applicant relied on ***Uganda Revenue Authority v Siraje Hassan Kajura, Civil Appeal No. 09 of 2016***, where the Supreme Court adopted the principle in ***Cape Brandy Syndicate v Inland Revenue Commissioners (1921) KB 64*** that taxing statutes must be interpreted strictly and that no tax can be imposed unless clearly authorised by law. The Applicant thus submitted that the disputed allowances met both requirements and were therefore exempt from PAYE.

**Burden of Proof and Legality of the Assessment**

25. The Applicant submitted that it had discharged the burden imposed under Section 19 of the Tax Appeals Tribunal Act by producing evidence demonstrating that the assessment was excessive. It argued that the Respondent failed to evaluate evidence relating to salary reductions, lay-offs and the exempt nature of the allowances and instead relied on outdated payment schedules and assumptions regarding employee remuneration.

The Applicant therefore maintained that the assessment was inconsistent with the law and should be set aside.

**Remedies sought**

26. The Applicant prayed that the Tribunal find that it is not liable for the assessed PAYE and set aside the Respondent's assessment. The Applicant also sought costs of the application pursuant to Section 27 of the Civil Procedure Act Cap 282. In support of this prayer, it relied on ***Godfrey Katunda v Betty Atuhaire Bwesharire and Another, Court of Appeal Civil Appeal No. 5 of 2006***, where it was held that costs ordinarily follow the event and should generally be awarded to the successful party unless there is good reason to order otherwise. Accordingly, the Applicant prayed that the application be allowed with costs.

**VI. Submissions of the Respondent**

27. The Respondent submitted that the Applicant was liable for the tax assessed. It contended that the impugned PAYE and VAT assessments were lawfully raised following investigations, a search and seizure operation, and a review of documents obtained from the Applicant's premises. The Respondent maintained that the Applicant failed to account for all taxable employee remuneration and failed to comply with its VAT obligations despite conducting taxable transactions. It further argued that the Applicant had failed to prove that the assessments were excessive or incorrectly raised and therefore prayed that the application be dismissed with costs.

**Preliminary objection on non-payment of 30% of the assessed tax**

28. As a preliminary point, the Respondent submitted that the application was incompetent for failure by the Applicant to pay 30% of the assessed tax as required under S.15(1) of the Tax Appeals Tribunal Act. The Respondent contended that payment of the statutory deposit is a mandatory requirement that must be satisfied before a taxpayer can properly invoke the Tribunal's jurisdiction. It argued that the Applicant's total assessed liability stood at Shs.973,327,588 and that 30% thereof, amounting to Shs.291,998,276.4,

had neither been paid nor shown to have been paid before commencement of the proceedings.

29. In support of this position, the Respondent relied on ***Uganda Projects Implementation and Management Centre v Uganda Revenue Authority, Supreme Court Constitutional Appeal No. 2 of 1999***, where it was held that the statutory requirement to pay 30% of the assessed tax pending resolution of an objection is constitutional.

#### **PAYE on Undeclared Employee Remuneration**

30. The Respondent submitted that the PAYE assessment was lawfully raised after investigations revealed that the Applicant failed to declare and account for all employment income paid to its employees. It argued that upon examining employment contracts, salary payment schedules, site allowance requisition forms and other payroll records seized during the investigation, it established that the Applicant paid remuneration comprising both basic salaries and site allowances, but only subjected part of the payments to PAYE deductions.
31. The Respondent contended that the salary records demonstrated that whereas PAYE and NSSF deductions were made on basic salaries paid through the banking system, the site allowances paid in cash were not subject to any statutory deductions. It maintained that these cash payments constituted taxable employment income and ought to have been included in PAYE declarations. The Respondent further submitted that an analysis of the Applicant's PAYE returns revealed undeclared cash payments amounting to Shs. 604,075,352 made to employees. Consequently, the Respondent assessed PAYE amounting to Shs.222,356,987.
32. The Respondent rejected the Applicant's contention that the payments constituted exempt allowances or that employees had been laid off during the COVID-19 period. It argued that the Applicant failed to produce any evidence of termination of employment, amendments to employment contracts or revisions to employee remuneration. According to the

Respondent, the available employment records established that the Applicant continued to employ staff and pay remuneration that had not been fully declared for tax purposes. The Respondent therefore maintained that all assessed PAYE was lawfully due and payable.

### VAT Liability

33. The Respondent further submitted that the Applicant was liable to pay VAT amounting to Shs.750,970,601. It argued that investigations established that the Applicant made taxable supplies and received consideration, thereby rendering it liable for VAT registration and the subsequent remittance of VAT. The Respondent relied on Ss. 4, 5, 6, 7 and 18 of the VAT Act to contend that VAT is chargeable on every taxable supply made by a taxable person and is payable whenever a person exceeds the registration threshold prescribed by law.
34. The Respondent submitted that investigations revealed transactions between the Applicant and GTI East Africa Ltd, through which construction materials worth Shs.433,324,230 were supplied and VAT amounting to Shs.59,965,020 was charged. It further established that the Applicant had entered into a construction contract with **Living World Assembly Church**, under which it received substantial sums of money, including an advance payment of Shs.1,026,547,500. The Respondent maintained that further inquiries showed that the Applicant had received significantly larger amounts in relation to the project and had issued tax invoices for works performed.
35. The Respondent also submitted that an examination of the Applicant's bank accounts revealed credits amounting to Shs.10,203,475,984, thereby rendering the Applicant liable for VAT registration with effect from November 2019. According to the Respondent, despite collecting and retaining VAT on taxable transactions, the Applicant failed to remit the tax to the Respondent. It therefore maintained that the VAT assessment was properly raised and remained payable.

### **Burden of proof**

36. The Respondent submitted that the Applicant had failed to discharge the burden placed upon it by Section 19(b) of the Tax Appeals Tribunal Act of proving that the taxation decision should not have been made or should have been made differently. It maintained that the assessments were based on documentary evidence obtained during the investigations and that the Applicant had not produced sufficient evidence to demonstrate that the assessments were excessive or incorrect. The Respondent therefore contended that it had established, on a balance of probabilities, that the PAYE and VAT assessments were lawful and justified.

### **Remedies sought**

37. The Respondent prayed that the Tribunal find that the Applicant is liable to pay PAYE of Shs.222,356,987 and VAT of Shs.750,970,601, giving rise to a total tax liability of Shs.973,327,588. It consequently urged the Tribunal to dismiss the application, uphold the impugned assessments and order the Applicant to pay the assessed tax. The Respondent further prayed for costs on the basis that it had proved that the Applicant was liable to pay the assessed taxes.

## **VII. The Applicant's submissions in rejoinder**

38. In rejoinder, the Applicant opposed the Respondent's preliminary objection and maintained that it had made payments towards the disputed tax liability in compliance with Section 15(1) of the Tax Appeals Tribunal Act. It therefore urged the Tribunal to determine the application on its merits.
39. The Applicant further reiterated that the PAYE assessment was based on assumptions rather than actual employee earnings. It maintained that the Respondent failed to consider evidence of staff lay-offs, resignations, and salary reductions occasioned by the COVID-19 pandemic, and consequently assessed tax on income that employees never received.
40. The Applicant also maintained that the transport, meal and sundry allowances were facilitative payments incurred in the course of employment and therefore qualified for exclusion from employment income under

Section 19(2)(d) of the Income Tax Act. On that basis, it prayed that the application be allowed and the PAYE assessment set aside.

#### VIII. The Determination

##### **The Respondent's preliminary objection regarding the Applicant's failure to pay 30% of the tax in dispute**

41. The Respondent raised a preliminary objection contending that the Application was incompetent for failure by the Applicant to comply with the mandatory requirement under S.15(1) of the Tax Appeals Tribunal Act of paying 30% of the assessed tax before instituting proceedings before the Tribunal. The Respondent submitted that the Applicant's assessed tax liability amounted to Shs. 973,327,588, and that there was no evidence of payment of the statutory amount.
42. Section 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 which is not in dispute, whichever is greater. The constitutionality and effect of this requirement were settled by the Supreme Court in *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority, Supreme Court Constitutional Appeal No. 2 of 2009*, where the Court held that the requirement to pay 30% of the assessed tax before pursuing an appeal does not amount to a denial of access to justice but constitutes a constitutionally permissible limitation intended to safeguard revenue collection and ensure compliance with the constitutional duty to pay taxes. The Court further affirmed the principle that taxes are payable on a "pay now and argue later" basis.
43. The Tribunal has reviewed the record and notes that no evidence was adduced demonstrating that the Applicant paid the mandatory 30% of the assessed tax before bringing the present Application. The Applicant equally did not address this issue in its submissions nor point the Tribunal to any proof of compliance with Section 15(1) of the Tax Appeals Tribunal Act.

44. Accordingly, the Tribunal finds merit in the Respondent's preliminary objection and holds that the Applicant's failure to comply with Section 15(1) of the Tax Appeals Tribunal Act renders the Application incompetent. The preliminary objection therefore succeeds.

**Alternative Finding on the Merits**

45. Having found that the application is incompetent, the Tribunal shall proceed to consider the substantive issue in the alternative.

**Issue one: Whether the applicant is liable to pay the PAYE assessed by the Respondent?**

46. The dispute before the Tribunal concerns whether the Respondent lawfully assessed PAYE on payments made by the Applicant to its employees. The Applicant contended that the assessment was imposed on income that was never paid to certain employees and on transport and meal allowances that were exempt from taxation under Section 19(2)(d) of the Income Tax Act. The Respondent, on the other hand, maintained that its investigations established that the Applicant paid employment income which was not declared for PAYE purposes and that the alleged allowances constituted taxable employment benefits.
47. Section 19(a) of the Tax Appeals Tribunal Act places the burden on an applicant to prove that an assessment is excessive, while Section 28(a) of the Tax Procedures Code Act similarly requires a taxpayer challenging an assessment to demonstrate that it is incorrect. The law therefore placed the burden upon the Applicant to establish that the Respondent's assessment ought not to have been made or should have been made differently.
48. The Tribunal has carefully considered the evidence and submissions of the parties. The Applicant argued that its business operations were adversely affected by the COVID-19 pandemic, resulting in employee lay-offs and salary reductions. It maintained that the Respondent relied on salary

schedules prepared at the project's commencement and failed to account for subsequent developments.

49. The Applicant further contended that the Respondent's assessment was not based on actual remuneration paid during the period under review but was instead derived from employment contracts, payroll records and salary schedules prepared before the disruption occasioned by the COVID-19 pandemic. According to the Applicant, the Respondent failed to account for subsequent employee lay-offs, salary reductions and the termination of employment relationships, and simply extrapolated employees' earnings from historical remuneration records.
50. The Applicant therefore maintained that the assessment was based on projected income rather than income actually earned and received by employees during the relevant period.
51. However, whereas the Applicant asserted that some employees ceased employment or had their remuneration reduced, the evidence placed before the Tribunal does not sufficiently demonstrate that the specific amounts forming the basis of the assessment were never paid or that the employees in question had ceased employment during the relevant period.
52. Conversely, the Respondent relied on employment contracts, monthly salary schedules, site allowance requisition forms, pay slips and PAYE return reviews obtained during investigations. According to the Respondent, these records revealed payments to employees which were not fully subjected to PAYE and showed that cash payments made as site allowances had not been declared for tax purposes.
53. The Tribunal has also considered the Applicant's contention that the disputed transport and meal allowances fall within the exemption provided under Section 19(2)(d) of the Income Tax Act. While the law excludes certain travel, accommodation, meal and refreshment allowances from employment income, the burden remained on the Applicant to demonstrate

that the payments were strictly reimbursements or allowances for expenditure incurred or likely to be incurred in the course of employment duties.

54. The Respondent's evidence was that the payments formed part of predetermined remuneration packages and were paid as a regular component of employee earnings. On the evidence before the Tribunal, the Applicant has not sufficiently demonstrated that the impugned payments qualified for exclusion under Section 19(2)(d) of the Income Tax Act.
55. The Tribunal therefore finds that the Applicant failed to discharge the burden imposed under Section 19(a) of the Tax Appeals Tribunal Act and Section 28(a) of the Tax Procedures Code Act of proving that the PAYE assessment was excessive or incorrect. The Tribunal consequently finds no basis for disturbing the Respondent's assessment.

**Issue two: What remedies are available to the parties?**

56. Having upheld the Respondent's preliminary objection and, in the alternative, found that the Applicant failed to establish that the PAYE assessment was excessive or incorrect, there is no basis upon which the Tribunal can interfere with the Respondent's objection decision. The remedies sought by the Applicant are therefore unavailable.
57. Under section 22(6) of the Tax Appeals Tribunal Act, the Tribunal is clothed with broad powers to make orders regarding costs, damages, interests and any other remedies. Given the findings above, the Tribunal dismisses the application and upholds the assessment.

**IX. Orders of the Tribunal**

58. In view of the above findings, the Tribunal makes the following orders:
  - (i) The Respondent's preliminary objection is upheld.
  - (ii) The Application is hereby dismissed for failure to comply with S.15(1) of the Tax Appeals Tribunal Act.

- (iii) The Respondent's objection decision is affirmed.
- (iv) The Applicant shall bear the costs of the Application.

DATED at Kampala this 30<sup>th</sup> day of June 2026



HON. CRYSTAL KABAJWARA  
CHAIRPERSON



MS. CHRISTINE KATWE  
MEMBER



HON. EDWARD BIRYETEGA  
MEMBER