

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 181 OF 2023.
(ARISING FROM APPLICATION 147 & 203 OF 2023)

AFRICA ASIA CONSTRUCTION (ACCC) LTD.....APPLICANT

VERSUS

1. UGANDA REVENUE AUTHORITY
2. GREAT STEEL LIMITED
3. ELBUENO TECHNOLOGIES LTD
4. HERI INVESTMENTS & TECHNICAL SERVICES LTD
5. INTERGRATED TRANSPORT SOLUTIONS LIMITED
6. ROSTWA ENGINEERS LIMITED
7. LINWIN HOLDINGS LIMITED
8. MULTILINES COMPANY UGANDA LIMITED
9. UPLAND ENTERPRISES & CONSTRUCTION LIMITED
10. NICE STAR INTERNATIONAL LIMITED
11. JOYSUN INTERNATIONAL LIMITED
12. CREST GROUP LIMITED
13. DAPPER ENGINEERING LIMITED
14. LEX UGANDA ADVOCATE & SOLICITORS
15. SUPPERIOR HARDWARE LIMITED.....RESPONDENTS

BEFORE: MS KABAKUMBA MASIKO, MR. WILLY NANGOSYAH, MS. SAFI GRACE

RULING

This ruling is in respect of an application seeking an order to add 14 other companies as Respondents to applications 147 and 203 of 2023.

The application is brought under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 1 rule 10 (2) and Order 52 rules 1 & 3 of the Civil Procedure Rules.

1. Background Facts

The grounds for the application are stated in the application and supporting affidavit deponed by Agasha Katugunda. The grounds are briefly that:

- i) The Respondent conducted an audit on the Applicant's tax affairs and raised an assessment of income tax Shs. 418,389,669 and VAT of Shs. 207,524,190 respectively.
- ii) At objection level, the 1st Respondent disclosed information of alleged purchases by the 2nd – 15th Respondents from the Applicant which the Applicant denied knowledge about. The Applicant could not furnish documents to the 1st Respondent for the alleged sale transactions to the 2nd - 15th Respondents.
- iii) The purported transactions with the 2nd – 15th Respondents were never carried out by the Applicant and therefore the sales are fictitious.
- iv) On 28th August 2023, the Applicant wrote to the 1st Respondent to investigate the fictitious transactions and the Respondent has not responded to date.
- v) The Applicant filed TAT applications 147 and 203 of 2023 and it is in the interest of justice that that the 2nd to the 15th Respondent's be added as parties to this suit.

The Respondent opposed the application through an affidavit in reply, deponed by Sam Kwerit. The grounds are briefly that;

- i) The Respondent conducted an audit on the Applicant's tax affairs for the period 2019 - 2021 and raised an additional income tax assessment of Shs. 425,189,669, VAT assessments of Shs. 233,279,096 and Shs. 105,188,644.
- ii) The assessments were based on undeclared sales arising from variances between income tax and VAT from the supply of paper and the Applicants' claims were not verifiable by ASYCUDA data and undeclared sales arising from the sales to 2nd to the 15th Respondent.
- iii) The Applicant objected to the assessments on grounds that all the transactions were declared and that the assessments were based on fictitious supplies.
- iv) The Respondent disallowed the objection because the documents provided did not support the objection.
- v) The assessment and tax liability against the Applicant is due and payable.
- vi) The Applicant has not demonstrated the grounds requisite for the grant of this application
- vii) It is in the interest of justice that this application be dismissed.

2. Representation

The Applicant was represented by Mr. Haruna Mbeeta while the Respondent was represented by Mr. Thomas Lumuria.

3. Submissions of the Applicant

The Applicant submitted that the 1st Respondent conducted an audit on the Applicant and raised additional income tax of Shs. 418,389,669 and VAT of Shs. 207,524,190 against the Applicant for the tax period 2019 to 2021. It is the Applicant's contention that the alleged sales were fictitious as they were never carried out by the Applicant and that it is in the interest of justice that the 2nd to the 15th Respondents be joined as parties to the main applications for effective and complete resolution of the issues in the main application as the orders will legally affect their interests and avoid multiplicity of suits over the same subject matter.

The Applicant submitted Section 22 (3) of the Tax Appeals Tribunal Act and Rule 30 of the Tax Appeals Tribunal (Procedure) Rules empowers the Tribunal to apply the civil procedure rules. Order 1 Rule 10 (2) of the Civil Procedure Rules empowers court at any stage of proceedings either upon or without the application of either party order the name of any party to be added to enable court effectually and completely adjudicate upon and settle all questions involved in the suit.

The Applicant relied on the case of ***Uganda Revenue Authority vs. ILISO Consulting (PTY) LTD & ILISO South Africa, Misc. Application No. 34 of 2023*** where the Tribunal held as follows while granting the application to add a party;

"...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 effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...".

The Applicant contended that adding the 2nd – 15th Respondents as parties will enable the Tribunal effectually and completely adjudicate upon and settle all questions involved in the main application and determine the right party to bear the tax burden if any, avoid multiplicity of proceedings over the same dispute and buttress the right to fair hearing of all parties involved in accordance with Article 28 of Constitution. The grant of the application will not prejudice the 1st Respondent but enable her collect Government revenue from the 2nd to the 15th Respondents if any, of over Shs. 3,619,665,314 arising out of fictitious purchases. The Applicant prayed that this application is granted, and the orders thought.

4. Submissions of the Respondent

In reply, the Respondent submitted that a party can be added to a suit if their presence is necessary to enable the Tribunal to effectually and fully adjudicate upon and settle all questions involved in the application. The Respondent cited Section 22 (3) of the Tax Appeals Tribunal Act which provides: *"The proceedings of a tribunal shall be conducted in accordance with such rules of practice and procedure as the tribunal may specify, and the tribunal may direct the application of the rules of practice and procedure of any court subject to such modifications as the tribunal may direct"*.

The Respondent relied on Rule 31 of the Tax Appeals Tribunal (Procedure) Rules, 2012 which provides:

"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".

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".

The Respondent submitted that Order 1, Rule 13 of the Civil Procedure Rules, provides:

"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".

The Respondent submitted that Order 1, Rule 3 of the Civil Procedure Rules, provides:

"All persons may be joined as defendants against 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 separate suits were brought against those persons, any common question of law or fact would arise".

The Respondent cited ***Departed Asians Property Custodian Board v Jaffer Brothers Limited, SCCA 9 of 1998***, where Justice Mulenga, JSC held 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 the 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 Respondent submitted that the dispute between the parties relates to assessments which were based on undeclared sales arising from a variance between income tax and

VAT sales from a supply of paper and the Applicant's claim of imports that were not verifiable in ASYCUDA data. The undeclared sales arose from sales made to Hariss International Ltd, Linwin Holdings, Integrated Transport Solutions Ltd, Elbuena Technologies Limited, Upland Enterprises and Construction Limited and Great Steel Ltd, Heri Investments and Technical Services Limited, and Rostwa Engineers Limited.

The Respondent submitted that whereas it is presumed the 2nd to 15th Respondents transacted with the Applicant, the addition of these parties to this matter will not be necessary in determining the questions involved in the dispute. The 1st Respondent prayed that the application be dismissed with costs to it.

5. The Applicant's submissions in rejoinder

In rejoinder, the Applicant submitted that the alleged sales on which the Respondent based the assessments in question did not exist, fictitious and that for effective and complete settlement of questions in the main applications, it is necessary to add the 2nd to 15th Respondents on the main applications as the orders sought by the Applicant will legally affect their interests. The Respondent admits in its affidavit and submissions in reply that out of the 14 entities in dispute, only Rostwa Engineers Limited allegedly responded to her email with purported copies of invoices and receipts. There is no evidence of any response from the rest of the 14 entities in dispute as regards the alleged sales by the Applicant.

The Applicant submitted that among the issues to be determined by the Tribunal in the main applications, is the question of fraud and illegality committed by the 2nd to 15th Respondents on both the Applicant and the Respondent, when they declared the disputed invoices to the Respondent as having been issued by the Applicant whereas not.

In paragraph 13 and 11 of Agasha Katugunda and Ali Swaydan's affidavits respectively, the Applicant submitted that they reported the issue of fraud committed by the 2nd to 15th Respondents for purposes of tax investigations which the Respondent commenced and is still ongoing against all the 14 entities.

The Applicant submitted that it is settled law that a court of law cannot sanction that which is illegal, and that illegality once brought to the attention of court overrides all questions of pleadings as was held by the Supreme Court in *Makula International vs. His Eminence Cardinal Nsubuga & Another, SCCA No. 4 of 1981*. In the present application, the Applicant raises serious allegations of fraud and illegality against the 2nd to 15th Respondents. The Respondent should not be permitted to condone or profit from the wrongs of the 2nd to the 15th Respondents, by raising tax assessments based on fictitious purchases if any. The Respondent has a duty to assist the Tribunal to investigate the allegations of fraud and illegality. The grant of the application will not cause any injustice to the Respondent but enable the Tribunal to arrive at a fair tax decision. The Applicant retaliated her orders sought be granted.

6. Determination of the application by the Tribunal

The Applicant filed this application seeking to add the 2nd to the 15th Respondent's as parties. The Applicant alleged that it had never made the impugned sales to the 2nd and 15th Respondents, which were relied on by the 1st Respondent to generate the assessments in issue. It is the Applicant's contention that the alleged sales were fictitious as they were never carried out by the Applicant.

The tribunal relied on Rule 31 of the Tax Appeals Tribunal (Procedure) Rules which provides:

"(1) 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".

Order 1, Rule 13 of the Civil Procedure Rules provides as follows:

"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 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".

In the case of ***Departed Asians Property Custodian Board vs. Jaffer brothers Ltd***, [1999] 1. E.A 55, Mulenga. J.S.C. stated:

"The two were joined as defendants, not because Jaffer Brothers Ltd had any cause of action against them. They were joined because, on application of Mohamed M. Bagalaaliwo, the original one defendant in the suit, the trial court accepted and ordered that their presence in the suit was necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit, in accordance with O.1 R. 10 (2) of the Civil Procedure Rules".

In the said decision, for a party to be added, it had to be proven that the suit would legally affect its interests after the case is disposed of. Furthermore, according to the taxing laws, S. 25 (1) of the Tax Procedures Code Act provides:

"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".

In addition, S. 14 (1) of the Tax Appeals Tribunal Act provides:

"(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."

In that regard, only a person dissatisfied with a taxation decision or objection decision may lodge an application. 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 Black's Law Dictionary* 10th Edition page. 1241 defines an objection as:

"A formal statement opposing something that has occurred, or is about to occur, in court and seeking the judge's immediate ruling on the point".

The above sections require a person who is dissatisfied with a taxation decision made by the 1st Respondent to apply to the Tribunal for review of the 1st Respondent's decision.

The 1st Respondent did not issue the 2nd – 15th Respondents with a taxation decision; therefore, the 2nd – 15th Respondents could not have been dissatisfied with a decision not issued to them. There were no assessments issued to the 2nd – 15th Respondent, and we do not have any evidence concerning their tax affairs and liability.

It is customary for the 1st Respondent, when carrying out tax audits, to carry out checks and reconciliations with persons within the Applicant's transactional ecosystem. This includes suppliers, customers, bankers, previous tax filings and other records that may be in the Respondent's possession. Such checks aid in ensuring the completeness of the audit as well as the accuracy and cohesion of findings. Therefore, in arriving at a tax assessment, it is customary for the 1st Respondent to be informed by information obtained from such other external sources. It would be unreasonable for Applicants to expect persons who have in one way or the other provided information to the 1st Respondent or aided the audit process, leading to the assessment, to be joined as co-respondents in proceedings before the Tribunal.

The most appropriate avenue that is available to parties in such cases would be to apply to the Tribunal to summon the 2nd – 15th Respondent to appear before it to give evidence.

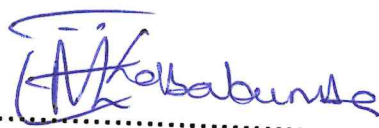
In ***Airtel Uganda Limited v URA, Misc App No. 72 of 2024*** the tribunal stated:

"We believe that the proper course of action for the Applicant is to apply to the tribunal, at the appropriate time, under S. 21 (2) (a) of the Tax Appeals Tribunals Act, for the tribunal to summon GVG to appear before it to give evidence. The above provision gives the tribunal the powers of the High Court to summon a person to appear before it to give evidence or to produce books, documents or things in the possession, custody or control of the person named in the summons".

Therefore, the correct procedure should be for the Applicant to apply to the Tribunal under Section 21 (2) of the Tax Appeals Tribunal Act to summon the 2nd – 15th Respondents to give evidence.

In the circumstances, this application to add the 2nd – 15th Respondents as parties to the main suit fails and is dismissed with costs to the Respondent.

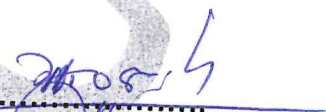
Dated at Kampala this 15th day of July 2024.



KABAKUMBA MASIKO
CHAIRPERSON



SAFI GRACE
MEMBER



WILLY NANGOSYAH
MEMBER