THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION 18 OF 2022

BALONDEMU DAVID ==========APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ==========RESPONDENT

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

RULING

This application arises from a challenge to an income tax assessment of Shs. 665,738,205 and a penal tax assessment of Shs. 20,000,000 issued to the applicant

The applicant operated a law firm under the names of Balondemu and Company Advocates. Sometime in 2020, the respondent requested for information on certain clients from the applicant. The applicant provided information which the respondent found insufficient. As a result, the respondent issued an income tax assessment of Shs. 665,738,205 and a penal tax assessment of Shs. 20,000,000. The applicant objected to the income tax assessment.

The agreed issues are:

1. Whether the applicant is liable to pay the income tax assessed?
2. What remedies are available to the parties?

The applicant was represented by Mr. Robert Bautu while the respondent by Mr. Tony Kalungi and Ms. Diana Prida Praff.

The dispute between the parties revolves around information provided by the applicant to the respondent and monies he received while operating under a law firm. The respondent contends that the applicant provided insufficient information. The respondent also

contends that the applicant is liable to pay income tax for the monies received as they were not purportedly remitted to the client.

The applicant testified that he is a registered taxpayer with a Tax Identification Number (TIN). He was formerly practicing his profession as Balondemu and Company Advocates. The said firm ceased business and was wound up. In 2015, the firm reopened for business, and he was joined by colleagues Mpata Kalid and Kobusinge Naila as partners. The firm opened a client trust account with United Bank of Africa. The firm did transactions for clients where it received funds on its client's account for onward transmission. In 2016, the applicant ceased to be a partner on being appointed chairman of the Kampala District Land Board.

He testified further that in August 2020 the respondent invited him to attend a meeting in respect of money laundering. On 31st August 2020, his representative, one Eric Mkwe attended the meeting where he was requested to furnish information relating to clients who were beneficiaries of monies put on the firm's client trust account. Eric Mkwe informed the respondent that the information was confidential. On 4th September 2020, the respondent requested information on payments received by a client called Trimecke Group Limited (hereinafter called Trimecke). On 9th November 2020, the respondent informed the applicant that it was investigating him. On 16th November 2020 and 10th December 2020, the applicant explained to the respondent the transactions of the clients. On 14th December 2020, the respondent requested for more information. The applicant stated that he provided the information despite lawyer-client confidentiality. On 6th January 2021, the respondent informed the applicant that he had not provided the information required and requested for contact details of the clients. On 12th January 2021, the applicant furnished the information. In a letter dated 22nd January 2021, the respondent informed the applicant that the information was not sufficient. On 26th January 2021, the applicant provided an explanation and further information. On 26th February 2021, the respondent demanded to inspect originals of all scanned documents which the applicant supplied in its letter of 19th March 2021. On 9th April 2021, the respondent informed the applicant that he was liable to a penalty for non-compliance and threatened

to transfer an income tax liability which was confirmed on 6th September 2021. He was issued an income tax assessment. He objected and had other meetings with the respondent. On 27th December 2021, his objection was disallowed. The applicant also testified on the payments made to the clients.

The respondent's witness, Mr. Gava Shine, a supervisor in its Tax Investigations Department testified that sometime in April 2019 the respondent received intelligence information that Trimecke was concealing income through Balondemu and Company Advocates. It was alleged that Trimecke supplied solar generators worth US$ 256,948 to Weei Ta Engineering and Construction and BHF Technologies SDN BHD in Brunei which was wired through the firm's accounts. This posed a risk of tax evasion as the monies could not be traced in the accounts of Trimecke but were on the account of the law firm.

The witness was assigned the task of investigating the affairs of Trimecke. He established that it was registered with Uganda Registration Services Bureau on 7th March 2017 with two directors. It was registered for taxes on 10th March 2017 dealing in wholesale and retail business. It has never filed any returns. Its registered offices were non-existent. It operated bank accounts. A review of its bank statements showed no transactions on supply of solar generators. There was no record of payments or deposits on the bank accounts. The national identity cards of the directors were fake. A review of the Asycuda system revealed that the company had not exported nor imported any items including solar generators to Weei Ta Engineering and Construction and BHF Technologies SDN BHD which confirmed that there was a scam and were seeking a refund of monies paid.

She testified further that the applicant was registered for income tax with effect from 2nd November 2011. He registered Balondemu and Company Advocates in 2015 as a sole proprietor. The applicant did not indicate the law firm in his tax profile. The applicant was signatory to the firm's account in UBA bank. The applicant claimed that he ceased to be a partner in 2016 but the firm received approval of chambers in 2017. She further alleged that the applicant is still the Managing Partner for the law firm. She alleged that between 28th January 2019 and 4th September 2020 the applicant withdrew US$ 4,557,450 from

his account but no returns were filed. The applicant was still a signatory to an account of the law firm. She stated that the applicant claimed he was an agent of Trimecke. An analysis of information showed that the applicant was the beneficiary of the monies deposited on the account.

She testified further that on 5th October 2020, the respondent requested the applicant to account for US$ 4,557,450 and to avail information on the contacts of the beneficiaries. On 10th December 2020, the applicant indicated that the accounts were for client's funds. On 18th December 2020, the applicant submitted document for review in respect of monies withdrawn. The said information did not have the contacts and physical addresses of the beneficiaries. On 19th March 2021. the respondent wrote to the applicant stating that the information given was insufficient. The applicant did not avail details requested. The respondent issued a penalty assessment. On 26th May 2021, the respondent informed the applicant the monies it received was classified as his income due to the insufficient information provided. On 7th September 2021, the respondent issued the applicant an additional income assessment for the period 1st July 2018 to 30th June 2019 due to income not declared. She alleged that on 28th September 2012 the applicant objected to the assessment of Shs. 665,738,205 but not the penalty assessment of Shs. 20,000,000.

The respondent's second witness, Mr. Joseph Balikuddembe, its supervisor Exchange of Information in its Tax Investigation Department testified that sometime in 2021 he received a request to draft and forward an Exchange of Information (EOI) to Brunei Darussalam. The basis of the request revolved around a dispute that Trimecke purportedly supplied solar generators worth US$ 256,948 to Weei Ta Engineering and Construction and BHF Technologies SDN BHD. The payment for the transaction was wired through the bank account of Balondemu and Company Advocates. He prepared the request and forwarded it to the competent authorities in Brunei. He received a response containing all the information required in respect of Trimecke, Weei Ta Engineering and Construction and BHF Technologies SDN BHD. He forwarded the information to the Tax Investigations Department.

The applicant's third witness, Mr. Julius Katsigeire, an officer in the respondent's Tax Investigations Department testified that the applicant is an advocate of the High Court Uganda trading as Balondemu and Company Advocates. He is registered for tax purposes as a provider of management and consultancy services. He testified that in 2019 the respondent received information that Trimecke was concealing information through Balondemu and Company Advocates. It was alleged that Trimecke supplied solar generators worth US$ 256,948 to Weei Ta Engineering and Construction and BHF Technologies SDN BHD based in Brunei. He alleged that the payments could not be traced to Trimecke but to the account of Balondemu and Company Advocates. He was part of the team that sent an information request from Brunei. The information received, exhibit REX5, confirmed that Trimecke had signed contracts with the above companies. That payment was made to Balondemu and Company Advocates. A review of Asycuda records did not establish any exports made by Trimecke. Information from Brunei showed that no imports were received of solar generators from Uganda. Email correspondences showed that no delivery was made despite payments made. Information showed that Balondemu and Company Advocates made all payments to Kilowatt BI Technologies SMC limited which was not party to the supply contracts. Information from Uganda Registration Service Bureau showed that Mr. Fred Semakula was the sole shareholder of Trimecke and signatory to its accounts. The National Identification Card issued by Mr. Fred Semakula was not issued by National Identification and Registration Authority (NIRA). The phone contacts of the Mr. Semakula belonged to one Kabenge Wilson. The evidence established that all the beneficiaries of the monies were non-existent.

The respondent's fourth witness, Ms. Susan Akiso, a regional manager working with United Bank of Africa tendered in bank accounts and company documents used in opening an account of Trimecke. The respondent's fifth witness, Ms. Angela Nyesiga a registrar employed with Uganda Registration Services Bureau tendered in company documents of Trimecke, Weei Ta Engineering and Construction and BHF Technologies SDN BHD. The respondent's sixth witness, Ms. Margaret Nabakooza, Secretary to the

Law Council tendered in a certificate of approval of chambers issued to Balondemu and Co. Advocates, a blank letter head and cheque of the said firm.

The applicant submitted that he is an advocate of the High Court and was formerly practicing under Balondemu and Company Advocates which he left in 2016. During his time as a partner, the firm was engaged in various transactions. It operated a bank account with United Bank of Africa. Sometime in 2020, the respondent requested the applicant to furnish information on certain clients. Despite the law on client's confidentiality and privacy, he provided the information. He was issued with a penalty assessment followed by an income tax assessment of Shs. 665,738,205.

The applicant submitted that the liability to pay taxes is a creature of the law. S. 4 of the Income Tax Act imposes income tax on every person who has chargeable income. He argued that before one is assessed income tax, it must be proved that he earned the income which is subject to tax. He submitted that the income of US$ 426,730 leading to an income tax assessment of Shs. 665,738,205 was not earned by him. The applicant submitted the respondent does not have any power to transfer the income tax liability of another taxpayer to him. He cited *Sande Pande Ndimwibo and another v URA* Civil Suit 424 of 2012 where the High Court held that it is illegal for the respondent to transfer income tax liability of one person to another without due process. He also contended that the reason to transfer liability because of insufficiency of information provided by him to the respondent is unacceptable. He further contended even if the respondent had powers to transfer liability it must be to the applicant's former law firm. The clients belonged to the law firm and were not his personal clients. He retired from the law firm in 2016 in accordance with the partnership deed. The income tax assessment related to the financial year 2018/2019, when he had left the law firm. It submitted that a retiring partner cannot be liable for debts and obligations after his retirement. He cited S. 19 of the Partnership Act which states that a partner who retires from a partnership does not cease to be liable for the partnership debts before retirement.

The applicant submitted that though the respondent recognized the funds were on the firm's client account it taxed them. He contended that a client trust account is a statutory account and the funds on it do not belong to the firm but the client who is the ultimate beneficiary. He submitted that he received the monies for onward transmission to the client. The applicant cited Sections 40 and 43 of the Advocates Act and Rules 2 and 6 of the Advocates Trust Account Rules.

The applicant submitted that he tendered in Deeds of Acknowledgment to show that the clients received the funds from the firm. The respondent does not complain that Trimecke did not receive the monies, nor is the latter complaining. The applicant submitted that Trimecke is a registered company. It has a registered address. It is a registered taxpayer and has a Tax Identification Number. It has a shareholder and a director. The applicant submitted that the respondent tendered in contracts to show that payments were made to companies who has contracts with Trimecke. The applicant contended that the respondent cannot turn around and purport a taxpayer who has a TIN and has been paying taxes is non-existent. He submitted that he is not related to the beneficiaries of the funds. The applicant is not a director, a shareholder, a promoter of the beneficiaries. He submitted that the respondent did not call any evidence to show that he has a role in the beneficiaries.

In reply, the respondent submitted that the applicant is liable to pay the penal tax assessed of Shs. 20,000,000. The respondent contended that S. 25(1) of the Tax Procedure Code Act and S. 16(1)(c) of the Tax Appeals Tribunal Act requires a person dissatisfied with an objection decision to lodge an application with the Tax Appeals Tribunal Act. S. 3 of the Tax Procedure Code Act defines an objection decision to mean a taxation decision in respect of a taxation objection. S.1(1)(k) of the Tax Appeals Tribunal Act defines a taxation decision to mean any assessment, determination, decision, or notice. It cited *Cable Corporation (U) Limited v Uganda Revenue Authority* Civil Appeal 1 of 2011 where the High Court observed that a taxation decision does not arise out of an objection, but an objection decision arises from an objection. It contended that there is no

objection decision in respect of the penal tax. The applicant is challenging the penal assessment when he did not object to it.

Without prejudice, the respondent contended that the applicant has not led any evidence to show that he submitted the information the respondent requested for. The applicant has not provided an explanation as to why he ought not to have been issued a penalty assessment due to failure to provide information. The respondent cited *Commissioner Investigations and Enforcement v Kidero* (Income Tax Appeal E028 of 2020) involving a request for specific information by the respondent in respect of election campaign contributions which was not provided. The respondent requested the applicant to provide information on the physical address and contacts of the beneficiaries. The respondent contended that applicant has an obligation to provide the said information. The respondent argued that S. 15(1) of the Tax Procedure Code Act provides that every taxpayer shall maintain records to determine its tax liability. The respondent contended that S. 6 of the Anti- Money Laundering Act provides that an accountable person shall not initiate a business relationship without undertaking customer due diligence measures. Paragraph 1 of the Act lists advocates as accountable persons who have an obligation under S. 6 of the Act. The respondent contended that the applicant must comply with the Tax Procedure Code Act and the Anti- Money Laundering Act.

In respect of the assessment of Shs. 665,738,205, the respondent argued that the term income is not exclusively defined in the income tax Act. It cited Crane Bank v URA HCT-00-CC-CA-18 where the court cited *Cape Brandy Syndicate v IRC* (1992) 1 KB 64 and stated that "where the Act does not define a word or term, then the word or term must be given its ordinary literal meaning. The courts may have recourse to dictionaries." It argued that according to *Black's Law Dictionary* 11th Edition the word "income" connotes "the money or other form of payment that one receives, usually, periodically, from employment, business, investments, royalty, gifts and the like." It also cited *Eisner v Macomber* 252 US 189 (1920) where it was stated that "income may be defined as the gain derived from capital, from labour or from both combined." It also cited *Commissioner v Glenshaw Glass Co.* [1955] 348 US 426 where the United States Supreme Court

adopted an income concept based on "instances of undeniable accessions to wealth, clearly realized." It contended that the applicant acknowledged having received the monies in exhibit AE 6. Having received the monies, the respondent contended that it is pertinent to determine whether the income was taxable or not.

The respondent contended that in *John Livingstone Okello labor v Commissioner General URA* HCCS 229 of 2010 where the court defined "undeclared income" as "Failure by a taxpayer to include certain income on his or her tax return in order to avoid paying taxes on the income." The court held that burden of proof is on the plaintiff to show that he declared all his income in the returns and the assessment made by the Commissioner is erroneous. It cited *Kampala Nissan v URA* HCCA 7 of 2009 the High Court held that the words 'shall' means a tax law should be obeyed. It further cited *Siraje Hasan Kajura v URA* (supra) where the court stated that "unless exempted, the obligation to pay income tax is mandatory." It argued that S. 4 of the income tax Act provides that income tax shall be charged for each year of income on every person who has chargeable income. It argued that S. 4 should be read with S. 58 of the income tax Act which provides for indirect payments and benefits which includes (a) a payment that directly benefits the person (b) a payment dealt with as the person directs. It also cited *Frank Babibasa v URA* HTC-00-CC-CS-434 of 2011 where the court found the "rewards earned by the plaintiff are payments directly benefitting him" and is therefore chargeable income.

The respondent testified that there is no bank transfer of funds to Trimecke from the applicant's law firm. Ms. Susan Akiso a regional manager of UBA indicated that the applicant was the sole signatory to the firm's account and withdrew the monies received on behalf of Trimecke. The applicant admitted withdrawing the cash. The respondent contended that the director of Trimecke is Fred Semakula while the documents show that one Kagawa Yamato received the money. There is no company document that indicates Kagawa as a director. The applicant did not explain why he received monies on his behalf. He stated that deeds of acknowledgement signed by Kagawa bore the stamp of Kilowatt Bi Technologies. There is no evidence that the beneficiaries existed. The respondent contended that the documentation in support of payments to the firm was full of

inconsistencies. These included to Wickham Terrence who was invoiced US$ 25,600. Didier Robert who paid US$ 11,500, Thamsanqa Sibya paid US$ 11,500 and Weei Ta Engineering and Construction and BHF Technologies SDN BHD

The respondent reviewed the agreements between Trimecke and Weei Ta Engineering and Construction and BHF Technologies SDN BHD and others. It stated that there was no export. The information obtained from Brunei through information exchange showed that there was no import. The evidence shows that Balondemu and company Advocates received monies which were released to Kagawa Yamoto on behalf of Kilowatt BI Technologies SMC Limited which was not party to the supply contract. Trimecke has one director Mr. Fred Semakula who is sole signatory to its bank accounts. He provided a fake national identity card and contact. The respondent concluded that all the beneficiaries of the money were fictious and non-existent. The respondent cited *United States of America v John O. Green and Thomas D. Selgas* Court of Appeal (fifth Circuit) No. 21-10651 where an attorney at law was convicted and ordered to pay taxes in a case of tax evasion. The court held that tax evasion includes "concealment of assets or covering up sources of income and handling of one affair to avoid making the records usual in transactions of the kind." The respondent contended that the applicant concealed sources of income and avoided making records usual in transactions of the kind.

The respondent submitted that it is clothed with the powers to recharacterize the affairs of a taxpayer under S. 91 of the income tax Act. It cited *Intertek Services v URA* HCCS 5 of 2002 where the court held "It is well settled that in considering whether a particular transaction brings a party within the terms of the Income Tax Act, it is substance rather than form that is to be regarded." It was stated that it is the substance of a transaction that must be looked at to determine the true legal rights and obligations of the parties. The respondent contended that the substance was the applicant received monies on its account as payment. It cited *Kale Khan Mohammda Hanif v.CIT* [1963] 50 ITR 1 where it was held that if an agent failed to establish the source of a cash credit satisfactory, such amount can be treated by the taxing authorities as taxable income. It also cited *Commissioner of Income Tax v Maduri Rajaiahgari Kistaiah* 1979 120 ITR 294 where it

was held that where the IGTO finds unexplained cash credits, it is open to him to add such sums as income from an undisclosed source. Also, in *Daulatran Rawatmuli v CIT* [1967] 64 ITR 593 the Calcutta High Court observed that "it is not unreasonable to hold that any amount representing secret income arose out of the business of the firm." The respondent also cited *X Bank v Federal Tax Administration* 21 ITLR 285 [2018] where the court stated:

> "a recipient of income can only be regarded as not the beneficial owner if the following exist: the first dependency depends on whether the income concerned would not have been obtained unless there was an obligation to pass on the income. The second dependency is that the obligation to transfer the income is conditional on obtaining the income."

The respondent submitted that the applicant did not provide evidence that it passes on monies to persons entitled to it. The beneficiary was non-existent. The money was passed one Kagawa Yamato of Kilowatt BI Technologies SMC Limited. It submitted that the applicant obtained an economic benefit from an escrow relationship. The respondent also cited *Yaya Towers v KRA* Civil Appeal 55 of 2009 where it was stated that "although the business carried on by the respondents were unlawful, they nevertheless constituted a trade within the meaning of the Income Tax Acts and the profits therefrom were properly assessable to income tax."

The respondent contended that the applicant's argument that he retired as a partner was not part of the objection decision. S. 16(4) of the Tax Appeals Tribunal Act states that an application is limited to the grounds in an objection decision unless the Tribunal orders otherwise. Without prejudice, the respondent contended that the applicant did not retire in 2016. He was still the sole signatory of the law firm accounts. A loan agreement between Balondemu and Company Advocates and Schillings Finance dated 1st May 2019 was signed by the applicant. He witnessed a land agreement dated 21st January 2019. The respondent also stated that Susan Akiso indicates that the applicant filed a declaration of source of income as the holder of the law firm's bank accounts on 28th October 2019. Ms. Nabakooza Margaret testified on an inspection report which showed the applicant as the managing partner. The firm's letterhead issued in 2017 showed the applicant as the managing partner. The email correspondences between the applicant

and the respondent showed the applicant as partner in the law firm. The deeds of acknowledgement show the applicant was still transacting as Balondemu and Company Advocates and not as Balon Advocates.

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

The applicant operated a law firm under the names of Balondemu and Company Advocates. The law firm received monies on behalf of its clients. Sometime in 2020, the respondent requested for information on certain clients of the law firm. The information was provided but the respondent found it insufficient. As a result, the respondent issued a penal tax assessment of Shs. 20,000,000 on the applicant for providing insufficient information. The respondent further contended that the firm did not remit funds to the beneficiaries. An income tax assessment of Shs. 665,738,205 was issued on the applicant for the monies received which the respondent considered as undisclosed income.

The first dispute is in respect of the penal tax assessment of Shs. 20,000,000. The respondent contends that the applicant did not object to the penal tax assessment. S. 16(4) of the Tax Appeals Tribunal Act provides that.

> "Where an application for review relates to a taxation decision that is an objection decision, the applicant is, unless the tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates"

The objection by the applicant of 28th September 2021, exhibit REX 20 on p. 232 of the respondent's trial bundle, shows that he objected to the transfer of liability of Shs. 665,738,205. It does not mention the penal tax. Though the respondent contended that it filed an objection decision, exhibit REX 29, page 291 of its trial bundle, what is on record are email correspondences between the applicant and the respondent. It is not clear how what transpired in email correspondences can amount to an objection decision. The actual objection decision is not attached. The last email of 13th October 2021 states

> "We have reviewed your letter and would like to invite you for a meeting Wednesday 20th October 2021 to enable you present the detailed grounds of objection. The meeting will

be held at the Objections Unit Office, Upper Ground Level, URA Tower, Nakawa at 10.00 Hrs."

Therefore, the respondent did not consider the letter of the applicant of 28th September 2021 as an objection. It invited him to give detailed grounds of objection. The minutes of the meeting of 20th October 2021, exhibit AE 19 shows that the parties agreed that the applicant will submit an online objection. The said online objection was not tendered in as an exhibit. It is not clear whether the applicant ever submitted an online objection. If the applicant did not submit an online objection, it means the respondent could not have made an objection decision. In short, it would mean that this application before the Tribunal is premature as the parties did not comply with what was decided in the meeting of 21st October 2021. The applicant testified that his objection was disallowed. Since the parties do not seem to be denying that the respondent made an objection decision which is not record, the Tribunal cannot say that the parties are not properly before it. The Tribunal cannot state that the issue of penal tax was not part of the objection or taxation decision without looking at the objection which the applicant ought to have filed online and the respondent ought to have responded to. He who comes before the law should come with clean hands. Since the parties agreed that the applicant should file a detailed online objection, one party cannot turn around and argue that the objection decision did not include an issue when the objection nor the objection decision are before the Tribunal. The respondent cannot raise that the applicant did not address the issue of penal tax when the certainty of the online objection and objection decision are not clear.

The respondent contends that the applicant did not provide sufficient information which goes to the merit of the penal assessment. Since the online objection and objection decision are not tendered in as exhibits, and both parties have addressed the issue the Tribunal feels no prejudice is caused to either party by addressing the issue of the penal assessment.

The respondent contends that the applicant did not provide sufficient information. The respondent contended that under the Tax Procedure Code Act a taxpayer is required to provide information as requested. S. 49A of the Tax Procedure Code Act provides.

"(1) A person who upon request by the Commissioner, fails to provide records in respect of transfer pricing within 30 days after the request is liable to a penal tax

(2) A person who fails to provide information other than information referred to in subsection (1), to the Commissioner upon request, is liable to a penal tax of twenty million shillings."

Therefore, the Tribunal will look at the information requested for and provided.

The information required by the respondent arose from the applicant's relationship with the beneficiaries which was legal one. The respondent did not address its letter to the legal firm because it contended that it ceased to exist. As a former partner in the firm, the applicant could be held liable for its action before it ceased to exist. A notice of cessation, Exhibit AE1 shows that Balondemu and Company Advocates ceased to exist. It was registered on 31st August 2020 though it had stamps backdated to 2016. A Notice of Change of Particulars was also registered on 20th April 2020, with stamps backdated to 2016 which states that Mpata Khalid and Naila Kobusingye have taken over business form the former proprietor. The Notices take effect on the date they are registered because that is when the public becomes aware of the cessation and takeover. The notice of cessation and notice of change of particulars which were filed in 2020 with stamps of 2016 were a smokescreen to shield the applicant from legal liability. They were deliberately backdated to pervert the course of justice. A partnership deed tendered in the Tribunal between Naila Kobusinge, and Kalid Mpata tendered in court is not dated. Though the applicant contended that he ceased to work with Balondemu and Company Advocates in 2016, the cessation was file in 2020, he continued to transact under the legal firm of Balondemu and Company Advocates. This is confirmed by its letterhead tendered in by the Secretary, Law Council and other documents signed by the applicant for the legal firm including cheques. A loan agreement between Balondemu and Company Advocates and Schillings Finance dated 1st May 2019 was signed by the applicant. He witnessed a land agreement dated 21st January 2019. Under S. 90 of the Income Tax Act the Commissioner can look at the substance of a transaction rather than form. The applicant can be deemed to have continued to work as a partner of Balondemu and Company Advocates and maybe liable for actions thereafter.

Having stated that the applicant is liable for actions of the legal firm after 2016, we go back to the information giving rise to the penalty. On 4th September 2020, the respondent wrote to the Managing Partner of Balondemu and Co Advocates. The relevant portion of the said letter said:

> "Therefore, the purpose of this communication is to request you to provide to us responses to the issues below.
>
> Information available indicates that you receive payments on behalf of Trimecke Group Ltd. (copy of agreement) attached. Please provide information with clear supporting documentation on all the payments received on behalf of Trimecke for the period July 2017 to date.
>
> Please provide confirmation that all the payments received on behalf of Trimecke Group Ltd were transferred to Trimecke Group Ltd.
>
> Pease provide this information within five days from the date of receipt of this letter to our offices at URA Tower"

The Commissioner goes ahead to state "This request is made in accordance with Section 42 of the Tax Procedure Code Act." S. 42 allows the Commissioner for the purpose of administering any provision of a tax law, to require any person, by notice in writing whether liable for tax to furnish, within the time specified in the notice, any information that may be stated in the notice." There must be evidence to show that the taxpayer received the notice and did not act on it in the prescribed time. The offence is committed on the date he or she does not provide the information. S.42(4) provides that the Section has effect despite any law relating to privilege or public interest with respect to the giving of information and any contractual duty of confidentiality. Therefore, the applicant's contention that communication between a lawyer and client is confidential may not be helpful. A lawyer is still obliged to provide information to the respondent as requested irrespective of his duty of confidentiality to a client.

The said letter was addressed to the Managing Partner, Balondemu and Co. Advocates. Despite a Notice of Change of Particulars registered on 20th April 2020, showing Mpata Khalid and Naila Kobusingye as partners, exhibit A12, an email from the applicant shows him holding out as the Managing Partner.

The second letter of concern is the one of 5th October 2020 addressed to the applicant. The relevant communication in the letter states:

> "The purpose of this communication therefore is to request you to account for the money reflected on the above-mentioned account in terms of source and application. This information should be submitted to our office on Floor 14, URA Tower, Plot M193/M194, Nakawa Industrial Area."

The said letter does not indicate when the notice to provide information expires. This means the applicant still has time to comply with it.

The third letter of 14th December 2020 states

> "Following your explanations, you are requested to provide evidence of transfer of the money to your clients plus their addresses and contact details."

It goes on to state that:

> "Please submit all the above information by Friday 18, 2020 to our offices at URA Tower..."

The fourth letter of 19th March 2021 which directed the applicant stated inter alia:

> "The purpose of this communication is therefore to request you to provide telephone contacts and physical addresses of all the beneficiaries indicated in your submissions and further make a statutory declaration on the completeness and genuineness of the information submitted."

It went on to state that:

> "Please submit all the above information in physical copies by Friday March 26, 2021, to our offices..."

It states the information can be sent to an email stated. In an email dated 18th December 2020 written by the applicant to Mr. Isaac Kiyemba, he states that he has furnished him with all the information requested. In a reply of 6th January 2021, Mr. Isaac Kayemba states

> "We have reviewed your submission made through the email received on 18th December 2022 and wish to respond as follows.
>
> Whereas you provided documentation to support deposits on your bank account, evidence of transfer of the money to respective clients (without contacts) was relating to those in the table below totaling to USD 363,900."

The letter indicates that the contacts of the client were not provided. However, the submissions to the email were not tendered as evidence. In an email of 12th January

2021, the applicant states that he has furnished the required information in the attachment as per your request. In a letter dated 22nd January 2021, Ms. Osuret Job Cedrice for the respondent wrote:

> "We have reviewed the additional documents you submitted and wish to further respond as follows:
>
> "Whereas you provided documentation to support deposits on your bank account for the transactions in Table 1 below, you did not submit any evidence of transfer of the money from your account to the respective clients as earlier stated by yourself."

The said letter does not mention that the applicant did not provide contact details of its clients. It does not state what was in the documentation

The above letters bring to attention the major problems facing the penal assessment. In its letter of 9th April 2021 informing the applicant of the penal tax the respondent stated

> "Reference is made to the various previous information requests and your corresponding submissions.
>
> Further reference is made to our communication to you dated 19th March 2021, in which you are requested to provide telephone contacts and physical addresses of all the beneficiaries indicated in your earlier submissions and further make a statutory declaration on the completeness and genuineness of the information submitted.
>
> To date we have not received any response from you despite the reminder email sent to you on Thursday April 01, 2021."

There are so many requests for information, it is not clear which communication gave rise to the penal tax. Was it the letter of 19th March 2021 or the reminder email or the previous communications? The reminder email was written on 1st April 2021 after the date of 26th March 2021, which was the dateline in the notice of 19th March 2021, had expired. Did the reminder email extend the time for the applicant to provide information? The reminder email is not attached. If it extended time, the Tribunal cannot state when the applicant committed the offence giving rise to the penal assessment.

The respondent requested for information. The respondent alleges the information the applicant provided was not sufficient. There is no yardstick in the Tax Procedure Code Act that determines what information is sufficient or not. The applicant testified that on

12th January 2021, he furnished information of the contacts to the respondent. The respondent does not deny that the applicant provided information. The applicant also testified that on 26th January 2021, he provided further information. This brings as to the question whether the applicant provided the required information.

Before one is condemned to pay the penal tax, it should be clear that he failed to provide the information requested by the respondent. It must be shown that the information was within the knowledge of the offender. The respondent cited S. 6 of Anti- Money Laundering Act which states that an accountable person.

> "shall not initiate a business relationship or carry out an occasional transaction, including the opening of a new account or issuing a passbook, entering into a fiduciary transaction, renting a safe deposit box, performing a cash transaction over one thousand currency points, or conducting a wire transfer, without undertaking customer due diligence measures, including obtaining, recording and verifying by reliable means."

Paragraph 1 of the Schedule 2 of the said Act lists Advocates as accountable persons. The offences under the Anti- Money Laundering Act are criminal while the one in dispute is a taxation dispute. The standard of proof is different. The respondent argued that the applicant is obliged to have physical addresses and contacts of the beneficiaries of monies that passed through his firm. The Act does not define what customer due diligence measures are. However, the Tribunal thinks though a prudent lawyer may not have physical addresses of his clients he should have their contacts. But without looking at the attachments to the emails or the documentation in support and the reminder email, the Tribunal cannot say that the applicant failed to provide the contacts. As the communications between the parties progressed, the respondent lost interest in the contacts of the applicant's clients and its interest shifted elsewhere. In its last letter of 22nd January 2021, the respondent stated that the applicant did not provide details of transfer of money from its accounts to the client. It did not mention anything about the failure by the applicant to provide the contacts of its clients. As already stated, the doubt as to whether the applicant did not provide the contact details of its clients, cannot be cleared until all the documentation, emails and attachments are presented to the Tribunal. Though the Tribunal agrees with the respondent that the applicant did not leave his law firm in 2016 or thereafter, it is not clear why the penal assessment was made to him personally

when all the information was requested for was in 2020 and 2021 after the Notice of Change in Particulars was registered. Also, in the absence of a clear objection decision on record, one cannot tell for what communication, the penal assessment was issued. What information did the applicant, nor his law firm not provide? The Tribunal already noted that there is a possibility that the applicant did not objection nor did the respondent make an objection decision. An objection decision is like a charge sheet, it delineates the information not provided that constituted the offence for which the penal assessment was issued. This is to enable the suspect to defend himself. Taking the above into consideration, the penal assessment of Shs. 20,000,000 is set aside.

The second part of the dispute revolved around the income tax assessment of Shs. 665,738,205 The respondent's witness, Mr. Gava Shine, a supervisor in its Tax Investigations Department testified that sometime in April 2019 the respondent received intelligence information that Trimecke was concealing income through Balondemu and Company Advocates. Trimecke was contracted by Weei Ta Engineering and Construction and BHF Technologies SDN BHD in Brunei to supply solar generators worth US$ 256,948 which was wired through the applicant's firm's accounts. The said generators were not supplied.

Trimecke was registered with Uganda Registration Services Bureau on 7th March 2017 with two directors. It was registered for taxes on 10th March 2017 dealing in wholesale and retail business. It has never filed any returns. Its registered offices were non-existent. It operated bank accounts. A review of its bank statements showed no transactions regarding supply of solar generators. There was no record of payments or deposits on the bank accounts. The national identity cards of the directors were fake. The said Trimecke never exported solar generators to Weei Ta Engineering and Construction and BHF Technologies SDN. It cannot be contended that Trimecke was a special purpose vehicle used in a scam and for money laundering.

The companies in Brunei allegedly did not receive the solar generators they ordered. The monies for breach of contract were never refunded to them. The respondent contended

that the applicant was involved in anti- money laundering activities. The offence of money laundering is defined in S. 3 of the Anti- Money Laundering Act as:

"3. Prohibition of money laundering It is prohibited for any person to intentionally—

(a) convert, transfer, transport or transmit property, knowing or suspecting that such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions; or

(b) conceal, disguise, or impede the establishment of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property, knowing or suspecting that such property to be the proceeds of crime; or

(c) acquire, possess, use, or administer property, knowing, at the time of receipt, that the property is the proceeds of crime; or

(d) act to avoid the transaction reporting requirements provided in Part III of this Act; or Act Anti–Money Laundering Act 2013

(e) assist another to benefit from known proceeds of crime; or

(f) use known proceeds of crime to facilitate the commission of a crime; or

(g) participate in, associate with, conspire to commit, attempt to commit, aid, and abet, or facilitate and counsel the commission of any of the acts described in subsections (a) to (f)."

Offences under the Anti- Money Laundering Act are criminal. The Tribunal is not a criminal court.

However, the Tribunal can still look at the tax implications of the applicant's acts. The question is whether such proceeds can be considered as income and taxed. The Income Tax Act provides for taxation of income. S. 4 of the Income Tax Act provides that:

"(1) Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income."

S. 17(1) of the Income Tax Act defines gross income. It reads

"(1) Subject to this Act, the gross income of a person for a year of income is the total amount of –

(a) business income.

(b) employment income; and

(c) property income."

The funds that were deposited on the applicant's account did not arise from employment nor property income. The Tribunal must consider whether they were business income. S. 18 of the Income Tax Act that defines business income reads.

"(1) Business income means any income derived by a person in carrying on a business and includes the following amounts, whether of a revenue of capital nature –

(a) the amount of any gain, as determined under Part VI of this Act which deals with gains and losses on disposal of assets, derived by a person on a disposal of a business asset, or on the satisfaction or cancellation of a business debt, whether or not the asset or debt was on revenue or capital account.

(b) any amount derived by a person as consideration for accepting a restriction on the person's capacity to carry on business.

(c) the gross proceeds derived by a person from the disposal of trading stock:

(d) any amount included in the business income of the person under any other Section of this Act.

(e) the value of any gifts derived by a person in the course of, or by virtue of, a past present, or prospective business relationship; and

(f) interest derived by a person in respect of trade receivables or by a person engaged in the business of banking or money lending."

S.1(g) of the Income Tax Act defines business to include "any trade, profession, vocation, or adventure in the nature of trade, but does not include employment".

The proceeds that were wired to the applicant's firm were from a purported sale of generators. The applicant was operating a legal firm under the names Balondemu and Company Advocates. The said legal firm cannot be said to be in the business of selling generators. In any case sale of generators is not a legal business. Under S. 18 of the Income Tax Act, without looking at other Sections, the respondent can only assess the applicant income tax for the provision of legal services in handling the transaction of sale of generators by its clients.

S. 18(1)(d) provides that business income includes any amount derived by a person under any other Section of the Act. S. 58 of the Income Tax Act provides for indirect payments and benefits. It reads.

> "The income of a person includes –
>
> (a) a payment that directly benefits the person, and
>
> (b) A payment dealt with as the person directs,
>
> which would have been income of the person if the payment had been made directly to the person."

The respondent contended that in *John Livingstone Okello v Commissioner General URA* HCCS 229 of 2010 the court defined "undeclared income" as "Failure by a taxpayer to include certain income on his or her tax return in order to avoid paying taxes on the income." The respondent also cited *United States of America v John O. Green and Thomas D. Selgas* Court of Appeal (fifth Circuit) No. 21-10651 where an attorney at law was convicted and ordered to pay taxes in a case of tax evasion. The court held that tax evasion includes "concealment of assets or covering up sources of income". The respondent argued illegal income is taxable. It cited *Daulatran Rawatmuli v CIT* [1967] 64 ITR 593 where the Calcutta High Court observed that "it is not unreasonable to hold that any amount representing secret income arose out of the business of the firm."

Courts have drawn a distinction between cases where normal income producing activities become illegal due to non-compliance with licensing requirements or acting in contravention to a ban in trading on one hand and profits acquired because of the commission of systematic crimes such as burglary, theft, money laundering etc. on the other hand. A lawyer without a practicing certificate would be considered in the first group, one trading where there is a ban. While the taxation of normal income where the activities become illegal due to non-compliance is not debatable that arising from commission of systematic crime is. Where there is a ban on a trading activity and a taxpayer trade in contravention of the ban, there is no reason why he should not be taxed.

The dispute of the applicant belongs to the group of commission of systematic crimes. There are no authorities from Uganda courts on taxation of systematic crime. Taxing proceeds from systematic crimes including money laundering may send wrong signals.

In *Hayes v Duggan* [1929] IR 406. there was an illegal lottery, the profits from which the Supreme Court held could not be subject to tax. According to Fitzgibbon, J., it was hard to believe that any well-ordered state can consider that its own criminal law will not be enforced. "The carrying on of the lottery in question was criminal and contrary to law as the case stated admits, and I can find no intention in ITA 1918, that it contemplated such a state of affairs." Taxing illegal activities arising from systèmatic crimes may have the counter effect of encouraging the vices that are sought to be taxed. It would also undermine the state's interest and its authorities mandated to investigate prosecute and convict such as the Police, the Directorate of Public Prosecutions, and Inspectorate of Government in investigating and prosecuting such crimes. The state may be considered a silent beneficiary of vices it is seeking to discourage. It may lose the will to fight such vices. It would also undermine the presumption of innocence. It can be argued that for a state to tax illegal activities from systematic crimes the perpetrators ought to have been convicted and there is no law that provides for forfeiture of the proceeds of the activities to the State.

In some common law jurisdictions, courts have upheld the taxation of income earned from illegal sources. There is established case law across several jurisdictions justifying the taxation of income from unlawful activities. Taxable income is defined as assessable income less deduction. On this basis, if the activities of the taxpayer give rise to taxable income, it is reasonable to hold that, regardless of the legality of the activities undertaken, any income so produced would be subject to income tax after the deduction of outgoings and expenditures wholly and exclusively incurred in producing the income in question. It has been argued that: "the object of this bill is to tax a man's net income... the law does not care where he got it from, so far as the tax is concerned." This is in line with the position of the courts in *MacFarlane v Commissioner of Taxation* (1986) 13 FCR 356, 380-381. In a Canadian case, *Smith v Minister of National Revenue*, 13 it was argued that the statutory definition of income is wide enough to include income derived from a business the carrying on of which is expressly prohibited by law. Once the character of an enterprise has been ascertained as being business, the person, who carries it on cannot found himself upon elements of illegality if any, to avoid tax. By subjecting the

profit to tax, the authority does not condone or take part in the illegal enterprise. Denman, J. in *Partridge v Mallandaine* [1886] 2 TC 179 suggested that someone carrying on a "systematic business of receiving stolen goods" (a 'fence') would be taxable which is entirely in line with the argument of some courts that if the activity is carried out as a business the profits are assessable as trade profits. In *Canadian Minister of Finance v Smith* [1927] A.C. 139,198 it was stated that once the character of an enterprise has been ascertained as being business, the person, who carries it on cannot found himself upon elements of illegality if any, to avoid tax. *Lindsay, Woodward, and Hiscox v Commissioners of Inland Revenue* [1932] 18 Tax Cas. 43,54, 56. In *Inland Revenue Commissioners v Aken* [1990] STC 497 concerned the taxation of income from prostitution. The taxpayer appeared on national television and spoke of her earnings as a prostitute. This came to the attention of the Crown and the Inland Revenue Department assessed her unpaid tax and interest in the sum of £58,000. In court proceedings, her defence to the claim was based on prostitution as an illegal activity. In determining whether prostitution was a trade the judge referred to the famous dictum of Lord Reid in *Ransom (Inspector of Taxes) v Higgs* [1990] STC 497 that the word 'trade' 'is sometimes used to denote any mercantile operation, but it is commonly used to denote operations of a commercial character by which the trader provides to customers for reward goods or services. One of the most notable cases concerns the notorious American gangster Al Capone, who having successfully avoided prosecutions for criminal activities, fell victim to tax laws and was finally imprisoned for failure to declare his income. in Australia, the Commissioner of Taxation issued a public ruling, Taxation Ruling TR 93/25, where the opinion is expressed that "receipts from systematic activity where elements of a business are present are income irrespective of whether the activities are legal or illegal". Therefore, the complexity of law relating to illegal activities and taxation is not in doubt, it is settled law now that the tax is not confined to lawful businesses only. Hence for systematic crimes, a taxpayer who in the course of business is involved in illegal or criminal activities, is still liable to pay taxes for example smuggling. The Tribunal thinks that there is no law prohibiting taxation of income arising from illegal or criminal activities, it will not stop the respondent from carrying out its mandate.

Having stated that activities giving rise to income from illegal sources maybe subject to tax, the Tribunal must determine whether the applicant's purported income from purported criminal activity is taxable. The taxation of income where of a principal offender is clear is not difficult. Trimecke is still liable to pay taxes if when it did not supply the solar generators whether money laundering is involved.

For a person who is not an agent nor employee of the principal offender, to be held liable for the taxes, there would be need for a conviction or conclusive evidence. By conclusive evidence the Tribunal means evidence that implicates the agent in the commission of the crime. A conviction that times maybe good evidence. A conviction is the link between the person and the criminal activities. Such a person maybe considered to be engaging in criminal activities as an adventure in the nature of trade.S.1(g) of the Income Tax Act defines business to include "any trade, profession, vocation, or adventure in the nature of trade, but does not include employment. *Black's law Dictionary* 10th Dictionary p. 64 defines an adventure as "1. A commercial undertaking that has an element of risk; venture." A person who engages in crime or illegal activities bears the risk of get caught, prosecuted and imprisonment or fine. Illegal trade is defined at p. 1721 is defined as traffic or commerce carried out in violation of federal, state, or local law. The proceeds from such activities are indirect payment or benefits. An employee who in the course of employment is involved in illegal activities like embezzlement can be deemed to be receiving indirect payments or benefits arising from the employment. On conviction such person should be liable to pay taxes. Therefore, if there is a conviction or evidence that the applicant was an accomplice with Trimecke he would be considered as an adventurer in illegal trade and his income is liable to tax. There was no conviction of the applicant to make him liable. This matter was investigated by the Criminal Investigation Department. The investigation may drag on until the hens come to roost. The absence of a conviction or prosecution should not bar the respondent from recovering taxes where it can prove that there was income received by the taxpayer from illegal activities. Therefore, the Tribunal must determine whether there is evidence that the applicant was an accomplice or associate in the sale of generators.

The respondent contended that the money which was deposited on the applicant's account were from undisclosed or unexplained sources. Everyone knows where the monies came from. It came from the prospective purchasers of solar generators. The monies were deposited on the client's account of the applicant's law firm. Advocates are required to keep accounts for clients' monies. Money belonging to clients should be kept separate from the advocate's/practice's own money. Such monies cannot be deemed to belong to the advocate. S. 40 of the Advocates Act reads

> "Every advocate shall, in connection with his or her practice as an advocate, keep accounts in compliance with the rules entitled "the Advocates Accounts Rules" and "the Advocates Trust Accounts Rules" contained respectively in the First and Second Schedule to this Act, and shall deal with all monies to which the rules apply in accordance with those rules."

In the agreements it was agreed that the considerations for the solar generators shall go through the legal firm of the applicant. The monies were paid and Trimecke is not complaining. It is not discernable how monies on a client account can be deemed to belong to the firm. Advocates are known to receive monies on behalf of clients.

The respondent contends that the monies were paid to a non- existent person. The agreements between B.H.F Technologies SDN BHD, Weei TA Engineering, and construction and Trimecke was signed by Rizza, Steven Lee, and Kagawa Yamato for the parties, respectively. All this was done in the presence of Balondemu and Co. Advocates. It means that the representatives of the B.H.F Technologies SDN BHD, Weei TA Engineering and construction must have seen Mr. Kagawa Yamato who signed for Trimecke. The signatories for the above companies did not come to testify that they did not see the person who signed the agreements with them. At the time of signing the agreements, the purchasers did not seem to query that Mr. Kagawa was a director. It was the same Kagawa Yamato who received the funds from Balondemu and Company Advocates on behalf of Trimecke Company Limited and one James Ssali though a different stamp of Kilowatt BI Technologies SMC Limited was used on the acknowledgement of receipt of funds. In Exhibit RE 21, Mr. Kagawa Yamato acknowledged receipt of funds from Mes international Limited through Balondemu and Company Advocates as a director of Trimecke. There are proforma invoices exhibits AE

45 and AE 47 which were shows that Kagawa Yamato handled sales. Does the use of a different stamp on acknowledgement of monies make Trimecke non-existent? The Tribunal does not think so. While Trimecke may not have physical presence, or a genuine address, the persons acting for it were physical persons. For convenience purposes and to nail the applicant, the respondent did not thoroughly investigate or establish the role of Mr. Kagawa Yamato and James Ssali in Trimecke. The sole promoter and member of Trimecke, Mr. Fred Semakula who had a passport, and a national identity card was never called to testify on the role of Mr. Kagawa Yamato and Mr. James Ssali in Trimecke. Though the respondent contended that the passports and identity cards issued were false, there is no report from the issuing authorities that they were fake. The said Fred Semakula was a signatory to a Bank of Africa account which the respondent stated showed no records of the funds of Trimecke but was operational, see exhibit REX3. Though it was alleged that the contacts of Mr. Fred Semakula were fake, it is not understandable as to how he was operating the bank account of Trimecke. Though there is no rule that requires a director to sign all contracts or deeds of acknowledgements on behalf of a company if Mr. Kagawa Yamato or Mr. James Sale were not directors or officials of Trimecke respectively it makes them personally liable for their actions. They were acting under false pretenses. There is no evidence on the persons who were holding out as them in the transactions. However, to make the applicant liable for taxes, it must be shown that Mr. Kagawa Yamato and or Mr. James Sale or whoever was acting for them passed on the monies to him or shared it with him. There must be evidence that the applicant was an accomplice. This evidence is missing. Evidence or a conviction that the applicant was an accomplice would be helpful. Money passing through a client account is not sufficient as it is a statutory requirement that law firms should have them. The Tribunal does not work on suspicions, speculation, and hearsay. It must be shown that after the monies left the client account the applicant received them or was a beneficiary.

Furthermore, a perusal of the documents obtained during the exchange of information, give contradictory information on why the goods may never have reached, that is if they were ever delivered. Exhibit, REX 5 at pages 100 to 110 of the respondent's trial bundle

shows delayed shipment. Exhibit at page 12 is a delivery note to BHF Technologies BHD. At p. 113 there is a certificate of conformity issued to Trimecke exporting to BHF Technologies BHD. There are also information showing the specifications of the generators. At p.135 there is a quotation for air freight of solar generators to Brunei. These contradictions in the testimony of the respondent and documents are not explained. In an email of 28th March 2019, from BHF Technologies BHD copied to Trimecke amongst other, mentions a refund on cancellation of shipment. If the goods never reached the destination, why did the respondent rush to treat it as a money laundering activity and not as a breach of contract? So, when does a breach of contract become criminal and tax matter and not a civil action? There was no witness from B.H.F Technologies SDN BHD, Weei TA Engineering, and construction and Trimecke who testified in the Tribunal to explain what actually happened. A witness from a Criminal Investigation Department to testify on whether there was no sale of generators, but a money laundering scheme would have been helpful. In the absence of such testimony, it is difficult to determine whether the failure to deliver the generators was a breach of a contractual obligation which would lead to a civil action, or it was a money laundering scheme which was a criminal.

S. 58 refers to indirect payments and benefits. A reading of S 58 states that the payment would have been income of the person if it had been directly paid to him. It is difficult to comprehend how payment from the sale of generators would be considered income of a lawyer. They are not directly payable to him. The said monies were paid on a client account. There is no evidence that the proceeds on the client's accounts were indirect payments or benefits. The said payments were for transmission to Trimecke. If the said payments were paid to fictitious persons, they do not become indirect payments or benefits to the lawyer unless there is evidence that the lawyer used his legal business to propagate a legal scam to benefit himself. The applicant testified that he is neither a shareholder nor director in Trimecke. To show that an applicant was a willing participant in a crime, there must be a conviction from a competent court, or disciplinary action against the lawyer or conclusive evidence presented before the Tribunal to show so. The respondent cannot use the pretext that the monies were from undisclosed or unexplained sources to make them income of the applicant.

In this case there was a lot of complicity and negligence on part of the persons involved. Weei Ta Engineering and Construction and BHF Technologies SDN BHD did not do a due diligence on the person who offered to supply solar generators to them. Their representatives signed a contract with Mr. Kagawa Yamato who was representing Trimecke. They did not ascertain whether he was a director or official of the company. The purchasers acknowledged that they inspected the equipment and were satisfied with the condition. It is not clear why they wanted the seller to do the export on their behalf. Usually, it the buyer who does the export/import of the goods. Why would someone from Brunei come to Uganda to buy solar generators and when they are available next door? The Uganda Registration Service Bureau issued a certificate of incorporation to Trimecke. Bank accounts were opened by Trimecke. False identity cards and passports are alleged to have been issued. There was a letter from a law firm introducing Trimecke to the bank. Trimecke had a Tax Identification Number. By the time a Tax Identification Number is issued, it means that the respondent has verified that the information given by the taxpayer is accurate. When such information is relied on by individuals in scams, the respondent is not more innocent or less guilty than other parties who may use such information including lawyers who may innocently represent such individuals. A report from the Criminal Investigation Department was not tendered in court, maybe it is still investigating. It would be important to note if it was implicating the applicant. If the information provided to the Uganda Registration Services Bureau provided by Trimecke in respect of their contacts was fictious, did the respondent want the applicant to also provide false information to it? Wouldn't the applicant be committing an offence? Maybe the applicant was caught between a rock and a hard place in providing such information.

The Tribunal notes that the right person the respondent ought to have issued an assessment would be Trimecke. There is no explanation by the respondent as to why it did not issue an assessment against Trimecke which was business of the supply of generators. If Trimecke was fictitious, the assessment ought to have been issued against the perpetrators, including Kagawa Yamato. There is no reason why an assessment was

also not issued Kagawa Yamato and James Ssali if Trimecke was fictious before proceeding against the applicant.

Taking all the above into consideration, this application is allowed. The Tribunal notes that the applicant did not adduce the online objection it was directed to make, leading to a wastage of time covering issues that may not have arisen. As result it is not entitled to costs. No order as to costs.

Dated at Kampala 14th day of December 2022.

DR. ASA MUGENYI
CHAIRMAN

MR. GEORGE MUGERWA
MEMBER

MS. CHRISTINE KATWE
MEMBER