

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 26 OF 2021

BBULE MUHAMMAD =====APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY =====RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE

RULING

This ruling is in respect of a preliminary objection by the respondent that the applicant has not paid 30% of the tax in dispute.

On 8th July 2022, the respondent raised a preliminary objection that the applicant had not paid 30% of the tax assessed in dispute or that part of the tax assessed not in dispute, whichever is greater. The parties were directed to file submissions.

The applicant was represented by Mr. Andrew Katulege and Mr. Ambrose Tabyasa while the respondent by Ms. Diana Mulira.

The respondent submitted that the application was not properly before the Tribunal as the applicant has not paid 30% of the tax assessed or that part of the tax assessed not in dispute. The respondent contended that S. 30 of the Tax Appeals Tribunal Act provides that "a taxpayer who has lodged a notice of objection should pay 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater. The respondent cited *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* Constitutional Appeal 2 of 1999 where the Supreme Court ruled that the statutory requirement in the then VAT Act, similar to the Tax Appeals Tribunal Act, requiring a taxpayer to pay 30% of the tax assessed or that part not in dispute, whichever is greater is constitutional and did not infringe on the right to a fair hearing. The respondent submitted

that the Supreme Court was following the South African decision of *Metcash Trading Co. Limited. v Commissioner of South African Revenue Services* and another where it was held that a taxpayer has to pay his tax and argue later. The respondent also cited *Elgon Electronics v Uganda Revenue Authority* HCCA 11 of 2007 where the Court held that the provisions of S. 15(1) of the Tax Appeals Tribunal Act are mandatory. The requirement to pay 30% of the tax in dispute or that not in dispute whichever is greater is in line with the "pay now and argue later" principle. In *Samuel Mayanja v Uganda Revenue Authority* HCT 00-CC-MC-0017-2005 Justice Egonda Ntende held that once a taxpayer had lodged an application for review under S. 15 of the Tax Appeals Tribunal Act he is obliged to deposit at least 30% of the tax in dispute. The respondent also cited *A Better Place Limited v Uganda Revenue Authority* Civil Appeal 37 of 2019 where the High Court held that the applicant did not apply to the Tax Appeals Tribunal to enforce alternative methods of payment of the 30% tax in dispute and therefore the Tribunal was not faulted for dismissing the matter. The respondent submitted that the tax assessed was Shs. 2,181,573,972 therefore the applicant ought to have paid Shs. 645,472,191 as 30% which he has never paid or that part of the tax not in dispute, whichever is greater. The respondent prayed that matter be dismissed with costs.

In reply, the applicant submitted that the respondent on 4th December 2020 wrote a letter containing a computation of taxes totaling to Shs. 4,108,030,056. The applicant contended that the said computation had errors which required interpretation of the law. The applicant contended that the respondent used a variance of Shs. 6,529,908,300 to estimate taxes not using correct information. The respondent also used a markup of 5.4 % which was wrong. If the respondent had used audited accounts it should not have used a markup. The applicant contended that the respondent used expected sales instead of a correct figure of Shs. 1,358,121,165.

The applicant contended that the errors by the respondent comprised: The input tax paid by the applicant was not considered. The VAT paid monthly was not considered. VAT is paid monthly. It was inconsistent to use markup and audited accounts. It was wrong to use estimated sales and not actual ones. The applicant submitted that under S. 98(4) of

the Income Tax Act, the commissioner may for purposes of rectifying a mistake amend the order or a document any time before the expiry of two years. The applicant contended that the preliminary objection does not stand.

The applicant contended that there was fraud by the respondent. He also submitted that if the Tribunal dismisses its application he will suffer substantial loss. He cited *Tropical Commodities Supplies Limited v International Credit Bank* (200) 2 EA 331 where Ogoola J held that substantial loss does not represent any particular amount. The applicant also submitted that the respondent denied him an opportunity to pay 30% of the tax in installments. It cited *Century Bottling Company Limited v Uganda Revenue Authority* where the applicant was given an opportunity to pay in four equal installments. The applicant cited *Mukula International Limited v Cardinal Nsubuga and another* 1982 (HCB) 11 where the court held that once an illegality is brought to the attention of court it cannot stand. The applicant prayed the preliminary objection be dismissed.

Having read the submissions of the parties on the preliminary objection this is the ruling of the Tribunal.

The respondent raised a preliminary objection that the applicant has not paid 30% of the tax in dispute. S. 15 of the Tax Appeals Tribunal Act provides that

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

A causal reading of the Section implies that at the time of objection, a taxpayer is required to pay 30% of the tax in dispute or that which is not in dispute whichever is greater pending the determination of the objection.

The issue of payment of 30% was dealt with by the Supreme Court in *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority Constitutional Appeal 2 of 199* where the Supreme Court held that that the statutory requirement in the VAT Act which is similar to S. 15 of the Tax Appeals Tribunal Act, requiring a taxpayer

who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30% of the tax assessed or that part of tax assessed not in dispute, whichever is greater is constitutional and did not infringe on the right to a fair hearing. The requirement to pay 30% of the tax in dispute has been emphasized in a number of High Court decisions. In *Elgon Electronics v Uganda Revenue Authority* HCCA 11 of 2007 Justice Geoffrey Kiryabwire stated that the provisions of S. 15(1) of the Tax Appeals Tribunal Act are mandatory. In *Samuel Mayanja v Uganda Revenue Authority* HCY 00-CC-MC-0017-2005 Justice Egonda Ntende held that once a taxpayer has lodged an application for review he is obliged to pay at least 30% of the tax in dispute. In *A Better Place Limited v Uganda Revenue Authority* HCCA 37 of 2019 the application was dismissed for failure to pay the 30% of the tax in dispute.

The applicant argued that there were errors in the computation of its taxes by the respondent. The Supreme Court decision of *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority Constitutional* (supra) cited the South African decision of *Metcash Trading Co. Limited. v Commissioner of South African Revenue Services and another* where it was held that the taxpayer has to pay his tax and argue later. The applicant should first pay the 30% of the tax in dispute or that which is not in dispute, whichever is greater and then argue. The Tribunal will be able to entertain all his arguments if he has met the statutory requirements under S. 15 of the Tax Appeals Tribunal Act. When one acts contrary to a provision of a statute he acts illegally. A Tribunal like court cannot entertain an illegality. Failure to comply with S. 15 renders one's act illegal, making it difficult for the Tribunal to entertain his appeal.

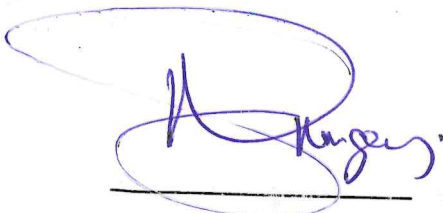
The applicant also contended that the respondent denied him a chance to pay 30% of the tax in dispute in installments. In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* (supra) the Supreme Court noted that:

"Where taxpayer is unable to pay the 30% of the assessed tax before filing the appeal to the Tax Appeal Tribunal he or she should apply to the Commissioner General of the respondent."

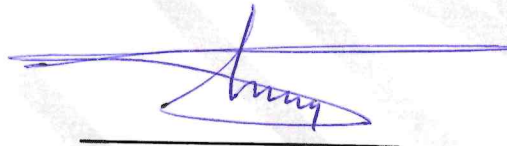
Though the Supreme Court dealt with S. 34(4) of the VAT Act, it has since been replaced by S. 28 of the Tax Procedure Code Act which provides for an applicant to pay in installments. A taxpayer should apply to the Commissioner under S. 28(1) of the Tax Procedure Code Act for extension of time to pay the 30% in instalments. There is no appeal against a refusal by the Commissioner General to pay the 30% of the tax in dispute in installments.

Taking the above into consideration, the preliminary objection is upheld. The main application is dismissed with costs.

Dated at Kampala this 5th day of August 2020.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MS. CHRISTINE KATWE
MEMBER

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that the Supreme Court was following the South African decision of *Metcash Trading Co. Limited. v Commissioner of South African Revenue Services* and another where it was held that a taxpayer has to pay his tax and argue later. The respondent also cited *Elgon Electronics v Uganda Revenue Authority* HCCA 11 of 2007 where the Court held that the provisions of S. 15(1) of the Tax Appeals Tribunal Act are mandatory. The requirement to pay 30% of the tax in dispute or that not in dispute whichever is greater is in line with the "pay now and argue later" principle. In *Samuel Mayanja v Uganda Revenue Authority* HCT 00-CC-MC-0017-2005 Justice Egonda Ntende held that once a taxpayer had lodged an application for review under S. 15 of the Tax Appeals Tribunal Act he is obliged to deposit at least 30% of the tax in dispute. The respondent also cited *A Better Place Limited v Uganda Revenue Authority* Civil Appeal 37 of 2019 where the High Court held that the applicant did not apply to the Tax Appeals Tribunal to enforce alternative methods of payment of the 30% tax in dispute and therefore the Tribunal was not faulted for dismissing the matter. The respondent submitted that the tax assessed was Shs. 2,181,573,972 therefore the applicant ought to have paid Shs. 645,472,191 as 30% which he has never paid or that part of the tax not in dispute, whichever is greater. The respondent prayed that matter be dismissed with costs.

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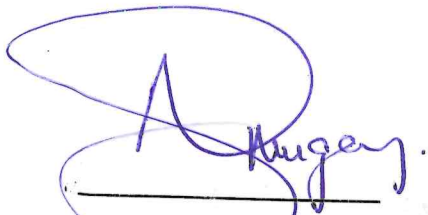
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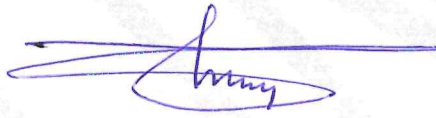
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Taking the above into consideration, the preliminary objection is upheld. The main application is dismissed with costs.

Dated at Kampala this 5th day of August 2020.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MS. CHRISTINE KATWE
MEMBER