

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 112 OF 2021

BLACK COB.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: Ms. CRYSTAL KABAJWARA, Mr. SIRAJ ALI, Ms. KABAKUMBA MASIKO

RULING

This ruling is in respect of a preliminary objection to the effect that the Tax Appeals Tribunal has no jurisdiction to entertain the instant Application.

1. Background facts

The facts are as follows:

- (i) The Applicant is the informant identified by the Respondent as Black Cob with TIF No.001 bearing serial number 0568.
- (ii) On 22nd June 2015, the Applicant gave information to the Respondent, about tax evasion by East African Breweries Limited International (EABLI) and Uganda Breweries Limited (UBL) for the period May 2008 to June 2015. The Respondent issued the Applicant with a Tax Evaders Information Form Number [TIF] 001 Serial Number 0568 on the same day.
- (iii) As a result of the above information, the Respondent assessed taxes of Shs. 118,332,401,819 and Shs. 9,780,243,983 against UBL and EABLI respectively.
- (iv) Under the provisions of S. 8 of the Finance Act, 2014 and later S.74A of the Tax Procedures Code Act (TPCA), the Applicant was entitled to a statutory reward of 10% of the tax collected from both taxpayers.
- (v) The Respondent received part of the tax assessed against UBL and made part payment to the Applicant of Shs. 1,169,759,20.

- (vi) Both UBL and EABLI contested their respective assessments before the Tax Appeals Tribunal. Their applications before the tribunal were dismissed on 7th July 2020 and 24th March 2021 respectively.
- (vii) The Respondent has declined to make any further payments to the Applicant on the grounds that the information availed by the Applicant was not directly related to the remainder of the taxes recovered.

At the hearing, the Respondent raised a preliminary objection to the effect that the Tribunal does not have jurisdiction over the matter.

2. Representation

At the hearing of the Application, Mr. William Were and Ms. Hajara Namwanga appeared for the Applicant while Mr. Kwerit Sam, Ms. Christine Mpumwire, and Mr. Agaba Edmund appeared for the Respondent. Both parties filed written submissions which were adopted by the tribunal as their legal arguments.

3. The issue for determination

The issue for determination is whether the Tribunal has jurisdiction to entertain the application.

4. Submissions of the Respondent on the preliminary objection

The Respondent submitted that the Tribunal does not have the jurisdiction to entertain this matter, it being a contractual and not a tax dispute. The Respondent submitted that before any court proceeds to determine the merits of any case before it, it must first establish whether it is seized with the necessary jurisdiction to do so. In support of this argument, the Respondent cited the decision in *Owner of Motor Vessel Lillian v Caltex Oil Kenya Limited [1990-1994] LLR*. The Respondent also cited the decisions in *Desai v Warsaw (1967) EA 351* and *Odida V Oyama and Ors (HC Miscellaneous Cause no. 03 of 2023* where the Court held that proceedings conducted by court without jurisdiction are a nullity.

The Respondent submitted that **Article 152(3) of the 1995 Constitution of the Republic of Uganda** provides for the creation of the Tax Appeals Tribunal primarily for the resolution of tax disputes. Section 14 of the Appeals Tribunal Act, cap 345 provides that any person aggrieved by a decision made under a tax in Act by the Uganda Revenue Authority or a committee established under the Tax Procedure Code may apply to the Tribunal for review of such a decision.

The Respondent submitted that the Applicant does not contest any assessed taxes but only seeks payment of an informer's reward. The Respondent submitted that the Applicant's claim lies in contract and ought to have been filed in the High Court and not the Tax Appeals Tribunal. The Respondent submitted that the Tribunal has no jurisdiction to entertain the Applicant's claim. In support of this argument the Respondent relied on the decision of the High Court in *Bank of India (U) Limited V NC Beverages Limited vs. Uganda Revenue Authority (HCCS No. 0009 of 2021 (OS))* where Justice Mubiru held that decisions taken under the Tax Procedures Code Act, 14 of 2014 (TPCA) are not taxation decisions for the purposes of **Section 14 (1) of The Tax Appeals Tribunals Act (TAT Act)**.

5. The Applicant's submissions in Reply

The Applicant argued that the Respondent's submissions do not recognize the effect of the amendments to **Section 74(1) of the TPCA**. The Applicant submitted that these amendments provide for appeals from the decisions of a committee established under the Tax Procedures Code Act. The Applicant submitted that **Section 14 of the TAT Act**, was amended by substituting for sub-clause (1) the following—

- (a) a person who is aggrieved by a decision made under a taxing Act by –
 - (i) the Uganda Revenue Authority; or
 - (ii) A committee established under the Tax Procedures Code Act may apply to the Tribunal for a review of the decision.

The Applicant submits that the Respondent has not recognized the difference between the jurisdiction of the Tribunal under Subsection (1) (as amended) and the jurisdiction conferred under **Subsection (2) of Section 14 of the TAT Act** and in addition the

application did not arise under **Section 74A of the TPCA** but under **Section 8 of the Finance Act**.

The Applicant submitted that whereas **Section 14(1) of the TAT Act (as amended by Section 74 of the TPCA)**, restricts the Tribunal to decisions arising from a "Taxing Act", **Section 14(2)** deals with all other taxation decision envisaged under the various laws such as the Finance Act and gives the Tribunal the jurisdiction to entertain and dispose of an application for review of any tax decision provided that the application is properly brought before the Tribunal. Therefore, the Respondent's decisions made in the course of tax administration in respect of payment of a tax informer is a taxation decision within the definition of a taxation decision in **Section 1 of the TAT Act** as well as a tax decision within **Section 3 of the TPCA**.

The Applicant further submits that there is a misconception of the facts because the Applicant gave information to the Respondent sometime in 2015 before the enactment of **Section 74A of the TPC Act in 2019**. The Respondent acted on the information and collected VAT and Excise Duty and paid the Applicant the first instalment on 8 May 2018. The legislature enacted the **TAT Act** and subsequently the **TPCA** which under Section 2 and the 2nd Schedule confer upon the **TPCA** the status of a "Taxing Act".

In addition, the Applicant submitted that **Section 16(1)(4) of the TAT Act** provides: *"Where an application for review relates to a taxation decision that is an objection 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 Applicant submitted that it is expressly expected that certain taxation decisions would not involve assessment and objections. For instance, as in this case, the decision to pay or not to pay part of the tax to the Applicant is a taxation decision as it directly affects the amount of tax to be retained by the Respondent and is well within the context of **Article 152 of the Constitution of Uganda**.

The Applicant submitted that the Tribunal has power to review any taxation decision in respect of which an application is properly made. This gives the Tribunal original but not exclusive original jurisdiction in some matters. The Applicant submitted that this position

is confirmed by the High Court in the case of *Bank of India (U) Ltd V NC Beverages Ltd & Anor HCCS No. 0009 of 2021*.

The Applicant prayed that the preliminary objection be dismissed, and the application be heard on its merits.

6. Respondents' submissions in rejoinder

The Respondent reiterated their earlier submissions that the Tax Appeals Tribunal does not have jurisdiction to entertain contractual disputes created under **Section 74A** of the TPCA (formerly **Section 8 of the Finance Act**) but only tax disputes.

The Respondent submitted that the decision to pay or not pay an informer's reward is not something left to the discretion, judgment, direction, opinion, approval, satisfaction, decision, or determination of the commissioner. Both Section 8 of the Finance Act and Section 74A of the TPCA are structured in mandatory terms. The commissioner is duty-bound to pay a reward to an informer whose information leads to tax collection.

The Respondent submitted that many tax informer reward cases have been lodged in the High Court and have been properly determined as in the case of *Nelson Habasa vs. Uganda Revenue Authority [HCCS No. 192 of 2019]*. The Respondent submitted that the Tribunal should therefore not be clogged with all manner of disputes but should be left to determine the matters which it was purposed to handle under the law.

The Respondent stated that the mere fact that the Tribunal has previously handled informer cases does not mean that the Tribunal has jurisdiction to handle informer cases which are not disputes arising from an Act which imposes tax.

The Respondent reiterated its argument that this application is improperly before the Tribunal as it is not a tax dispute. The Respondent prayed that this application be struck out with costs to the Respondent for having been lodged in an improper forum.

7. Determination of the application by the Tribunal

Having studied the evidence and the submissions of the parties, the following is the decision of the Tribunal.

The instant Application relates to a claim for an informer's reward, which at the time the claim arose, was provided for under **S. 8 of the Finance Act, 2014**. Following the enactment of the **Tax Procedures Code (Amendment) Act, 2019**, **S.8 of the Finance Act** was repealed and was re-enacted as **S. 74A of the TPCA**. The Applicant therefore claims under **S.74A** of the **TPCA**.

The gist of the Respondent's argument is that while **S. 14(2)** of the **TAT Act**, provides that the Tribunal has the power to review any taxation decision in respect of which an application is properly made, this provision must be read in line with **S. 1(k)** of the same Act and the power of the tribunal must be restricted to a decision which relates to any assessment, determination, decision or notice made under any Act, which imposes a tax.

Ss. 14(1) and 14(2) of the **TAT Act** provide as follows;

- (1) A person who is aggrieved by a decision made under a taxing Act by the:
 - i. Uganda Revenue Authority; or
 - ii. Committee established under the Tax Procedures Code Act,May apply to the tribunal for a review of the decision.
- (2) The tribunal has power to review any taxation decision in respect of which an application is properly made.

It is the case for the Respondent that neither the **TPCA** nor the **Finance Act** are Acts which impose tax. Accordingly, the Tribunal has no jurisdiction to handle the instant matter as it arises under **S.74A** of the **TPCA**, which is not a taxing Act but a procedural Act.

The Applicant relied on **S.2** and **Schedule 2** of the **TPCA** for the submission that the **TPCA** is a taxing Act. The Applicant submitted that the decision, approval and exercise of discretion left to the Commissioner General to pay or not to pay an informer is a taxation decision under **S. 1** of the **TAT Act** as well as a tax decision under **S. 3** of the **TPCA**.

This preliminary objection turns on whether the TPCA is a taxing Act. In order to resolve this preliminary objection, the Tribunal must therefore determine whether the TPCA is an Act which imposes tax. If the Tribunal finds that the TPCA is a taxing Act, it follows that the Tribunal has jurisdiction to entertain the instant application as the decision by the Commissioner General not to pay the Applicant would amount to a decision made under a taxing Act within the meaning of S. 14(1) of the TAT Act.

Conversely, if it is found that the TPCA is not a taxing Act, it would follow that the decision by the Commissioner General not to pay the Applicant would not amount to a decision made under a taxing Act within the meaning of S. 14(1) of the TAT Act. In that case the tribunal would have no jurisdiction to entertain the instant Application.

The question as to whether the TPCA is a Taxing Act, is one that is easily resolved.

S.1 (I) of the TAT Act, defines a "taxing Act" as "*any Act which imposes a tax*".

The TPCA is a taxing act as it imposes penal tax.

Penal tax is defined under S. 3 of the TPCA as "*a tax imposed as a penalty for failure to perform an act required by or under a tax law*".

Penal tax is imposed under several provisions of Part XIV of the TPCA.

These include:

48. Penal Tax for Default in Furnishing a Tax Return

A person who fails to furnish a tax return by the due date, or within a further time allowed by the Commissioner under this Act **is liable to pay a penal tax** equal to two percent of the tax payable under the return before subtracting any credit allowed to the tax payer on his or her tax return or ten currency points per month, whichever is higher, for the period the return is outstanding (*emphasis added*).

49. Penal Tax for Failing to Maintain Proper Records

A person who deliberately fails to maintain proper records as required under a tax law for a tax period is liable to pay a penal tax equal to double the amount of tax payable by the person for the period to which the failure relates. (*emphasis added*)

49A. Penal Tax for Failure to Provide Information

- (1) A person who, upon the 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 equivalent to fifty million shillings. (*emphasis added*)
- (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. (*emphasis added*)

50. Penal Tax for Making False or Misleading Statements

Where a person knowingly or recklessly-

- (a) Makes a statement to an officer of the Uganda Revenue Authority that is false or misleading in a material particular; or
- (b) Omits from a statement made to an officer of the Uganda Revenue Authority any matter or thing without which the statement is misleading in a material particular, and the tax properly payable by the person exceeds the tax that was assessed as payable based on the false or misleading statement or omission, that person is liable to pay a penal tax equal to double the amount of the excess. (*emphasis added*)

51. Penal Tax for Understating Provisional Tax Estimates

- (1) A provisional taxpayer, whose estimate or revised estimate of chargeable for a year of income is less than ninety percent of the taxpayer's actual chargeable income assessed for that year, is liable to penal tax equal to twenty percent of the difference between the tax calculated in respect of the taxpayer's estimate, or as revised, of chargeable income and the tax

calculated in respect of ninety percent of the taxpayer's actual chargeable income for the year of income (*emphasis added*).

- (2) A provisional taxpayer whose estimate or revised estimate of gross turnover for a year of income is less than ninety percent of the taxpayer's actual gross turnover for that year is **liable to penal tax** equal to twenty percent of the difference between the tax calculated in respect of the taxpayer's estimate, or as revised, of gross turnover and the tax calculated in respect of ninety percent of the taxpayer's actual gross turnover for the year of income. (*emphasis added*)

53. Recovery of Penal Tax

- (1) Liability for penal tax is calculated separately in respect of each section dealing with penal tax.
- (2) Penal tax shall not be imposed on a person for an act or omission if the person has been convicted of an offence for the same act or omission.
- (3) Where penal tax has been paid and criminal proceedings are instituted in respect of the same act or omission, the Commissioner shall refund the amount of penal tax paid.
- (4) Where good cause is shown, in writing, by the person liable to pay penal tax, the Minister may, on the advice of the Commissioner, remit in whole or part, any penal tax.
- (5) Penal tax is treated as unpaid tax for the purposes of this Act and shall be recovered and collected as unpaid tax.

The above provisions show that the TPCA is a taxing Act, as it imposes penal tax under Ss.48, 49, 50 and 51 of the TPCA.

Having determined that the TPCA is a taxing Act, it follows that the Tribunal has jurisdiction to entertain the instant application, as the decision by the Commissioner General not to pay the Applicant, amounts to a decision made under a taxing Act within the meaning of S. 14(1) of the TAT Act.

We are alive to the decision of the Commercial Division of the High Court in ***Bank of India Uganda Ltd vs. NC Beverages Ltd and Uganda Revenue Authority CS No. 009 of 2021 (OS)*** where Hon. Justice Stephen Mubiru found as follows;

".....It was specifically made under section 32 of the Tax Procedures Code Act, 14 of 2014. By its long title, that Act provides a Code to regulate the procedures for the administration of specified tax laws in Uganda; to harmonise and consolidate the tax procedures under existing tax laws; and to provide for related matters. Its provisions are entirely procedural in nature, designed to guide processes in the administration of specified tax laws. None of its provisions imposes a tax. It therefore is not a "taxing Act". It follows that standing on their own without an underlying controversy arising out of action taken or omission under a taxing Act, decisions taken under the Tax Procedures Code Act, 14 of 2014, are not taxation decisions for purposes of section 14(1) of the Tax Appeals Tribunals Act".

However, given the clear provisions of **Ss. 48, 49, 50 and 51** of the TPCA and the definition of "penal tax" under **S. 3** of the same Act, we find that the decision in ***Bank of India Uganda Ltd vs. NC Beverages Ltd and Uganda Revenue Authority (supra)*** as far as it determines that the TPCA is not a taxing Act was made *per incuriam*.

In ***Continental Tobacco (U) Ltd vs. Global Hardware Company Ltd (Arua High Court Civil Appeal No. 0017 of 2013)***, Hon. Justice Stephen Mubiru set out the options available to a lower court seeking to avoid a binding precedent.

"Whereas the highest court in the hierarchy has the liberty to depart from its earlier decisions or to overrule its own decisions, where such decisions are likely to occasion an injustice in a particular case, or where it appears right to do so, and to modify the previous pronouncements when they cease to conform with the social philosophy of the day, the courts below do not have such a liberty. They are bound to follow such a decision unless they can be distinguished. The rule is so strict that even for the highest court, mere discovery that an earlier decision was wrong does not of itself justify a departure from it (see Jones v. Secretary of State for Social Services [1972] 1AC 944).

To avoid an inconvenient but otherwise binding precedent, a court below has several options available to it; - to distinguish it by confining it to its narrow facts, thereby limiting the scope of its authority; to find that it was per incuriam, that is, the Court had overlooked an existing decision or statute relevant to the decision; where the reasons for the rule have ceased to exist (*Cessante ratiō legis cessat ipsa lex*); refuse to follow any statement in the decision which is not the ratio; freely choose which of two clearly inconsistent binding decisions to follow. A court is otherwise not justified to dismiss a binding precedent simply because it does not agree with *ratio decidendi*". (emphasis added).

In *Huddersfield Police Authority v. Watson* (1947) 2 All ER 193 at 196, Lord Goddard CJ, defined the term *per incuriam* as follows;

"What is meant by giving a decision *per incuriam* is giving a decision when a case or statute has not been brought to the attention of the court and they have given the decision in ignorance or forgetfulness of the existence of that case or that statute".

In *Riziki Binti Abdulla and Faiza Binti Abdulla v. Sharifa Binti Mohamed Bin Hemed and Others* (1959) EA 1035, the court set out the scope of the *per incuriam* rule as follows;

"The expression "*per incuriam*", when applied to judicial decisions, is one which has a defined and limited scope, as was recently pointed out by this court in *Kiriri Cotton Co. v. R. K. Dewani* (5), [1958] E.A. 239, (C.A.) where at p. 246 the following passage from the judgment of Sir Raymond Evershed, M.R., in *Morelle Ltd. v. Wakeling* (6), [1955] 1 All E.R. 708, at p. 718, was quoted:

"As a general rule the only cases in which decisions should be held to have been given *per incuriam* are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found on that account, to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have

been decided per incuriam must, in our judgment, consistently with the stare decisis rule, which is an essential feature of our law, be, in the language of Lord Greene, M.R., of the rarest occurrence."

Relying on the above authorities and on the reasons given above, this preliminary objection is accordingly dismissed. Each party will bear its own costs. The main application will be fixed for hearing.

Dated at Kampala this 30th day of July 2024.

Crystal Kabajwara

MS. CRYSTAL KABAJWARA
CHAIRPERSON

Siraj Ali

MR. SIRAJ ALI
MEMBER

Kabakumba Masiko

MS. KABAKUMBA MASIKO
MEMBER

RULING