

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION No.183 OF 2024**

CAYMAN CONSULTS LIMITED .....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: CRYSTAL KABAJARWA, STELLA NYAPENDI, GRACE SAFI**

**RULING**

This ruling is in respect of a preliminary objection raised by the Respondent that the Applicant has not paid the 30 percent deposit of the tax assessed. The Respondent seeks a declaration that this application be dismissed with costs to the Respondent for failure to comply with the statutory requirement of payment of 30 percent of the tax in dispute pursuant to Section 15 of the Tax Appeals Tribunal Act.

**1. Background facts**

The Applicant deals in the supply of professional and resource management services. In 2009, through a project implementation agreement, the Applicant was subcontracted by a United States-based company called Trigyn to provide I.T staff placement services to United Nations Missions across Africa.

In 2018, the Respondent conducted an audit based on the above agreement and found that the Applicant neither withheld nor remitted PAYE for the employees under the project implementation agreement.

On 7 March 2024, the Respondent issued the Applicant with assessments demanding Pay As You Earn (PAYE) of Shs.42,331,904,361 for the period of 2019 to December 2022.

The Applicant contended that on 27 August 2018, the Respondent issued a management letter to the effect that the staff who the Applicant manages on behalf of Trigyn and United Nations, are not employees of the Applicant for income tax purposes. The letter further intimated that the income they receive is exempt from tax

under Section 21 of the Income Tax Act. That the Applicant therefore relied on the Respondent's guidance and did not collect the PAYE from the staff.

Therefore, on 27 April 2024, the Applicant objected to the assessment on grounds that the UN Contractors are not employees for tax purposes as per Section 21 of the Income Tax Act. The Applicant argued that the Respondent is bound by its earlier position stated in the management letter dated 27 August 2018. On 21 June 2024, the Respondent disallowed the objections, and the Applicant filed before this Tribunal.

At the scheduling, the Respondent raised a preliminary objection that the application was improperly before the Tribunal on grounds that the Applicant had not paid 30 per cent of the tax in dispute. On the other hand, the Applicant contended that they are not required to pay the deposit. The parties agreed to file submissions on the preliminary point of law.

## **2. Issue for Determination**

Whether the Applicant is liable to pay 30 per cent of the tax assessed.

## **3. Representation**

The Applicant was represented by Mr. Ssekabira Isaac, Ms. Atai Sarah and Mr. Abubaker Lubega while the Respondent was represented by Ms. Joan Agasha and Ms. Charlotte Katuutu.

## **4. Submissions of the Respondent on the Preliminary objection**

The Respondent submitted that Section 15 of the Tax Appeals Tribunal Act (TAT Act) provides that a taxpayer who has lodged a notice of objection pending final resolution of the objection shall pay 30 per cent of the tax assessed or that part not in dispute, whichever is greater.

The Respondent cited the case of *Uganda Projects Implementation and Management Centre (UPIMAC) v Uganda Revenue Authority, Supreme Court Constitutional Appeal No.2 of 2009*, where the Supreme court held:

*"The requirement to pay 30 per cent of the tax assessed, or that which is not in dispute, whichever is greater, is constitutional and did not infringe on the right to a fair hearing".*

The Respondent also relied on the case of **Samuel Mayanja v Uganda Revenue Authority HCT 0017 of 2005**, where it was held:

*"Once a taxpayer has lodged an application for review under S.15 of the Tax Appeals Tribunal Act, he is obliged to deposit at least 30 per cent of the tax assessed."*

The Respondent submitted that the principle of binding precedents was substantially elucidated in the case of **Continental Tobacco (U) Limited v Global Hardware Company Limited Civil Appeal No.0017 of 2013** where the Learned Hon. Justice Stephen Mubiru in holding that he was bound to follow the binding decisions of the higher courts referred to the following:

*"The doctrine of binding precedent requires that the rule in a relevant previous decision must be followed "because it is a previous decision and for no other reason.... Through the acquisition of "the accumulated experience of the past" and by binding later courts, precedents provide for uniformity to a large extent, which is one of the most basic demands of justice. It is for that reason that in Smith v Allwright (1944) 321 US 644, at 669, Roberts J. commented; **it of paramount importance that judicial decisions should not be like "a restricted railroad ticket, good for this day and train only." Failure to follow binding precedent creates "the inconvenience of having each question subject to being re-argued and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth and in fact there would be no real final court of appeal."** (See London Tramways v. London County Council [1898] AC 375at Per Lord Halsbury at p 380).*

*In the hierarchical system of courts which exists in this country, "it is necessary for each lower tier to accept loyally the decisions of the higher tiers" (see Cassell v. Broome [1972] AC 1027 at 1054)."*

The Respondent submitted that the doctrine of binding precedent demands that the decision of the Supreme Court binds all courts subordinate thereto including the court of Appeal, Constitutional Court, the High Court, the Magistrates Courts and the Tax Appeals Tribunal.

The Respondent submitted that the Applicant relies on the holding in Fuelex v URA to assert that the Application raises questions of law and not factual questions and that as such, it need not pay 30 per cent of the tax in dispute. The Fuelex decision is a decision of the Constitutional court while the UPIMAC decision is of the Supreme Court and therefore takes precedence over the decision of the Fuelex.

The Respondent relied on the case of ***Bullion Refinery Limited v URA, TAT App No.36 of 2021*** where the Applicant sought to rely on the Fuelex decision to contend that it was not liable to pay 30 per cent of the tax in dispute and the Tribunal held:

*“Where a taxpayer objects to an assessment and also to a legal interpretation of a decision, the taxpayer will still be required to pay 30 per cent of the tax assessed in the objection”.*

The Respondent submitted that in the present case, the Applicant objected to PAYE assessments of Shs.42,331,904,361 as well as the legal interpretation. The Respondent prayed that this preliminary objection is upheld, dismissed with costs to the Respondent.

#### **5. Submissions of the Applicant in reply to the Preliminary Objection**

In reply, the Applicant submitted that Section 15(1) of the Tax Appeals Tribunal Act does not apply to applications brought on matters of law like the one at hand, and therefore the Respondent’s objection is a pure misconception of the law.

The Applicant cited the case of ***Fuelex (U) Limited v Uganda Revenue Authority Constitutional Petition No.3 of 2009*** where it was held:

*“Section 15 of the Tax Appeals Tribunal Act is not unconstitutional in so far as it applies to only disputes over the tax amounts assessed. Its constitutionality comes into question where its applicability is sought to extend to parties whose disputes are purely legal and or technical and where the issue for determination before the Appeals Tribunal does not relate only to the amount of tax payable”.*

The Applicant argued that the issues it laid before the Tribunal for determination are all purely matters of law and the requirement of 30 per cent does not apply in the circumstances. The Applicant submitted that the application is not challenging the quantum or amount of the tax assessed, but rather the legality of the assessments issued by the Respondent.

The Applicant submitted that the word “shall” as used in Section 15 of the Tax Appeals Tribunal Act was interpreted by the Constitutional Court in the case of ***Fuelex (U) Limited v Uganda Revenue Authority Constitutional Petition No.3 of 2009*** is not mandatory in nature.

The Applicant submitted that the law that was interpreted by the Supreme Court in the case of Project Implementation was Section 34 C of the VAT Act as amended by the

Finance Act 2001 is totally different and distinguishable from Section 15(1) of the Tax Appeals Tribunal Act in terms of requirements.

The Applicant argued that the Respondent twisted the phrasing of Section 34C of the VAT Act as interpreted by the Supreme Court in the case of Project Implementation to suit Section 15(1) of the Tax Appeals Tribunal Act.

The Applicant submitted that the facts/ law in the Supreme Court decision of ***Uganda Projects Implementations and Management Centre (Supra)*** are distinguishable from the facts at hand and therefore not binding on the Tribunal. The Applicant argued that the right decision the Tribunal should rely on is the ***Fuelex (U) Limited v Uganda Revenue Authority Constitutional Petition No.3 of 2009***.

The Applicant submitted that the case of ***Bullion Refinery v URA TAT Application No.36 of 2021***, is only persuasive and not binding on the Tribunal. The Tribunal in the case of ***Bullion Refinery v URA*** misapplied the findings of the Constitutional Court in the case of ***Fuelex (U) Limited v URA*** which was binding on it, when in among other limited circumstances set for non-payment of the 30 per cent it held:

*"Where a taxpayer objects to an assessment and also a legal interpretation of a decision, the taxpayer will still be required to pay 30 per cent of the tax assessed in the objection".*

The Applicant submitted that this is misapplication of the decision of the Constitutional Court in the case of Fuelex where it was held:

*"I find that Section 15 of the Tax Appeals Tribunal Act is not unconstitutional in so far as it applies to only disputes over the tax amounts assessed. Its constitutionality comes into question where its applicability is sought to extend to parties whose disputes are purely legal and or technical and where the issue for determination before the Appeals Tribunal does not relate only to the amount of tax payable"*

The Applicant submitted that even where disputes arise on matters of law and fact, a taxpayer is not required to pay 30 per cent. The Applicant prayed that the Tribunal does not rely on the case of ***Bullion Refinery v URA App No. 36 of 2021*** but rather ***Fuelex UG Ltd v URA Constitutional Petition No. 3 of 2009***.

The Applicant submitted that Section 15 (1) of the TATA was not made to do away with or wipe away rules of drafting pleadings that require a legal puritan or a disputant to give material facts to his or her case. What is set out in the Application are all the

requirements prescribed in the form of the Act. One must look at all laid before the Tribunal to tell if these are issues of law or fact.

The Applicant submitted that they are not required to pay the 30 per cent as alleged by the Respondent. They prayed the Respondent's preliminary objection is overruled.

## **6. The Submissions of the Respondent in Rejoinder**

The Respondent submitted that *Fuelex Ug Ltd v URA, Constitutional reference No. 03 of 2009*, ruled by the majority of 3:2, that section 15 of the TAT Act (requiring 30 per cent tax deposit) is unconstitutional, in so far as it subjects a taxpayer whose objection does not relate to the amount of tax payable.

The Respondent submitted that tax assessments stem from the application of tax statutes. All assessments are based on interpretation of the provisions of the tax laws to impose the tax. Therefore, if thoughtfulness is not given to what extent one is to be excused the provisions of Section 15 of the TAT Act as per the *Fuelex case*, the Tribunal will run a risk of opening up a gate to the abuse of provisions of Section 15 of the TATA, breed confusion and also runs a risk of countering the settled position in *Uganda Projects Implementation and management Centre v URA C.A NO.2 of 2009*.

The Respondent submitted that the Applicants case does not fall under the ambit of Fuelex since the Applicant indicates that he contests a tax amount of Shs. 42,331,904,361.

The Respondent submitted that the Applicant ought to pay the 30 per cent of the tax in dispute because the case before the Tribunal involves an assessment which position was clarified on in line with *Fuelex Ug Ltd v URA in Bullion Refinery Ltd v URA App No. 36 of 2021* the Tribunal held:

*"Our understanding of the Constitutional Court decision of Fuelex (U) Ltd v Uganda Revenue Authority (supra) is that it is not inconsistent with the Supreme Court decision of Uganda Projects Implementation and Management Centre v Uganda Revenue Authority (supra). What the Constitutional Court in the Fuelex (U) Limited v Uganda Revenue Authority (supra) was concerned about was the practical application of S. 15 of the Tax Appeals Tribunal Act to tax disputes. It may be applied in such a way that an unconstitutionality may arise. For instance, if a party files an objection on a legal interpretation, subjecting it to pay 30 per cent of a tax it*

*has not objected to would be denying it a right to a fair hearing. If a party is objecting to a private ruling or the application of a practice notice, why should it be required to pay 30 per cent of an assessment it has not objected to? However, where a taxpayer objects to an assessment and also to a legal interpretation of a decision, the taxpayer will still be required to pay 30 per cent of the tax assessed in the objection”.*

The Respondent further submitted that the position in the Supreme Court Decision of ***Uganda Implementation and Management Center v URA C.A NO.2 OF 2009*** has never been overturned and the same is still binding. Under the rule of stare decisis, courts are obligated to uphold their previous rulings or the rulings made by higher courts within the same court system. The Respondent prayed that the case is dismissed with costs.

## **7. Determination of the Tribunal**

Having read the submissions of the parties, this is the decision of the Tribunal.

When this matter came up for scheduling, the Respondent raised a preliminary objection that the Applicant had not paid the 30 per cent of the tax in dispute. This was also stated in the Respondent’s statement of reasons for taxation. Counsel for the Applicant argued that this was a question of law and therefore the 30 per cent was not payable.

Preliminary points of law may be raised at any time of the proceedings. The Respondent raised a preliminary objection that the Applicant had not paid 30 per cent of the tax in dispute or which is not in dispute whichever is greater.

The Tribunal notes that in paragraph (g) of the Applicants statement of facts, the Applicant stated that the Respondent issued assessments of Shs. 42,331,904,361 for the period 2019 to 2022 following an investigation where the Respondent alleged that there was an employer–employee relationship between UN Staff and the Applicant.

The Applicant relied on the case of *Fuelex (supra)* where the Constitutional Court held that the 30 per cent deposit as prescribed in section 15 of the Tax Appeals Tribunal Act does not to extend to parties whose disputes are purely legal and or technical and

where the issue for determination before the Appeals Tribunal does not relate only to the amount of tax payable.

Section 15 (1) of the Tax Appeals Tribunal Act states:

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

**In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority, Supreme Court Constitutional Appeal 2 of 2009. Justice C.N.B Kitumba* stated:**

*“It may be a hardship on the taxpayer but according to Article 17 of the Constitution, a citizen has a duty to pay taxes and to do so promptly, so that government business can go on. This is what was discussed in the Metcash Trading Co. Ltd case. “The principle of pay now and argue later”. The tax payer has to pay his tax then argue later. I am unable to fault the ruling of the Constitutional Court...”.*

**Justice Boniface Wamala in *A Better place Uganda limited v URA, Civil Appeal No. 37 of 2019* stated:**

*“.....the requirement to pay then 30 per cent of the tax assessed or the part of the tax not in dispute, is set in motion when the taxpayer lodges with the Commissioner a notice of objection to an assessment. What this means is that the said portion of the tax is payable before resolution of the objection by the Commissioner. If the portion of the tax is collected at that level, there would not be a requirement to make a further payment when the matter comes up before the Tribunal upon an application for review of a tax decision that may have been made by the Commissioner. Where the portion of the tax was not collected at the time the objection was considered by the Commissioner, as was the case in the instant matter, the TAT is obliged to enforce that payment”.*

The parties have relied on two precedents, which, on the face of it, appear to have two opposing views. The Respondent has relied on the Supreme Court decision of ***Uganda Implementation and Management Center v URA*** which held that the requirement to pay 30 per cent of the tax assessed is constitutional and does not



infringe on the right to a fair hearing. On the other hand, the Applicant has relied on *Fuelex v URA*, a decision of the Court of Appeal which held that the 30 per cent deposit does not extend to parties whose disputes are purely legal and or technical and where the issue for determination before the Appeals Tribunal does not relate only to the amount of tax payable.

This Tribunal, in *Bullion Refinery Limited v URA (Supra)* attempted to reconcile or harmonise the two cases. The Tribunal stated:

*"However, where a taxpayer objects to an assessment and also to a legal interpretation of a decision, the taxpayer will still be required to pay 30 per cent of the tax assessed in the objection.... The application filed before the Tribunal shows that the applicant objected to taxes of Shs. 686,711,048...the objection decisions attached shows that the applicant objected to taxes assessed. There is no evidence to show that the applicant objected to only a legal interpretation of a tax dispute. This tax ought to have been paid at the stage of objecting and this was not done. Therefore, this application is not properly before the Tribunal".*

We are inclined to agree with the above reasoning of the Tribunal.

In the present case, there is an assessment, objection and objection decision in respect to a disputed amount. The Applicant has a duty to pay the tax assessed and prove that the tax assessed was made incorrectly and should have been made differently. It should also be noted that the dispute in the present case is not purely a legal dispute as envisaged by the Fuelex case. The dispute also involves a question of fact, for example, whether the staff in question were employees of the Applicant or not. This is both a question of fact and of law.


Consequently, the Applicant ought to have paid 30 per cent of the tax assessed.

Notwithstanding the above, the Tribunal is cognizant of the overriding principle in Article 126 (2) (e) of the Constitution of the Republic of Uganda which requires substantive justice to be administered without undue regard to technicalities.

Therefore, in view of the quantum of the tax in dispute of Shs. 42,331,904,361 coupled with the fact that the application raises triable issues regarding the implications of the Respondent's earlier guidance of 27 August 2018 to the Applicant, the Tribunal hereby makes the following orders:

- (i) The Applicant should deposit with the Respondent Shs. 12,699,571,308.30 being 30 per cent of the tax assessed of Shs. 42,331,904,36;
- (ii) The Applicant may apply to the Respondent for an instalment plan in accordance with Section 28 of the Tax Procedures Code Act; and
- (iii) The Tribunal shall proceed to hear the matter on its merit subject to the Applicant paying the 30 per cent deposit or a payment plan agreed upon by the Respondent as the case may be.
- (iv) Costs shall abide in the main cause.

Dated at Kampala this 18<sup>th</sup> day of November 2024.

  
CRYSTAL KABAJWARA  
CHAIRPERSON

  
STELLA NYAPENDI  
MEMBER

  
GRACE SAFI  
MEMBER