

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 005 OF 2024

DR. AMOS NZEYI APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an administrative additional income tax assessment of Shs. 1,820,867,049.20 on income earned by the Applicant from the sale of land.

1. Background facts

The Respondent issued the Applicant with an assessment of Shs. 2,186,824,000 arising from the sale of approximately 42 acres of land that the Applicant sold to Crown Beverages Limited in 2019 for a price of Shs. 6,500,000,000.

The Applicant objected to the assessment on the grounds that this supply comprised of sale of undeveloped private land which is not a business asset and is exempt from income tax. The Respondent then issued a revised assessment of Shs. 1,820,867,049.20.

Dissatisfied with the Respondent's objection decision, the Applicant filed this application for review of the decision.

2. Issues for determination

The issue for determination is whether the Applicant is liable to pay the tax assessed?

3. Representation

At the hearing of this Application, Mr. Ronald Kalema and Mr. Gerald Ndobya appeared for the Applicant while Mr. Donald Bakashaba and Mr. Samuel Oseku appeared for the Respondent.

Mr. John Mpanga, the Applicant's Accountant stated that in 2019, the Applicant sold land comprised in Block 383, Plot 7402 Busiro, Kitende, measuring 7.22 acres and Block 383, Plot 7402 Busiro, Kitende measuring 15.61 acres collectively at Shs. 6,500,000,000 to Crown Beverages Limited. That the Respondent issued a tax assessment of Shs. 2,186,824,000 on the grounds that the Applicant is in the business of buying and selling land. The Applicant objected on the grounds that:

- (i) The land was not a business asset; hence, the proceeds of the sale could not be included as business income.
- (ii) That the capital gain obtained from the sale of the property to Crown Beverages Limited is exempted and could not be part of the Applicant's gross income.

The witness testified that the Respondent issued a revised assessment of Shs. 1,820,867,200 and he stated that there was no evidence to corroborate the Respondent's assertion that the Applicant is in the business of buying and selling land.

The witness testified the Applicant purchased the land for private use and not business, it remained undeveloped until it was transferred to Crown Beverages Limited, which constructed a factory thereon.

The Respondent called one witness, Mr. Nicholas Mugume, an Officer in the Respondent's Domestic Taxes Department.

He testified that Applicant disposed off a business asset and was mandated to account to for income tax. He stated that the Applicant registered business activity on his tax profile

is real estate activities with own or leased property. Therefore, disposal of the land was disposal of a business asset.

During cross examination, the Respondent's witness testified that there was no evidence that the Applicant had historically engaged in the buying and selling of land and that the Respondent's assessment was based entirely on the Applicant's registered tax profile.

4. The Submissions of the Applicant

The Applicant submitted that the Applicant is a shareholder in various companies such as Crown Beverages Limited, Hot Loaf Bakery, Inncor Uganda Limited. Monarch Capital Investments Limited, National Bank of Commerce Uganda Limited.

The Applicant's witness indicated that the taxes on the dividends paid by these companies have always been declared and accounted for in his tax returns. The Applicant submitted that his returns also show that he did not declare any business income during the period assessed of 2019 in 2021.

In addition to being a shareholder in the aforementioned companies, the Applicant also started obtaining rental income from apartments located in Kololo. The Applicant stated that he accounts for tax on this rental income, which he started to earn in 2021.

The Applicant submitted that in populating its tax profile for the TIN, he clearly indicated that he has no business income as indicated in Exhibit R1 at Page 35 of the trail bundle. This proves that the Applicant has no business income.

Whether the asset is a business asset?

The Applicant submitted that Section 2 of the Income Tax Act defines a business asset to mean an asset which is used or held ready for use in a business, and includes any asset held for sale in a business and any asset of a partnership or company.

The Applicant contended that the land held by the Applicant was not a business asset held in any business. The land was held in the Applicant's personal capacity which he then sold to Crown Beverages.

The Applicant submitted that a "business asset" has been defined in ***Makerere University Retirement Benefits Scheme v. Uganda Revenue Authority (TAT Application No. 17 of 2021)***, wherein the Tribunal noted that:

".... the addition of the word 'business' on the word 'asset' for purposes of defining a 'business asset' meant that not all assets attract WHT..... there are 'business assets' and 'assets of the business', Assets of the business, usually put in the balance sheet of the financial statement as assets of the company is what is referred to as 'business assets' while items or goods used for trading purposes, merchandise or ordinary course of business known as stock in trade though used in a business but are not owned by the business in strict sense of ownership do not comprise assets in a business assets in a business..... that business assets and stock in trade comprise assets in a business however only business assets belonging to the business and not stock in trade attract WHT".

The Applicant submitted that the land that was disposed of was not a business asset to the Applicant since it was not an asset of a business, or one held ready for use in a business. It was a personal asset that the Applicant had owned for nine years, and it had grown to become a bush before its disposal.

The Applicant further argued that the land sold was not trading stock disposed of that could have attracted any tax. The Applicant prayed that the Tribunal finds that the land sold to Crown Beverages is not a business asset and therefore exempt from withholding tax in accordance with Section 21(j) of the ITA which exempts any capital gain that is not included in business income from taxation.

The Applicant prayed that the objection decision is quashed, and the Tribunal declares that Shs. 1,820, 867,049.20 is not payable by the Applicant.

5. The Submissions of the Respondent

Whether the Applicant is in the business of buying and selling land?

The Respondent submitted that the Applicant is liable to pay income tax having disposed of a business asset and was mandated by law to account for the income earned from the disposal. Section 4 (1) of the Income Tax Act makes the imposition of Income Tax mandatory. It provides:

"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 for the year of income."

The Respondent submitted that submitted that Section 15 of the Income Tax Act provides:

"Chargeable income of a person for a year of income is the gross income of the person for the year, less total deductions allowed under the Act for the year."

The Respondent submitted that Section 18 (1) of the Income Tax Act provides:

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

The Respondent cited Section 2 (c) of the Income Tax Act Cap. 338 defines "business" as:

"Any trade, profession, vocation or adventure in the nature of trade, but does not include employment."

The Respondent contended that having engaged in the transaction of disposing of his land to Crown Beverages, the Applicant undertook part in such activities as envisaged under Section 18(1) above read together with Section 2 (c) of the Income Tax Act, simply put, engaged in an adventure in the nature of trade.

The Respondent submitted that the ***Black's Law Dictionary 8th Edition*** provides; *"adventure" implies a pecuniary risk, a venture, a commercial purpose."*

The Respondent submitted that they are cognizant of the fact that a transaction of purchase of land cannot be assumed without more to be an adventure in the nature of trade. The Respondent submitted that the Applicant's voluntary declarations on its tax profile, which the Respondent based on in raising the impugned assessment clearly demonstrate the intention of the Applicant from the onset to engage in the business of real estate.

The Respondent submitted that Section 2 of the Income Tax Act defines a "business asset" as-

"An asset which is used or held ready for use in a business and includes any asset held for sale in a business and any asset of a partnership or company".

The Respondent submitted that Section 2 asserts that an asset of a company or partnership is automatically a business asset whether or not it is being used in the business or held ready for use or held ready for sale. For the Applicant, it has to be shown that the asset was used or held ready for use in the business or held for sale.

The Respondent submitted that the Applicant, as evidenced by his tax profile, had at all times held the land which he later sold to Crown Beverages as a business asset. Through his declarations, the Applicant expressed his undertaking in the business of real estate, of which purchase, and sale of land are among the activities involved. The land sold to Crown Beverages was a business asset.

The Respondent submitted that the question for the Tribunal to examine is whether the transaction in issue falls under the ambit of business income, the Applicant having disposed of his business asset and derived gains from undertaking in the vocation or business of selling land.

The Respondent argued that the gains from the sale of the land ought to have been added to the business income of the Applicant and declared to the Respondent as the same arose out of the Applicant's business of purchase and sale of land. Whereas, it is true that gains from the sale of privately held assets are currently not taxable in Uganda, a distinction has to be made between gains derived by individuals disposing of their

privately-owned assets and gains derived by individuals engaged in the business of real estate (purchase and sale of land) as the Applicant.

The Respondent submitted that through his declarations in the tax profile, the Applicant expressed the motive to partake in the trade of buying and selling land, which intention materialized upon disposal of his property to Crown Beverages. Suffice to note that a taxpayer is bound by their declarations to the Commissioner. The Respondent cited the case of *Karl Evans Brown V Commissioner of Income Tax, Downer Ja at Pg. 289* where it was held:

"The cardinal features of the Income Tax Act are the obligation on the tax-payer to furnish particulars of his income to the tax gatherer and the inquisitorial power of the tax gatherer to require such particulars. There is no room for reversal of roles"

The Respondent submitted that Applicant's declarations to the Commissioner demonstrates the nature of business he is involved in. The Respondent also submitted that the Applicant made rounds in news with his famous purchase of the "Temangalo Land", which land he purchased and later sold to NSSF. Therefore, the Respondent correctly assessed the Applicant for disposal of his business asset to Crown Beverages.

6. The submissions of the Applicant in rejoinder

The Applicant reiterated its submissions and maintained that the assessment was without legal merit. The land in question was privately owned and held as a personal asset. The mere disposal of private property did not constitute a business activity. The proceeds arising from the sale did not amount to income derived from any business, nor did they fall within the scope of taxable gains on business property or trading stock.

The Applicant further submitted that he had not engaged in the systematic or continuous sale of land that would amount to a trade or business. Rather, the transaction was a singular and isolated event involving the sale of a long-held personal asset, and as such could not reasonably be characterized as a business venture.

The Applicant submitted that he declared his sources of income, as consistently reported to the Uganda Revenue Authority (URA), comprised solely of dividends earned as a shareholder in several companies, including Crown Beverages Limited, Hot Loaf Bakery, Mascor Uganda Limited, and Monarch Capital Investment, as well as rental income derived from his residential property located in Kololo. He emphasized that at no time had he reported or derived business income from land transactions.

The Applicant submitted asserted that the selection of this TIN category did not imply engagement in the buying and selling of land. The Applicant argued that it was incorrect and legally untenable for the Respondent to rely on a technical registration code to impute a commercial character to what was, in substance and intent, a private transaction.

The Applicant submitted that had he been engaged in the business of land trading, he would have registered under a more appropriate commercial classification reflecting such business activity. The current TIN registration, which he maintained was solely for rental income purposes, could not reasonably be interpreted as indicative of land trading.

The Applicant also took issue with the Respondent's characterization of the transaction as "an adventure in the nature of trade." He submitted that this assertion lacked clarity and was based on vague generalizations rather than any specific evidence. There was no indication of repeated transactions, no supporting documentation pointing to an intention to trade, nor any enhancements to the land to increase its marketability. Moreover, the Respondent had not adduced any evidence of a prior pattern of similar transactions or any agreements pointing to a commercial arrangement in this instance.

The Applicant argued that the transaction did not exhibit any of the classic hallmarks of trade; such as frequency, intention to resell at a profit, short holding period, or improvements aimed at resale.

The Applicant submitted that the transaction in question constituted the disposal of a capital asset and did not meet the legal threshold for an adventure in the nature of trade. The Applicant prayed that the Tribunal finds the proceeds of the sale to fall within the exclusion provided under Section 21(1)(j) of the Income Tax Act, and therefore not subject to income tax.

7. The Determination of the Tribunal

Having listened to the evidence and read the submissions of the parties, this is the decision of the Tribunal.

The Applicant sold a parcel of land to Crown Beverages Limited. The Applicant had prior to the sale held the land for a period of nine years. The Applicant contends that the land was held in a private capacity and was therefore not a business asset used in a business within the meaning of the ITA. The Respondent on the other hand classified the land as a business asset on the basis that the Applicant engaged in an adventure of a nature of trade. It is for this reason that the Respondent assessed income tax on the sale of the land.

The Applicant submitted that the transaction is exempt from income tax in accordance with section 21 (i) (j) of the ITA. The section provides as follows:

“The following amounts are exempt from tax:

*any capital gain that is not included in business income, other than **capital** gains on the sale of shares in a private limited liability company **or on the sale of a commercial building...***”

The Applicant submitted that he is not in the business of buying and selling land and as a result, the income from the sale of land nor the gain are taxable.

The Respondent submitted that the Applicant as evidenced by his tax profile had at all times held the land which he later sold to Crown beverages as a business asset. Through his declarations, the Applicant expressed his undertaking in the business of real estate, of which purchase, and sale of land are among the activities involved. The land sold to Crown Beverages was therefore a business asset.

Section 4 of the ITA imposes income tax on any every person who has chargeable income for the year of income. Chargeable income is defined under Section **15** of the ITA to mean gross income less allowable deductions.

Section 17 defines gross income to include business, employment, and property income. Section 18(1)(a) defines “business income” to include gains “derived by a person on the disposal of a business asset”.

However, **Section 21(1)(j)** exempts from income tax “any capital gain that is not included in business income, except the sale of shares in a private company or the sale of a commercial building.

Bringing all the above provisions together in harmony, one can reasonably conclude that income tax is chargeable on gains derived from the disposal of assets were the assets disposed of are business assets. If the assets are not business assets, for example, personal assets, such gains are not taxable.

Therefore, we must now determine whether the land in question was held by the Applicant as a business asset.

Section 2(h) defines a business asset as “an asset which is used or held ready for use in a business,” and it specifically includes “any asset held for sale in a business and any asset of a partnership or company”.

A business is defined by Section 2 of the ITA to include any trade, profession, vocation or adventure in the nature of trade.

Therefore, we must establish whether the Applicant was engaged in a trade or adventure in the nature of a trade involving the buying and selling of land. This involves determining whether there are any indicators that point to trading activity rather than a hobby or investment. These include:

- (i) Repeated transactions - A trading activity is more indicative if there are repeated and systematic transactions. This was clearly displayed in the case *Pickford v Quirke – CA 1927, 13 TC 251* where it was held that the repeated nature of the transaction were indicative of trading activity. In the present case, there is no proof of repeated transactions involving the sale of land. The Applicant adduced his tax

returns and while there are several declarations relating to dividend or rental income, there have never been declarations concerning income arising from land sales.

- (ii) The length of time an asset is held is an important indicator of trade. The longer the period of ownership the greater the chance of it being seen as an investment rather than a trade. In *Wisdom v Chamberlain – CA 1968, 45 TC 92*, a person who held silver bullion and sold it after a short period of time was found to have carried out a trade. In the present case, the Applicant held the land for a period of nine years. This indicates that the land was held most likely as an investment and not for trading purposes as trade entails repeated activity (see (i) above).
- (iii) Changes to the asset - any changes or modifications made to an asset to make it more marketable is indicative of trade. In the case *Cape Brandy Syndicate v CIR – CA 1921, 12 TC 358; [1921] 2 KB 403*, wine which was purchased and then blended with French brandy, re-casked and sold at a profit was an activity found to constitute a trade. In the present case, the Applicant held the land for nine years and made no developments to it. By the time he sold it to the Respondent, the land was bushy, a fact that the Respondent does not refute. The badges of a trade have been extensively addressed by case law.

In *Luwaluwa Investments Limited v URA (Uganda Comm. Ct., 2023)*, the Court of Appeal found that a mortgaged hotel property, purchased by a bank and held to recover a loan, was a business asset of the bank because it was used by the bank in its business of lending and security recovery.

In the present case, there is nothing to show that the Applicant was in the business of buying and selling land. The Applicant has adduced evidence to show that he owns shares in various companies and also earns rental income from apartments in Kololo. This is evidenced by his historical tax returns. There is nothing in the returns to show that he has been trading in land. Therefore, the Applicant has discharged the burden of proof and it now shifts to the Respondent to discharge.

During cross examination, the Respondent's witness stated that the Respondent's assessment was entirely based on the Applicant's registered tax profile. However, a tax

profile is not sufficient or conclusive proof of activities, which are a question of fact. Therefore, ticking a box on a taxpayer registration form is not sufficient proof of an enterprise.

The Respondent has provided no further evidence to prove to this Tribunal that the transaction amounted to the sale of a business asset. In the circumstances, the Tribunal orders as follows:

- (i) This application is allowed.
- (ii) Costs awarded to the Applicant.

Dated at Kampala this 30th day of June 2025.

Crystal Kabajwara
CRYSTAL KABAJWARA
CHAIRPERSON

Siraj Ali
SIRAJ ALI
MEMBER

Christine Katwe
CHRISTINE KATWE
MEMBER