

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 366 OF 2024

FINN CHURCH AID UGANDA.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

**BEFORE: MS. CRYSTAL KABAJWARA, MRS. KABAKUMBA MASIKO,
MS. PROSCOVIA REBECCA NAMBI**

RULING

This ruling is in respect of an application challenging a stamp duty assessment issued to the Applicant in respect of employment and supplier contracts.

1. Background facts

The Applicant was registered in Uganda in 2014 as an international non-governmental organization working to support people in fragile and disastrous regions of Uganda. The Applicant is also an implementing agent of the United Nations High Commission for Refugees and also partners with the Office of the Prime Minister in the LEARN program.

On 27 September 2024, the Respondent issued to the Applicant an assessment of Shs.53,800,000 for stamp duty on employment and supplier agreements that were executed in the period 2014-2024.

On 5 October 2024, the Applicant objected to the assessment on the grounds that they did not have the numbers of employment and supplier contracts assessed and that the Stamp Duty Act does not specify the party that should bear the cost of stamp duty in respect to employment and supplier contracts.

On 4 November 2024, the Respondent issued its objection decision maintaining the assessment.

2. Representation

At the hearing of this application, the Applicant was represented by Mr. Mark Kamanzi and Mr. Daniel Bagonza while the Respondent was represented by Mr. Nuwaha Barnabas.

3. Issues

The main issue for determination is whether the Applicant is liable to pay the stamp duty as assessed by the Respondent.

4. Submissions of the Applicant

The Applicant submitted that Section 2 of the Stamp Duty Act cap 339, provides for the instruments that are chargeable with stamp duty in accordance with the 2nd schedule to the Act.

S.2(1)(a) of the Stamp Duty Act. Cap 339 provides:

'Every instrument mentioned in schedule 2 to this Act which, not having been previously executed by a person in Uganda is executed by a person is executed in Uganda and relates to property situated, or to a matter or thing done or to be done, in Uganda.'

Furthermore, item 5 of the second schedule of the Stamp Duty Act imposes stamp duty on agreements or memorandum of an agreement. The Respondent contends that the Applicant executed employment and supplier contracts that accrued stamp duty worth Shs. 53,880,000 and ought to have accounted for stamp duty on the same.

The Applicant cited the case of **URA vs Siraje Hassan Kajura SSCA 9 of 2015**, where it was held:

"In a taxing Act, clear words are necessary in order to tax the subject In a taxing Act, one has merely to look at what is clearly said. There is no room for an intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in it, nothing is to be implied. One can only look fairly at the language used".

The Applicant also cited the case of **Infectious Diseases Institute vs Uganda Revenue Authority Civil Appeal No.6 of 2022** where it was held:

"It has for long been a well-established principle in the interpretation of tax legislation that the taxpayer may only be taxed by clear words. In the event of ambiguity in tax legislation (where

the provision is so obscure that no meaning can be given to it), the taxpayer will be given the benefit of the ambiguity.

Additionally, In ***Farid Meghani v URA Civil appeal no. 6 of 2021***, the court noted that certainty in tax laws is important as it enables taxpayers to know without complexity or debate what specific transactions are taxable, what the charge of tax is, in whose hands the income or benefit is taxable, how the tax should be accounted for/declared, how the tax is to be computed (if at all) and when it must be paid.

The Applicant argued that Section 2 of the Stamp duty Act and item 5 of the second schedule to the Act do not impose any liability or obligation on the Applicant to pay stamp duty for contracts executed either for employees or service providers. The Applicant stated that there are two makers of these contracts namely the employer and employee on one hand and the contractor and supplier on the other hand; it would be unfair for the Respondent to singularly determine that it is the employer or the contractor to pay stamp duty on the employment or supply contracts and not the employee or supplier.

The Applicant also denied executing the impugned agreements and stated that it is a charitable organization which funds schools for refugees but does not own the schools or execute employment contracts with the teachers or contractors. Further, the Respondent never engaged the Applicant before or during the assessment and relied solely on the review of the Applicant's P.A.Y.E and Withholding.

The Applicant further stated that the Respondent only asked the Applicant to provide employment and supplier contracts for the period January 2014 to December 2024 in the email dated 25 October 2024 long after the assessment. This shows that the Respondent's assessment was premised on assumptions.

The Applicant stated that it would be discriminatory for the Stamp Duty Act to impose the duty on the employer and contractor and then exempt the employee and supplier who have equal interest in these contracts.

The Applicant submitted that they are a non-government organization that is donor funded and that the Respondent's assessments were made in bad faith the Applicant who has always been compliant with its tax obligations.

5. Submissions of the Respondent

The Respondent contended that the Applicant raised several issues in their submissions that go beyond their ground(s) of objection. For example, the Applicant's contention regarding the validity of a stamp duty assessment that is based on a PAYE review by the Respondent was never raised at objection.

The Respondent submitted that section 47 of the Stamp Duty Act provides that a person who is dissatisfied with a taxation decision may lodge an objection with the Commissioner. The objection is expected to contain the grounds of objection. Further, section 14 of the Tax Appeals Tribunal Act which empowers the Tribunal to review a decision made under taxing Act limits the review to the grounds stated in the objection decision. Furthermore, the Tribunal has held in various cases that grounds of appeal are limited to grounds of the objection decision.

The Respondent also submitted that the substance of the contracts upon which tax was levied were never disputed by the Applicant from the onset. The Applicant only disputed their liability to bear the tax burden under employment contracts.

In this regard, the Respondent stated that Section 1 of the Stamp Duty Act defines the term "chargeable" to mean an instrument chargeable under the Stamp duty Act or any other law in force in Uganda when the instrument was executed. Further, the provision also defines an instrument to mean a document by which a right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded.

Additionally, Item 5 of Schedule 2 to the Act provides that an agreement or memorandum of agreement qualifies to be an instrument liable to stamp duty.

Further, section 9 of the Stamps Act specifies the party to an agreement that is liable to stamp duty. It states:

"In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne, in the case of an instrument described in Schedule 2 to this Act, by the person drawing, making or executing the instrument."

The Respondent submitted that when objecting, the Applicant did not dispute the quantum nor workings of the stamp duty assessment or the existence of employment agreements but rather questioned whom the stamp duty was to be borne. The Respondent argued that an employee has no interest or benefit drawing an

employment contract and it is usage in the employment industry that employer draw employment contracts. Further an employment relationship is governed by contract wherein rights and liability are to be created, transferred, limited, extended, extinguished or recorded. In light of the non-disputed fact of agreements at objection, the said agreements are liable to stamp duty under the aforementioned section.

The Respondent concluded by submitting that the Applicant has failed to discharge its burden of proof and is therefore not entitled to the remedies and reliefs sought.

6. Submissions of the Applicant in rejoinder

The Applicant submitted that the letter of assessment, notice of objection and taxpayer engagement capture form show that there was no basis for the Respondent's assessment. These documents also show that the Applicant disputed the quantum and workings of the stamp duty assessment and/ or the existence of employment agreements.

Further, the Applicant stated that while the Respondent has submitted that this Tribunal has held in various cases that the grounds are limited to grounds of the objection decision, the Respondent did not cite any of the said cases. Consequently, the Applicant is unable to respond to the submission to either agree, disagree or distinguish the said cases.

The Applicant also submitted that the provisions of the taxing statutes cited by the Respondent do not impose the liability for paying stamp duty on employment contracts on the Applicant as the employer while exempting the employees and neither do they impose liability for payment of stamp duty on supply contracts on the Applicant as the contractor while exempting the service providers. Therefore, the provisions of the Stamp Duty Act are unclear and ambiguous and cannot be relied upon to impose the assessed tax on the Applicant.

7. The determination of the Tribunal

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

The Applicant contended that it is not liable to pay the stamp duty assessed on the grounds that Section 2 of the Stamp duty Act read together with item 5 of the second schedule to the Act do not impose any liability or obligation on the Applicant to pay stamp duty for contracts executed either for employees or service providers. The Respondent argued that the Applicant executed employment and supplier contracts that accrued stamp duty worth Shs. 53,880,000 and is therefore liable to stamp duty.

S.2(1)(a) of the Stamp Duty Act provides:

“(1) Subject to this Act, the following instruments shall be chargeable with duty in accordance with Schedule 2 to this Act –

- (a) Every instrument mentioned in schedule 2 to this Act which, not having been previously executed by a person in Uganda is executed by a person is executed in Uganda and relates to property situated, or to a matter or thing done or to be done, in Uganda.”*

Further, section 2 of the Stamp Duty Act defines an “instrument” to include:

“a document by which a right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded”.

The above definition of “instrument” is broad as it includes every document by which a right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Thus, written contracts including employment and supply contracts fall within this definition as they create rights and liabilities.

In addition, section 3(1) imposes duty on all instruments listed in the second schedule to the Act that are executed in Uganda. In this regard, Item 5 of the second schedule charges a flat duty of UGX 10,000 on every *“agreement or memorandum of an agreement”*.

This item applies regardless of the subject matter of the agreement. The schedule encapsulates agreements of all kinds and makes them dutiable at the specified rate. Consequently, any written agreement executed in Uganda not otherwise exempted

attracts this duty. The instrument is dutiable regardless of the income or profitability of the executors.

In *Stanbic Bank Uganda v URA HCCS.No.92/2007*, the court emphasized that stamp duty attaches to the instrument itself upon execution, not to the transaction or parties' intent. Therefore, the Respondent's power is limited to charging duty on the written document the moment it is signed as non-payment does not invalidate the contract. This affirms the general principle that written agreements are prima facie chargeable under the second schedule when executed.

Thus, each signed employment or supply contract automatically generated a duty irrespective of the party's status or motive. The Applicant's non-profit status or the fact that contracts might involve grants or service fees is irrelevant. This is because stamp duty is a tax that applies to documents and is not based on profit.

The Applicant has also submitted that the Respondent relied on PAYE returns and withholding tax returns to assess stamp duty and thereby made assumptions. By inference, the Applicant's position is that the Respondent ought to have relied on the agreements to assess whether duty was paid or not.

According to section 28 of the Tax Appeals Tribunal Act, for a tax assessment, the burden is on the taxpayer to prove that the assessment is incorrect. Therefore, the onus was on the Applicant to demonstrate to this Tribunal, that the contracts underpinning the PAYE and withholding tax filings were charged with duty.

The Applicant has not discharged the burden.

That said, whilst information in PAYE and withholding tax returns is indicative of the existence of employment and supplier arrangements, the returns on their own do not specify the number of or the specific agreements that are dutiable. It is also worth noting that the Respondent did not request for the said agreements during review and only requested for them on 25 October 2025, a week before the objection decision was made. It is also worth noting that the agreements requested for span a ten-year period from 2014 – 2024 and the Applicant requested the Respondent for time to provide the same and this was not granted.

As stamp duty is chargeable in documents and not income or value of the transaction unless specified by the Stamp Duty Act, it is important for the Respondent to verify the documents liable to ensure completeness and correctness of the stamp duty assessment. Therefore, in the absence of the physical agreements, this Tribunal is unable to determine the accuracy of the assessed duty.

We now turn to the question as to who is liable to pay the stamp duty. The Applicant has argued that the Stamps Act does not assign the liability and if it does to the employer or contractor, that would be discriminatory.

Section 9 of the Stamps Act provides:

"The expense of providing the proper stamp shall be as set out in Schedule 3 to this Act."

In this regard, paragraph 1 of the third schedule to the Stamps Act provides:

"In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne, in the case of an instrument described in Schedule 2 to this Act, by the person drawing, making or executing the instrument."

Therefore, the Applicant's argument that the Act is silent on which party bears the duty cannot hold as the above provision states who bears the cost of stamp duty where the agreement is silent.

In the present case, the Respondent's assessment was based on the assumption of the existence of employment and supplier agreements on account of the Applicant's withholding tax and PAYE returns. Whilst in practice, both employment and supplier contracts are drawn and issued by the employer, it is important that the very existence and execution of the same is ascertained to enable the correct determination of the duty payable. Therefore, while we agree with the Respondent that employment and supplier contracts are chargeable with stamp duty at a rate of Shs.10,000 per agreement and that the duty is payable by the person who draws or makes the agreement, the dutiable agreements must be physically verified to enable the correct assessment of the stamp duty.

In light of the above, the Tribunal therefore makes the following orders:

- (i) The assessment of Shs.53,800,000 is set aside;

- (ii) The matter is hereby remitted to the Respondent to re-compute the duty based on the actual agreements underlying the PAYE and withholding tax returns that were reviewed by the Respondent;
- (iii) The above exercise should be completed not later than 15 September 2025; and
- (iv) Each party should bear their own costs.

Dated at Kampala this ...18th... day of August 2025.



MS. CRYSTAL KABAJWARA



**MRS. KABAKUMBA MASIKO
MEMBER**



**MS. PROSCOVIA REBECCA NAMBI
MEMBER**