

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO. 154 OF 2024**  
**ARISING FROM APPLICATION NO. 164 OF 2024.**

HUA SHENG INTERNATIONAL CO. LTD.....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY..... RESPONDENT

**BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MS. KABAKUMBA MASIKO**

**RULING**

This ruling is in respect of an application challenging the collection by the Respondent of 30% of tax in dispute in TAT Application No. 164 of 2024.

The Applicant seeks the following orders:

- i. A declaration that 30% of the tax in dispute is payable upon an order of the Tax Appeals Tribunal while considering an application for review of an objection decision.
- ii. A declaration that the taxpayer can only pay 30% of the tax in dispute when arising from an objection decision relating to an assessment.
- iii. A declaration that the Respondent becomes functus officio after issuing an objection decision and therefore lacks jurisdiction to enforce payment of 30%.
- iv. A declaration that the jurisdiction to enforce payment of 30% of the tax in dispute lies with the Tax Appeals Tribunal, not the Respondent.
- v. Costs of the application be provided for.

## 1. Background facts

The grounds of this application are contained in the affidavit in support of Ms. Asiimwe Alice Mungo, an Accountant of the Applicant.

Ms. Asiimwe stated that on 3 July 2024, the Applicant filed Application No. 164 of 2024, before the Tribunal. On 17 July 2024, the Respondent served the Applicant with a letter demanding payment of 30% of the disputed tax in TAT Application No. 164 of 2024.

The Applicant contends as follows:

- a. That the Respondent is functus officio after issuing an objection decision relating to an assessment and has no jurisdiction to enforce the collection of 30%.
- b. The Respondent has no statutory mandate to enforce collection of 30% of the tax in dispute from the Applicant.
- c. The suspension of the Applicant's TIN NO. 1008456551 in enforcement of payment of 30% is illegal.
- d. The Respondent's enforcement of payment of 30% of the tax in dispute without an order of the Tax Appeals Tribunal is an infringement of the Applicant's right to a fair hearing before the Tribunal.
- e. The payment of 30% of the tax in dispute does not extend to an objection decision other than a decision relating to an assessment.

In the affidavit in reply sworn by Ms. Mpumwire Christine, an officer in the Respondent's legal Services and Board Affairs Department, the Respondent contended as follows:

- a. The Respondent conducted a post clearance audit on the Applicant and issued an assessment of Shs. 4,813,080,967 for the period of January 2019 to September 2023.
- b. Upon an application for review of the assessment by the Applicant, the Commissioner upheld the assessment.
- c. The Applicant has filed TAT App No. 164 of 2024 to review the Commissioner's decision before the Tribunal.
- d. That the Applicant is required to pay 30% of the tax in dispute.

e. The Application is barred in law and ought to be dismissed with costs.

## 2. Issues

- a. Whether the obligation to pay 30% of the tax in dispute arises when an application has been made to the Tribunal?
- b. What remedies are available?

## 3. Representation

The Applicant was represented by Mr. Cheng John Kennedy, Bernard Olok while the Respondent was represented by Mr. Sam Kwerit and Ms. Doreen Amutuhaire.

## 4. The Submissions of the Applicant

The Applicant submitted that the 30% tax in dispute is only payable by the Applicant upon an order of the Tax Appeals Tribunal. The Applicant submitted that the Respondent cannot be a judge in its own case. Relying on Section 15 (1) of the Tax Appeals Tribunal Act (herein after "TAT Act") provides:

*"A taxpayer who has lodged a notice of objection to an assessment (emphasis mine) shall, pending final resolution of the objection, pay thirty percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater...."*

The Applicant submitted that the Respondent cannot on its own motion demand that the Applicant pays 30% tax in dispute. In support of the above position the Applicant relied on the decision of the High Court in **Cable Corporation (U) Ltd vs. Uganda Revenue Authority Civil Appeal No. 1 of 2011** at page 24 of the judgment of Justice Madrama (as then was) stated:

*"... the matter which aggrieves the taxpayer from the objection decision becomes a dispute and where it is in dispute as it is in the Appellant's case, it is in my opinion the general rule that Commissioner or the Respondent as in this case may be considered functus-officio after making the objection decision....."*



*Generally, the Commissioner would after communicating the objection decision exhausted its jurisdiction on the matter and further jurisdiction is vested in the High Court or the Tax Appeals Tribunal...".*

The Applicant submitted that it is not stated in the Tax Appeals Tribunal Act when and how the 30% tax in dispute is to be paid nor is it stated in the Tax Procedure Code Act that the Respondent will support the Tax Appeals Tribunal in the enforcement of the 30% tax in dispute.

The Applicant stated that the mandate to enforce payment of 30% lies with the Tax Appeals Tribunal. The Applicant cited ***A Better Place Ltd vs. Uganda Revenue Authority HCCA No. 37 of 2019*** at page 25 the learned Judge stated:

*"It is the mandate of the Tax Appeals Tribunal to enforce Section 15(1) of the Tax Appeals Tribunal Act."*

The Applicant submitted that the Respondent acted illegally when it suspended the Applicant's Tax Identification Number (TIN). This action is a gross violation of the Applicant's right to trade with the Respondent in respect of other tax matters which may not concern the same tax head which is under a dispute. When the Respondent suspends a TIN, it directly aids in default in taxpayer filing obligations such as: Pay As You Earn (PAYE), Value Added Tax monthly returns filings. It is thus illegal and should heavily be penalized as acts done maliciously to frustrate business.

The Respondent's enforcement of payment of 30% of the tax in dispute before an order by Tax Appeals Tribunal to pay 30% is an infringement of Applicant's right to a fair hearing. The Applicant contended that the Applicant will be denied a right to a fair hearing as enshrined in Article 28 (1) of the Constitution of the Republic of Uganda. By allowing the Respondent to demand payment of 30% tax in dispute before a hearing, the Tribunal would have acted with partiality towards the Respondent and closed its eyes to its excesses of illegal enforcement mechanism.

The Applicant submitted that the payment of 30% tax in dispute must be moderated through mechanisms of fair hearing. If not judiciously moderated, the Respondent is advantaged in the process of hearing the application to the detriment of the Applicant.

The Respondent will block court attendance by the Applicant. The taxpayer loses the protection of the law and guarantee on the right to a fair hearing when the payment of the 30% tax in dispute is enforced before an order by the Tax Appeals Tribunal.

The Applicant submitted that this would be a wrong position of the law. In the case of ***Better Place Limited vs Uganda Revenue Authority HCCA No. 37 of 2019***, page 18; Wamala. J. maintained: "...it is also clear that from the start of the proceedings in the Tribunal, starting with the order of a temporary injunction, the Appellant was given an opportunity to negotiate with the Respondent on how 30% of the tax in dispute was to be paid....".

The Applicant argued that the cause of justice is best served when the parties to the trial are accorded equal opportunity to present the merits of their respective cases before Court. This is the essence of the protection of rights provided for under Article 21(1) and 44 (c); which are, respectively, with regard to equality of treatment before the law, and the right to be accorded a fair hearing.

The Applicant contended that the Respondent's enforcement of payment of 30% of the tax in dispute before an order by the Tax Appeals Tribunal is an infringement on the Applicant's right to a fair hearing.

The Applicant submitted that there was no assessment to tax in relation to the amount demanded by the Respondent. As such, the 30% tax in dispute is not collectable from. The Respondent issued a demand for payment of disputed tax. The source of the disputed tax is not an assessment but an audit.

The Applicant submitted that the Respondent in paragraph 5 states that the Applicant was assessed tax of Shs. 4,813,080,967 but does not attach the assessment. Section 24 (5)(a) of the Tax Procedure Code Act (TPCA) together with Section 15 of the Tax Appeals Tribunal Act directs the payment of 30% tax in dispute to a taxation decision arising from a tax assessment. In ***Cable Corporation (U) Ltd vs. Uganda Revenue Authority Civil Appeal No. 1 of 2011 at pg.7***, where Madrama J (as then was) observed:

*"...a taxation decision does not arise out of an objection but an objection decision arises from an objection to a taxation decision other than a decision arising from an objection decision..."*

It was the Applicant's argument that it is not challenging an assessment but the audit that led to a wrong tax demand and is not liable to pay 30% tax in dispute.

The Applicant submitted that Section 24 (5) (b) of the Tax Procedure Code Act only relates to other tax decision. This provision does not call for the payment of 30%. The Respondent should have issued an assessment following the conclusion of the audit it carried out. In absence of the assessment, the enforcement of payment of 30% tax in dispute is illegal. The Applicant prayed that the Tribunal finds that in the absence of an assessment, the Applicant cannot be compelled to pay the thirty percent of the tax in dispute and costs of this application.

## **5. The Submissions of the Respondent**

Whether the Applicant is liable to pay 30% of the tax in dispute, and when should it be paid?

In reply, the Respondent submitted that the Applicant is required to pay 30% of the tax in dispute upon filing an Application before the Tax Appeals Tribunal. Section 15 of the Tax Appeals Tribunal Act (TAT Act) states:

*"(1). A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30% of the tax assessed, or that part of the tax assessed not in dispute, whichever is greater".*

The Respondent submitted that a taxpayer appealing to the Tax Appeals Tribunal must, pending the resolution of the dispute, pay 30% of the tax assessed or the portion of the tax not in dispute. The Applicant claimed that 30% of the tax in dispute is only payable during the objection proceedings with the Respondent. However, we submit that the requirement to pay 30% is rooted in the TAT Act and applies once an application is lodged before the Tax Appeals Tribunal.

The Respondent submitted that the Applicant's interpretation of the term "Objection" under Section 15 of the TAT Act is flawed. The term refers to the dispute resolution process and does not limit the payment of 30% solely to the Objection stage. The

obligation to pay 30% arises when an application is made to the Tribunal, irrespective of the stage of the dispute.

The Respondent cited the case of ***Uganda Projects Implementation Management Centre (UPIMAC) v. Uganda Revenue Authority; Constitutional Appeal No. 02 of 2009***, The court ruled that an application to the Tax Appeals Tribunal without the payment of 30% of the assessed tax was premature. This judgment underscores the Respondent's position that the Applicant is legally bound to pay the mandatory 30% upon lodging an Application before the Tribunal.

The Respondent submitted that it is not disputed that the Respondent conducted an audit and assessed taxes of Shs. 4,813,080,967. The 30% payment requirement is applicable to this liability resulting from the audit.

In ***Fuelex Uganda Ltd v. Uganda Revenue Authority; Constitutional Petition No. 3 of 2009***, the Court of Appeal reaffirmed that the 30% payment requirement applies in all instances where there is a disputed tax liability, as in the present case.

The Respondent submitted that it is tasked with revenue mobilization and collection for national development. The demand for 30% payment is based on the statutory mandate that a taxpayer appealing to the Tribunal must pay this portion. The Respondent's actions can only be restrained by an injunction.

Secondly, the Respondent submitted that the Applicant has not exhausted the proper procedure as required by Section 229 of the East African Community Customs Management Act (EACCMA). The Applicant was served with audit findings, if aggrieved, it should have lodged an Application for review under Section 229(1) of the EACCMA. It is after this step, with an appeal decision from the Commissioner General, that the Applicant can appeal to the Tribunal.

The Respondent cited the case of ***Kawuki Mathias v. Commissioner General, Uganda Revenue Authority; Misc. Cause No. 14 of 2015***, where a specific procedure is prescribed by law, it must be exhausted. Therefore, the Applicant's current Application is prematurely before the Tax Appeals Tribunal.



**Issue 2: Whether the Respondent has powers to enforce collection of 30% of the tax in dispute, and whether the requirement to pay 30% inhibits the Applicant's right to a fair hearing?**

The Respondent submitted that the Applicant's claims that demanding payment of 30% violates its right to a fair hearing. *In Uganda Projects Implementation Management Centre v. Uganda Revenue Authority; Supreme Court Constitutional Appeal No. 2 of 1999*, the Supreme Court upheld the constitutionality of the requirement to pay 30% of the tax assessed pending resolution of the dispute. The Court confirmed that this requirement does not infringe upon the right to a fair hearing or equal treatment under the law. It was the Respondent's submission that the enforcement of the 30% payment requirement, as mandated by law, does not violate the Applicant's rights. The Respondent prayed that this application is dismissed with costs.

#### **6. The Applicant's Submissions in Rejoinder**

In rejoinder, the Applicant submitted that the Respondent did not address the grounds raised in the application and instead framed issues outside the application and attempted to resolve those issues. The respondent conceded to grounds 1,2,3 and 5. The Applicant prayed that this Tribunal finds in the favor of the Applicant.

The Applicant submitted that it exhausted all the internal appeals mechanisms. If the Respondent had requested its own customs department for a report on this matter, they would have discovered that there is an application for review. The Applicant submitted that the enforcement of payment of the 30% tax in dispute before an order by the Tax Appeals Tribunal to pay the 30% tax in dispute is an infringement of the Applicant's right to a fair hearing.

The Applicant submitted that the requirement to pay the 30% before the Tribunal orders so is an illegality. The Applicant further contests the payment of thirty percent contested tax demanded by the Respondent even before the Tax Appeals Tribunal commences a hearing of the case. This leads to an injustice as it favors the Respondent to the detriment of the Applicant.



The Applicant further alleged that the case of ***Uganda Implementation Management Center v URA Constitutional appeal No. 2 of 199***, that the present application is not about the constitutionality or unconstitutionality of Section 15 of the TAT Act. Rather it is about the legality of the Respondent trying to enforce the collection of 30% of a disputed tax before the case is scheduled before the Tribunal for hearing. The Applicant submitted that the collection of 30% tax in dispute before an order of the Tribunal is an infringement on the right to fair hearing of the applicant. The applicant reiterated her prayers.

## 7. The Determination of the Tribunal

The requirement to pay 30% of the tax in dispute, is set out in Section 15 of the Tax Appeals Tribunal Act, as follows:

*"(1) A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay thirty percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater". (Underlined for emphasis).*

Contrary to the Applicant's assertion that no assessment was issued by the Respondent, a perusal of the Customs Post Clearance Audit Report dated 2 April 2024 and attached to the Application No. 164 OF 2024 as annexure 1 shows under paragraph 3.3 that an assessment of Shs. 4,813,080,967 was issued by the Respondent.

A relevant excerpt of the Customs Post Clearance Audit Report is reproduced below for ease of reference.

*"Arising from the findings under 3.1 and 3.2 above taxes amounting to Shs. 4,813,080,967 have been computed as payable by your company, broken down as below:*

<b>Period</b>	<b>Import Duty</b>	<b>Excise Duty</b>	<b>INF LEVY</b>	<b>VAT</b>	<b>WHT</b>	<b>TOTAL TAX PAYABLE</b>
<i>Schedule 1</i>	<i>55,981,391</i>	<i>47,394,897</i>	<i>3,742,342</i>	<i>2,923,555,344</i>	<i>29,850,432</i>	<i>3,060,524,407</i>
<i>Schedule 2</i>	<i>86,593,405</i>	<i>47,349,842</i>	<i>5,604,136</i>	<i>1,549,726,813</i>	<i>53,916,228</i>	<i>1,743,190,424</i>

Schedule 3	7,937,403			1,428,732		9,366,135
<b>TOTAL</b>	<b>94,530,808</b>	<b>47,349,842</b>	<b>5,604,136</b>	<b>1,551,155,545</b>	<b>53,916,228</b>	<b>4,813,080,967</b>

The review of matters relating to customs is provided for under Section 229 of the EACCMA which provides:

*“A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission”*

It's also on record that on 30 April 2024, the Applicant applied for review of the post clearance audit and in a letter dated 15 May 2024 the Respondent upheld the tax payable. It was the Applicant's submission in rejoinder that it exhausted all internal appeal mechanisms.

Regarding the above, we find that the Applicant exhausted all mechanisms required and should have found it proper to pay the thirty percent of the assessed amount that they sought to review which was not done.

The Tribunal has held in **Rebecca Akello v URA App No. 23 of 2022**, and **Bullion Refinery Ltd Vs Uganda Revenue Authority TAT application no. 36 of 2021**, that: *“a taxpayer who objects to an assessment is required to pay 30% of the tax assessed in the objection”*.

Relying on the above decision, the Tribunal finds that 30% of the tax in dispute is due and payable because the Applicant objected to the assessment and filed an application before the Tax Appeals Tribunal.

The Tribunal has also perused the Respondent's letter dated 16 July 2024, alluded to under paragraph 3 of the affidavit of Ms. Asimwe Alice Mungo.

There is nothing to show that the said letter was an attempt by URA to enforce payment of 30%. Our perusal shows that the said letter was not a demand, but a mere reminder to

the Applicant to pay the 30% of the tax in dispute in accordance with Section 15 of the Tax Appeals Tribunal Act. The Tribunal is satisfied that the Applicant's right to a fair hearing was not infringed through the said reminder.

We agree with the Respondent that the obligation to pay 30% of the tax in dispute arises when an application has been made to the Tribunal. The Tribunal's duty is to enforce the law on the payment of 30% of the tax in dispute and its collection is the duty and the mandate of the Uganda Revenue Authority.

In the circumstances, the Tribunal makes the following orders:

- (i) The Applicant should deposit with the Respondent Shs. 1,443,924,290.1 being 30 per cent of the tax assessed of Shs. 4,813,080,967.
- (i) The Applicant may apply to the Respondent for an instalment plan in accordance with Section 28 of the Tax Procedures Code Act; and
- (i) The Tribunal shall proceed to hear the matter on its merit subject to the Applicant paying the 30 percent deposit or a payment plan agreed upon by the Respondent as the case may be.
- (i) Costs shall abide in the main cause.

Dated at Kampala this 16<sup>th</sup> day of January 2025.



**SIRAJ ALI**  
**CHAIRPERSON**



**CHRISTINE KATWE**  
**MEMBER**



**KABAKUMBA MASIKO**  
**MEMBER**

