THE REPUBLIC OF UGANDA

IN THE TAX APPEAL TRIBUNAL OF UGANDA

TAT APPLICATION NO. 69 OF 2023

KAMPALA HOSPITALITY DEVELOPMENT LIMITED........................ APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY...RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJI ALI, MRS.CHRISTINE KATWE

RULING

This ruling addresses the question whether the Respondent's assessments are time barred under the provisions of section 25 (formerly section 23) of the Tax Procedure Code Act ("TPCA").

1. Background facts

The Applicant is a limited liability company whose principal business is the provision of hospitality services. On 6 January 2023, the Respondent issued two VAT administrative assessments for the periods May 2015 to August 2021 as follows:

a) Administrative default assessment amounting to Shs. 202,467,166.38 in respect of VAT for the period 1 May 2015 to 31 August 2021; and

b) Consolidated VAT assessment of Shs1,347,704,955.62 for the tax period 1 May 2015 to 31 August 2015.

The Applicant objected to the above assessments on the ground that the period May 2015 to December 2019 were barred by law under section 23 (2) (b) of the Tax Procedure Code Act (as it when was, now section 25 (2) (b)).

The Respondent maintained the assessments amounting to Shs. 306,960,700 in respect of the tax periods May 2015 – December 2019 on the ground that the Respondent

reviewed information available in the Applicant's withholding tax returns, which it alleged to amount to "discovery of new information".
The Applicant applied for review of the objection decision on the grounds that the assessments for the period May 2015 – December 2019 are time barred.

2. Representation

Mr. Andrew Kyambadde, Mr. Ntege Mark Trevor and Ms. Lamunu Daisy Anyakun of M/s Godena Associates appeared for the Applicant while Mr. Sam Kwerit and Ms. Hilda Tusiime appeared for the Respondent.

3. Issues for determination

The main issue for determination by this Tribunal is whether the assessments for the period May 2015 – December 2019 are time barred.

The Applicant's first witness was Mr. Ntare Augustine, a Financial Controller of the Applicant. He testified that the Respondent issued an administrative default assessment against the Applicant amounting to Shs. 202,467,166.38 for the tax period of October 2015. The default assessment arose from non-declaration of VAT on imported services.

He stated that at objection, the Respondent vacated assessments for July 2018 to August, 2021 on the grounds that the services to which the assessments relate are exempt from VAT. However, the Respondent upheld the assessments for the tax period May 2015 – June 2018 on the ground that the Respondent had powers to issue assessments beyond the three year limitation period if they discover new information.

The witness testified that the Respondent, in their objection decision, stated thar the "review of information available in the Applicant's withholding tax returns gives rise to new information." The witness further testified that all the necessary information to conclude a review of the Applicant's VAT affairs, within three years as prescribed by law, was always in the withholding tax returns which had been filed by the Applicant and was in the custody of the Respondent.

Ms. Diana Zalwango, an officer of the Respondent was the Respondent's sole witness. She testified that the Respondent carried out an audit of the Applicant covering the period 2015 – 2021. The Respondent issued assessments amounting to Shs. 1,347,704,955 on the basis that the Applicant made payments for imported services without charging VAT.

The Respondent partially allowed the Applicant's objection, leaving an outstanding tax liability of Shs. 303,543,126. The witness testified that when the Respondent reviewed the Applicant's withholding tax returns, it obtained new information which formed the basis of the assessments outside the three year period. Therefore, the tax was lawfully assessed.

4. The Submissions of the Applicant

The Applicant cited section 25 (2) which provides as follows:

"An additional assessment under subsection (1) may be made-

(a) at any time if fraud or any gross or willful neglect has been committed by or on behalf of the taxpayer, or new information has been discovered in relation to the tax payable by the taxpayer for a tax period;

(b) in the case of an additional assessment, within three years from the date service of the notice of the additional assessment; or

(c) in any other case, within three years after the date-

(i) the taxpayer furnished the self-assessment return to which the original assessment relates, or

(ii) the Commissioner served notice of the original assessment on the tax payer".

The Applicant submitted that following a strict interpretation of the provision, the determining factors for an additional assessment to be issued by the Respondent are:

(i) The Respondent discovered new information; and

(ii) The additional assessment was issued within three years from the date of service of the notice of the additional assessment.

"Within three years"

The Applicant submitted the above timelines, as provided for under section 25(2) (b) must be strictly adhered to. The Applicant cited the case of ***Cable Corporation V***

Commissioner General & Uganda Revenue Authority Civil Appeal 1 of 2011, in which case the learned Hon. Justice Christopher Madrama opined:

"Statutory time limits should be strictly adhered to in tax matters."

The Applicant submitted that on 10 January 2023, the Respondent issued as assessment for the period May 2015 to December 2019. This period spans over an eight year from 10 January 2023, which is the date of the assessment notice.

Discovery of new information

The Applicant cited the case of **Langham V Veltema [2004] STC 544,** which explains what qualifies as "new information" in tax matters. The case examined whether an officer of the Inland Revenue could issue an additional assessment based on new information discovered after the closure of an earlier inquiry. The court ruled:

"New information refers to any material change or additional facts that were unknown to the tax authority at the time of the original inquiry or decision."

The Applicant submitted that while the TPCA is silent on what amounts to "discovery of new information", the literal meaning should be applied. The Applicant cited the Black's Law Dictionary, 9th edition at page 533 which defines the noun "discovery" to mean:

"The act or process of finding or learning something that was previously unknown".

The Applicant submitted that for new information to be discovered, such information must have been unknown before, missing or hidden from the Respondent. The Applicant stated that their tax returns were available to the Respondent between 2015 and the time when the additional assessments were issued. The Applicant submitted that during cross examination, the Respondent's witness confirmed that no information was requested from the Applicant throughout the audit process but rather, all the information relied on was obtained from the Applicant's tax returns in the Respondent's e-system.

The withholding tax returns were in the custody of the Respondent and as such, the information was available to the Respondent and could not qualify as new information. Further, the Applicant submitted that the Respondent had three years to act or raise

assessments based on this information, which it did not. The Applicant also submitted that the so called "new information" was never exhibited or presented before the Tribunal and that the Respondent did not provide any particulars of the new information at the hearing.

The Applicant cited ***Megha Industries Uganda Ltd V Uganda Revenue Authority, Application No. 32 of 2022***, wherein the court held:

"In order for the tribunal to determine whether findings from an office the Auditor General (OAG) audit constituted new information, the audit report and findings must be presented before the tribunal...Only by reviewing this report could the tribunal assess whether the findings indeed amounted to new information."

The Applicant submitted that in the absence of such evidence, the Tribunal could not determine whether the additional assessment was issued in compliance with Section 25 (2) (a) of the TPCA. The Applicant therefore concluded by arguing that the assessments were unlawful and time barred and prayed that the assessment be set aside.

5. The Submissions of the Respondent

The Respondent submitted that it is not in dispute that the Applicant consumed imported services which attract VAT. The Applicant's only contention is that the additional assessments were issued outside the three year limitation period provided for under section 25 (2) of the TPCA.

The Respondent submitted that the limitation period does not apply where there is fraud, gross or willful neglect or where there is discovery of new information. The Respondent further submitted that when they conducted an audit of the Applicant, they established that the Applicant only accounted for withholding tax on the imported services and grossly or willfully neglected or ignore to account for VAT.

The Respondent went on to submit that the audit carried out led to the discovery of the new information and the Applicant's failure to account for VAT amounted to gross or willful neglect.

The Respondent cited the case of ***Uganda Electricity Transmission Co. Ltd v URA, Civil Suit No. 423 of 2010,*** where it was held that information discovered through an audit can qualify as "new information." The Applicant submitted that in the same case, the interpretation of "new information" is not restricted to what was not at the disposal of the Commissioner.

The Respondent submitted that whilst the Applicant filed withholding tax returns, the Respondent could only establish the fact of non-compliance by conducting an audit. The Respondent further submitted that the Applicant is responsible for correctly calculating their tax liability and that the Applicant's failure to correctly account for the tax amounted to gross or willful negligence.

The Respondent relied on the Black's Law Dictionary, 11th edition, which at page 1916 defines "willful" to mean voluntary and intentional. It also defines "neglect" at page 1244 to mean the failure to give proper attention to a person or thing, whether inadvertent, negligent or willful.

The Respondent submitted that by accounting for withholding tax and leaving out the corresponding VAT, the Applicant willfully neglected its compliance obligations. Therefore, the three year limitation period does not apply.

The Respondent relied on the case of ***Michael Ndichu v Commissioner, Domestic Taxes, [2023] KEHC 2594*** where the Tax Appeals Tribunal of Kenya found that the taxpayer had willfully neglected to file its tax returns and as a result, it was lawful for the Kenya Revenue Authority to issue assessments outside the limitation period.

Regarding the Applicant's submission that the Respondent did not produce evidence at the hearing pertaining to the new information, the Respondent submitted that the said withholding tax returns which the Respondent relied on were exhibited in the joint trial bundle on pages 25 – 78. The Respondent prayed that the application be dismissed with costs to the Respondent.

6. The Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant challenged the Respondent's reliance on ***Uganda Electricity Transmission Co. Ltd v Uganda Revenue Authority, Civil Suit No. 423 of 2010,***

whose facts the Applicant argues, are distinguishable from the current facts. The Applicant argued that in the above case, the defendant discovered new internal company documents which had not been provided by the plaintiff. The court held that the internal documents constituted new information. This is distinguishable from the present case as the Respondent was in possession of the Applicant's tax returns and failed to review the returns within the statutory timelines.

The Applicant cited the case of ***Van Boeckel v Customs and Excise Commissioners [1981] STC 290***, where Woolf J held:

"Tax authorities must exercise reasonable diligence in their investigations before issuing assessments. If the tax authority fails in this duty, whether through negligence or improper enforcement, the taxpayer cannot bear the consequences of that failure, provided the taxpayer has complied with disclosure requirements and acted in good faith."

The Applicant also cited Langham v Veltema [2004] STC 544 where the court clarified that "new information" must be:

"Something that was not previously disclosed or available to the tax authority at the relevant time"

The Applicant submitted that the Respondent had the duty to review the filed returns within a reasonable period of time and its failure amounted to negligence in exercising its mandate.

7. Determination by the Tribunal

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

The Applicant is engaged in the provision on hospitality services including the provision of hotel accommodation, foods and beverages.

In 2015, while constructing hotel infrastructure, the Applicant consumed the services of non-resident persons, which constituted imported services. The services attract VAT at a rate of 18% and withholding tax at a rate of 15%. The Applicant only accounted for withholding tax and did not account for the VAT.

In 2023, the Respondent issued an additional assessment to the Applicant for the unaccounted-for VAT. The period of the assessment, 2015 – 2019, is outside the limitation period within which the Respondent can issue additional assessments. The limitation period is three years as prescribed by Section 25 (2) of the TPCA. In the present case, the period is 5-8 years, which is beyond the three-year limitation period.

The Applicant argues that the Respondent was time barred. The Respondent on the other hand argued that they were justified in assessing outside the three-year limited because they were within the exceptions to the three-year limitation period as provided for in Section 25 (2) (a). The exceptions include circumstances where the Respondent discovers new information or where the taxpayer is found to be fraudulent or grossly or wilfully negligent.

Section 25(2) of the TPCA provides as follows:

"An additional assessment under subsection (1) may be made-

(a) at any time if fraud or any gross or willful neglect has been committed by or on behalf of the taxpayer, or new information has been discovered in relation to the tax payable by the taxpayer for a tax period;

(b) in the case of an additional assessment, within three years from the date service of the notice of the additional assessment; or

(c) in any other case, within three years after the date-

(i) the taxpayer furnished the self-assessment return to which the original assessment relates, or

(ii) the Commissioner served notice of the original assessment on the tax payer".

Therefore, the question to be decided is whether, subject to the exceptions therein, the Respondent is barred from making a claim against the Applicant by the statute of limitation prescribed by section 25 of the TPCA.

What is a statute of limitations and what purpose does it serve?

A statute of limitation is the time period established by law during when the tax authority can review, analyze, and resolve a taxpayer's tax-related issues.

The Black's Law Dictionary, 10th Edition defines statute of limitation as a law that bars claims after a specified period.

Further, in an article ***"The Statute of Limitations in Tax Cases and Mistaken Advice by Officials", The Yale Law Journal, Vol. 61, No.7 (Nov., 1952) pp. 1214 – 1220,*** it is stated as follows:

"The statute of limitations on federal tax claims must balance conflicting equities of individual taxpayers and the public. Whenever the statute bars collection of a valid claim, the taxpayer receives a windfall at the public's expense. On the other hand, if the government asserts tax claims many years after they arise, individuals who in good faith believed they owed no tax may suffer unreasonable hardship. Accordingly, congress has provided relatively short limitations period if the taxpayer files a proper return."

In other words, statutes of limitations, such as section 25 of the TPCA, are meant to restrict the period within which a tax authority may assert a claim against a taxpayer, who in good faith believed that they owed no tax.

In the present case, the TPCA restricts the Respondent's ability to make such claims to within three years from the date the taxpayer filed their self-assessment return. In such cases, where a taxpayer has filed their tax return, the Respondent has until three years to make a claim against the taxpayer. The Respondent is not allowed to issue additional assessments beyond the 3 year limitation period except in exceptional circumstances which are set out in section 25 (2) of the TPCA.

<u>The exceptional circumstances under which the tax authority may issue additional assessments beyond the three year limitation period</u>

Section 25 (2) lists three circumstances under which the three year limitation period will be set aside:

(i) Where the tax authority discovers new information concerning the taxpayer's declarations / tax position; or

(ii) If gross or willful neglect has been committed by the taxpayer; or

(iii) If fraud has been committed by the taxpayer;

<u>Discovery of new information</u>

The TPCA does not define the phrase "discovery of new information". Therefore, the phrase must be given its plain ordinary meaning as correctly stated by the Applicant ***(Crane Bank v Uganda Revenue Authority, Supra).***

Further, one of the cardinal principles of interpretation of tax statutes is that tax statutes must be strictly interpreted. One has to look clearly at what is said and there is no room for intendment / assumptions ***(Cape Brandy Syndicates v CIR, 12 TC 366).***

The Cambridge Online Dictionary defines the word "discover" to mean:
"to find information, a place, or an object, especially for the first time"

Further, it defines information to mean:
"facts about a situation, person, event, etc."

In effect, the phrase "discovery of new information" can be summed up to mean the finding of facts about a situation, a place or an object, especially for the first time.

The Applicant's position is premised on the argument that the Respondent cannot allege to have discovered information when they were in possession of the Applicant's withholding tax returns since 2015.
During cross examination, the Respondent's witness testified that the Respondent did not request any information from the Applicant throughout the audit process. All the information that the Respondent relied on was obtained from the Applicant's tax returns in the Respondent's e-system.

The Applicant relied on the case of **Langham V Veltema [2004] STC 544,** which new information to mean:
"...any material change or additional facts that were unknown to the tax authority at the time of the original inquiry or decision."

On the other hand, the Respondent cited the case of ***Uganda Electricity Transmission Co. Ltd v URA, Civil Suit No. 423 of 2010*** ("UETCL case"). In this case, the Plaintiff

argued that the defendant can only lawfully exercise powers upon receipt of information which was not in its possession before revised assessments were issued.

However, the court rejected this argument and held that information discovered through an audit can qualify as "new information" and that "new information" is not restricted to what was not at the disposal of the Commissioner.

While, in principle, we agree with the above finding, it is important to distinguish the facts in the present case from the facts in the UETCL case.
In the UETCL case above, the Respondent carried out a comprehensive audit of the taxpayer and identified information contained in a third party document (the "connected thinking" document). In this case, several reconciliations had been happening in the background to ascertain the correct loss making position of the Applicant. At the time the third party report was submitted to the Defendant, the Applicant's loss making position had not been defined with certainty.

The Hon. Justice Madrama stated:
"By February 2010, the issue of the tax affairs of the former Uganda Electricity Board and particularly the allocation of assets and losses remained pending....The final conclusion on the issue was yet to be made. Secondly the "connected thinking" document required the issue to be finalised for all the three successor companies The "connected thinking document" clearly indicated that the issue of losses and allocation of assets was yet to be resolved by the defendant by August 2006.... the plaintiff cannot turn round and claim that the issue of losses or allocation of assets cannot be revisited by the defendant after its own proposal in the "connected thinking document" submitted after August 2006 to the defendant. The defendant could only have established all the material facts on losses and allocation of assets based on the "written down value of assets" after submission of the document dated August 2006, with ascertainment would be within time by August 2010".

On the other hand, in the present case, there was a definitive tax position filed by the Applicant as per their withholding tax returns. The returns had been in the Respondent's position since 2015. The Respondent did not rely on any external or third party information

as a basis for the assessment. They relied on information that was apparent from the Applicant's filed withholding returns, which were available on the Respondent's e-tax system. Section 25 places a duty on the Respondent to review taxpayers' information and re-assess in a timely manner and not later than three years from the taxpayers' self-assessment return.

Further, another distinction to make between the UETCL case and the current case is that in the UETCL case, the returns in question were for the period 2001 – 2004 before the Respondent introduced the e-tax portal. The tax portal was introduced in 2009 and It is now fourteen years since its introduction. The system which has been hailed as a success, having significantly eased the filing of returns by taxpayers and the review of the same by the Respondent.

The Respondent cannot now turn around and disown their own e- system that is used to store and access taxpayers' returns and other information at the click of a button. It is not known why the Respondent took three years to review the Applicant's withholding tax returns, which were at their disposal. However, it is the duty of the Respondent to ensure that tax is collected in a timely manner and where taxpayers have filed their tax returns, the review of the same should be done promptly, within the timelines set by the law.

Legislative intent regarding section 25 (2) of the TPCA

To further buttress the above, we found it necessary to consider the what the real intention of the Legislature was at the time when the TPCA was enacted. To this end, we turned to the Parliamentary Hansard to revisit the debate around section 25 (2).

The TPCA bill was extensively discussed and the extract below from the Hansard dated **Tuesday, 16 September 2014** in respect of Section 25 (2).

*"**MR KAKOOZA:** You know, when they are assessing taxpayers, for instance VAT for final year or VAT at the end of the financial year, they might not be able to find out the mistake you have caused at the beginning of the year so they give you a period of three years; URA can come back*

and say, please according to the details and the copies and the audited books of accounts and your importation documents, we are finding that there some additional assessments which we have to give you to pay taxes. That is why they have put it in three years which is B.

Then in sub clause 1 they are saying it might be you as a taxpayer; you did not give in the documents to verify that the tax assessments which are additional; you did it intentionally that is why they want to get you here. But what hon. Nandala-Mafabi is saying, if I gave you the documents and you did not do it, why should a penalty come to me when I gave you the documents. That is the question. So, the drafting should be different such that in case it was a not a problem from me as a taxpayer…

MR EKANYA: *…You see this clause is very serious. Sometimes ladies and gentlemen of URA make omissions, errors and negligence and then come back and say you did not furnish us the information and yet it is them who ignored it. They do sampling, and the error is as a result of their own omission. The taxpayer should not be penalised three years after. That is why they say, "You give me a bribe, I will ignore you tax liability". This causes bribery and fraud. We need a clause here to protect the taxpayer that if it was as a result of wilful negligence of a commissioner or a representative the taxpayer is protected from penal tax and interest.*

MR NANDALA-MAFABI: *Mr Chairman, there is what we call avoidance and evasion. Avoidance is legal; evasion is illegal. Here you have filed your returns very well giving all the information and you made your computation using the law. Now URA comes and says that they are issuing an additional assessment of Shs 60 million after 3 or 5 years. If this tax was due five years ago, you must pay interest and penal tax yet it was not wilful, fraud or anything like that. Also, you get somebody who is involved in fraud, wilful and is paying the same penal tax and interest. Why should you penalise me when you should have issued an additional assessment there and then and I pay the money…*

THE DEPUTY CHAIRMAN: *What about in a case where some information had been hidden and now has been discovered. I am talking about in this clause.*

MR NANDALA-MAFABI: *But Mr Chairman even with that we are making a mistake. The moment it is a fraud, it means there was information which was not declared.*

THE DEPUTY CHAIRMAN: *If it is not intentional, it is not fraud.*

MR NANDALA-MAFABI: *If you are saying it is not intentional then you cannot put it here.*

THE DEPUTY CHAIRMAN: *Yes, that is why it has to be here. It may not be intended that the information be kept away but it has just been discovered that we did not know about this and there is no fraud about that.*

MR NANDALA-MAFABI: *But, Mr Chairman, if you read very well this new information it is not segregating the one which is intentional and non-intentional. May be here the new information that has been discovered by the tax authority may not be intentional withheld.*

MR KAKOOZA: *Chair we need to redraft it because every taxpayer is registered and whatever importation you make, whatever goods and services you supply, are registered within the computers; all the documents you bring for assessment are known and you have them because that is your basis for tax assessment.*

But you cannot come back after 3 years and say, "No I have discovered new information," because you get all the documents from me. If it was your negligence, do not put a burden on me. For a business of three years, you know the computation and projection of profits that you have made. So, coming back in three years and say, "By the time I audited you, the documents I had...."

THE DEPUTY CHAIRMAN: *Hon. Kakooza...the new information that they are talking about is the one that has been discovered in relation to the tax payable by the tax payer for the tax period and this means that the information was not with URA and they have just discovered it from the tax payer. Please.*

MR KAKOOZA: *If that is it, then for that period that you have discovered, do not put interest on me because I furnished all the documents with you and my projections in my documents are clear.*

THE DEPUTY CHAIRMAN: *You do not discover documents that are with you..."*

RULING

The above extract from the Hansard shows that the intention of section 25 (2) of the TPCA was to:

(i) Ensure that the Respondent can raise a claim against taxpayers who withhold information from the Respondent or who are negligent or fraudulent;

(ii) Protect and not burden taxpayers who have been diligent in filing their returns and providing all the necessary information to the Respondent by capping the time within which an additional assessment can be raised to three years;

(iii) Place a duty on the Respondent to review taxpayers' returns in a timely and efficient manner.

Therefore, with regard to exception concerning discovery of new information, we agree with the Applicant that in the circumstances, the Respondent did not discover any new information. The Respondent could not have "discovered" information that was apparent on the taxpayer's returns since 2015. This information was not hidden or concealed from the Respondent. The Respondent ought to have reviewed the returns within the three year period and did not.

<u>Gross or willful neglect</u>

The second exception to the three year statute of limitation is cases where the taxpayer has committed gross or willful neglect. Willful neglect is a deliberate or intentional failure to perform a legal duty, essentially meaning someone knowingly chooses not to do something they are required to do.

The Black's Law Dictionary, 10th Edition defines neglect as follows:

"neglect' indicates...that a person has not done that which it was his duty to do"

It goes on to define willful neglect to mean:

"intentional or reckless failure to carry out a legal duty..."

Uganda operates a self-assessment regime. This places a legal duty on the taxpayer to ensure that their tax declarations are accurate and complete.

In the present case, the Applicant purchased services of non-resident persons during the construction of hotel premises. The Applicant only accounted for 15% withholding tax and did not account for 18% VAT on imported services. The question that we must address is whether this omission was intentional, reckless or was an honest / unwilful mistake.

The Applicant was assessed VAT consolidated VAT assessment of Shs. 1,347,704,955 for the tax period 1 May 2015 to 31 August 2015 which was reduced to Shs. 306,960,700. The VAT liability arose from the purchase of certain services from non-resident persons during the construction of a hotel.

We cannot determine with precision the value of entire investment in the hotel project. However, the assessed VAT amount of on imported services of Shs. 306,960,700 translates into a purchase price of Shs. 1.7 billion for the services that gave rise to the VAT liability. Therefore, one can reasonably conclude that the entire investment in the hotel construction project must have been quite significant, to the tune of several billion shillings.

Therefore, judging by the above value of the services and the level of investment, what level of care would a reasonable person have exercised under the circumstances?

In ***Commissioner of Domestic Taxes v Airtel Networks Kenya Limited (Income Tax Appeal E062 of 2022) [2023] KEHC 25059,*** the court observed:

"On what amounts to gross or wilful neglect, it would be instances where there is proof of an intentional gross deviation of what is reasonably accepted on the part of the taxpayer."

A reasonable person making such a significant investment in the construction of a hotel would have carried out financial modelling to determine the impact of taxes on the future profitability of the investment. In the present case, services from non-resident persons attract 15% withholding tax and 18% VAT, bringing the total impact of the two taxes to 34%. An investor in a hotel project of the kind constructed by the Applicant cannot claim

ignorance of a tax impact of 34% on their investment. This impact is too large to be ignored. If the Applicant did not carry out a financial modelling, which is highly unlikely, then that was reckless of them.

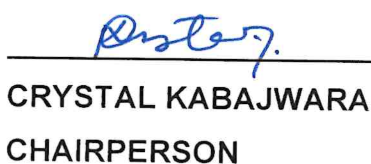
The only inference that can be drawn from the above is that the Applicant had full knowledge of both their VAT and withholding tax obligations in respect to the hotel project and did not account for VAT, perhaps, in the hope that the discovery would never be made or would be late as is the case here. VAT on imported services goes hand in hand with withholding tax on payments to non-residents. However, withholding tax returns were filed without the corresponding VAT returns.

In the case of ***Michael Ndichu v Commissioner of Domestic Taxes, (Income Tax Appeal E064 of 2021) [2023] KEHC 2594 (KLR),*** the court found the taxpayer willfully negligent for having failed to file their tax returns. The court held that the taxpayer had an obligation to file their returns and their failure to file amounted to willful neglect.

Therefore, on the balance of probabilities, we are not convinced that the Applicant's omission was an honest mistake. Consequently, we find that the Applicant's failure to account for VAT on imported services, while accounting for the corresponding withholding tax amounted to willful neglect.

The Applicant is liable to pay the tax assessed and the application is dismissed with costs to the Respondent.

Dated at Kampala this 13th day of February 2025.



CRYSTAL KABAJWARA	SIRAJ ALI	CHRISTINE KATWE
CHAIRPERSON	MEMBER	MEMBER