TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 206 OF 2024

KIWOKO HOSPITAL.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, MS. CHRISTINE KATWE, HON. WILLY NANGOSYAH

RULING

I. Introduction

1. This is an application challenging the Respondent's decision to impose an additional PAYE tax assessment on the Applicant following an audit, in which the Respondent re-characterized the Applicant's consultants and contracted specialists as employees. The Applicant contends that these individuals were properly engaged as independent contractors and that the resulting tax liability is unjustified, while the Respondent maintains that the terms of engagement demonstrate an employer–employee relationship, thereby validating the assessment.

II. Background facts

2. Kiwoko Hospital, the Applicant, is a church-founded, not-for-profit medical facility located in Nakaseke District in Central Uganda. It relies heavily on donor funding and community support to provide free medical services, particularly to women and children. Its operations require a mix of general medical practitioners, extensive support staff, and, where specialised expertise is necessary, the engagement of consultants and other specialists on a non-permanent, need-based basis.

3. In the course of its routine tax administration functions, the Respondent conducted an audit into the Applicant's tax affairs. Following this audit, on 26 April 2024, the Respondent issued Additional PAYE Assessments imposing a tax liability of Shs. 79,830,973. The assessment arose from the Respondent's decision to recharacterize payments made by the Applicant to specialists, consultants, and other contracted service providers as payments to employees, thereby treating them as employment income rather than business income.

4. This re-characterization encompassed numerous contracted individuals, including highly specialised medical practitioners whom the Applicant states it cannot afford to employ permanently, but instead engages only as necessary to ensure timely patient care. The Applicant disputed this treatment and, on 12 June 2024, lodged online objections challenging the entire additional tax liability.

5. On 19 June 2024, the Applicant furnished the Respondent with contracts, Memoranda of Understanding, payment schedules, and other supporting documents intended to justify the classification of the affected individuals as independent contractors rather than employees. After reviewing these materials, the Respondent maintained its position. On 3 July 2024, it issued objection decisions disallowing the Applicant's objections on the ground that, notwithstanding the labels used in the contractual documents, the terms of engagement indicated an employer–employee relationship.

6. Dissatisfied with these objection decisions, the Applicant filed the present Application before the Tax Appeals Tribunal. The Applicant contends that the dispute raises matters of both fact and law concerning the nature of its business operations and the proper tax characterisation of the individuals it engages. The Respondent, for its part, upholds the validity of the assessment and the basis upon which it re-characterized the relevant payments.

III. Issues

7. The following issues are before the Tribunal for determination:

   (i) Whether the Applicant is liable to pay the taxes as assessed by the Respondent?

   (ii) What remedies are available to the parties?

IV. Representation and Evidence

8. Mr. Deus Mugabe and Ms. Lilian Arinda, both of M/S H&G Advocates, represented the Applicant, while Ms. Doreen Amutuhaire and Ms. Eseza Victoria Sendege, both from the Legal and Board Affairs Department of the Respondent, represented the Respondent.

9. The Applicant presented affidavit evidence of **Mr. Frank Byaruhanga, its Finance Manager**. The witness stated that Kiwoko Hospital is a church founded, not-for-profit medical facility located in Nakaseke District in Central Uganda. It relies heavily on donor funding and community support to provide free medical services, particularly to women and children. Its operations require a mix of general medical practitioners, extensive support staff, and, where specialised expertise is necessary, the engagement of consultants and other specialists on a nonpermanent, need based basis.

10. The Respondent conducted an audit into the Applicant's tax affairs and, following this audit, on 26 April 2024, issued Additional PAYE Assessments imposing a tax liability of Shs. 79,830,973. The assessment arose from the

Respondent's decision to re-characterise payments made by the Applicant to specialists, consultants, and other contracted service providers as payments to employees, thereby treating such payments as employment income rather than business income.

11. The re-characterisation affected numerous contracted individuals, including highly specialised medical practitioners whom the Applicant cannot afford to employ permanently but instead engages on a need-only basis to ensure timely patient care. The Applicant disagreed with this treatment and, on 12 June 2024, lodged online objections challenging the entire additional tax liability.

12. On 19 June 2024, the Applicant furnished the Respondent with contracts, Memoranda of Understanding, payment schedules, and other supporting documents intended to justify the classification of the affected individuals as independent contractors rather than employees. After reviewing these materials, the Respondent maintained its position, and on 3 July 2024, issued objection decisions disallowing the Applicant's objections on the ground that, notwithstanding the labels used in the documents, the terms of engagement indicated an employer–employee relationship.

13. Being dissatisfied with the Respondent's objection decisions, the Applicant filed the present Application before the Tax Appeals Tribunal. The Applicant contends that the dispute raises matters of both fact and law concerning the nature of its business operations and the proper tax characterisation of the individuals it engages, whereas the Respondent upholds the validity of the assessment and its decision to re-characterise the relevant payments.

14. The Applicant adduced affidavit evidence through Mr. Frank Byaruhanga, whose testimony was subjected to cross examination. The Respondent did not file any affidavit or witness statement and did not adduce oral evidence in rebuttal relying instead on documentary evidence and submissions.

V. Submissions of the Applicant

15. The Applicant submitted that they are not liable for the tax assessed. They argued that the law on the burden of proof in tax proceedings places the legal burden on the taxpayer to show that an assessment is incorrect, but that the evidential burden shifts once the taxpayer adduces evidence sufficient to rebut the assessment.

16. The Applicant cited section 19 of the Tax Appeals Tribunal Act (TAT Act) and the decisions in ***East African Breweries Ltd v Uganda Revenue Authority (TAT 14/2017)*** and ***Uganda Revenue Authority v Balondemu David (Civil Appeal No. 0002 of 2023)***, arguing that whereas it had adduced evidence, the Respondent filed no witness statements and produced no contrary evidence to support its re-characterisation. The Applicant argued that the Respondent could not remain a "silent participant" in litigation, and that in the absence of rebuttal evidence, the Applicant's evidence should be accepted as unchallenged.

17. On the substantive issue of whether the consultants were employees, the Applicant submitted that the Respondent incorrectly applied section 2 of the Income Tax Act (ITA) and ignored the proper legal tests. It argued that the definitions of "employment" under the ITA and the Employment Act require careful factual analysis, and that the High Court decision in ***Infectious Diseases Institute v Uganda Revenue Authority, Civil Appeal No. 006 of 2022***, provides an authoritative framework for distinguishing employees from independent contractors. The Applicant emphasised that employment is characterised by a contract of service, control by the employer, fixed or ascertainable remuneration, integration into the organisational structure, exclusivity, and entitlement to employment benefits.

18. The Applicant further relied on the control test stated in the classic case of ***Ready Mixed Concrete v Minister of Pensions [1968] QB 2 497***, submitting that control in this context refers to who determines the work to be done, how it is to be done, the means employed, and when and where it is done. The Applicant cited ***Infectious Diseases Institute v Uganda***

Revenue Authority (supra) for the principle that while some administrative controls may exist in a consultancy arrangement, what matters is the degree of functional control exercised in practice. The Applicant submitted that, in its case, the consultants determined their own hours, availability, and manner of work, and that the Applicant did not exercise meaningful control over their provision of services.

19. The Applicant submitted that, applying the factors set out in ***Infectious Diseases Institute v Uganda Revenue Authority*** (supra), such as control, fixed remuneration, tools of work, integration, exclusivity, benefits, and ownership of work product, the consultant specialists clearly fell outside the scope of employment. It argued that the consultants were paid only for work done; that their remuneration varied; that they were not entitled to leave, sick pay, social security contributions or other employment benefits; that they were personally liable for malpractice and required to maintain malpractice insurance; and that they were free to engage with other entities without restriction. The Applicant submitted that these features were wholly inconsistent with an employer-employee relationship.

20. The Applicant further argued that the affected consultants did not occupy any position of permanency within the hospital, and thus did not fall within the ITA Category of persons entitled to a "fixed or ascertainable remuneration." Relying again on ***Infectious Diseases Institute v Uganda Revenue Authority (supra)***, they submitted that fixed remuneration presupposes an employment position characterised by permanence and regularity. By contrast, the consultants' work was driven by need, their visits were irregular, and they only earned when they actually provided services. Thus, their remuneration was neither fixed nor ascertainable in any employment-law sense.

21. The Applicant also relied on its internal evidence and the testimony of AW1, which it argued was unchallenged. According to the Applicant, AW1 confirmed that the specialists refused employment contracts, insisted on retaining autonomy, and only worked when available. The Applicant argued

that these undisputed facts demonstrated that the consultants were never integrated into the hospital's organisational structure and should not have been re-characterised as employees.

22. Based on the foregoing, the Applicant submitted that the Respondent erred in law and fact in re-characterising the consultants as employees. It invited the Tribunal to find that the Respondent had failed to discharge the evidential burden necessary to support the assessment, that the assessments were baseless, and that the Applicant had demonstrated that the consultants were independent contractors. The Applicant therefore prayed that the Additional PAYE Assessments issued on 26t April 2024 and the objection decisions of 3rd July 2024 be set aside, that the additional tax be vacated, and that the Applicant be awarded costs.

VI. Submissions of the Respondent

23. The Respondent submitted that the central question is whether the recharacterized individuals were employees or contractors. It argued that characterising an individual as an employee is a factual inquiry guided by established legal principles. The Respondent relied on the decision in ***Ready Mixed Concrete v Minister of Pensions (supra)*** to argue that a contract of service exists where (i) the individual agrees to provide work or skill for remuneration, (ii) agrees to be subject to the employer's control, and (iii) the other terms of the contract are consistent with a contract of service.

24. The Respondent also submitted that the first relevant test is whether the individuals were entitled to fixed or ascertainable remuneration. According to the Respondent, while the Applicant maintained that the consultants were paid only upon rendering services, the Respondent argued that the Applicant's own witness contradicted this.

25. It pointed to the Applicant's testimony that consultants were paid from annual donations by ADRA, and that the Applicant knew in advance how much each specialist would earn for the entire year or project period. The

Respondent submitted that this demonstrated that the specialists' remuneration was ascertainable and therefore consistent with employment.

26. The Respondent next addressed the control test. Citing the Tribunal's decision in ***International Food Policy Research Institute v URA, TAT Application 59 of 2023***, where the Tribunal held as follows;

"It is not difficult to discern that the element of control is important in determining whether a person is an employee or an independent contractor".

27. The Respondent argued that "control" signifies the power to direct how, when, and where work is done. Accordingly, the Applicant's own testimony demonstrated that the Applicant sourced patients, scheduled patient appointments, and then summoned the specialists to treat the patients on those appointed dates. This, the Respondent argued, constituted sufficient control to establish an employment relationship.

28. The Respondent further argued that the broader terms of engagement were consistent with employment. It submitted that whereas consultants typically determine their own work, choose their work location, and supply their own tools, the specialists in issue worked at the Applicant's premises, did not choose their place of work, and used tools supplied by the Applicant. It also submitted that the work performed by the specialists was integral to the Applicant's core mission of providing healthcare services, and therefore indicative of employment. The Respondent referred to the consultancy agreements in AEX5 of the Joint Trial Bundle, specifically identifying provisions and preambles showing that the services rendered were central to the Applicant's operations. It noted that clauses concerning tools of trade and the nature of the work indicated organisational integration consistent with employment.

29. In addition, the Respondent submitted that the payment arrangements further demonstrated employment. Citing clauses in the agreements and AW1's testimony, it argued that the consistency and predictability of remuneration resembled a wage rather than consultancy fee. It also argued that the consultants' assignments were essential to the hospital's core

operations, such as neonatal care, obstetrics, and radiography, which placed them within the heart of the organisation's functional structure. According to the Respondent, these characteristics strongly pointed to an employer–employee relationship when assessed under the "mixed test" approach endorsed in ***Infectious Disease Institute v URA***.

30. On the basis of these factors, the Respondent submitted that the individuals in question were properly re-characterised as employees. It maintained that the Applicant's assertion that they were independent contractors was unsupported by the evidence and contradicted by the Applicant's own testimony. It therefore invited the Tribunal to find that the PAYE assessment was properly raised.

31. The Respondent also prayed for costs and stated that costs follow the event and that the successful party is ordinarily entitled to costs. Citing section. Section 27 of the Civil Procedure Act, the Respondent argued that, having demonstrated that the Applicant is liable to pay the taxes assessed, it should be awarded costs of the application. It concluded by praying that the application be dismissed, the assessment of Shs. 79,830,973 be upheld, and the Applicant be ordered to pay all taxes assessed together with the Respondent's costs.

32. No rejoinder was filed by the Applicant

VII. The determination

33. Having heard the evidence and read the submissions of the parties, the following is the ruling of the Tribunal.

34. In arriving at a resolution of this issue, the Tribunal is tasked with ascertaining whether the re-characterised specialists were employees for purposes of PAYE. The Tribunal is guided by the well-established approach, derived from ***Ready Mixed Concrete v Minister of Pensions & National Insurance (1968) 2 QB 497*** and applied by Ugandan courts, that classification turns on the totality of facts, with particular focus on:

(i) the degree of control over what, how, when and where work is done;

(ii) the degree of integration of the individual's work into the organisation; and

(iii) whether the other terms, including remuneration, are consistent with a contract of service.

35. In ***Infectious Diseases Institute v URA (HCCA No. 006 of 2022)***, the High Court clarified that there is no single determinative factor: remuneration, even if fixed or regular, is not by itself conclusive; the court must assess control, integration and the practical substance of the relationship. The Court rejected any rigid "two-month" proxy and emphasised a holistic, fact-sensitive inquiry. We now turn to each factor.

Control

36. AW1 testified that visiting specialists were not bound by HR policies, were not granted leave, and were not given working schedules. He also explained, however, that the hospital identifies patients in the community, issues appointments and, when a patient accepts, calls the specialist to attend at the facility. In practical terms, the Applicant organises when and where services are rendered. Applying the guidance in ***Infectious Diseases Institute v URA (supra),*** the fact that the specialists are neither bound by the Applicant's HR policies nor given work schedules is indicative of the absence of control.

37. Naturally, for an institution such as a hospital, there must be a certain level of administrative expediency. Where a specialist commits to a specific number of days at a given time to a facility, that does not make them an employee. It merely provides certainty to the facility, the specialist and the patients about the availability of the service which the specialist provides.

Remuneration

38. While the Applicant asserted that consultants are paid for work done with 6% WHT deducted, AW1 acknowledged that payments to the specialists are made from ADRA's annual restricted fund and that he knows in advance how much each specialist will earn for the year. The Respondent therefore

argued that this indicated the specialists were employees rather than independent consultants.

39. In determining whether the specialists' income is ascertainable, we are guided by the dictum of Justice ***Thomas Ocaya in Infectious Disease Institute (supra)***, where he laid down three factors for evaluating when income is deemed ascertainable. The first factor is whether there is a contractual or legal entitlement to the payment. He stated:

"A payment of a fixed or ascertainable income doesn't bring it within the scope of the provision if there isn't a contractual (or other legal) entitlement to the payment."

40. In evaluating the evidence, the Tribunal has to consider the nature of the business rather than adopt a one-size-fits-all approach. On the facts before the Tribunal, the Applicant's specialists, consultants, and contracted service providers are engaged on a need-based basis, triggered by specific operational requirements such as the unavailability of internal expertise or the need for urgent patient care. The evidence, that is, contracts, Memorandum of Understanding, and payment schedules, demonstrates that payment is contingent upon actual engagement and delivery of services, not upon the mere existence of a continuing obligation to pay, regardless of whether services are performed.

41. Unlike employees, who are contractually entitled to remuneration accruing by reason of time served or continued availability, the specialists in question derive entitlement only once services have been performed. There is no evidence of guaranteed monthly income or salary obligations enforceable independently of performance. On this basis, the specialists lack the type of legal entitlement contemplated by Justice Ocaya as bringing payments within the PAYE regime.

42. Furthermore, regarding the ascertainment of income, the second factor that was considered by the Hon. Justice was how the income is determined. He stated:

"When the remuneration is not fixed, then the ascertainable aspect must be a priori, meaning formed or conceived beforehand, relating to or derived by

reasoning from a self-evident proposition, and not a posteriori, meaning relating to or derived by reasoning from observed facts."

43. Applying this distinction, the payments made by the Applicant are ascertainable, if at all, only after the fact. Although the Respondent may point to agreed rates (for example, per procedure, per day, or per engagement), such rates do not render income ascertainable in advance in the relevant sense. What remains unknown beforehand is:

    (i) Whether the specialist will be called upon at all,
    (ii) What services will be required during a given period, and
    (iii) the volume or nature of services will justify payment.

44. Thus, while the method of calculation may be known, the existence and quantum of income are not predetermined. The income crystallises only after services are rendered and needs are identified.

45. The third and final factor that was considered in the ***Infectious Disease Institute case*** in determining what amounts to ascertainable income is the permanency of the relationship. He stated:

    The permanence of the relationship, for which the payment is made, is an important consideration. Even if the payment looks prima facie fixed or ascertainable, where the payment is made as a result of a relationship without some degree of permanency, the payment(s) may not be considered fixed since the relationship from which they arise is not itself certain and there can be no payment without a relationship and because of this, the permanency of the relationship is relevant to a determination as to whether such payment is fixed or ascertainable.

46. The facts strongly support the Applicant on this point. The Applicant is a not-for-profit, donor-funded institution operating under financial constraints and unpredictable service demands. It does not maintain an ongoing force of specialist staff but engages specialists intermittently, as needed, and for limited purposes. The relationship between the Applicant and the professionals is therefore:

a) Intermittent rather than continuous,

b) Reactive to clinical necessity rather than contractual obligation, and

c) Terminable automatically upon completion of the specific service required.

47. There is no expectation of continuity of engagement, no mutual obligation to provide or accept work, and no certainty that payments will recur. As Justice Ocaya observed, "there can be no payment without a relationship", and where the relationship itself is uncertain and transient, the payments derived from it cannot logically be considered fixed or ascertainable in advance.

48. Therefore, in applying Justice Ocaya's dictum to the facts, the Tribunal takes note of the fact that the specialists' payments cannot be regarded as fixed or ascertainable because the specialists had no prior legal entitlement to salary-like income, any amounts payable were determinable only after services were rendered (a posteriori), and the engagements were intermittent and non-permanent, lacking the degree of permanency required to attract PAYE.

Workplace integration/tools of work

49. The specialities in issue, such as obstetrics, neonatal care and radiography, are core to the Applicant's mission and are delivered on site using the hospital's facilities and tools. However, when evaluating the various factors, it is important to consider the practical realities of the industries or sectors in question, since, as highlighted by the judicial precedents, there is no single determinative factor. It is also important to add that each factor under consideration must be weighed in accordance with its relevance in the circumstances of each case, such as the industry in question.

50. Therefore, whereas for industries such as banking, insurance, financial consultancy, etc., it is common for consultants to carry their own tools, such as computers to the workplace, this may not be practical in the medical industry. It would be bizarre for an obstetrician to walk around various facilities with their own set of fetal dopplers, speculums, and ultrasound

machines. It would also be very dangerous for a radiographer to move around with X-ray machines!

51. Consequently, upon careful consideration of all the evidence and the submissions of both parties, the Tribunal finds that the absence of HR discipline, leave entitlement, and NSSF contributions for the visiting specialists points toward consultancy rather than an employer – employee relationship.

52. Therefore, we find that the recharacterized individuals were independent consultants, not employees. Accordingly, the additional PAYE assessment of Shs. 79,830,973 is set aside.

What remedies are available to the parties?

53. Section 22(6) of the Tax Appeals Tribunal Act grants this Tribunal broad powers to make orders, costs, damages, interests, or any other remedy. Given the findings above, the Tribunal makes the following **ORDERS**:
    (i) The application is allowed;
    (ii) The PAYE assessment of Shs. 79,830,973 is set aside; and
    (iii) Costs are awarded to the Applicant.

DATED at Kampala this **17TH** day of **April** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

MS. CHRISTINE KATWE
MEMBER

HON. WILLY NANGOSYAH
MEMBER