THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

MISC. APPLICATION NO. 86 OF2022

ARISING FROM APPLICATION NO. 11 OF 2011

MAGNET CONSTRUCTION LTD.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDANT

BEFORE DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

RULING

This ruling is in respect of a reference of a decision of the registrar to the tribunal in respect of an application for a garnishee order.

The tribunal issued a ruling in the main application where a VAT assessment of Shs. 40,453,803 was upheld but the respondent was ordered to refund Shs. 84,411,983 to the applicant with interest from the date of the ruling till payment in full. The applicant contends that the award and interest accruing is Shs. 791,085,659.57 which has not been satisfied. The respondent contends that the VAT refund was used to offset the applicant's outstanding liabilities and the latter is not entitled to any monies. The applicant wants to attach monies of the respondent's account to recover the award and interest.

The applicant was represented by Mr. Joseph Angura while the respondent by Mr. George Senyomo.

Mr. Omagor Stephen, a tax consultant for the applicant, stated that the applicant applied for a garnishee order nisi to be issued. The registrar directed the application to be served on the bank before an order nisi would issue. The deputy registrar dismissed the application on grounds that the garnishee account is a revenue collection account, inter alia, which the applicant is not satisfied with, hence this appeal.

The applicant submitted that on 20th September 2011, the Tribunal ruled in its favour and ordered the respondent to refund it Shs. 84,411,983. The applicant was awarded interest on the refund from the date of award, till payment in full which is Shs. 791,085, 659.57 and is unsatisfied. The applicant has made more than ten demands through correspondences and engagements with the respondent for the refund, but in vain. The applicant being dissatisfied by the respondent, applied to execute the ruling of the tribunal, by way of garnishee of the respondent's accounts. The deputy registrar declined to issue an order nisi and dismissed the application hence this reference to the tribunal.

The applicant submitted that the registrar erred in law when be abdicated his duty and failed to hold that the respondent is legally obliged to notify the applicant of any tax due, and the applicant had a right to object before any recovery measures are taken.

The applicant submitted that, after the Tribunal ruled in its favour in 2012, ordering the respondent to refund its money, it applied formally for it in October 2012, but the respondent did not comply. It followed that with several letters and had engagements with the respondent to refund its money but it never yielded fruit. The respondent after eleven years, then wrote to the applicant that it had a tax liability of Shs. 248,865,312, and it had used the refund to offset the liability.

The applicant contended that it was deprived the right to object. The applicant submitted that a right to a fair hearing is enshrined in Articles 42, 28(1) and 44(c) of the Constitution of Uganda which reads that;

> "any person appearing before any administrative official or body has a right to be treated justly and fairly, and that, when arriving at administrative decisions, the principles of natural justice which entail a right to a fair hearing must be applied".

The applicant submitted that the right to a fair hearing cannot be derogated. Uganda Revenue Authority as a state agency charged with the collection of taxes is bound by the provisions of the Bill of Rights. The due process in taxation entails that a taxpayer is made aware of any tax outstanding, all the facts that led to an assessment, or how the tax has been imposed.

The applicant submitted that S. 32(7) of the VAT Act, as then was, required the Commissioner to make an assessment against the taxpayer. He is to serve notice of the assessment on the person assessed, which notice shall state, (a) the tax payable; (b) the date the tax is due and payable, (c) an explanation of the assessment; and (d) the time, place and manner of objecting to the assessment. The applicant submitted that the respondent admits that it never issued a demand notice or an assessment against the applicant as the law requires. The applicant cited *Commissioner of Internal Revenue v First Sumiden Circuits Inc. (CTA EB 1831, 12 February 2020),* where the Court in annulling an assessment that was raised as a result of a new finding without giving a taxpayer a right to explain itself, opined that;

> "It violated the taxpayer's right to due process. A person should be given all the opportunities to have all his queries and doubts answered and the assessment clearly explained to him. The task of collecting taxes should not lead to discouraging tax payers from carrying on with their businesses. There must be fairness in the process of tax assessment".

The applicant submitted that although the respondent is empowered by law to assess what a taxpayer has to pay, it is prudent that while undertaking such an exercise, the taxpayer be given an opportunity to know that it has a tax liability, all the modalities through which the tax came about, be given chance to explain its position, when all the facts have been disclosed to it.

The applicant submitted that the deputy registrar erred in law when he held that the respondent satisfied the orders of the Tribunal in Application 11 of 2011. The registrar erred in law when he relied on a ledger that did not reflect that the applicant had a tax debt of Shs. 248,865,321, and which did not reflect the offset of Shs. 84,411,983.

The applicant submitted that the tax ledger presented by the respondent was not certified nor authenticated, not endorsed by the Commissioner General or any officer authorized to so. It was wrong for the registrar to rely on it as it did not meet the test in law. It does not show that the applicant had a tax liability of Shs. 248,865,312. The applicant submitted that the registrar ignored inconsistencies, deliberate falsehoods that go to the root of the matter and ought never to be ignored, or out looked. The affidavit of Kebirungi Margret

was colored with wilful intention to pervert and mislead, by means of wilful misrepresentations or artful sophistry and such affidavit ought to be struck out.

The applicant submitted that the registrar held that the applicant had a burden to prove that it did not have any tax liability in 2012. The matter before him was for execution of a decree under Order 23 of the Civil Procedure Rules and not challenging an assessment.

The applicant submitted that the registrar erred in law when he held that the respondent's Stanbic Bank Account No. 60033731926, subject to garnishee, is a revenue collections account, without evidence in support.

The applicant submitted that the registrar also abdicated his duty to determine whether S. 44(5) of the VAT Act that came into force in 2018, was retrospective and affects interest that accrues to the applicant. The tribunal ordered a refund with interest. The issue to determine was whether the interest that accrues to the award is liable to capping under the VAT Amendment Act 2018. It submitted that the registrar declined jurisdiction to determine the interest which applies to the matter, asserting that, that it is an issue for determination by way of the applicant filing a fresh case in the Tribunal.

In reply, the respondent submitted that in garnishee proceedings, the duty of the registrar is to establish if the garnishee is indebted to the judgment debtor. It submitted that the applicant's arguments that the registrar abdicated his duty not to hold that the respondent is legally obliged to notify the applicant of any tax due, and the applicant had a right to be heard before any recovery measures are taken and to determine whether S. 44(5) of the VAT Act has retrospective force and affects the interest should be disregarded.

The respondent submitted that the commissioner does not ask a taxpayer before it can offset any tax liabilities that are due. There is no legal requirement to issue any tax assessment or demand notice before any refund can be made. It is also not necessary to first inform the tax payer of its debts before effecting a refund. It cited *Red Chili Hideaway Ltd v URA* Application No. 38 of 2018 where the tribunal held that;

"Therefore a Commissioner cannot refund monies if there are other taxes due from the tax payer. It is like pushing the cart before the horse. He has to first sort out the other taxes due from the tax payer..."

The respondent submitted that the applicant's arguments relating to the applicant being issued with a tax assessment or demand notice before any refund should be disregarded as the law does not require the same to be issued before a refund can be made.

The respondent submitted that the applicant having failed to file an affidavit in rejoinder showed that the applicant had admitted to the contents of the affidavit in reply. The applicant cannot submit that the registrar ignored the inconsistences in the ledger and the applicant did not have a tax debt of Shs. 248,865,321 and that it did not reflect the offset of Shs. 84,411,983.

The respondent submitted that Account no. 600033731926 is not subject to garnishee as it is a revenue collection account. It submitted that Sections 14 and 15 of the Uganda Revenue Authority Act provide that "Revenue to accrue to the Consolidated Fund". All revenue collected by or due and payable to, the authority under the Act shall be credited or be due and payable to the consolidated fund; except that the minister may from time to time authorize the authority in writing to retain a percentage of the revenue collected by the authority as may be determined by the minister in order to enable the respondent meet its expenditure without interruption. The respondent submitted that all the revenue on the accounts of the respondent is held in trust of the government of Uganda and any liabilities of the government attributable to the departments of customs, income tax and Inland Revenue shall remain vested in the government and may be enforced by or against the government. This application should not have been filed as garnishee proceedings do not apply to the respondent. The respondent cited S. 56(1) of the Evidence Act which provides that;

"The court shall take judicial notice of the following facts-

(a) All acts and ordinances enacted or hereafter to be enacted, and all acts of parliament of the United Kingdom now heretofore in force in Uganda;

(b) All orders in Council laws, statutory instruments or subsidiary legislation now or heretofore in force or hereafter to be in force, in any part of Uganda"

The respondent submitted that it is judicially noticed that the respondent's accounts are collection accounts and therefore are not subject to garnishee.

Having read the pleading and submissions of the parties, this is the ruling of the tribunal.

This application was filed under S. 98 of the Civil Procedure Act, Rule 30 of the Tax Appeals Tribunal Regulations and Order 23 Rule 1, 2 and 10 of the Civil Procedure Rules. Rule 31 of the Tax Appeals Tribunal Procedure Rules provide that in any matter relating to the proceedings of the Tribunal, the rules of practice and procedure of the High Court shall apply. The applicant is appealing a decision of the deputy registrar by way of reference. A reference to the High Court is made under Order 50 Rule 7 of the Civil Procedure Rules which reads:

> "If any matter appears to the registrar to be proper for the decision of the High Court the registrar may refer the matter to the High Court and a judge of the High Court may either dispose of the matter or refer it back to the registrar with such directions as he or she may think fit."

Order 23 of the Civil Procedure Rules deals with attachment of debts, which falls under the jurisdiction of the registrar and not the Tribunal. By filing an application under Order 23 the applicant seeks the Tribunal to usurp the powers of the registrar and listen to the application for garnishee de novo, which is an irregularity that cannot be ignored.

When the parties appeared before the deputy registrar on 23rd May 2022, it was stated that the garnishee order had not been served on the garnishee/bank and therefore it could not appear. Both parties agreed to proceed without the garnishee/bank.

A garnishee order also known as attachment of debts is a process by which a judgment creditor seeks to recover money that is due to a judgment debtor which is in the hands of a third party. In this case, the bank. The third party in whose hands the money is sought to be attached is called garnishee and the necessary order is called a garnishee order. The garnishee order changes the obligation of the 3rd party to pay the judgment debtor into an obligation to pay the judgment creditor directly. The test is whether the money is

attachable. It must be owing to the judgement debtor and must be available at the time of attachment.

The application for garnishee order is provided for under Order 23 Rule 10 of the Civil Procedure Rules which reads.

> " (1) A court may, upon the ex parte application of a decree holder, and either before or after an oral examination of the judgment debtor, and upon affidavit by the decree holder or his or her advocate, stating that a decree has been issued and that it is still unsatisfied and to what amount, and that another person is indebted to the judgment debtor and is within the jurisdiction, order that all debts owing or accruing from the third person (hereafter called "the garnishee") to the judgment debtor shall be attached to answer the decree together with the costs of the garnishee proceedings".
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> "(2) By the same or any subsequent order, the court may order that the garnishee shall appear before the court to show cause why he or she should not pay to the decree holder the debt due from him or her to the judgment debtor or so much of the debt as may be sufficient to satisfy the decree together with the costs aforesaid.
>
> (3) At least seven days before the day of hearing the order nisi shall be served on the garnishee, and, unless otherwise ordered, on the judgment debtor."

A garnishee is expected to appear before court to state why the debt should or should not be realized. A decree absolute will be given if it has been satisfied to court that these monies should be attached. In the instant case, none of this was done which brings us to the issue of procedural irregularity. No bank was served or summoned. Instead it was the parties to the main application who appeared and proceeded to address the deputy registrar on issues he did not have jurisdiction to entertain. In *Makula International Ltd v. His Eminence Cardinal Nsubuga & Another* [1982] HCB 111, where it was held that: "A court of law cannot sanction what is illegal and illegality once brought to the attention of the court overrides all questions of pleading including admissions made thereof." The application before the deputy registrar degenerated into an application which was not for garnishee. The Tribunal cannot entertain an application the did not follow the procedure set out under the Civil Procedure Rules for garnishee. Issues in respect of whether S. 44(5) of the VAT Act that came in force in 2018 had retrospective effect on interest or whether the respondent is legally obliged to notify the applicant of any tax due or whether the applicant was denied a fair hearing are outside the ambit of the deputy registrar to

determine. The Tribunal cannot pretend that it will entertain an appeal on issues which the registrar did not have authority to entertain.

By the time the applicant filed this reference there are a number of irregularities. Firstly, the garnishee was never served and a wrong party, the judgement debtor who has no locus standi in such application unless there is an order to that effect, was invited to attend garnishee proceedings. Secondly, the applicant sought to determine issues outside an application for garnishee before the registrar. The Tribunal cannot entertain grounds on appeal which the registrar did not have jurisdiction to entertain as it would be an abatement of an illegality. Thirdly, what was meant to be a reference to the Tribunal is an application to hear the garnishee application de novo. The Tribunal does not have powers to entertain an application for garnishee as those powers are vested in the registrar. The issue arising and remedies sought are beyond what can be addressed and remedied by this appeal to the Tribunal. In the absence of a garnishee, the Tribunal cannot determine whether it is indebted to the judgement debtor and the money owed is available.

The Tribunal notes that the issue of the actual tax payable arose from a delay in execution of the decree. If the parties had resolved it at the time the decree was made, this dispute would not have arisen. Taxation is a continuous process. Tax liability if not resolved in time can water down an amount in a court award. To wait for 11 years to execute a court award creates fresh problems. Tax liability may not be static. Instead of resolving the amount that was actually due, the applicant rushed to court to enforce an amount which is still disputable.

The main application was filed on 10th June 2022. On 20th September 2011, the Tribunal delivered a ruling in favour of the applicant, and ordered the respondent to refund the applicant Shs. 84,411,983, as a VAT penal tax refund. The applicant was awarded interest on the refund which it alleges is still unsatisfied till now. The respondent stated that it utilized it to offset the applicant's liability of Shs. 248,865,312 in September 2012. The applicant's claim had interest of Shs. 791,085, 659. 57. S. 3 of the Limitation Act provides that

"(3) An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due."

Therefore, thought the applicant can still claim the refund of Shs. 84,411,983 it cannot claim interest of Shs. 791,085, 659. 57 as it is time barred. The respondent contends that the principal tax was offset by tax liability that accrued. That is not a dispute that can be resolved in garnishee proceedings. The registrar ought to have served the respondent with a notice to show cause why the decretal amount should not be executed, before entertaining an application for garnishee which was not done. The hearing under the notice would have resolved what was actually payable.

Having stated that this application was not properly filed and has a number of irregularities, it is beyond remedy using a reference to the Tribunal. It cannot be entertained. Therefore, this application is dismissed. Each party to bear its costs.

Dated this 26th day of July 2022.

DR. ASA MUGENYI	**MR. GEORGE MUGERWA**	**MS. CHRISTINE KATWE**
CHIARMAN	**MEMBER**	**MEMBER**