

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION No. 251 OF 2024

MASSALIA SMC LTD.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. PROSCOVIA R. NAMBI,
MS. STELLA NYAPENDI

RULING

This ruling is in respect an application brought under Article 126 of the Constitution, Section 98, Section 33, Section 80(1)(d) of the Civil Procedure Act Cap 71 and Section 22 of the Tax Appeals Tribunal Act Cap 341 seeking for orders that:

- (i) The Respondent be allowed to adduce additional witness to be relied on in this application; and
- (ii) Costs of the application be provided for.

1. Background Facts

The Applicant is a Ugandan Company dealing in the business of sports betting and gaming activities. The Respondent conducted an audit into the Applicant's affairs for the period of January 2023 to August 2023. The Respondent issued the Applicant with gaming tax, betting tax, and withholding tax assessments for the period January 2023 to August 2023 amounting to Shs.28,129,806,328.

The Applicant objected to the Respondent's assessment of Shs.28,129,806,328 and on 30 August 2024, the Respondent issued an objection decision disallowing the Applicant's objection.

Ahead of the hearing, both parties indicated that they would each call two witnesses and went ahead to file two witness statements each. Specifically, the Respondent's first witness was Mr. Samuel Mukobe, a Supervisor in the Respondent's Large taxpayer Office in the Domestic Taxes Department and Mr. Javan Sabiiti, an Objections Officer with the Respondent's Domestic Taxes Department.

The hearing of the case commenced on 12 March 2025. On 14 March 2025, after the Applicant had closed their case, and after the Respondent had called their first witness, the Respondent applied to the Tribunal to add a third witness, Ms. Teddy Kyaligonza, the Acting manager, ICT and Gaming Sector, in the Respondent's Large Taxpayer's Office.

Further, on 17 March 2025, the Respondent made a second application to add as a witness, Mr. Grace Aine, the Manager Special Projects in the Domestic Taxes Department, in charge of telecoms, gaming and High Net Worth Individuals as a fourth witness.

Whilst both applications were made separately, we have considered it expedient to prepare a single ruling to cover both applications.

2. Representation

The Applicant was represented by Tom Magezi and Aretha Uwera while the Respondent was represented by Ms. Gloria Twinomugisha, Ms. Charlotte Katuutu and Mr. Orishaba Simon Peter.

The Tribunal invited the parties to make oral submissions.

3. Submissions of the Respondent

The Respondent made the following submissions.

Ms. Teddy Kyaligonza

The Respondent submitted that having Ms. Kyaligonza as an additional witness was crucial and just for the determination of the dispute as it provides a clear explanation of the gaming and betting data flow since she is well versed with the transaction. The Respondent submitted that the Tribunal has the discretion to regulate its own procedure. Further, Article. 126 (2) (e) of the Constitution of the Republic of Uganda is to the effect that in adjudication of cases, court shall subject to the law, administer justice without undue regard to technicalities.

The Respondent further submitted that adding Ms. Kyaligonza as an additional witness will not prejudice the Applicant case since the Applicant will have an opportunity to

cross examine her. It is in the interest of justice, fairness and the duty of the TAT to determine matters on their merits.

In addition, the Respondent argued that they were compelled by unforeseen circumstances to call Ms. Kyaligonza as a witness. This is because certain questions that the Tribunal asked the first witness concerning third party information that was relied on to assess the Applicant were not well explained by the first witness. Therefore, the Respondent prayed that the Tribunal grants the application to allow Ms. Kyaligonza to be called as a witness. In the alternative, the Respondent prayed that they be allowed to call any other witness other than Ms. Kyaligonza.

Mr. Grace Aine Ngabirano

The Respondent submitted that on 13th March 2025, the Tribunal directed the Respondent to provide source data which could not be provided due to its voluminous nature. However, the data could be submitted through a safe file transfer protocol location.

Owing to the Tribunal's request for the Respondent's third-party source data, the Respondent prayed that they be allowed to call Mr. Grace Aine Ngabirano the Manager Special Projects in the Domestic taxes, in charge of telecoms, gaming and High Net Worth Individuals since he is the officer who obtained the third-party information. The Respondent further submitted that it is Mr. Grace Aine Ngabirano who analysed the said information and would therefore be the best witness to testify in regard to information shared.

The Respondent prayed that Mr. Grace Aine Ngabirano be presented as the Respondent's witness to speak to the third-party source data.

4. Submissions of the Applicant

The Applicant submitted to the admission of both witnesses as follows:

Ms. Teddy Kyaligonza

The Applicant opposed the application on the ground that there were no unforeseen circumstances as alleged by the Respondent. He stated that the poor performance of

a witness through good cross examination is not unforeseen circumstances. This is confirmation that the Respondent is re-tailoring their case due to the poor performance of their first witness, Mr. Samuel Mukobe (RW1).

The Applicant also stated that Ms. Teddy Kyaligonza had been part of the proceedings from conferencing to date. Further, the Applicant stated that their case has been built on two fundamental parameters – the first being evidence submitted through the trial bundle and the second being the Applicant's two witnesses that addressed the Tribunal.

The Applicant also stated that while the Respondent refers to Article 126 (2) (e) of the Constitution of Uganda, there must be compliance with the principles of natural justice and procedural fairness.

The Applicant also submitted that had the Respondent ought to have in good faith, made the application to call an additional witness at the closure of the proceedings the previous day. However, the bad faith is demonstrated by the fact that the Respondent filed their witness statements three days after the deadline that had been given and some few hours before the Tribunal proceedings, for which we the Applicant did not object. Further, RW1 confirmed that he's a seasoned and experienced tax collector who is well conversant with the matters before this Tribunal. In addition, the Respondent submitted that Ms. Kyaligonza has nothing new to say, she is therefore irrelevant and will not add any value to the proceedings before this Tribunal

Therefore, the Applicant submitted their strong objection to the introduction of Ms. Teddy Kyaligonza or any other witness at this stage when the Applicant has closed its case and when the Respondent had confirmed to the Tribunal that their last witness was waiting outside.

Mr. Grace Aine Ngabirano

The Applicant objected to the new witness since he had just been availed the witness statement on the same morning of the application. In addition, the Applicant submitted that Mr. Samuel Mukobe (RW1), the Respondent's first witness, had confirmed in his witness statement in paragraph 8 to 10 that he obtained the sourced data.

The Applicant also submitted that during the cross examination of RW1, he confirmed that he was knowledgeable about the data obtained from the third parties namely MTN, Airtel and Pegasus. Further, RW1 had clarified that the data was not in the format in which it had been obtained from the three entities. In addition, RW1 confirmed during cross examination to having analyzed that data and having come up with the workings under REX 4 in the Joint Trial Bundle. Therefore, it is upon that background that the Tribunal directed Rw1 to produce the source data.

The Applicant also submitted that the quick perusal of the witness statement of Mr. Grace Aine under paragraph 3 and 4 introduces a very new narrative to the effect that the data was obtained from TIMS.

The Applicant further submitted that the Respondent's defense to this Application has always been that the data was obtained directly from MTN, Airtel and Pegasus. Further, during the scheduling of this matter, the Tribunal directed the Respondent to provide source data and its now shocking that after the Applicant has closed its pleadings, the Respondent have also closed their pleadings, furthermore the Applicant has closed its case and the Respondent was meant to close their case that now they are bringing a new witness with new evidence.

The Applicant submitted that introducing a new witness (es) at this stage will affect the entire integrity of the proceedings before the Tribunal and it is a confirmation that the basis of the tax assessments before this Tribunal is questionable.

In addition, the Applicant submitted that the witness statement introduces other documents as the documents in the Joint Trial Bundle ended on REX11. However, the new witness statement introduces REX 12, 13, 14 and 15A.

The Applicant submitted that the question is whether the introduction of a new narrative and a new witness is bonafide, more so after the cross examination of RW1. It further posed a question, why this disclosure was coming now, after cross examination and yet the Respondent was given ample time by the Tribunal to produce the alleged said information before cross examination?

The Applicant submitted that RW1 did not mention TIMMS. Further, not even Mr. Javan Sabiiti, the Respondent's second witness in his witness statement refers to TIMMS. The Applicant in his conclusion stated that the Respondent's application was in bad faith and that RW1 was the right witness to tender in the source data.

5. Submissions of the Respondent in Rejoinder

In rejoinder, the Respondent submitted that with regard to adding Mr. Grace Aine as a witness, the fact that the said data was from TIMMS does not affect its validity. In addition, if the data was obtained directly the information wouldn't change in any way

The Respondent further submitted that during the hearing, the Applicant indicated that they did not dispute the source data.

Lastly, the Respondent submitted that they are aware that the Tribunal has power to give directions of how evidence should be presented and that no prejudice would occur if the Application is granted since the Applicant will have the opportunity to cross examine the witness.

6. Determination by the Tribunal

Having listened to the submissions of the parties, this is the decision of the Tribunal.

Ms. Teddy Kyaligonza

We have looked at the witness statement of Teddy Kyaligonza dated 13 March 2025. In our view, the witness statement does not disclose any new information that has not been presented to this Tribunal. In fact, the information presented was articulated by the RW1 – Samuel Mukobe. The Respondent also confirmed that there was nothing new that the witness will introduce.

Whereas we recognise the import of Article 126 (2) (e) of the Constitution and the discretion of the Tribunal, in the present circumstances, it would be procedurally unfair to the Applicant to admit the Respondents new witness statement. The Respondent had ample time to prepare for and lay out their case. They did not make good use of their time. They cannot now, at the lastminute, after having had the benefit of hearing the Applicant's witnesses and their first witness coupled with the fact that Ms. Teddy

Kyaligonza sat through the entire testimony, turnaround and plead unforeseen circumstances. The failure by RW1 to sufficiently explain his evidence is not an unforeseen circumstance.

Therefore, the application to add Ms. Teddy Kyaligonza is hereby denied. The alternative prayer for presenting a new witness other than Ms. Teddy Kyaligonza will only be considered by this Tribunal on its own merits.

Mr. Grace Aine Ngabirano

The manner in which Counsel for the Respondent has conducted this case from the onset is unprofessional. The Respondent has consistently displayed a lack of preparedness. Specifically, this is demonstrated by their failure to produce the said source data right from conferencing despite the directives of the Tribunal. On 24 February 2025, the Tribunal directed the Respondent to provide the source data by 25th February 2025. The Respondent had ample time from 30th September 2024 when this case was filed in this Tribunal to adequately prepare for its case including witness identification, preparation and presentation.

Further, the introduction of new information at the tail end of the trial is not bonafide. Whereas the Tribunal has the discretion to allow parties to introduce new witnesses and new evidence, this has to be done in good faith and not as an afterthought.

However, in the case of ***Uganda Revenue Authority v TATA Uganda Limited (Miscellaneous Application 2084 of 2023 [2024] UGCommC211 (31 July 2024)*** the court held:

“A mistake, negligence, or oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter is considered on its merits.”

This was also re-echoed in the case of ***FL Kaderbhai & Anor versus Shamsherali & Ors S.C Civil Application No.20 of 2008***, where it was held:

“It would be a grave injustice to deny an Applicant such as this one, to pursue his rights simply because of the negligence of his lawyers when it is fairly well settled now, that an error of counsel should not be necessarily visited on his client.”

In addition to the above, the Tribunal is mindful of the fact that the Applicant at the last hearing stated that they do not dispute the figures presented in REX 3, which are derived from the source data. Therefore, it would not prejudice their case if Mr. Grace Aine Ngabirano's witness statement is admitted for the purposes of explaining the source data.

Further for completeness, it is in the interest of this Tribunal to appreciate all the information relied on to enable the Tribunal to properly determine the matter.

We have also looked at Mr. Grace Aine Ngabirano's witness statement, and our directive is that his testimony should only be limited to an explanation of the source data and its linkage to the summarized data presented in REX3 and REX 5 of the Joint Trial Bundle.


In conclusion, the Application to add Mr. Grace Aine Ngabirano is hereby granted subject to the directives above. The Tribunal therefore makes the following orders:

- (i) The Application to add Ms. Teddy Kyaligonza as a witness is denied.
- (ii) The Application to add Mr. Grace Aine as a witness is allowed. However, his witness testimony should only be limited to explaining the source data.
- (iii) Costs for the session concerning the application to add Mr. Grace Aine are hereby awarded to the Applicant on account of Counsel for the Respondent's unprofessional conduct.

Dated at Kampala this 17th day of March 2025



CRYSTAL KABAJWARA
CHAIRPERSON



PROSCOVIA R. NAMBI
MEMBER



STELLA NYAPENDI
MEMBER