THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL APPEAL NO. 0072 OF 2024

ARISING OUT OF TAT APPLICATION NO. 0149 OF 2023

MOIL UGANDA LIMITED :: APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::::::::: RESPONDENT

Before Hon. Lady Justice Patricia Kahigi Asiimwe

Judgment

Introduction

1. This is an appeal from the Ruling of the Tax Appeals Tribunal in (TAT Cause No. 0149 of 2023). In that Ruling, the Tribunal held that the Respondent has to pay tax assessed at UGX. 789,242,588 on the grounds that the Appellant overstated their interest expense deduction.

Background

2. On 30th March 2023, following an audit, the Respondent issued the Appellant with administrative additional income tax assessments of UGX. 240,831,554, UGX. 367,587,532 and UGX. 180,823,502 for the period 2019, 2020, and 2021, respectively. The assessments were issued on the grounds that the Applicant purportedly overstated its interest expense.

3. The Respondent alleged that the Appellant belonged to a group of companies with common underlying ownership and therefore, it ought to have restricted its interest expense deduction to 30% of Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) under section 25 (3) of the Income Tax Act, Cap 338.

4. The Applicant objected to the assessment, and the Respondent disallowed its objection. The Respondent filed an application at the Tribunal contesting the assessment.

The Application before the Tribunal

5. At the Tribunal, the Appellant submitted that it was not liable to pay the taxes assessed, as it is not a member of a group. The Applicant also submitted that although they have the same shareholders as two other companies, namely, Moil Kenya Limited and Mansoor Industries Limited (incorporated in Tanzania), the two companies are not subscribers to the memorandum and articles of association of the Applicant. For this reason, they do not form a group with the Applicant. The Appellant further submitted that the interpretation of the definition of the term "group" under Section 25 (5) of the Income Tax Act is an underhanded method aimed at defeating the legal definition of a group of companies as provided for in the Companies Act. The Applicant relied on Section 47 of the Companies Act, now Section 45 Companies Cap 106, which states how a person can become a member of a company. The Appellant also submitted that Section 25(5) of the Income Tax Act does not clearly state whether it is binding only on companies within Uganda, as well as those outside Uganda. Since the section is silent on its scope, it would be safer to conclude that, being a Ugandan law, it is targeting only Ugandan group companies. The Appellant further submitted that the loan that

was obtained was used solely in the business of the Applicant and that no other entity benefited from it.

6. The Respondent submitted that the dispute revolves around whether the Applicant is a member of a group of companies within the meaning of Section 25(5) of the Income Tax Act. The Respondent submitted that it was established that the Applicant, Moil Kenya Limited, and Mansoor Industries Limited have common shareholders and therefore common underlying ownership. The Respondent cited section 25 (3) of the Income Tax Act, which restricts the deductible interest claimable by a taxpayer who is a member of a group to 30% of EBITDA. The Respondent also cited section 25 (5) of the Income Tax Act, which defines the term "group" to mean: "...persons other than individuals, with common underlying ownership." The Respondent urged the Tribunal to apply the literal meaning of the provision, citing the established principle that tax statutes must be interpreted according to their plain language without further inference.

Decision of the Tribunal

7. The issue for determination before the Tribunal was whether the Applicant is part of a group. In its Ruling delivered on 4th October 2024, the Tribunal held that the Appellant was liable to pay the assessed tax as it was a member of the group under section 25 of the Income Tax Act.

8. The Tribunal found that the evidence from company searches revealed that the Appellant, Moil Kenya Limited, and Mansoor Industries Limited (Tanzania) had the same three shareholders. The Tribunal held that on this basis, the three companies shared common underlying ownership and therefore subject to the tax cap of 30% under section 25 (3) of the Income Tax Act.

Grounds of Appeal

9. The Appellant, being dissatisfied with the above decision of the Tax Appeals Tribunal, appealed to this Honorable Court on the grounds that:

    I. *The Honourable members of the tribunal erred in law when they failed to evaluate the evidence on record, thereby reaching an erroneous conclusion that the Applicant is a member of a group.*
    II. *The Honourable members of the tribunal erred in law when they disregarded the definition of a group of companies as per the Companies Act.*
    III. *The Honourable members of the Tribunal erred in law when they held that the definition as per section 25(5) of the Income Tax Act is unambiguous.*
    IV. *The Honourable members of the Tribunal erred in law when they held that it cannot enquire into the use and application of the borrowed funds, and yet it was the basis of the assessment.*

Representation

10. The Appellant was represented by ALP Advocates, and the Respondent was represented by its Legal and Board Affairs Department.

Resolution

11. The Appellant raised 4 grounds. I will consider ground II first.

Ground II: The Honourable members of the Tribunal erred in law when they disregarded the definition of a group of companies as per the Companies Act.

12. The Tribunal held that the Applicant is a member of a group under section 25 of the Income Tax Act.

13. Counsel for the Appellant submitted that the Tribunal should have considered the Companies Act in determining whether or not the Appellant is part of a group. Counsel contended that the Companies Act is the substantive law for company matters and should take precedence over the Income Tax Act. Counsel argued that under Section 45 of the Companies Act, membership requires subscription to the memorandum and articles of association, which was not the case between the three companies.

14. Counsel for the Respondent submitted that where a taxing statute is clear and unambiguous, provisions of other statutes cannot be used to interpret it. Counsel argued that section 25(5) of the Income Tax Act provides its own definition of a group based on common underlying ownership, which is distinct from membership under company law.

15. The Tribunal held that when the provisions of a taxing act are clear and unambiguous, provisions of other statutes cannot be applied to interpret the Act.

16. Section 25 of the Income Tax Act provides as follows:

> *(1) Subject to this Act, a person is allowed a deduction for interest incurred during the year of income in respect of a debt obligation to the extent that the debt obligation has been incurred by the person in the production of income included in gross income.*
> *(2) In this section, "debt obligation" includes an obligation to make a swap payment arising under a swap agreement and shares in a building society.*

(3) The amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group, other than a financial institution, microfinance deposit taking institution, tier 4 microfinance institution or person carrying on insurance business, shall not exceed thirty percent of the tax earnings before interest, depreciation and amortisation.

(4) A taxpayer whose interest exceeds thirty percent of the tax earnings before interest, tax, depreciation and amortisation may carry forward the excess interest for not more than three years, and the excess interest shall be treated as incurred during the next year of income.

(5) In this section— "group" means persons other than individuals, with common underlying ownership;

[Emphasis mine]

17. Under section 25 (1) of the Income Tax Act, a taxpayer's interest expenses are tax-deductible. However, under section 25 (3) for taxpayers who are part of a group, the deduction for interest expenses is capped at 30% of their earnings before interest, taxes, depreciation, and amortization. The provision goes ahead to define a group as "persons other than individuals, with common underlying ownership." The Income Tax Act also defines underlying ownership under section 2.

18. In the case of **Vinos versus Marks & Spencer plc [2001] 3 All ER 784**, Court held that:

A principle of construction is that general words do not derogate from specific words. Where there is an unqualified specific provision, a general provision is not to be taken to override that specific provision.

19. In the present case, I find that the definition of group under section 25 (5) of the Income Tax Act is a specific provision and therefore overrides the provisions in the Companies Act.

20. Therefore, the Tribunal did not err in law when it disregarded the definition of group of companies under the Companies Act. This ground, therefore, fails.

Ground III: The Honourable members of the Tribunal erred in law when they held that the definition as per section 25(5) of the Income Tax Act is unambiguous.

21. The Tribunal held that section 25 (3) and (5) are clear and unambiguous and that it is not for the Tribunal to read into what is clearly stated.

22. Counsel for the Appellant submitted that section 25(5) is ambiguous in respect to whether it applies to foreign companies that are not registered in Uganda. The Appellant further submitted that it departs from the definition in the Companies Act and is therefore ambiguous.

23. The Respondent submitted that the law is clear, a group means persons other than individuals with common underlying ownership. Counsel further submitted that the Respondent had the same shareholders and is therefore a group under the Income Tax Act.

24. It is not in dispute that the three individuals, Altaf Jamal, Shanif Jamal, and Alkarim Jamal, are the same shareholders in the three companies.

25. Under section 25 (5) of the Income Tax Act, "group" means persons other than individuals, with common underlying

ownership. Under section 2(xxx) of the same Act, underlying ownership is defined as "in relation to a person other than an individual, means an interest held in, or over, the person directly or indirectly through interposed companies, partnerships or trusts by an individual or by a person not ultimately owned by individuals."

26. Therefore, from the above, where companies have the same shareholders, they are a group of companies under the Income Tax Act. The Appellant's contention on this issue is twofold: firstly, that the clause is not clear on whether it applies to foreign companies that are not registered in Uganda, and secondly, that it departs from the Companies Act. As already determined under the resolution of Ground II above, the Companies Act is not applicable in this case.

27. I find that the above definition is very clear. For as long as parties have the same underlying ownership, they are a group of companies under section 25 of the Income Tax Act, whether or not they are foreign companies.

28. Ground III, therefore, fails.

Ground I: The Honourable members of the Tribunal erred in law when they failed to evaluate the evidence on record, thereby reaching an erroneous conclusion that the Applicant is a member of a group.

Ground IV: The Honourable members of the Tribunal erred in law when it held that it cannot enquire into the use and application of the borrowed funds, and yet it was the basis of the assessment.

29. I will consider the above two grounds together. The Appellant argues that the Tribunal did not evaluate evidence proving it is a standalone company, which included a loan agreement from Diamond Trust Bank Uganda, annual returns, audited

financials, and purchase invoices. They contend that these documents show the loan was sourced, utilized, and repaid solely by the Appellant without sharing funds with Moil Kenya or Mansoor Industries Limited.

30. The Appellant further submitted that the Tribunal erred by refusing to inquire into how the borrowed funds were used. Counsel argued that since the interest deduction was denied on the basis of being a group, it was necessary to determine if the other companies actually benefited from the loan. Counsel submitted that the Hansard shows that the intention of Parliament was to prevent related parties from giving loans to themselves. Counsel further submitted that there was never such an arrangement between the three companies.

31. The Respondent, on the other hand, submitted that documents like loan agreements do not disprove common underlying ownership or corporate relationships. The Respondent argued that the relevant test under the Income Tax Act for limiting interest deductions is the status of the company as a member of a group, not the use of the borrowed funds.

32. The Tribunal held that it is not for them to inquire into the use and application of the borrowed funds, as such a test is not provided for under section 25 of the Income Tax Act.

33. The Tribunal, in coming to its decision, relied on the 1920 UK case of **Cape Brandy Syndicate V IRC 12 TC 358,** where it was held that "... in taxation, you have to look simply at what is clearly said. There is no room for any intendment; there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly, and that is the tax." This case was

cited with approval in the Supreme Court case of **URA V Siraje Hassan, Civil Appeal No. 9 of 2015**.

34. The House of Lords in the case of **News Corp UK & Ireland Ltd Vs. Commissioners for His Majesty's Revenue and Customs [2023] UKSC 7, [2024] AC 89**, at para 27 held as follows:

> *...the modern approach to statutory interpretation in English (and UK) law requires the courts to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision.*

35. In the case of **Inland Revenue Commissioners v McGuckian [1997] 1 WLR 991**, it was held that in determining the natural meaning of particular expressions in tax laws, "weight is given to the purpose and spirit of the legislation."

36. The court further held that "Always one must go back to the discernible intent of the taxing Act."

37. **Lord Andrew Burrows**, Justice of the Supreme Court of the United Kingdom, in his paper **Some Issues on Statutory Interpretation**.[1] stated that "The point I want to make here, and it may be that this is now well-accepted, is that there are no special rules for interpreting tax statutes. Given the importance of words, context, and purpose in respect of statutory interpretation, there is now no significant difference between the interpretation of tax statutes and any other statutes." He further stated that the interpretation of tax legislation, like any other statute, is guided by the interpretation of words, context, and purpose.

[1] https://supremecourt.uk/uploads/speech_lord_burrows_060625_abef2c5b0d.pdf

38. In the case of **MacNiven v Westmoreland Investments Ltd [2003] 1 AC 311, 320, Lord Nicholls of Birkenhead** held that "The paramount question always is one of interpretation of the particular statutory provision and its application to the facts of the case."

39. In the case of **Collector of Stamp Revenue v Arrowtown Assets Ltd [2003] HKCFA 46**, cited in **Barclays Mercantile Business Finance Limited Vs Mawson (Her Majesty's Inspector of Taxes 2004 UKHL 51** it was held that:

> *[T]he driving principle in the Ramsay line of cases continues to involve a general rule of statutory construction and an unblinkered approach to the analysis of the facts. The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.*

40. From the above authorities, it is clear that the UK has since moved on from the position in the **Cape Brandy Syndicate** case that, in the interpretation of tax cases, one must only look at the literal meaning of the text and not the purpose of the law.

41. In the recent decision in the matter of **Techno Three Uganda Limited v Uganda Revenue Authority, TAT No. 009 of 2025,** the Tribunal also departed from the literal interpretation of statutes to the purposive interpretation of statutes.

42. In that matter, the Applicant challenged a tax assessment of UGX. 312,539,675. The Respondent (URA) restricted the Applicant's interest expense deductions to 30% of Earnings before interest, tax, depreciation, and amortisation under Section 25 of the Income Tax Act, on ground that there was common shareholding between three dormant entities (Satech Industries, Roma Granite, and Naguru Hill Holdings) classified

the Applicant as a member of a "group". The Applicant contended that these sister companies were non-operational entities with no economic relationship to the Applicant, and that a literal application of the law would result in an unjust tax burden of 48%, potentially leading to business closure.

43. The Tribunal allowed the application and set aside the assessment. The Tribunal looked beyond the literal wording of the provision to the purpose as derived from the Hansard. It held that Section 25(3) was designed to prevent profit shifting by multinational corporations, not to penalize local businesses with inactive sister companies that have no traceable economic relationship. Consequently, the Tribunal found that a literal interpretation in this context would lead to an absurd result that the Parliament never intended.

44. In the present case, the Appellant's witness testified that the Applicant borrows from local financial institutions, uses the money locally, and pays for it without any participation of any other corporate body.

45. The question then is whether, given the circumstances of the case, section 25 (5) applies to the Appellant. As was held in the above cited authorities, in the interpretation of tax statutes, the court will look at the words, the context, and the purpose of the law. In determining the purpose of the law, the court looks at the Hansard. **(See Pepper (Inspector of Taxes) v Hart [1993] 1 All ER 42).**

46. According to the Hansard on 24th of May 2018, Parliament discussed the provisions, it was stated as follows:

Mr. Musazi Madam Chairperson, we propose to amend clause 4 as follows;

i) *In sub clause (3) by deleting the words "who is a member of a group" and substituting the words "other members of the same group or an associate"*

ii) *In sub clause (5) (b) by substituting for the definition of the word "group" the following "group" means associates or companies with a common underlying ownership of 50 percent or more"*

The justification, Madam Chairperson, is to:

1. *Open up the restriction to debts owed to group members of the same group or associates and*
2. *To specify a minimum percentage of the common underlying ownership.*

Mr. Mwiru: Madam Chairperson, I rise to oppose the proposal by the chairperson, I propose that the bill remains in the form it is proposed for one reason; when you read the object of the bill, particularly is respect to this, it is to provide for restriction on deductible interests. What is taking place is that group of companies keep on lending amongst them[selves]. So, the interest that would accrue and come to the country, they tend to treat it as part of allowable deductions, hence reducing the chargeable income.

So, if we are to proceed the way the chairperson is going, we are – in this case, we are looking at the multinational companies. They are the ones which are engaged in group of companies. I do not think the chairperson, hon. Musasizi, has a group of companies. What is taking place is that those multinational companies keep on lending amongst themselves and when it comes to the actual declaration, they would show they have lent amongst themselves.

Therefore, the interest accruing out of the sales forms part of the allowable deductions hence, reducing the chargeable income.

47. The Tribunal in the case of **Techno Three Uganda Limited v Uganda Revenue Authority** (supra) stated that the above debate implies that the intention of the legislature was to limit the extent to which persons use interest deductions to reduce their chargeable income, and secondly to target multinational companies that lend amongst themselves. I agree with the Tribunal.

48. The Hansard indicates that this provision was not meant to apply to companies borrowing from sources outside the "group" defined in Section 25(5).

49. I find that the Tribunal ought to have determined the mischief which section 25 (3) and (5) of the Income Tax Act was intended to address, and then evaluated the evidence to determine whether the transaction in issue falls within that mischief.

50. Grounds I and IV are therefore upheld.

51. In the final result, the Appeal is upheld, the decision of the Tribunal is set aside, and the Appellant is awarded costs.

Dated this 30th day of March 2026

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Patricia Kahigi Asiimwe
Judge
Delivered on ECCMIS