

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 96 OF 2023

NIC GENERAL INSURANCE COMPANY LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. KABAKUMBA MASIKO,  
MS. ROSEMARY NAJJEMBA

RULING

This ruling, is in respect of an application, challenging a stamp duty assessment of Shs. 1,313,855,809 following an investigation by the Respondent, into the Applicant's tax affairs, for the period January 2015 to December 2017.

Background

In August 2014, the Respondent undertook an audit of the Applicant's stamp duty position, for the period January 2012 to June 2014. Following this audit, the Respondent raised an assessment of Shs. 613,282,533. The Applicant proceeded to pay Shs. 300,210,000, being half of the assessed amount. As at the end of the year 2015, the Applicant's stamp duty liability, as reflected in its stamp duty ledger, stood at Shs. 2,332,090,959. This amount included the sum of Shs. 313,072,533, being the remainder of the assessed amount.

In July 2016, the Respondent undertook a further stamp duty audit of the Applicant, this time, for the period July 2014 to December 2015. Following this audit, the Respondent wrote to the Applicant on 22<sup>nd</sup> July 2016, notifying it that the reconciliation had resulted in a total outstanding amount of Shs. 705,162,617.

The Applicant interpreted the above letter, to mean that the Respondent had verified the Applicant's stamp duty liability and had corrected it from Shs. 2,332,090,959 to

Shs. 705,162,617. In reliance on the said letter, the Applicant adjusted its stamp duty ledger from Shs. 2,332,090,959 to Shs. 1,018,235,150.

As a result of the said adjustment and payment of the Applicant's stamp duty liability, a sum of Shs. 1,313,855,809, remained as a balance on the Applicant's stamp duty ledger. The Applicant re-characterized this balance, as 'other income' and duly paid income tax on it.

In June 2021, the Respondent conducted a tax compliance audit on the Applicant, for the period January 2015 to December 2017. Following this audit, the Respondent issued the Applicant with a stamp duty liability assessment of Shs. 4,308,134,797. This assessment included the sum of Shs. 1,313,855,809, which the Applicant had re-characterized as 'other income' and which the Respondent had now added back to the Applicant's stamp duty ledger.

In response to the said assessment, the Applicant conceded to the sum of Shs. 2,994,278,988 and proceeded to file an objection in respect of the balance of Shs. 1,313,855,809. On 8<sup>th</sup> May 2023, the Respondent rendered an objection decision, maintaining the assessment of Shs. 1,313,855,809. Hence this application

### **Representation**

At the hearing, the applicant was represented by Mr. Asuman Nyonyintono and Ms. Norah Amanyana and later by Mr. Ssenkungu Simon Peter and Mr. Opindeni Noah. The Respondent was represented by Ms. Patricia Ndagire, Ms. Eseza Victoria Sendege and Ms. Joan Agasha.

At the scheduling, the following issues were set down for hearing.

1. Whether the Applicant is liable to pay the stamp duty as assessed?
2. What remedies are available to the parties?

The Applicant's sole witness was its Tax manager, Mr. Odong Willy Omara. The witness testified that due to the nature of the Applicant's business, it is liable to pay stamp duty on every insurance policy it successfully issues to a client and for this reason the Applicant maintains a stamp duty ledger to help it keep track of its stamp duty liabilities.

The witness testified that the Respondent has carried out three stamp duty audits in respect of the instant matter;

- i. An audit for the period January 2012 to June 2014 in respect of which the Respondent issued an assessment of Shs. 613,282,533.
- ii. An audit for the period July 2014 to December 2015, in respect of which the Respondent issued an assessment of Shs. 705,162,617.
- iii. An audit for the period January 2015 to December 2017, in respect of which the Respondent issued an assessment of Shs. 4,308,134,797.

The witness testified that in August 2014, the Respondent audited the Applicant's stamp duty affairs for the period January 2012 to June 2014 and assessed the Applicant with a stamp duty assessment of Shs. 613,282,533. The witness stated that the Applicant complied with the assessment issued by the Respondent and proceeded to make payment of Shs. 300,210,000 leaving the Applicant with a stamp duty liability of Shs. 313,072,533. The witness stated that consequently at the end of the year 2015, the Applicant's stamp duty ledger reflected an opening stamp duty liability of Shs. 2,332,090,959 which included the balance of Shs. 313,072,533.

The witness testified that in July 2016, the Respondent carried out another compliance audit for the period July 2014 to December 2015. The audit established that the Applicant's stamp duty liability of Shs. 2,332,090,959 as contained in its stamp duty ledger was bloated and exaggerated and arose from cancelled insurance policies and double postings made by both the Applicant's head office and its branches.

The witness testified that following this audit the Respondent wrote to the Applicant on 22<sup>nd</sup> July 2016 and informed it that its correct stamp duty liability for the period July 2014 to December 2015 was Shs.705,162,617 and not Shs. 2,332,090,959 as had been erroneously reported by the Applicant in its stamp duty ledger. The witness testified that the Respondent's said letter dated 22<sup>nd</sup> July 2016, was a clear unambiguous and unqualified representation to the Applicant that the Applicant's correct stamp duty liability for the period July 2014 to December 2015 was Shs. 705,162,617.

The witness testified that as a result of the above representation by the Respondent, the Applicant rightfully developed a legitimate expectation and duly acted in the belief

that the assessed sum of Shs. 705,162,617 was its correct stamp duty liability for the period July 2014 to December 2015. The witness testified that in reliance on the representation by the Respondent that its stamp duty liability for the period July 2014 to December 2015 was Shs. 705,162,617, the Applicant adjusted its stamp duty ledger from Shs. 2,332,090,959 to Shs. 1,018,235,150 to reflect the position communicated by the Respondent in its letter dated 22<sup>nd</sup> July 2016. The sum of Shs. 1,018,235,150 is comprised of Shs. 313,072,533 and Shs. 705,162,617.

The witness testified that after adjusting its stamp duty ledger and settling all its stamp duty liability with the Respondent, the Applicant's stamp duty ledger showed a balance of Shs. 1,313,855,809 which arose from the reduction by the Respondent of the Applicant's stamp duty liability from Shs. 2,33,090,959 to Shs. 705,162,617. The witness testified that accordingly in November 2016, the Applicant made an adjusted entry to its stamp duty ledger by debiting its stamp duty ledger and recognizing the balance of Shs. 1,313,855,809 as 'other income' and proceeded to pay income tax on the said disclosed income.

The witness testified that in June 2021, the Respondent conducted another audit into the Applicant's tax affairs for the period January 2015 to December 2017 and issued a management letter dated 24<sup>th</sup> June 2021 assessing the Applicant with a stamp duty liability of Shs. 4,308,134,797. The above liability included the sum of Shs. 1,313,855,809 which had been debited from the Applicant stamp duty ledger and recognized as 'other income'.

The witness testified that on 4<sup>th</sup> April 2023, the Applicant objected to the said assessment by conceding to a sum of Shs. 2,994,278,988 and objecting to Shs. 1,313,855,809. The witness stated that the Respondent rejected the Applicant's objection and issued an objection decision maintaining the assessment in question.

The Respondent's sole witness was Mr. Ezira Ahimbisibwe, an officer in the Respondent's Domestic Taxes Department. Mr. Ahimbisibwe testified that the Respondent received information from an informer that the Applicant was not making full disclosure of its tax affairs. The witness testified that the Respondent accordingly conducted a search and seizure exercise of the Applicant's premises to recover information to verify the allegations. The witness stated that the Respondent reviewed

the Applicant's tax affairs for January 2015 to December 2017 and issued an assessment of Shs. 6,468,717,997 as per management letter dated 24<sup>th</sup> June 2021.

The witness stated that during the review and subsequent engagements with the Applicant, it was noted that the information provided to the Respondent by the Applicant in respect of stamp duty only related to policies from the head office and did not cover policies from the Applicant's branches. The witness stated that as a result it was agreed that in reviewing the Applicant's stamp duty liability the Applicant's stamp duty ledger would be used as it contained information about all stamp duty generated by all branches of the Applicant including the head office.

The witness stated that a review of the Applicant's stamp duty ledger revealed that on an unspecified date in September 2016, the Applicant debited the sum of Shs. 1,313,855,809 and re-characterized it as 'other income'. The witness stated that during its engagements with the Applicant, the Respondent requested for documentation supporting the removal of the said amount of stamp duty from the stamp duty ledger. The witness testified that in response to queries by the Respondent regarding the said debit the Applicant stated that the debit arose from an audit of the Applicant by the Respondent which gave rise to a lower stamp duty liability than that subsisting in the Applicant's stamp duty ledger. The witness stated that the Applicant failed to provide evidence that the Applicant had provided full information to the Respondent including the contents of the stamp duty ledger at the time of that review.

The witness testified that a stamp duty liability of Shs. 4,308,134,797 was communicated to the Applicant on 24<sup>th</sup> June 2021 being the sum of Shs. 2,994,278,988 and the unsupported ledger reduction sum of Shs. 1,313,855,809. The witness stated that the Applicant objected to the said assessment and on 8<sup>th</sup> May 2023, the Respondent made an objection decision rejecting the objection on the grounds that the entry debited in the stamp duty ledger as 'other income' was neither supported by any documentary evidence nor was it satisfactorily explained. Further the attachments to the Applicant's letter dated 4<sup>th</sup> April 2023 did not speak to the queried sum of Shs. 1,313,855,809 debited in the stamp duty ledger.

## Submissions of the Applicant

The Applicant submitted that it is not liable to pay the Stamp duty liability of Shs. 1,313,855,809 as assessed by the Respondent on the grounds that as a tax Stamp duty is payable on instruments and not transactions or entries and that the Respondent is estopped by representation from denying their clear, unambiguous and unequivocal representation of the Applicant's tax liability in 2016 on which the Applicant relied to write off and remove the amount of Shs. 1,313,855,809 from its Stamp duty ledger and reclassified it as other income in its audited books.

The Applicant submitted that it is a generally accepted principle of law that Stamp duty is chargeable on instruments specifically stipulated under the Stamp Duty Act. The Applicant cited the decisions in **Eaton Towers Uganda Ltd v. Uganda Revenue Authority** and in **Stanbic Bank Uganda Ltd & 7 others v. Uganda Revenue Authority HCCS No. 170 of 2007**.

Relying on **S.2 of the Stamp Duty Act Cap 339** and on the decision in **Uganda Law Society and 12 others vs. The Attorney General, Constitutional Petition No. 32 of 2020**, the Applicant submitted that a chargeable instrument for the purposes of the Stamp Duty Act, is operationalized by the signing or affixing of a signature onto an instrument as per the definition of the term `execution` under S. 2 of the Act.

The Applicant submitted that in all disputes regarding Stamp Duty, the initial point of inquiry is whether there is an instrument that has been executed. The Applicant submitted that once the presence of an executed instrument has been ascertained, the next point of inquiry is whether that instrument is liable to Stamp duty under the 2<sup>nd</sup> Schedule of the Stamp Duty Act and if so, at what rate. The Applicant submitted that it followed that before any taxpayer is found liable to pay Stamp Duty, the Respondent has a statutory duty to demonstrate to the taxpayer which instruments, the stamp duty assessed relates to and to further explain where the stamp duty liability arises from.

The Applicant submitted that from the beginning of the instant tax dispute, the Respondent has failed to disclose the instrument to which the disputed amount of Shs. 1,313,855,809 relates to or arises from. The Applicant submitted that the Respondent instead based its assessment on the claim that the writing off and removal of the

amount was not satisfactorily explained. The Applicant submitted that the adjustment of entries to a stamp duty ledger which doesn't relate to any instrument does not fit the definition of an instrument as envisaged under S.2 of the Stamp Duty Act. The Applicant submitted that the Stamp Duty Act clearly provides that Stamp duty shall only be payable on instruments specifically provided for under the 2<sup>nd</sup> Schedule of the Act. The Applicant submitted that it cannot therefore be subjected to Stamp duty on the basis of an adjusted entry.

The Applicant submitted further that it is trite that when a party makes a representation to another party with full knowledge that the other party shall rely on the representations made, then the representing party is estopped from denying the existence of truthfulness of the representations they made to the detriment of the other party. The Applicant cited the decision of the High Court in **DFCU Bank Ltd v. Magezi HCCS No.547 of 2017**, in support of this argument.

The Applicant submitted that the Respondent made a clear and unambiguous representation to the Applicant regarding its tax liability and the Applicant treated the representations made by the Respondent as correct and reliable and relied on the said representations. The Applicant submitted that in full reliance on the above representations by the Respondent, it paid to the Respondent all the identified Stamp duty liability as communicated by the Respondent. The Applicant submitted that this implied that any other amount besides the identified tax liability were not payable by the Applicant. The Applicant submitted that once the above liabilities were paid to the Respondent, there remained a balance of Shs. 1,313,855,809 on the Applicant's Stamp Duty ledger which was a mis-posting arising from cancelled insurance policies, which, necessitated its removal from the Stamp duty ledger in line with the International Financial Reporting Standards (IFRS).

The Applicant submitted that it wrote off and removed the sum of Shs. 1,313,855,809 from its Stamp duty ledger and recognized the same as other income in line with IFRS and proceeded to pay income tax on the same. The Applicant submitted that almost 7 years later, the Respondent now wants to subject the Applicant to Stamp Duty on the said sum of Shs. 1,313,855,809, which was written off in reliance on the Respondent's said representation. The Applicant submitted that it would be unconscionable to subject the Applicant to another tax yet it had already paid income tax on the disputed

amount. The Applicant submitted that the Respondent is estopped from denying the existence of the assessment issued by it against the Applicant for the audited period July 2014 to December 2015, to the detriment of the Applicant who fully relied on the said representations.

### **Submissions of the Respondent.**

The Respondent submitted that the doctrine of Estoppel by representation is not applicable to the facts of this case. Relying on the provisions of S. 25 of the Tax Procedures Code Act, the Respondent submitted that it may issue additional assessments to ensure that a tax payer is liable for the correct amount of tax. The Respondent submitted on the authority of the decision in **Uganda Revenue Authority vs. Tamale and Co. Advocates, HCCA No. 11 of 2020**, that as a general rule, equity follows the law therefore equity which is a doctrine of equity cannot stand in the face of a clear provision of the law.

The Respondent submitted that its witness testified during cross examination that he was aware that the Applicant had previously been audited by the Respondent's Large Tax Payer's Office and that the subsequent audit conducted for the period 2015 to 2017, which discovered the Stamp duty liability in issue could not have been the representation that the Applicant relied upon. The Respondent submitted that in these circumstances, the Applicant cannot rely on the doctrine of Estoppel where there is a clear statutory provision that allows the Respondent to issue additional assessments to ensure that a tax payer pays the correct amount of tax.

Relying on the definition of 'stamp duty' in **Black's Law Dictionary 11<sup>th</sup> Edition**, the Respondent that stamp duty is an amount of money payable on every document that confers any right or liability upon being created, transferred, limited, extended, extinguished or recorded. The Respondent submitted that in essence, stamp duty is tax that is chargeable on documents/instruments listed in the Stamp Duty Act.

The Respondent submitted that the Applicant is a bulk stamp duty declarant therefore the argument by the Applicant that the Respondent relied on entries/transactions and not on instruments is both false and untenable. The Respondent submitted that it added back the sum of Shs. 1,313,855,809 which had been debited in the Applicant's stamp duty ledger as other income and could be satisfactorily explained. The

Respondent submitted that the request by the Applicant for the Respondent to adduce evidence of the instruments in respect of which the stamp duty liability arises ignores the fact that the Respondent does not bear the statutory burden of proof. The Respondent submitted further that if there were cancelled policies as argued by the Applicant, it was still the Applicant's duty to adduce the said cancelled policies in evidence or provide the Respondent with the policies. The Respondent submitted that the Applicant regularly files bulk stamp duty assessments returns the entry of which in its stamp duty ledger was a bulk stamp duty assessment which gave rise to the disputed stamp duty liability. The Respondent emphasized that the entry in issue arose out of a bulk stamp duty return comprising of instruments.

The Respondent submitted on the authority of **Halsbury's Laws of England Vol. 99, 2023** that stamp duty is chargeable on instruments and not on transactions. The Respondent submitted that the instant case hinges on the Applicant's failure to satisfactorily explain or support with documentary evidence an entry debited in its stamp duty ledger as other income. The Respondent submitted that the Applicant failed to adduce evidence to explain the debiting of its stamp duty ledger with the stamp duty liability referred to as 'other income'. The Respondent reiterated the argument that the burden of proof is on the Applicant to prove that the assessment raised by the Respondent was incorrect or erroneous and that the Applicant is not liable to pay the tax or that the taxation decision should not have been made or should have been made differently. In support of this argument the Respondent cited the provisions of **S. 28 of the Tax Procedures Code Act, S.19 of the Tax Appeals Tribunals Act and S. 101 of the Evidence Act** and the decision in **Williamson Diamonds Ltd vs. Commissioner General (2008) 4 TTLR 167**.

The Respondent submitted that the argument by the Applicant that it paid its stamp duty liabilities and wrote off the sum of Shs. 1,313,855,809, being a mis-posting from cancelled insurance policies, and removed the same sum from its stamp duty ledger and recognized it as other income in line with International Financial Reporting Standards (IFRS) and even paid income tax on the same, is not supported by evidence.

The Respondent submitted that the Applicant neither provided the cancelled insurance policies in question nor did it adduce evidence in respect of the said cancelled policies

at the hearing. The Respondent submitted that the Applicant's witness stated under cross examination that before the Applicant issues a policy, the insured must deposit a non-refundable sum consisting of the stamp duty and that upon cancellation of the policy, the stamp duty collected is debited in its ledger and the money is deposited on the Applicant's bank account. The Respondent submitted further that the Applicant did not adduce evidence of what 'other income' constituted and further that there was no evidence of any expenses incurred in deriving the 'other income'. The Respondent submitted that the Applicant did not specify the particular IFRS under which the amount debited as 'other income' was removed from its stamp duty ledger.

The Respondent submitted that at the hearing, the Respondent's witness testified that having added back the amount debited in the Applicant's stamp duty ledger as other income, he expected the Applicant to support the entry debited as other income with information including a reconciliation and cancelled policies which the Applicant did not submit.

In rejoinder, the Applicant reiterated and reaffirmed the contents of its earlier submissions and maintained that it is not liable to pay the disputed amount of Shs. 1,313,855,809 as stamp duty.

In rejoinder to the argument by the Respondent that the doctrine of Estoppel is not applicable to this case, the Applicant stated that the Respondent has never amended the June 2014 to December 2015 assessment by way of an additional assessment. The Applicant explained that whereas the Respondent may issue additional assessments to amend a tax assessment issued for a tax period to ensure that the correct amount of tax is paid, the Respondent has never issued any such additional assessment amending any tax assessment from the audited period of July 2014 to December 2015 from which the disputed amount of Shs. 1,313,855,809 arises.

The Applicant submitted that in the year 2021, the Respondent conducted an investigation into the Applicant's tax affairs for a different period (January 2015 to December 2017) and added back the sum of Shs. 1,313,855,809 which the Applicant had written off from its stamp duty ledger. The Applicant submitted that this amount did not relate to any instruments and was written off following clear representations from the Respondent. The Applicant submitted that the investigations for the period January 2015 to December 2017 alluded to above does not constitute an additional

assessment which amends the tax assessment for a totally different period of July 2014 to December 2015. The Applicant submitted that it is trite that when an additional assessment is made it must relate to the tax period which is sought to be amended. The Applicant relied on **S. 23(1) of the Tax Procedures Code Act** and on the decision in **Kasese Cobalt Company Limited vs. Uganda Revenue Authority HCCA No. 4 of 2020**.

The Applicant stated that the Respondent cannot conduct an audit and raise an independent and fresh assessment for a particular tax period and thereafter claim that it is an additional assessment amending the tax liability for a different tax period. The Applicant iterated that in the absence of proof to the contrary the tribunal ought to find that the Respondent has never made any additional assessment amending any tax assessment from the audited period July 2014 to December 2015 and therefore the assessment dated 22<sup>nd</sup> July 2016 for the period June 2014 to December 2015 with an assessed tax of Shs. 705,162,617 still stands.

The Applicant rejoined further that Estoppel is a rule of evidence by which a litigant, is in certain circumstances, prevented from denying something, which he had previously asserted to be true. In support of this argument the Applicant relied on the decisions in **Crabb vs. Arun District Council (1976) 1 Ch. 183** and **Yonasani B. Kanyomozi vs. Motor Mart (U) Ltd SCCA**.

Relying on the above decisions the Applicant submitted that it had demonstrated that the Respondent has never amended the tax liability of the audited period of July 2014 to December 2015, by way of an additional assessment. The Applicant rejoined that the decision in **Uganda Revenue Authority vs. Tamale & Co. Advocates HCCA No. 11 of 2020**, is inapplicable to the circumstances of our case as the facts of the decision in the **Tamale case** are distinguishable from the facts of the instant case. The Applicant stated that the dispute in the **Tamale case** related to the correctness of additional assessments made and issued by the Respondent for the purpose of amending self-assessments made by a tax payer. The Applicant stated that the **Tamale case** therefore related to the discretion of the Respondent to undertake a VAT audit before the effective registration of a tax payer for VAT. The Applicant stated that in the instant case no additional assessments were issued.

## DETERMINATION OF THE ISSUES

1. Whether the Applicant is liable to pay the stamp duty as assessed?

The Applicant has submitted that it is not liable to pay the stamp duty of Shs. 1,313,855,809. In support of this submission, the Applicant has raised two arguments. The first, is that the disputed amount, does not arise from any of the instruments provided for under the 2<sup>nd</sup> Schedule of the Stamp Duty Act or indeed from any other instrument and secondly that the Respondent is estopped by the doctrine of Equitable Estoppel from denying that it had represented to the Applicant through its letter dated 22<sup>nd</sup> July 2016, that its stamp duty liability for the period July 2014 to December 2015 was Shs. 705,162,617.

In order to resolve this issue and indeed the entire matter, we must delve at length into each of the above arguments.

We will begin with the second argument.

The doctrine of Estoppel is provided for under **S. 14** of the **Evidence Act**. It states as follows:

'When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing'

In **Nuridin Bandali v Lombank Tanganyika Limited [1963] EA 304**, the Court of Appeal of East Africa, found that an equitable estoppel fell within the definition cited above. **Newbold JA** went on to observe as follows:

'The precise limits of an equitable estoppel are, however, by no means clear. It is clear, however, that before it can arise one party must have made to another party a clear and unequivocal representation, which may relate to the enforcement of legal rights, with the intention that it should be acted upon and the other party, in the belief of the truth of the representation, acted upon it.'

In the **Bank of Uganda vs. Masaba & Others (1999) 1 EA 2 (SCU)**, their Lordships, set out the following requirements for the operation of the doctrine of equitable estoppel:

‘Three elements which must be present for the doctrine of equitable estoppel to operate are, first, a clear and unequivocal representation; second, an intention that it should be acted upon; and, third, action upon it in the belief of its truth’.

Relying on the above authority, for the doctrine of equitable estoppel to operate, in the instant case, it must be shown, firstly, that the Respondent’s letter dated 22<sup>nd</sup> July 2016, which has been reproduced below, constituted a clear and unequivocal representation, secondly that the Respondent intended the Applicant to act on the said representation and thirdly that the Applicant acted upon the representation in the belief that the representation was true. A plea of equitable estoppel will only lie, if all three, of the above conditions are met.

22<sup>ND</sup> July 2016

*The Chief Finance Officer  
National Insurance Corporation Ltd  
Plot 3, NIC Building, Pilkington Road  
P.O Box 7134,  
Kampala.*

*Dear Sir,*

**RE: STAMP DUTY – JULY 2014 TO DECEMBER 2015**

*Reference is made to the information submitted in relation to stamp duty payable on insurances policies made by the company.*

*The following information was used to determine the amount of stamp duty outstanding for the period:*

- *Summaries of returns from outlets for policies issued.*
- *Payments made for stamp duty during the period.*
- *Adjustments for cancelled policies arising from clients who failed to make payments for insurance policies undertaken.*

*The reconciliation for stamp duty on policies made, has resulted in the total amount outstanding of Shs. 705,162,617.*

Please arrange to pay the identified liability of Shs. 705,162,617, not later than 22 August 2016.

Yours faithfully,

Frederick Kalyango

AG. MANAGER MANUFACTURING AND FINANCE – LARGE TAXPAYERS OFFICE.

Manager Compliance – (E) Large Taxpayers Office.

We believe, that for the purposes of proving an equitable estoppel, a clear and unequivocal representation, must mean an unambiguous statement or action which clearly communicates a specific intention or belief to the other party and leaves no room for interpretation.

The question which arises therefore, is whether the above letter, conveyed to the Applicant, clearly and unambiguously, that the Applicant's entire stamp duty liability for the period up to December 2015 was only Shs. 705,162,617?

In support of the argument, that the above letter, was a clear and unequivocal representation by the Respondent, that the Applicant's entire stamp duty liability for the period up to December 2015, was only Shs. 705,162,617, Mr. Odong Willy Omara, the Applicant's Tax Manager, testified as follows under paragraphs 12, 13 and 14 of his witness statement:

*“12. That the Respondent carried out the second relevant tax compliance audit in or around July 2016 into the Applicant's affairs for the period July 2014 to December 2015. The Respondent after an extensive review and reconciliation of the Applicant's stamp duty affairs, revealed and communicated that the Applicant's stamp duty liability of Shs. 2,332,090,959/(Uganda Shillings Two Billion Three Hundred Thirty –Two Million Ninety Thousand Nine Hundred Fifty-Nine), as contained in its stamp duty ledger, was bloated and exaggerated arising from a number of cancelled insurance policies and double postings made by both head office and its branches.*

*13. That following the above-mentioned audit, the Respondent, through a letter dated 22<sup>nd</sup> July 2016, clearly and unequivocally communicated to the*

*Applicant that its correct and true total stamp duty liability for the period of July 2014 to December 2015 was assessed to be **UGX. 705,162,617/- (Uganda Shillings Seven Hundred Five Million One Hundred Sixty-Two Thousand Six Hundred Seventeen Only)** as opposed to **UGX 2,332,090,959/- (Uganda Shillings Two Billion Three Hundred Thirty-Two Million Ninety Thousand Nine Hundred Fifty-Nine)** as had been erroneously reported by the Applicant in its stamp duty ledger.*

14. *That the Respondent's letter dated 22<sup>nd</sup> July 2016 was a clear, unambiguous and unqualified representation to the Applicant that its true, verified and correct total stamp duty liability for the period of July 2014 to December 2015 was **UGX 705,162,617/- (Uganda Shillings Seven Hundred Five Million One Hundred Sixty-Two Thousand Six Hundred Seventeen Only)**.*

Having perused the testimony of Mr. Omara above, the following questions arise.

Did the above letter reveal and communicate to the Applicant that its Applicant's stamp duty liability of **Shs. 2,332,090,959/- (Uganda Shillings Two Billion Three Hundred Thirty –Two Million Ninety Thousand Nine Hundred Fifty-Nine)**, as contained in the stamp duty ledger, was bloated and exaggerated, arising from a number of cancelled insurance policies and double postings made by both head office and its branches?

Did the above letter, clearly and unequivocally communicate to the Applicant that its correct and true total stamp duty liability for the period of July 2014 to December 2015 was assessed to be **UGX 705,162,617/- (Uganda Shillings Seven Hundred Five Million One Hundred Sixty-Two Thousand Six Hundred Seventeen Only)** as opposed to **UGX 2,332,090,959/- (Uganda Shillings Two Billion Three Hundred Thirty-Two Million Ninety Thousand Nine Hundred Fifty-Nine)** as had been erroneously reported by the Applicant in its stamp duty ledger?

Was the Respondent's letter dated 22<sup>nd</sup> July 2016, a clear, unambiguous and unqualified representation to the Applicant that its true, verified and correct total stamp duty liability for the period of July 2014 to December 2015 was **UGX 705,162,617/-**

**(Uganda Shillings Seven Hundred Five Million One Hundred Sixty-Two Thousand Six Hundred Seventeen Only)?**

A comparison, of the contents, of the above letter, to the testimony of Mr. Omara, shows that the two, bear very little resemblance. For instance;

- i. Far from an extensive audit, the letter appears to relate to only, a reconciliation of stamp duty due on policies issued by the Applicant for the period July 2014 to December 2015.
- ii. No mention is made of the stamp duty ledger or of the fact, that it formed the basis of, or that it was relied upon by the Respondent in carrying out the reconciliation.
- iii. It is clear, that the reconciliation is restricted to the period, July 2014 to December 2015 and no stamp duty liability for periods earlier to this are contemplated.
- iv. No mention is made of the sum of **Shs. 2,332,090,959/-** either as forming the Applicant's stamp duty liability in the ledger or of it having been stated in the ledger erroneously due to cancelled policies or double postings.

We believe, that a clear and unambiguous representation, would at the very least, require the above letter, to state in express terms, that the Applicant's correct stamp duty liability for the period July 2014 to December 2015 was **Shs. 705,162,617/-** and not **Shs. 2,332,090,959/-** and that the sum in the stamp duty ledger, was erroneous, having arisen from cancelled insurance policies and double postings made by the Applicant.

Having carefully examined the above letter and having arrived at the above conclusions, it is our considered opinion, that the Applicant, was not justified in taking the position, that the said letter was a clear and unambiguous representation, that it's total stamp duty liability for the period of July 2014 to December 2015, was **UGX 705,162,617/- (Uganda Shillings Seven Hundred Five Million One Hundred Sixty-Two Thousand Six Hundred Seventeen Only)** and not **UGX 2,332,090,959/- (Uganda Shillings Two Billion Three Hundred Thirty-Two Million Ninety Thousand Nine Hundred Fifty-Nine)**.

The plea of equitable estoppel accordingly fails.

We will now proceed to determine the first argument. The Applicant submitted that it is not liable to pay the Stamp duty liability of Shs. 1,313,855,809 as assessed by the Respondent on the grounds that, as a tax, Stamp duty is payable on instruments and not transactions or entries

The Applicant submitted that in all disputes regarding Stamp Duty, the initial point of inquiry is whether there is an instrument that has been executed. The Applicant submitted that once the presence of an executed instrument has been ascertained, the next point of inquiry is whether that instrument, is liable to Stamp duty, under the 2<sup>nd</sup> Schedule of the Stamp Duty Act and if so, at what rate. The Applicant submitted that it followed that before any taxpayer is found liable to pay Stamp Duty, the Respondent has a statutory duty to demonstrate to the taxpayer which instruments, the stamp duty assessed relates to and to further explain where the stamp duty liability arises from.

The Applicant submitted that the Respondent had failed to disclose the instruments to which the disputed amount of Shs. 1,313,855,809 related and had instead based its assessment on the claim that the writing off and removal of the amount was not satisfactorily explained. In a nutshell, the Applicant's submission, was that it should not be subjected to Stamp duty on the basis of an adjusted entry.

In order, to determine this argument, we must examine in detail, the circumstances, under which the sum of Shs. 1,313,855,809 arose. In order to do this, we must go back to the testimony of Mr. Omara, on this point.

Mr. Omara's testimony, on this point can be summarized as follows;

In August 2014, the Respondent audited the Applicant's stamp duty affairs for the period January 2012 to June 2014 and issued a stamp duty assessment of Shs. 613,282,533, out of which the Applicant paid the sum of Shs. 300,210,000, leaving a stamp duty liability of Shs. 313,072,533. At the end of the year 2015, the Applicant's stamp duty ledger, reflected an opening stamp duty liability of Shs. 2,332,090,959 which included the balance of Shs. 313,072,533.

In July 2016, the Respondent carried out another compliance audit for the period July 2014 to December 2015, by which it established that the stamp duty liability of Shs. 2,332,090,959 contained in its stamp duty ledger was bloated and exaggerated and

arose from cancelled insurance policies and double postings made by both the Applicant's head office and its branches.

Following this audit, the Respondent wrote to the Applicant on 22<sup>nd</sup> July 2016 and informed it that its correct stamp duty liability for the period July 2014 to December 2015 was Shs.705,162,617, and not Shs. 2,332,090,959 as had been erroneously reported by the Applicant in its stamp duty ledger.

In reliance, on the above letter, the Applicant adjusted its stamp duty ledger from Shs. 2,332,090,959 to Shs. 1,018,235,150 to reflect the position communicated by the Respondent in its letter dated 22<sup>nd</sup> July 2016. The sum of Shs. 1,018,235,150 is comprised of Shs. 313,072,533 and Shs. 705,162,617.

Following the adjustment of its stamp duty ledger and the settlement of its stamp duty liability, the Applicant's stamp duty ledger showed a balance of Shs. 1,313,855,809, which arose from the reduction by the Respondent of the Applicant's stamp duty liability from Shs. 2,332,090,959 to Shs. 705,162,617.

In November 2016, the Applicant made an adjusted entry to its stamp duty ledger by debiting its stamp duty ledger and recognizing the balance of Shs. 1,313,855,809 as `other income` and proceeded to pay income tax on the said disclosed income.

It will be observed that the sum of Shs.1,313,855,809/- arises from the subtraction of the sum of Shs. 1,018,235,150 (Shs. 313,072,533 +Shs. 705,162,617) from Shs. 2,332,090,959.

It is clear from the above, that the sum of Shs. 1,313,855,809 formed part of the Applicant's stamp duty liability as stated in the Stamp duty Ledger. We are able, to infer from the above, that amounts, appearing in a Stamp Duty Ledger, as stamp duty liabilities, constitute stamp duty, and that all legal formalities have been observed before their inclusion in the Ledger. These formalities as stated above, include the requirement that they must relate to duly executed instruments, which are liable to stamp duty under the 2<sup>nd</sup> Schedule of the Stamp Duty Act.

In the instant case, it is clear from the inclusion of the sum of Shs. 1,313,855,809, in the Stamp Duty Ledger, that all legal formalities for its inclusion, as stamp duty, in the ledger were met by the Applicant.

The argument by the Applicant that the Respondent has failed to show the instruments to which the stamp duty liability of Shs. 1,313,855,809, relates, is therefore untenable. The Respondent merely added back to the Applicant's stamp duty ledger, an amount which had been erroneously removed.

For the reasons above, we find that the Applicant is liable to pay the stamp duty as assessed.

This Application is accordingly dismissed with costs.

Dated at Kampala this 12<sup>th</sup> day of June 2025.



**MR. SIRAJ ALI**  
**CHAIRMAN**



**MS. KABAKUMBA MASIKO**  
**MEMBER**



**MS. ROSEMARY NAJJEMBA**  
**MEMBER**