

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 160 OF 2023
ARISING FROM APPLICATION NO. 47 OF 2023

NIVED ENTERPRIZES LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA

RULING

This application is in respect of an application seeking leave from the tribunal to amend pleadings.

On the 9th March 2023, the applicant was given a withholding tax (WHT) exemption. On 25th and 26th March 2023, the respondent assessed WHT of Shs. 576, 831, 330. On the 27th March 2023, the applicant applied to the tribunal contesting the tax. On 28th March 2023, the respondent was served court applications not to revoke the WHT exemption. On 29th March 2023, the respondent revoked the applicant's WHT exemption. On 12th April 2023, the applicant amended this application with a cause of action in respect to the revoked WHT exemption. The applicant now seeks to amend its amended application to re-characterize the dispute as: violation of the right to legitimate expectation; violation of the right to fair hearing and abuse of court process, the violation of the right to carry out lawful trade, right to just and fair hearing treatment in administrative decisions, violation of the respondent's mandate to uphold fundamental rights and freedoms.

Issues

1. Whether the applicant fulfills the conditions for the grant of leave to amend Application 47 of 2023?
2. What remedies are available?

The applicant was represented by Mr. Allan Atwine while the respondent by Mr. Sam Kwerit and Ms. Sheeba Tayahwe.

The applicant submitted that this application is brought under S. 22(1) of the Tax Appeals Tribunal, Rule 31(2) of the Tax Appeals Tribunal Rules and S. 98 of the Civil Procedure Act. The applicant submitted that Order 6 Rule 19 of the Civil Procedure Rules states.

"The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

The applicant submitted that in *Space Marketing Uganda Ltd v Equifax Uganda Ltd & 4 Ors*, IHC MA No. 969 of 2020 p. 5, Justice Richard Wejuli Wabwire noted

"According to Mulla, The Code of Civil Procedure, 17 140 Edition Volume 2, at pages 333, 334 and 335; as a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised in the pleadings be determined, where the amendment will occasion no injury to the opposite party, except such as can be sufficiently compensated for by costs or other terms to be imposed by the order

Hon. Justice Wabwire further stated that;

"Odgers on Pleadings and Practice 20 150th Edition at page 170 also states that where the amendment is necessary to enable justice to be done between the parties, it will be allowed on terms even at a late stage. However, if the application is made malafide, or if the proposed amendment will cause undue delay, or will in any way unfairly prejudice the other party, or is irrelevant or useless, or would raise merely a technical point, leave to amend will be refused."

He further restated the principles for the grant of an application to amend pleadings as follows;

"In *Gasu Transport Services (Bus) Ltd v 160 Obene (1990-1994]* EA 88 Tsekooko, JSC stated that the four principles that appear to be recognized as governing the exercise of discretion in allowing amendments are;

- i. The amendment should not work injustice to the other side. An injury which can be compensated by an award of costs is not treated as an injustice
- ii. Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.

- iii. An application which is made mala fide should not be granted
- iv. No amendment should be allowed where it is expressly or impliedly prohibited by any law (for example limitation actions)".

The applicant submitted that the matters it seeks to clarify and introduce are of great public importance and do not offend any of the principles held by courts of law on granting such application. It is in the best interest of justice and to avoid multiplicity of proceedings that the real issues in controversy are determined. It submitted that the respondent argued that it is attempting to smuggle issues of Judicial Review in HCMC 011 of 2023 into this application which is not true. The applicant submitted that the respondent knows that the earlier applications were unskillfully drafted, are ambiguous and don't seek the most appropriate remedies that the applicant deserves for the gross violation of its fundamental rights and violations.

The applicant submitted that the respondent was in contempt of a court order. It submitted that contempt of court was defined by Justice Musa Ssekaana in *Ekau v Dr. Ruth Aceng. The Minister of Health and Attorney General* (Miscellaneous Application 746 of 2018) [2019] UGHCCD 120 as "Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment." The said Court order of 5th April 2023 stated that;

"A temporary injunction is hereby granted on condition that the applicant pays 30% of the taxes assessed for the goods at the border pending determination of the main application or until the tribunal decides otherwise"

The said order was delivered to and received by the respondent on 17th April 2023. The respondent assessed 30% of the taxes for 2,000 tons of rice that were stuck at the border and the applicant paid. The applicant proceeded to import 1071 tons without interruption. However, the respondent later impounded the applicant's trucks carrying 389 tons. The applicant couldn't proceed to import the remaining 540 tones despite having paid for them. The applicant submitted that this order arises out of proceedings of an application which it wishes this Tribunal to determine.

In reply, the respondent submitted that the principles governing amendment of pleadings were laid down in *Gasco Transporters Services Ltd v Martin Adala Obene* SCCA 4 of 1994, where the Supreme Court ruled that;

- a. The amendment should not occasion an injustice to the opposite party.
- b. The amendment should be granted if it is in the interest of justice and to avoid multiplicity of suits.
- c. It should be in good faith
- d. It must not be expressly or impliedly prohibited by law.

The respondent submitted that in determining whether or not to allow the amendment of pleadings, the amendment should be to determine the real questions in controversy between the parties without undue technicalities in accordance to Article 126(2)(e) of the Constitution. Courts should in the interest of justice allow the amendment to promote justice unless it would cause an injustice to the opposite party and introduce a distinct cause of action which cannot be compensated for any award of costs.

The respondent submitted that the proposed amendment is immaterial and merely meant to derail the conclusion of this matter. This amendment was filed after failed attempts to stay proceedings in this application. This amendment is not only filed in bad faith to stall the commencement and expeditious disposal of Application 47 of 2023. The respondent submitted that the respondent and the general public will be deprived of revenue. This amendment will prejudice the respondent as far as defending several suits in the same cause of action at the same time before this tribunal and the high court. It is in the interest of justice that the pleadings must come to an end to enable the trial to commence and the matter expeditiously disposed of. The respondent prayed that this application is dismissed with costs.

Having perused through the evidence on file, this is the ruling of the tribunal;

The applicant filed this application seeking leave to amend her pleadings. It submitted that the matters it seeks to clarify on are of great public importance and it is in the best interest of justice and to avoid multiplicity of proceedings that the real issues in controversy are determined. It does not prejudice the respondent.

The respondents in its affidavit in reply stated that the proposed amendment is immaterial. That the applicant seeks to amend an already amended application. The amended application is precise and there is no need for any further amendment.

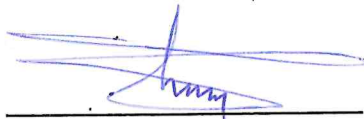
The tribunal notes that the applicant amended its application on the 12th April 2023. It filed a miscellaneous application for stay of proceedings in the same matter and now seeks to amend the amended application. A trial cannot proceed if an applicant keeps remembering issues to amend. The issues the applicant intends to add are of the rights to a fair hearing, the right to carry out trade and fundamental rights and freedoms which should be sought from the high court or civil court as these rights cannot be determined by a tax tribunal. The Tribunal has to restrict itself to decisions of the respondent arising from taxing acts. These include the WHT assessment and the exemption. Issues of civil rights and liberties can be determined by competent courts.

The applicant's endless applications seem to have the intention of causing delay and frustration to the proceedings. In the circumstances, this application is dismissed with costs to the respondent.

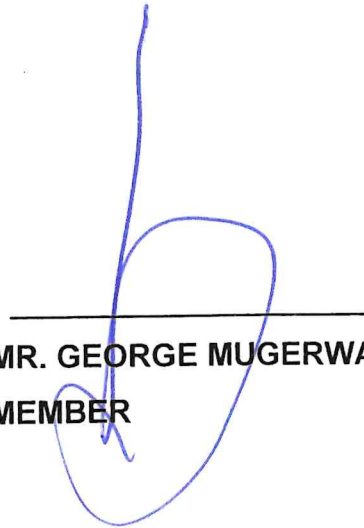
Dated at Kampala this 30th day of November 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MR. GEORGE MUGERWA
MEMBER