

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**

**TAT APPLICATION NO.152 OF 2022**

STANDARD CHARTERED BANK UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. STELLA NYAPENDI, MS. PROSCOVIA R. NAMBI

**RULING**

**1. Introduction**

This ruling is in respect of an application challenging a stamp duty assessment of Shs. 7,353,393,635 raised by the Respondent against the Applicant on financial instruments for the period January 2015 to December 2021. The Respondent contended that the Applicant had incorrectly charged stamp duty on the instruments at a nominal rate and that the duty should have been charged at 1% of the value in accordance with Item 56 of the Second Schedule to the Stamp Duty Act, 2014. The Applicant objected to the assessment, disputing the basis of the duty and claiming it was excessive. The Respondent rejected the objection. The Applicant then filed this application with the Tribunal for review of the objection decision

**2. Background**

The Applicant, a financial institution established under the Financial Institutions Act of 2004, issues several financial instruments including Bonds, Guarantees, Letters of Credit, Bid Bonds, Import Bills for Collection, and others, to its customers. Following a Stamp Duty audit on the Applicant for the period January 2015 to December 2021, the Respondent assessed Stamp Duty totaling Shs. 7,353,393,635. This assessment was based on the Respondent's view that these financial instruments should have attracted stamp duty at a rate of 1% of their value as "security bonds" under Item 56 of the Second Schedule of the Stamp Duty Act.

On 22 April 2022, the Applicant objected to the assessment on the grounds that (i) Bonds and Guarantees do not fall under item 56 of the Stamp Duty Act, (ii) the stamp duty was payable by their customers, and (iii) in any case the assessed duty was excessive because of the multiple instruments involved in single transactions.

On 30 May 2022, the Respondent issued its decision rejecting the Applicant's objection. On 13 June 2022, the Applicant wrote notifying the Respondent that it had elected to treat its objection as allowed under Section 46(8) of the Stamp Duty Act.

Subsequently, the Applicant filed the current application before the Tax Appeals Tribunal to review the Respondent's objection decision.

### 3. Representation

The Applicant was represented by Mr. Joseph Luswata and Mr. Winston Churchill Ruhayana while the Respondent was represented by Ms. Gloria Twinomugisha, Mr. Tonny Kalungi and Mr. Simon Peter Orishaba.

The Applicant called one witness – **Mr. Edmund Nsahirwe, the Applicant's Head of Trade Operations**, who testified that in March 2015, the Respondent communicated to the Applicant that it had concluded a Stamp Duty review on instruments executed or received by the Applicant in the period 1 January 2015 to 31 December 2021.

The witness testified that the Respondent reviewed a total of 6,999 in number and shared an excel spreadsheet detailing the customers involved, the nature of each instrument, its value, the date of issue or receipt, the duty paid, and the duty that should have been paid.

The witness stated that according to the Respondent's workings, the proper Stamp Duty for the instruments reviewed under the exercise was 1% of the value of the instrument but the Applicant had paid duty on the instruments at a flat rate of Shs. 5,000 or Shs. 10,000 or Shs. 15,000.

The witness testified provided an example of an Import Bill for Collection (IBC) valued at Shs. 52,709,596. The witness stated that the Applicant collected and paid Shs. 5,000 as Stamp Duty from the beneficiary of the said instrument but according to the Respondent's workings an amount of Shs. 527,095, was the proper duty payable, in respect of that instrument.

The witness stated that the Respondent sent its workings, along with, a letter stating that Stamp Duty had been underpaid on the Bonds and Guarantees, Letters of Credit, Bid Bonds, Import Bill for Collection and Others but that Stamp Duty, was correctly paid on mortgages and debentures. The witness stated that following clarification, the letter referred to above, was corrected and another letter was issued, stating that the underpaid Stamp Duty, on the same instruments for the same period, was Shs. 7,353,393,635.

The witness testified that on 22 April 2022, the Applicant objected to the Stamp Duty assessment and on 30 May 2022, the Respondent rendered its objection decision rejecting the Applicant`s objection.

The witness stated that on 13 June 2022, the Applicant wrote to the Respondent informing it that it had elected to treat its objection, as having been allowed since the objection decision, had been rendered beyond the 30-day limitation period.

The witness described the various instruments issued by the bank as follows;

- a) Letters of Credit serve as a bank guarantee to a foreign supplier of goods or services from a customer that on the presentation of compliant documents, the Bank will pay, in the event that the customer does not pay.
- b) Bond or Guarantee, is a bank assurance to a third party (client), that the third party will be paid a stated amount on the occurrence of an event, which is usually the non-performance of a contract between the third party and the bank customer (contractor). These include:
  - i. A Bid Bond accompanies a bid for a job and assures a client that a bidder has the capacity to fulfill or perform the contract, if the contract is awarded to the bidder. The bid bond, is a percentage of the contract sum, usually 5-10%.
  - ii. An Advance Payment Guarantee assures the client that if there is, non-performance of the contract, the Bank will pay the third party the advance it made to the contractor. This type of Guarantee, is a requirement whenever the third party is advancing money to the contractor to undertake a stated project.
  - iii. A Performance Guarantee assures the third party that if the customer fails to perform the contract, the bank will compensate the third party for

the losses incurred due to the non-performance to the extent of the Guarantee.

- iv. A Retention guarantee assures the third party that during a specified period of the completion of a project, the bank will fix or cause to be fixed the defects arising in the project.

He testified that the total value of the bond or guarantee instruments issued by the Applicant do not exceed 20% of the contract sum.

- c) An Import Bill for Collection is an arrangement between a customer of the bank and foreign supplier of goods or services for the bank to hold the shipping documents until the customer has paid for the goods or services. This mostly applies in contracts for the supply of goods. He further explained that -

- i. Under the Import Bill for Collection, in the event that the customer fails to pay for the goods or services the subject of the shipping documents, usually the invoice, packaging list, Bill of lading, Bill of exchange, commercial invoice, delivery note/airway bill or consignment note, certificate of origin or certificate of conformity, returned to the supplier's bank.

- ii. The Import Bill for Collection documents are issued or executed by a supplier of goods or the supplier's bank or by the shipping company and are sent by the supplier's bank to the Applicant bank.

- iii. On receipt of the shipping documents from the supplier's bank, the Applicant bank processes the documents and issues an Advice Note to the customer. When the customer has paid for the goods under the shipping documents, the shipping documents are handed over to the customer, who can then clear and receive the goods from customs.

- d) Others: What is included under 'Others' are uncommon types of guarantees like guarantees given to courts, supplier guarantees etc. A guarantee given to a court guarantees the payment of a stated sum to a named beneficiary in the event a court decides a case against the person applying for the guarantee.

The witness set out the following process for obtaining a trade facility from the Applicant specifically Bonds or Guarantees, Import loans or Bid Bonds;

- a) The customer must have a facility with the bank. In order to have a facility, bank customers execute facility letters for the facilities which may include overdraft, loans of various types and trade facilities.
- b) The facility letter specifies the type of facility, the facility amount, the total facility limit, the security held or required, conditions precedent and other terms of the relationship.
- c) The facilities are secured by various securities including property, trading stock, cash and personal guarantees. In cases, where the security was real estate, mortgages were executed by the customer and registered in the land registry at the Ministry of Lands.
- d) Customers desiring to take additional facilities, execute a further charge on the same property or other property if the value of the first property was less than the money being advanced. In some instances, some customers executed as many as six further charges for the same property or properties as security for facilities taken.
- e) In cases where the applications were made by companies and the security constituted assets like stock or cash, the customer would issue debentures.
- f) The mortgages and debentures including further charges or debentures were assessed to Stamp Duty at a rate of 0.5% of the amount secured by the either the mortgage, further charge, debenture or further debenture. This sum was debited from the customer's account and paid by the Applicant to the Respondent as a condition for the registration of the mortgage, further charge, debenture or further debentures in the land office or the company registry.
- g) The bonds or guarantees or letters of credit issued at the request of customers such as under exhibit AEX20 at page 619 of the joint trial bundle of exhibit AEX21 at page 625, subsequent to registration of those charges, were issued on the security of those charges but in the Stamp Duty review, the Respondent treated those instruments as attracting Stamp Duty at the rate of 1% of their values. The instruments are listed under exhibit AE1 at page 5, line 16, at page 9, line 17-20, page 17, line 44-46 or page 89 line 4 and others.

The witness testified that the majority of trade facilities provided to Ugandan customers, such as Bonds, Guarantees, or Letters of Credit, during the review period

were secured by mortgages on real estate or debentures on company assets executed by those customers. Further, the witness stated that:

- a) After the security was registered with the land office or companies' registry, or concurrently with the registration, customers would approach the Applicant's Trade department to apply for a trade facility like a Bid Bond, Advance Payment Guarantee, Performance Guarantee, or Letters of Credit.
- b) Customers completed an application form specifying the type of facility, the beneficiary, and the amount.
- c) For all applications, customers authorized the Applicant to debit their designated accounts for any charges, expenses, or amounts payable for the guarantees.
- d) Upon receiving an application, it was assessed to determine if the customer was suitable for the facility based on their facility letter, which outlined the facility type, limits, and security in place. Guarantees, bonds, or other facilities were issued only when the Applicant determined compliance.
- e) This procedure was consistently followed for all trade facility requests. There were no walk-in customers who received trade facilities during the review period; every customer had to have a current facility letter detailing the engagement terms and had to provide security, primarily in the form of mortgages or debentures.
- f) After a trade facility was issued, the staff in the Applicant's Trade Operations department retrieved the return template from the Respondent's portal monthly and filled it with details of the instruments issued or received, including amounts and dates. This template determined the Stamp Duty owed.
- g) The Trade Department then debited each customer's account for the assigned Stamp Duty according to the Respondent's return template and credited the Applicant's Collection Account. The bulk returns prepared by the Trade Operations Department were subsequently sent to the Finance Department.
- h) The Finance Department consolidated the returns from the Trade Department with those from other departments before submitting a consolidated return to the Uganda Revenue Authority each month.
- i) The Finance Department debited the Collections Account and paid the total monthly Stamp Duty for these instruments.

- j) The witness stated that the Applicant has never paid Stamp Duty on any instruments originating from their funds. Instead, Stamp Duty was always collected from the bank's customers and forwarded to the Respondent. This arrangement was agreed upon by every customer, and no facility was provided to those who did not consent to pay Stamp Duty on instruments issued or received by the Applicant.

The Respondent called 2 witnesses – Mr. Okodi Harold and Ms. Ruth Anne Agwang. **Mr. Okodi Harold, an officer in the Respondent's Domestic Taxes Office**, testified that performance bonds and guarantees are issued to indemnify third parties for the non-performance of contract obligations by the guarantor (Applicant), and they serve the same legal purpose as security bonds. He explained that Advance Payment Guarantees, Performance Bonds, Supplier Guarantees, and Goods/Services Guarantees are all executed to ensure the proper performance of a contract, thus having the same legal effect as Security and Indemnity Bonds.

The witness further stated that Advance Payment Guarantees, Performance Bonds, Supplier Guarantees, Goods/Services Guarantees, and Security Bonds are subject to a Stamp Duty rate of 1%, as they are classified as Security Bonds according to Instrument No. 56 of Schedule II of the Stamp Duty Act, 2014. He noted that on 30<sup>th</sup> March 2022, the Respondent conducted a Stamp Duty Audit on the Applicant concerning financial instruments (Bonds and Guarantees) issued to its clients. The audit revealed that between 1<sup>st</sup> January 2015, and 31<sup>st</sup> December 2021, the Applicant had significantly underpaid Stamp Duty on these instruments, including 356 Advance Payment Guarantees totaling Shs. 5,297,210,741, 389 Performance Bonds amounting to Shs. 2,769,274,887, 149 Supplier Guarantees totaling Shs. 967,216,921, and 41 Goods/Services Guarantees worth Shs. 124,142,151, as well as 9 Security Bonds valued at Shs. 51,365,092.

The witness noted that upon reviewing these documents, it was concluded that differences in wording and titles did not alter the intended purpose of the instruments from the Applicant bank and that indemnity aims to provide protection or security against losses or damages to the contracting party, compensating the affected party for any such losses. Therefore, the witness concluded that the Stamp Duty owed on all the Applicant's instruments would be 1%, as they all aim to indemnify the third party

in the event of contract defaults and secure against damages or losses due to breaches of duty.

The witness further testified that while the Applicant had initially declared a 1% Stamp Duty in accordance with item 56 for the executed bonds and guarantees, it subsequently opted to apply nominal rates under item 16, contrary to the Stamp Duty Act and standard banking practices. Consequently, the Respondent issued an Additional Principal Stamp Duty Assessment for the period of January 2015 to December 2021, totaling Shs. 7,353,393,635 due to underpayment on the executed bonds and guarantees, as provided under Section 63 of the Stamp Duty Act, 2014. He affirmed that the Respondent's decision was legally justified, given that Performance Bonds and Guarantees are subject to a 1% Stamp Duty rate because they fall under the category of Indemnity Bonds according to the Stamp Duty Act.

**Ms. Ruth Anne Agwang, a Manager in the Respondent's Independent Review of Objections,** testified that the Respondent issued an additional Stamp Duty assessment for the period January 2015 to December 2021, amounting to Shs. 7,353,393,635 due to underpayment of Stamp Duty on executed bonds and guarantees. The witness testified that on 22<sup>nd</sup> April 2022, the Applicant filed a manual objection and on 17<sup>th</sup> May 2022, the Respondent by email requested the Applicant for an objection review meeting on 19<sup>th</sup> May and for supporting documents and detailed explanations in respect of the grounds of their objections. The Applicant's representative wrote to the Respondent by email stating that the Applicant's officials were out of office until 23 May 2022 and requested that the meeting be rescheduled for 24 May 2022.

The witness testified that on 24 May 2022, a review meeting was held and the Applicant requested the Respondent to extend the time within which to make an objection on the basis that it was important for the Respondent to review information that was provided on 24 May 2022, after the expiry of the objection. The witness testified that the Respondent reviewed the Applicant's objection and established that performance bonds, advance payment guarantees, supplier guarantees, security bonds and goods/services guarantees were indemnity bonds since they represent payment on default in lieu of performance of contractual obligations. The witness testified that the Respondent further established that the Applicant used the term

`guarantee` interchangeably with `indemnity` and the Applicant undertook to indemnify or guarantee to pay the beneficiary in the event of a breach of contractual obligations or non-performance. The witness testified further that the Respondent also established that advance payment guarantees or bonds are indemnity bonds because the Applicant makes good the payment of an advance payment in case of breach of a contract or non-performance.

The witness testified that the Respondent issued an objection decision disallowing the objection due to underpayment of Stamp Duty on executed bonds and guarantees for the period January 2015 to December 2021 and subsequently issued an objection decision on 30 May 2022. The witness stated that the basis for disallowing the objection was that performance bonds, advance payment guarantees, supplier guarantees, security bonds and goods/services guarantees as declared by the Applicant are indemnity bonds falling under item 56 of Schedule 2 of the Stamp Duty Act and the Applicant therefore had an obligation to charge 1% on all the instruments issued for the period assessed.

The witness testified that pursuant to the above decision the Respondent established a variance of Shs. 7,353,393,635 between the payments made by the Applicant based on the nominal rates under Item 16 of Schedule 2 and the payments that the Applicant ought to have made based on 1% as per item 56 of Schedule 2.

The witness testified further that by a letter dated 13 June 2022, the Applicant notified the Respondent that it had elected under the provisions of S. 47(8) of the Stamp Duty Act, to treat the failure by the Respondent to make an objection decision within 30 days, as decision allowing the objection. The witness stated that on 24 June 2022, the Respondent wrote to the Applicant explaining that the request by the Applicant's representative for an extension of time to make an objection decision beyond the statutory timelines by requesting to re-schedule the review meeting from 19 May 2022, to 24 May 2022, had been granted. The witness stated that therefore the election by the Applicant was unlawful as the Applicant had requested the Respondent to extend the time for reviewing their own objection.

#### **4. Issues for Determination**

During scheduling, the following issues were set down for determination

1. Whether the objection decision was rendered out of time?
2. Whether the Applicant is liable to pay the tax assessed?
3. Whether the Stamp Duty is excessive in the circumstances?
4. Whether bonds and guarantees are security bonds in terms of Item 56 of the Stamp Duty Act, 2014.
5. What remedies are available to the parties?

Note on Issue 4: The Applicant initially phrased Issue 4 in their submissions as "*Whether bonds and guarantees are "security bonds" in terms of item 56 of the Stamp Duty Act (as of June 2019)*". The Respondent's written submissions and the Applicant's rejoinder referred to the issue as "*Whether bonds and guarantees are security bonds in terms of Item 56 of the Stamp Duty Act, 2014?*" The former, being the phrasing used in the list of agreed issues at scheduling, is taken as the formally agreed issue.

## **5. Submissions of the Applicant**

### **Issue No. 1: Whether the Objection Decision was rendered out of time?**

The Applicant submitted that its argument is grounded in the mandatory 30-day timeline for rendering objection decisions as stipulated by Section 47(8) of the Stamp Duty Act, 2014. This provision states:

*"Where an objection decision has not been made by the Commissioner within thirty days after the person lodged the objection with the Commissioner, the person may, by notice in writing to the Commissioner, elect to treat the Commissioner as having made a decision to allow the objection."*

The Applicant submitted that relevant facts timeline is as follows:

- The Applicant lodged its objection with the Respondent on 22 April 2022.
- Applying the 30-day rule from Section 47(8), the objection decision should have been rendered by Monday, 22 May 2022.
- The Respondent rendered the objection decision on 30 May 2022. This was seven days after the thirty-day period had expired.

- The Applicant elected to treat its objection as allowed on 13 June 2022. This election was made after the expiry of the 30-day period and within 20 days of the late decision.

The Applicant argues that because the decision was not made within the statutory thirty days, its right to elect to treat the objection as having been allowed under Section 47(8) accrued. By exercising this right on 13 June 2022, the Applicant solidified this position.

The Applicant asserts that the mandatory nature of tax procedures timelines is well-settled by court decisions. To support this position the Applicant cites Kenyan cases concerning a similar 60-day timeline provision in the Tax Procedures Act of Kenya (Section 51(2)). These are:

*Eastleigh Mall Limited v. Commissioner Investigations and Enforcement, Income Tax Appeal No. 68 of 2020. Equity Group Holdings Limited v Commissioner of Domestic Taxes, TAT Appeal No. 27 of 2017. Vivo Energy Kenya Limited v. Commissioner of Customs and Border Control, Application No. 346 of 2019 , and Liquid Telecom v. Commissioner Domestic Taxes, TAT Appeal No. 587 of 2023.*

From *Eastleigh*, the Applicant quotes the court emphasizing the mandatory and crucial nature of tax timelines: ***"It is clear from the foregoing that the provisions of section 51(II) of the Tax Procedures Act are mandatory. They are not cosmetic. Parliament in its wisdom knew that in matters tax, time is very crucial as those in commerce need to make informed decisions. If the Commissioner is allowed to exercise his discretion and stay ad infinitum before issuing an objection decision, the taxpayer would be unable to make crucial decisions and plan his/her business properly. The timelines set are mandatory and not a procedural technicality."***

The Applicant argues that these Kenyan decisions establish that failing to render a decision within the stipulated time means the Respondent was statute-barred from issuing any decisions after the period expired. In *Liquid Telecommunications Limited*, the Tribunal found the decision "statute time barred" .

The Applicant also relies on Ugandan case law to support the strict adherence to statutory time limits. The Applicant cited the following cases:

*Uganda Revenue Authority v. Uganda Consolidated Properties Limited, Civil Appeal No. 31 of 2000* where it was held that **"Time limits set by statute are matters of substantive law and not mere technicalities and must be strictly complied with."**

*Photon Technologies Limited v. Commissioner General Uganda Revenue Authority, HMMC No. 14 of 2016* where Justice Madrama stated that upon election after the Commissioner's failure to decide within time, **"the taxpayer is deemed to be liable only to the extent that he or she admits the assessed amount."** and that **"The legal process of election relieves the taxpayer of any payments not admitted in the objection to the assessment if the Commissioner does not communicate a decision within the statutory period of 30 days."**

*Kumi Orthopaedic Centre Limited v. Uganda Revenue Authority (2016-2020) UTLR 293* where it was held that once a party elects after the prescribed time, the objection is deemed allowed.

*Woodfix Technical Services Limited v. Commissioner General Uganda Revenue Authority, HCCS No. 616 of 2012.* In this case, the statutory time limit for making an objection decision had **"clearly elapsed"**

The Applicant argues that the conditions for Section 47(8) were met: (a) no decision was made within 30 days, and (b) the election was made within 20 days of the late decision.

Therefore, the Applicant contends that the objection decision rendered on 30 May 2022 is statute-barred.

The Applicant concludes that because the objection decision was made outside the prescribed time and they elected to treat the objection as allowed, the entire assessment contested is not valid, and the late decision absolves the Applicant of any liability to pay the assessed taxes

The Applicant's prayer regarding this issue is for the Tribunal to find that the objection decision was rendered out of time after the Applicant's right to elect had arisen and that the election by the Applicant extinguished the assessed tax.

## Issue 2: Whether the Applicant is not liable to pay the assessed Stamp Duty?

The Applicant submitted that it is not liable to pay the assessed stamp duty.

The Applicant submitted that it is a financial institution, and as such, issues, Guarantees and Bonds of several types, namely Bid Bonds and Letters of Credit, in favor of its customers and receives, Import Bills for collection on behalf of its customers.

The Applicant submitted that the above instruments are generally and collectively referred to as `bank trade facilities` and are offered as products to customers of the Applicant as a financial institution. The Applicant emphasized that these trade facilities are not randomly issued to walk-in-clients but are restricted to existing customers. The Applicant submitted that a person becomes a customer of the Applicant, only upon the execution of a facility letter. The Applicant submitted that the facility letters specify the type of facility, which includes bonds and guarantees.

The Applicant submitted that after the execution of the facility letter, a customer who wishes to draw on a facility, guarantee or bond makes an application for the same.

In the case of Import Bills for Collection, these are trade documents/documents of title between a customer of the Applicant bank and a foreign bank/supplier. The Applicant submitted that the supplier's bank sends the documents to the Applicant who holds and only releases those documents to the customer if the supplier confirms that payments for the goods or services supplied to the mutual customer have been paid for.

The Applicant submitted that embedded in the process of obtaining any trade facility, is an agreement by the customer to meet all costs of the transactions including the attendant Stamp Duty. As an example, the Applicant cited exhibit AE7, where the customer authorized the Applicant to debit charges of the transaction from each of their named accounts. The Applicant submitted that the debits made in respect of exhibit AE7, included Stamp Duty.

The Applicant submitted that by the above documentation and the act of debiting each customer account for Stamp Duty for bond and guarantee transactions and all other dutiable transactions, the Applicant agreed with the customer that the customer is the

one to pay Stamp Duty on the instruments. The Applicant submitted that such an agreement is permissible under Paragraph 1 Schedule 3 of the Stamp Duty Act.

The Applicant submitted that in the Application for the credit/trade facility, the customer authorizes the Applicant to debit all charges, Stamp Duty inclusive. The Applicant submitted that it has never paid Stamp Duty from its funds on any instruments issued, drawn, executed or received.

In respect of Import Bills for Collection, the Applicant submitted that these instruments are only received by the Applicant. The Applicant submitted that it did not "draw, execute or make" the instruments in question. According to Paragraph 1 of schedule 3 to the Stamp Duty Act 2014, stamp duty on instruments is payable "**by the person drawing, making or executing the instrument unless there is an agreement to the contrary**". In the absence of such agreement, the expense is borne by the person drawing, making, or executing. The Applicant asserts it is not liable to pay duty simply as a recipient.

The Applicant contends that the liability for stamp duty rests with its customers and that this contention is based on agreements with the customers where the customer undertakes to meet all costs of the transactions, including attendant stamp duty. The customer also authorised the Applicant to debit their accounts for these charges.

The Applicant cites case law regarding the interpretation of tax provisions and the imposition of duty:

***Brunton v. New South Wales Stamp Duties Commissioner (1913) AC 747***, which held that the intention to impose a tax or duty, or to increase a tax or duty already imposed, must be shown by clear and unambiguous language and cannot be inferred from ambiguous words.

***IRC v. Gribble (1913) 3 KB 212 and Ormond Investment Co v. Betts (1928) AC 143***, which established that in statutes of taxation, the imposition of a duty must be in plain terms, and that there is a rule in construing revenue Acts to give a fair and reasonable construction to their language without leaning to one side or the other. No tax can be imposed on a subject without words clearly showing an intention to lay the burden upon him, and the words of the statute must be adhered to.

By these principles, the Applicant argues that the law places the primary liability on the maker/drawer/executor, and while an agreement can shift the *expense*, the Applicant's role as merely receiving/handling the instruments means it is not the person liable under the statute, especially not as a recipient.

### **Issue 3: Whether the Stamp Duty assessed is excessive in the circumstances?**

In the alternative to Issue 1, the Applicant further submits that the assessed stamp duty is excessive. The Applicant submitted that the Respondent assessed stamp duty at 1% of the total value under item 56 of the second schedule to the Stamp Duty Act 2014 which Item 56 relates to "Security Bond or Mortgage Deed"

The Applicant argues that the instruments in question, such as Guarantees and Bonds, were not always subject to the 1% rate and, in many cases, were used in transactions where the primary duty was paid on other instruments. Specifically, the Applicant states that many of the trade facilities were secured by mortgages and debentures. In such cases, stamp duty of 0.5% of the value was paid on the mortgages or debentures.

Citing the principle from *Stanbic Bank and Others v. Uganda Revenue Authority, HC Consolidated Civil Appeal No. 70 of 2007 and 792 of 2006*, the Applicant submitted that is a principle of Stamp Duty Law that where several instruments are employed in a single transaction, the principal instrument (which attracts the higher duty) draws the main duty, and other instruments are charged at a nominal rate. In cases where mortgages or debentures secured the transaction, these should be considered the principal instruments attracting the 0.5% rate under Item 56.

The Applicant contends that the Respondent's assessment at 1% on the guarantees and bonds, without considering the duty already paid on the principal instruments (mortgages/debentures), leads to excessive double taxation on the same transaction. The Applicant asserts that the 0.5% paid on the mortgages/debentures should be sufficient or the difference should be reconciled.

Furthermore, the Applicant highlights that the Stamp Duty Act was amended effective 1 July 2019. After this amendment, stamp duty on bank guarantees and bonds became specifically chargeable under Item 36 of the Second Schedule at a flat rate of UGX 100,000.

The Applicant argues that for instruments issued after 1 July 2019, the duty should have been UGX 100,000 under Item 36, not 1% under Item 56. The Respondent's failure to apply this lower specific rate where applicable also contributes to the assessment being excessive.

Finally, the Applicant argues that the instruments they issued (Bank guarantees, insurance performance bonds, indemnity bonds, similar debt instruments) are not "security bonds" in the sense intended by Item 56, which is generally for bonds securing money or property or due performance of a contract by a surety. The Applicant contends they act as a surety to secure the performance of a contract or a loan, but this role does not constitute the instruments as Item 56 security bonds. The Applicant submits that the duty paid should be deemed sufficient if these instruments are not Item 56 security bonds.

In summary, the Applicant's submissions on these issues (2 &3) are that the customer is primarily liable for the stamp duty, and in the alternative, the assessed amount is excessive due to the misapplication of the 1% rate to instruments that were either already subject to 0.5% duty on principal security documents (mortgages/debentures) or were chargeable at a flat rate of UGX 100,000 under the amended law for bank guarantees and bonds, and/or do not constitute Item 56 security bonds.

#### **Issue No.4: Whether bonds and guarantees are security bonds in terms of Item 56 of the Stamp Duty Act, 2014?**

The Applicant submitted that from July 2019, bonds and guarantees could only be charged under the amended and specific item 36 and not the general item 56 of the Second Schedule to the Stamp Duty Act. The Applicant submitted that under cross examination, RW1, was not aware that as at July, 2019, the duty rate under item 36 had been reduced from an Ad valorem rate of 1% to a specific rate of Shs. 100,000. The Applicant submitted that after June 2019, the rate of Shs. 100,000 applied on guarantees because it was specific and the general item 56 could not apply. The Applicant prayed this part of the dispute be remitted to the Respondent for a reconciliation under S. 19 of the Tax Appeals Tribunal Act.

The Applicant submitted that the Respondent imposed Stamp Duty on the different instruments in issue at 1% of the total value, under item 56 of the Second Schedule to

the Stamp Duty Act, which applies to security bonds and mortgage deeds. The Applicant submitted that according to the Respondent the instruments in question, ought not to have been charged, at the nominal rate of Shs. 100,000. The instruments in question are Bonds or Guarantees, Letters of Credit and Import Bill for Collection. The Applicant submitted that the Respondent indiscriminately imposed duty of 1% on all these instruments pursuant to item 56 of the Second Schedule to the Stamp Duty Act.

The Applicant submitted that at no time, during the relevant period, were any of the instruments in issue specifically defined by the Stamp Duty Act. The Applicant submitted that only a bond, is defined under the Act, to include an instrument by which a person obliges himself or herself to pay money to another, on condition that the obligation shall be void if a specified act is or is not performed. This definition is broadly and vaguely worded and can be said to encompass all types of bonds-indemnity, performance and security. The Applicant submitted that these bonds are charged differently and separately under item 16(bond), item 36 (indemnity bond, which was expanded in the year 2019 to include bank guarantees, insurance performance bonds and `similar debt instruments` and item 56 (security bond).

The Applicant submitted that for the instruments in issue to be indiscriminately chargeable under Item 56, they should have been issued and executed by the bank not as bonds (Item 16), bank guarantees or similar debt instruments (Item 36), but the bank was acting as a surety to secure the due performance of a contract(or, after the 2022 amendment, to secure a loan or credit facility).

The Applicant submitted that the bank does not act in the position of a surety (as a principal with a primary obligation) to secure the due performance of a contract or to secure a loan or credit facility. The Applicant submitted that the bank merely provides a guarantee or bond, standing in the position of a bonded agent (with a secondary obligation) of the customer (who at all times bears the primary payment obligation) to pay over funds held for the account of the customer based on agreed terms. The Applicant submitted that as such the instruments in issue do not constitute security bonds.

The Applicant submitted that to the extent that there is ambiguity and uncertainty regarding what instruments constitute bonds (chargeable at nominal rates under item

16); bank guarantees, indemnity bonds and similar debt instruments (chargeable at nominal rates under item 36); and security bonds (chargeable at 1% under item 56). The Applicant submitted that these ambiguities should be resolved in favor of the Applicant. In support of this argument the Applicant relied on the decision in Stanbic Bank Ltd and Others vs. Uganda Revenue Authority; HC Consolidated Civil Appeal No. 70 of 2007 and 792 of 2006.

The Applicant submitted that the reason for the amendments on items 36 and 56 of the 2<sup>nd</sup> Schedule is not difficult to fathom. Relying on the Parliamentary Hansard of 13<sup>th</sup> June 2019, the Applicant submitted that the

2019 amendment of item 36 was done to provide for a uniform Stamp Duty payable on bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments in order to reduce the cost of debt financing and ease tax compliance and administration. The Applicant submitted that to find bank guarantees and performance bonds are or were security bonds in the years 2015 to June 2019, chargeable at 1% of total value would be an unfavorable interpretation or resolution of ambiguity and is to impose an unfair burden upon the Applicant and its customers.

The Applicant urged the tribunal to find that the objection decision was rendered out of time after the Applicant's right to elect had arisen and the election by the Applicant extinguished the assessed tax. In the alternative, the Applicant invited the tribunal to find that the liability to pay the duty was shifted to the customers by agreement of the bank and its customers in accordance with the Stamp Duty Act. In the further alternative, the Applicant invited the tribunal to order a reconciliation on the basis that the duty chargeable is 0.5% in instances where guarantees and bonds were issued, as part of debentures and mortgages, in a conveyance transaction or Shs. 100,000/= in the period after June 2019. The Applicant also invited the tribunal to find that guarantees and bonds are not security bonds and that the duty already paid by the Applicant is sufficient.

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

### **Issue 1: Whether the objection decision was rendered out of time?**

The Respondent submitted that the objection decision was rendered in time. The Respondent submitted that it is cognizant of the 30-day timeline, within which an

objection decision should be rendered under S. 46(8) of the Stamp Duty Act, however the same is subject to waiver where there is a necessity for the review of the tax payer's records for settlement of the objection and that the taxpayer has been duly notified. The Respondent relied on **S. 26(9) and 26(10) of the Tax Procedures Code Act (TPCA)**, in support of this argument.

The Respondent submitted that on 17<sup>th</sup> May 2022 and on 20<sup>th</sup> May 2022, the Respondent duly notified the Applicant through emails addressed to PWC, the Applicant's auditors, to attend a review meeting on 19<sup>th</sup> May 2022, for the purposes of defending the grounds of its objection and for the purpose of submitting all documents in support of its objections. The Respondent submitted that it received a response from Mr. Marshall Richard, an Associate Director, at PWC, who informed the Respondent by email (REX6) that he was out of office and would only return on 23 May 2022. The Respondent submitted that due to the above events and correspondences, it issued its objection decision on 30<sup>th</sup> May 2022.

The Respondent submitted that the TPCA regulates the procedure of the Stamp Duty Act by virtue of **Section 1 of the TPCA** and **paragraph d of Schedule 2 of the TPCA**. The Respondent as such, submitted that the waiver of the timelines laid down under **Section 26(9) of the TPCA** applies to the 30-day timeline set out in the Stamp Duty Act. The Respondent submitted that, accordingly the assertion by the Applicant that the objection decision was rendered out of time, is mis-founded, as the same was deemed waived when documentation was requested from the Applicant for the purpose of rendering the objection decision.

#### **Issue 4: Whether bonds and guarantees are security bonds in terms of Item 56 of the Stamp Duty Act, 2014?**

The Respondent submitted that bonds and guarantees, constitute security bonds, in terms of item 56 of the Stamp Duty Act. The Respondent submitted that the 2<sup>nd</sup> Schedule of the Stamp Duty Act, 2014 (as at 1<sup>st</sup> July 2019 to 30<sup>th</sup> June 2020), provided for rates of Stamp Duty payable, on various instruments covered under the Act, and under item 56, 1% of the total value of Security bonds or mortgage deeds was payable as Stamp Duty.

Under item 56, of the Act, security bonds or mortgage deeds, have been described, as having been executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract.

The Respondent submitted that, as guarantor, the Applicant issued financial instruments, known as bonds and guarantees to its customers on various tri-partite contracts, executed with third parties, which included advance payment guarantees, performance bonds, retention guarantees, supplier agreements and goods/services guarantees.

The Respondent submitted that upon the execution of these contracts, the Applicant's clients undertook, to fulfill certain contractual obligations, while the Applicant bank undertook to pay an amount secured by the bond or guarantee to third party beneficiaries in case of any breach by the obligor upon demand from the beneficiaries. The Respondent submitted that the execution of performance bonds and guarantees for the purpose of the Applicant indemnifying a third party for non-performance of stated contractual obligations by its client, deems them security bonds, as they possess, the same legal effect as security and indemnity bonds, due to the similarity in character.

Citing the decision in **Stanbic Bank Ltd & 7 others vs. Uganda Revenue Authority, HCT-00-CC-CA-170-2007 AND 792-2006**, where the court held that *“the character of the instrument must be ascertained by reference to its legal effect when executed”*, the Respondent submitted that in order to correctly determine, the liability to Stamp Duty, the character of the instrument, that is subject to Stamp Duty, must be ascertained by reference to its legal effect when executed.

The Respondent then submitted that the character of an instrument can be ascertained from the definition of the instrument and from the purpose for which it was executed, by analyzing the content of the document. The Respondent submitted that otherwise taxpayers would evade Stamp Duty by simply keeping the title of the instrument different from the content.

The Respondent relied on the definition of `bond` under **Section 1 (previously section 2)** of the **Stamp Duty Act, 2014** and the decision of the tribunal, in **Stanbic**

**Bank Holdings Ltd vs. URA TAT Application No. 56 of 2019**, as the basis for ascertaining whether the following instruments executed by the Applicant and its clients, are security bonds and are therefore chargeable to Stamp Duty rate under item 56 of the Act. The Respondent then went ahead to submit on the nature of the different instruments in question as follows-

- 1. Advance Payment Guarantee on behalf of New Vision Printing and Publishing Corporation dated 8<sup>th</sup> February 2019** - the Respondent submitted that the purpose of the instrument was for the printing of teacher and instructor education instructional materials for 2017-2022. The Respondent submitted that the Applicant guaranteed to indemnify the Ministry of Education and Sports in case of failure by New Vision Printing and Publishing Corporation, to print teacher and instructor education instructional materials for 2017-2022.

The Respondent that the Applicant irrevocably undertook to pay the beneficiary a sum not exceeding in total, an amount of Shs. 96,697,800, as an advance payment guarantee in the event that a demand in writing was received by the bank indicating that the contractor was in breach of its obligation under the contract. The Respondent submitted that the Advance Payment Guarantee further provided that "this security is subject to yourselves and is not transferrable or assignable".

- 2. The Performance Security Bond on behalf of Footsteps Furniture Company Limited dated 6<sup>th</sup> February 2019.** The Respondent submitted that the purpose of the instrument was for the supply, delivery and fitting of office furniture for the new URA headquarter building. The Respondent submitted that the Applicant bank guaranteed to indemnify Uganda Revenue Authority in case of failure by Footsteps Furniture to supply delivery and fitting of office furniture for the new URA headquarter Building.

The Respondent submitted that the Applicant irrevocably undertook to pay the beneficiary, upon a first written demand declaring that the obligor has defaulted under the contract, a sum not exceeding in total an amount of Shs. 259,963,027, as a security. The Respondent submitted that the Performance Security further provided that the security was valid until 9<sup>th</sup> August 2019.

3. **The Retention Money Guarantee for USD 879,689.61 on behalf of El Nasr Company for Civil Works/Dott Services JV dated 11<sup>th</sup> December 2018.** The Respondent submitted that the purpose of the above instrument was for the execution of the Arua Water Supply and Sanitation Project. The Respondent submitted that the Applicant guaranteed to indemnify National Water and Sewerage Corporation, in case of failure by El Nasr Company for Civil Works/Dott Services to execute the Arua Water Supply and Sanitation Project.

The Respondent submitted that the Applicant undertook to pay the beneficiary an amount not exceeding USD 879,689.61 upon written demand from the beneficiary declaring that the obligor had defaulted under the contract. The Respondent submitted that the Retention Guarantee provided that *“this security is subject to yourselves and is not transferable or assignable”*.

4. **The Supplier Guarantee dated 8<sup>th</sup> October 2018.** The Respondent submitted that the purpose of the above instrument was to supply Price Waterhouse Coopers with air travel. The Respondent submitted that the Applicant undertook to indemnify PWC an amount not exceeding USD 15,000 upon written demand from PWC declaring that Kenya Airways had defaulted on the contract.

The Respondent submitted on the basis of the decision of the tribunal in **Stanbic Bank holdings Limited vs. URA** (supra), and the reference by the Applicant to the instruments in question, as securities, the above instruments, were security bonds in terms of item 56 of the Stamp Duty Act (as at 1<sup>st</sup> July 2019-30<sup>th</sup> June 2020). The Respondent submitted that their legal effect is similar to performance bonds and guarantees as they were executed for the sole purpose of indemnifying third party beneficiaries in case of non-performance of their contractual obligations.

**Issue No.2 and 3, Whether the Applicant is liable to pay the tax assessed, and if so, whether the Stamp Duty assessed is excessive in the circumstances?**

The Respondent submitted on issues 2 and 3 together.

The Respondent submitted that the assessed Stamp Duty of Shs. 7,353,393,635 was due and payable. The Respondent quoted **Section 3** (currently Section 2) of the

**Stamp Duty Act and Item 56 of the Second Schedule to the Stamp Duty Act, 2014 (As at 1<sup>st</sup> July 2019 – 30<sup>th</sup> June 2020)** that Security Bonds and Mortgage Deeds, were subject to Stamp Duty at the rate of 1%.

Relying on the decision in **Stanbic Bank Uganda Ltd & 7 others vs. Uganda Revenue Authority HCT-00-CC-CA-170-2007 and 792-2006** (supra), where the court held that “*the liability of an instrument to stamp duty arose at the moment at which it was executed and depends on the law in force and the circumstances which existed at that time,*” the Respondent submitted that the assessed Stamp Duty of Shs. 7,353,393,635, was due and payable by the Applicant, and the same is not excessive as the Applicant has itself described the instruments in question as securities deeming them security bonds for purposes of Item 56 of the Second Schedule for which the applicable stamp duty rate is 1%.

**Issue No.5: What remedies are available to the parties?**

The Respondent invited the Tribunal to find that the Applicant had failed to discharge the burden of proving that the Stamp Duty assessed was incorrect and that accordingly, the Applicant is not entitled to the remedies sought. The Respondent prayed that the Application be dismissed with costs.

## **7. Submissions of the Applicant in Rejoinder**

In rejoinder the Applicant rejected the argument by the Respondent that the **TPCA** applies to the Stamp Duty Act, by virtue of **S. 26(9) and (10)** of the **TPCA**. The Applicant stated that **Paragraph (d) of Schedule 2 to the TPCA** relates to the Excise Duty Act and not the Stamp Duty Act. The Applicant stated that the Stamp Duty Act, is not listed in Schedule 2 of the TPCA, as one of the laws to which the TPCA, applies. The Applicant reiterated its argument that the Stamp Duty Act, is a self-contained Code and that all matters relating to Stamp Duty, must be resolved by looking at the Stamp Duty Act.

The Applicant stated that the submission by the Respondent that item 56 of the Stamp Duty Act, applies to this case, is erroneous. The Applicant stated that the Respondent conveniently avoids making any reference to item 36, which the Applicant submits is applicable to bonds and guarantees. The Applicant submitted on the authority of **ATC Uganda Limited vs. Uganda Revenue Authority, TAT Application No. 17 of 2019,**

that in cases of conflict, the specific provision takes precedence over a general provision.

The Applicant submitted further that in the year 2019, item 36 of the **Stamp Duty Act** was amended from "*indemnity bond*" to specifically cover "*Bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments*". The Applicant submitted that with the existence of the specific item 36 prescribing the duty payable on guarantees and bonds, recourse cannot be had to the general item 56 that prescribes duty payable on security bonds or mortgage deeds.

## **8. Determination of the issues**

Having read the submissions of the parties and reviewed the evidence on record, this is the decision of the Tribunal.

### **Issue 1: Whether the objection decision was rendered out of time?**

The Applicant contends that the Respondent's objection decision was rendered out of time because it was issued after the 30-day period stipulated in **Section 47(8) (now 46 (8) which we shall use in this ruling) of the Stamp Duty Act, 2014**. The Applicant argues that after the 30-day period expired, the Applicant's right to elect to treat the objection as allowed accrued and the Respondent was barred from issuing any decision.

On the other hand, the Respondent contends that the 30-day period specified in Section 46(8) of the Stamp Duty Act 2014 was waived by **Section 26(9) of the Tax Procedure Code Act**. This was because, on 17 May 2022, the Respondent requested an objection review meeting for 19 May 2022 and asked the Applicant for supporting documents and detailed explanations of their grounds of objection. The Applicant's representative indicated that their officials were unavailable until 23 May 2022 and requested to reschedule the meeting for 24 May 2022, beyond the 30-day period.

The Applicant however argues that the Stamp Duty Act is a self-contained code, and the Tribunal should only consider the provisions of the Stamp Duty Act itself in resolving the issue. Therefore, Tribunal examined Section 1 of the TPCA, Schedule 2 to TPCA and Section 29 (2) to establish whether it applies to the present case or not. For completeness, these provisions are reproduced below.

Section 1 of the TPCA states:

*“ This Act shall apply to every tax law specified in Schedule 2 to this Act.”*

**Schedule 2 of the TPCA** states:

*“For the purposes of this Act, a reference to tax law means-*

- (a) This Act;*
- (b) The Income Tax Act;*
- (c) The Value Added Tax Act;*
- (d) The Excise Duty Act;*
- (e) The Lotteries and Gaming Act;*
- (f) Any other Act imposing a tax as the Minister may by statutory instrument declare in accordance with section 96(2).”*

**Section 96(2)** of the TPCA provides:

*“The Minister may by statutory instrument with the approval of Parliament, amend Schedules 2 and 4 to this Act”.*

Clearly, the Stamp Duty Act is not among the tax laws above. The Tribunal therefore agrees with the Applicant that Section 26(9) of the Tax Procedures Code Act and the entire TPCA at that, does not apply to the Stamp Duty Act. The Respondent cannot rely on the TPCA in this case.

Therefore, resolution of this issue entirely depends on the interpretation of Section 46 (8) of the Stamp Duty Act, 2014, and it is reproduced below. The section states:

**“Where an objection decision has not been made by the Commissioner within thirty days after the person lodged the objection with the Commissioner, the person may, by notice in writing to the Commissioner, elect to treat the Commissioner as having made a decision to allow the objection.”** (emphasis is ours)

Section 46(8) provides a specific remedy to the taxpayer when the Commissioner fails to make a decision within the thirty-day period: the taxpayer may elect to treat the objection as allowed. The condition for this election is that the decision *“has not been made... within thirty days”*. In this case, that condition was met, as the decision was made on day 38. The Applicant then exercised their right to elect on 13 June 2022.

However, Section 46(8) does not explicitly state that:

1. The Commissioner must (shall) issue an objection decision within 30 days. (which is the case under the TPCA)
2. A decision rendered after the thirty-day period is invalid or void.
3. The objection is automatically allowed merely because the thirty-day period is missed.

Instead, the section grants the taxpayer the option ("*the person may*") to create a deemed outcome (that the objection is allowed) by making a written election. It means that if the Commissioner fails to make a decision within 30 days, the person objecting has the option to take a specific action, but they are not obligated to do so. They have a choice. They might choose to wait longer for an actual decision from the Commissioner, or they might prefer to take the initiative and file the notice of election. The phrase empowers the person objecting by giving them a mechanism to move the process forward if the Commissioner is delaying the decision. It prevents the taxpayer from being indefinitely stuck in a situation where no decision is made.

The Respondent's decision, even though issued after 30 days, supersedes the effect of the taxpayer's later election for a deemed decision. The statute only explicitly grants the taxpayer an electoral right, rather than automatically invalidating the late decision or deeming the objection allowed without election.

The Tribunal notes that the law does not provide a timeline within which the taxpayer must lodge their election notice. However, an election becomes unnecessary when there is an actual decision in place. Once the Commissioner makes a decision, even though after the specified 30-day period, that decision serves to resolve the objection, the rationale for allowing the Applicant to treat the objection as allowed is fundamentally undermined. The right to elect is extinguished - it effectively becomes moot.

Where a taxpayer opts not to file an election notice and waits for the Commissioner's objection decision, if the taxpayer disagrees with the delayed objection decision, they cannot invoke the original election rights since a decision has now been made.

We agree that after 22 May 2022, the Applicant's right to elect came into effect. However, the Applicant opted not to make the election and willingly waited for the Respondent's objection decision. Upon receiving the decision and finding its contents unsatisfactory – 21 days after the initial 30-day period and 13 days after the Respondent's decision, the Applicant then filed its purported election notice. The Applicant's "election notice" can only be perceived as an attempt to circumvent the Respondent's determination.

If the law permitted taxpayers to continually invoke elections after decisions are rendered, it would lead to a chaos within tax administration, severely impacting compliance and the predictability of administrative outcomes.

The Applicant cited to us the High Court decision in *Photon Technologies Ltd vs. The Commissioner General Uganda Revenue Authority, Miscellaneous Cause 14 of 2016*. We note, however, that the facts of the present case differ from those in the Photon case. In the Photon case, Court found that there was no objection decision or notice thereof at all and the Applicant rightly elected to treat the objection as having been allowed. In the present case, the Respondent issued an objection decision though after 30 days. Similar all the other case law cited by the Applicant do not apply to the facts in this case.

Applicant's notice of election is invalid as it was filed after the Respondent's formal objection decision. We therefore find that the Respondent's objection decision stands. It was not rendered out of time.

Therefore, the Tribunal will proceed to resolve the rest of the issues starting with Issue 4 since the core dispute, revolves around the distinction between general "bonds" (Item 16), "indemnity bonds" (Item 36), and "security bonds" (Item 56), and the applicable rates thereto (nominal vs. ad valorem).

## **Issue 2: Whether the Applicant is liable to pay the assessed Stamp Duty.**

The determination of the Applicant's liability to pay the assessed stamp duty of UGX 7,353,393,6351 is intrinsically linked to the outcomes of Issue 3 (whether the assessment is excessive) and Issue 4 (the correct classification of the instruments)

The Applicant submits that the economic burden of stamp duty, under ordinary circumstances, has been borne by its customers. The Applicant's role has been limited to collecting stamp duty from the customer and remitting it to the Respondent without incurring any expense from its own funds. Under Schedule 3 of the Stamp Duty Act, unless a contrary agreement exists, the obligation to provide the stamp falls on the party drawing, making, or executing the instrument, or, depending on the instrument type, on the grantee, purchaser, or transferee. The Applicant argues that for certain instruments, it was not the drawer or maker and thus cannot be statutorily liable as a mere recipient.

The Applicant also contends that the assessment itself is excessive - central to Issue 3, which in turn depends on Issue 4 – the classification of the instruments. The Applicant submits that, particularly after the June 2019 amendment, certain instruments were subject to a fixed stamp duty rate of UGX 100,000 under Item 36, rather than the 1% ad valorem rate applied by the Respondent. Additionally, the Applicant invokes Section 4(3) of the Act, arguing that in transactions involving multiple instruments (e.g., mortgages, debentures), the 0.5% duty already paid should be accounted for, preventing double taxation.

However, the Tribunal finds that the liability for stamp duty extends beyond mere cost allocation. The Stamp Duty Act establishes that stamp duty, when it becomes due and payable, is a debt to the Government of Uganda and is payable to the Commissioner. The Commissioner can sue for and recover unpaid duty. The Act in Section 56 imposes a penalty on a person who executes an instrument that is not duly stamped. Given that the Applicant bank executes the instruments it issues, such as bonds and guarantees, the responsibility for ensuring these instruments are duly stamped and the duty is paid over to the Respondent falls upon the Applicant as the executing party.

In fact, the Applicant's longstanding practice of collecting and remitting stamp duty confirms its recognition of this legal obligation. Accordingly, the Tribunal finds that the Applicant, as the party executing the relevant instruments, is liable to pay the legally chargeable stamp duty on the instruments in question by remitting the collected amounts to the Respondent.

The extent of this liability will be determined by the Tribunal's findings on the correct classification of the instruments (Issue 4) and the resulting calculation of the proper stamp duty (Issue 3).

**Issue 3 & 4: Whether the Stamp Duty assessed is excessive in the circumstances and Whether bonds and guarantees are "security bonds" in terms of Item 56 of the Stamp Duty Act?**

These issues are fundamentally linked, as the correct classification of the instruments determines the applicable stamp duty rate and thus whether the assessment is excessive. Issue 4, although phrased specifically to Item 56, expresses the broader question of the nature and classification of the instruments for stamp duty purposes, particularly distinguishing between general bonds (Item 16), indemnity bonds (Item 36), and security bonds (Item 56), and the applicable rates thereto (nominal vs ad valorem)

The Respondent assessed stamp duty on the Applicant's bonds and guarantees at a rate of 1% of the value based on the contention that these instruments fall under Item 56 to the Stamp Duty Act, 2014, as "Security Bonds." Alternatively, the Respondent argued that these instruments are "indemnity bonds" under Item 36 of the Second Schedule. The Respondent argued that bonds and guarantees executed by the Applicant were for the purpose of indemnifying third parties for non-performance and possess the same legal effect as security and indemnity bonds due to their character since they are secured by mortgages and debentures obtained from the customer.

The Applicant contended that these instruments are not "security bonds" under Item 56. The Applicant argued they should be classified under Item 16 (Bond) or Item 36 (Indemnity Bond). They submit that the Bank acts as a surety to secure the due performance of a contract (or repayment of a loan/credit facility), and the security (mortgages/debentures) is provided by the customer, not the Bank. Therefore, the instruments themselves are not the "Security Bond" contemplated by Item 56.

The Applicant highlighted that the Stamp Duty (Amendment) Act, 2019, specifically amended Item 36 to include "Bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments", setting a fixed rate of UGX 100,000/= for this category from 1 July 2019. They submitted that specific provisions, such as

Item 36 should take precedence over general provisions like Item 56 (the principle of *Generalia Specialibus Non Derogant*). The Applicant argued that applying the 1% ad valorem rate under Item 56 was incorrect and resulted in an excessive assessment. The Applicant also raised the principle that where a transaction involves multiple instruments, the principal instrument attracts the higher duty, and secondary instruments like guarantees or bonds securing facilities already covered by mortgages or debentures attracting duty (e.g., at 0.5%) should only attract nominal duty.

The Applicant also submits that under Section 4(3) of the Act, the parties could have determined the principal instrument in the transaction (e.g., the mortgage or debenture securing the obligation) as the one chargeable with the highest duty, and the duty should have been assessed on that principal instrument.

To determine the correct classification, it is necessary to consider the character of each type of instrument and the relevant provisions of the Stamp Duty Act, 2014, including its amendments.

The Stamp Duty Act, 2014, charges duty on instruments listed in Schedule 2. The relevant Items in dispute are:

1. Item 16: "BOND (not being a debenture)". The duty for this Item was Shs. 5,000, amended to Shs. 10,000 in 2016, and later to Shs. 15,000 in 2018.
2. Item 36: This item initially covered "Indemnity bonds". Prior to 1st July 2019, the rate was 1% of the value. The Stamp Duty (Amendment) Act, 2019, which commenced on 1st July 2019, amended Item 36 to specifically include "bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments" and revised the duty to a nominal fee of UGX 100,000.
3. Item 56: "Security Bond or Mortgage Deed" for specific purposes (like securing due execution of an office or accounting for money, or by a surety for a loan). The rate for this item is 1% of the value for period in question.

The Act defines "bond" in Section 2 to include:

"(a) an instrument by which a person obliges himself or herself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) an instrument attested by a witness which a person obliges to pay money to another; and

(c) an instrument attested by a witness by which a person obliges himself or herself to deliver grain or other agricultural produce to another".

The Act does not specifically define "indemnity bond" or "security bond". In such cases, the ordinary meaning applies.

Section 6(1) of the Act states that an instrument framed to come within two or more descriptions in Schedule 2 with different duties is chargeable only with the highest duty.

### Analysis

Drawing on the Tribunal's prior ruling in ***Stanbic Bank Holdings Limited v Uganda Revenue Authority (Taxation Application No 56 of 2019)***, the character of an instrument must be ascertained by reference to its legal effect when it is executed. Regardless of the label, the essential nature of the document must be considered.

In the prior ruling, the Tribunal noted the distinction between a contract of indemnity (a primary obligation to keep another harmless against loss) and a contract of guarantee (a secondary obligation to answer for the debt, default, or miscarriage of another who is primarily liable) and ultimately found that performance bonds, advance payment bonds, and generic guarantees impose a primary indemnity obligation and are thus indemnity bonds under Item 36 and that Bid bonds secure entry into contracts but do not indemnify for breach; they are general bonds under Item 16.

Furthermore, from 1 July 2019, the Stamp Duty (Amendment) Act, 2019, explicitly classified bank guarantees, performance bonds, indemnity bonds, and similar debt instruments under amended Item 36, setting a nominal duty of UGX 100,000.

Regarding the assessment under Item 56, the Respondent argued that because the bank's obligations are backed by customer-provided security (mortgages, debentures), the instruments should be treated as security bonds under Item 56. The Tribunal notes that while the guarantees and bonds might function as security in a commercial sense, the crucial question is whether the instruments themselves fit the description of a "Security Bond" under Item 56, especially alongside "Mortgage Deed".

A mortgage deed creates a security interest in property. A "Security Bond" in this context likely refers to an instrument of similar character, whose primary purpose is to establish or represent a security interest or is a bond directly executed by way of security over assets or for specific duties related to an office or accounting.

We reviewed the specific examples mentioned by the Respondent to illustrate the types of financial instruments and transactions that are subject to the stamp duty assessment. These include:

- New Vision Printing and Publishing Corporation: Advance Payment Guarantee indemnifying the Ministry of Education and Sports
- New Vision Printing and Publishing Corporation: Advance payment guarantee indemnifying the Ministry of Education.
- Amatheon Agri (Exhibit A57): Performance bond guaranteeing supply to the World Food Programme.
- V.G. Keshwala and Sons Ltd. (Exhibit A19): Generic guarantee for credit sales to Bidco Uganda Ltd.
- Babcon Uganda Limited (Exhibit A36): Advance payment guarantee securing Busitema University contracts.
- Other generic guarantees (Exhibits A94 to A117) also show customers contracting with beneficiaries, and the bank undertaking to indemnify or guarantee the beneficiary.

These examples show that the Applicant acted as a surety on behalf of customers, but the underlying security was provided by customer-held mortgages or debentures, not by the guarantees or bonds themselves.

There is no clear evidence on record to support the contention that the specific instruments issued by the Applicant (bank guarantees, performance bonds, advance payment bonds, bid bonds) are "Security Bonds" in the sense contemplated by Item 56.

Therefore, the Tribunal finds that the guarantees and bonds do not themselves create or represent security over property; they are contractual undertakings. Item 56 applies where an instrument's principal character is to establish a security interest (like a

mortgage or a bond executed directly as security), not to general suretyship supported by external customer assets.

Applying the principles established in the Stanbic Bank ruling, this Tribunal finds that:

- Performance bonds, advance payment bonds, and generic guarantees are classified as Indemnity Bonds under Item 36 of the Second Schedule.
- Bid bonds are classified as Bonds under Item 16 of the Second Schedule.
- Letters of Credit are specifically listed under Item 39 of the Second Schedule.
- Import Bills for Collection, not being specifically listed, would likely fall under the residual Item 66 ("Any other instrument not specifically mentioned").

The applicable rates are determined by these classifications, which changed over the assessment period due to amendments to the Stamp Duty Act. Specifically, for the period from 1 July 2019 onwards, instruments falling under Item 36 (including bank guarantees, performance bonds, and indemnity bonds) are subject to a fixed duty of UGX100,000/=, not 1% of the value. Item 16 (Bonds) and Item 39 (Letters of Credit), and Item 66 (Residual) have their own fixed rates.

#### Application of Section 6(1) and Section 4(3)

Section 6(1) applies only where instruments fit multiple duty categories. Here, the evidence indicates that each instrument fits a specific category. Section 4(3) allows the principal instrument (e.g., mortgage or debenture) to carry the highest duty, with supporting guarantees/bonds classified separately.

The Respondent's assessment of UGX 7,353,393,635, which applied a general rate of 1% of the value under Item 56 to instruments that are correctly classified under Items 16, 36, 39, and potentially 66, and for which specific or fixed rates apply (especially from 1 July 2019) was therefore excessive.

#### **Issue 5: What remedies are available to the parties?**

The Applicant sought for the assessment to be set aside or remitted for recalculation. The Respondent sought for the assessment to be upheld.

The Tribunal has the power to review a taxation decision and make a decision, including setting aside the decision or remitting the matter for reconsideration. Having found that the Applicant is liable to pay the correct duty (Issue 2), but that the assessed

amount was excessive due to incorrect classification and rate application (Issues 3 & 4), the appropriate remedy is to adjust the assessment to reflect the correct application of the Stamp Duty Act.

The Respondent's assessment of Shs. 7,353,393,635 is based on an expected duty calculation of Shs. 9,326,734,792 (comprising Shs. 9,249,909,792 for Bonds and Guarantees and Shs. 76,852,000 for Letters of Credit, Bid Bonds, Import Bills for Collection and others), less payments received.

The total stamp duty payable by the Applicant for the period must be recalculated, basing on the Tribunal's finding regarding the correct classification of these instruments under Items 16, 36, 39, and potentially 66, and the application of the corresponding rates (including the fixed rate of UGX 100,000 for Item 36 instruments from 1st July 2019),

The Tribunal is unable to perform a precise recalculation of the total amount payable by the Applicant based solely on the provided assessment summary which bundles instrument types. However, the Tribunal finds that the correct stamp duty payable is the total amount calculated by applying the rates applicable to the correct classification of each instrument issued or received by the Applicant during the assessment period. This amount is less than the UGX 7,353,393,635 assessed by the Respondent.

The Tribunal therefore sets aside the Respondent's assessment to the extent that it is based on incorrect classification and rates. The Applicant is liable to pay the correct stamp duty as determined by applying the appropriate rates under Items 16, 36, 39, and 66 (or relevant historical items/rates prior to the 2019 amendment) to the instruments in question for the respective periods.

In conclusion, the Tribunal finds as follows:

1. The objection decision was not rendered out of time.
2. The Applicant is liable to pay the legally chargeable stamp duty.
3. The Stamp Duty assessed was excessive due to the incorrect classification and application of rates. Instruments assessed as "security bonds" under Item 56 (1% rate) should have been classified under Items 16, 36, 39, and potentially 66, attracting different, mostly fixed, rates.

Accordingly, the Tribunal orders as follows:

1. The application is allowed in part.
2. The Respondent's assessment of UGX 7,353,393,635 is hereby set aside.
3. The matter is remitted to the Respondent for recalculation of the stamp duty payable by the Applicant for the period January 2015 to December 2021, in accordance with the classifications and rates determined by this Tribunal, specifically applying Item 16 for Bid Bonds, Item 36 (with the UGX 100,000 fixed rate from 1st July 2019) for Performance Bonds, Advance Payment Bonds, and Generic Guarantees, Item 39 for Letters of Credit, and Item 66 for Import Bills for Collection (or their corresponding rates and items prior to the 2019 amendment).
4. The Applicant shall be liable for the stamp duty amount as correctly recalculated by the Respondent.
5. Given the partial success of both parties, each party shall bear its own costs of the application.

Dated at Kampala this 8<sup>th</sup> day of May 2025.

  
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**MS. PROSCOVIA R. NAMBI**  
**MEMBER**

  
\_\_\_\_\_  
**MS. STELLA NYAPENDI**  
**MEMBER**



**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION NO.152 OF 2022**

STANDARD CHARTERED BANK UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. STELLA NYAPENDI, MS. PROSCOVIA R. NAMBI

**RULING**

This ruling, is in respect of an application, challenging a revised Stamp Duty assessment of Shs. 7,353,393,635, on the grounds that the objection decision by the Respondent, was rendered out of time and that the instruments chargeable to Stamp Duty, ought to have been charged at a nominal rate, and not at the rate of 1%, as prescribed under item 56 of Schedule 2 of the Stamp Duty Act.

**Background**

The Applicant is a financial institution operating under the Financial Institutions Act, 2004. The Applicant issues financial instruments known as Bonds or Guarantees to its customers.

For the period 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2021, the Applicant issued Bonds and Guarantees to various customers.

The Respondent carried out a Stamp Duty audit on the Applicant in respect of the financial instruments (Bonds & Guarantees) issued in the period above and determined that Bonds and Guarantees should have attracted Stamp Duty at a rate of 1% of the value in accordance with item 56 of the Second Schedule to the Stamp Duty

Act. The Respondent accordingly assessed Stamp Duty, in the sum of Shs. 7,353,393,635/-.

The Applicant objected to the assessment on 22<sup>nd</sup> April 2022, on the grounds that Bonds and Guarantees, do not fall under item 56 of the Second Schedule of the Stamp Duty Act and that the Stamp Duty is by agreement payable by the customer and that in any case the duty was excessive where more than one instrument was deployed.

The Respondent issued its objection decision on 30<sup>th</sup> May 2022, rejecting the Applicant's objection on the basis that Performance Bonds, Advance Payment Guarantees, Supplier Guarantees, Security Bond and Goods/Services Guarantees, fall under instrument 56 of the Second Schedule to the Stamp Duty Act, 2014, as amended.

On 13<sup>th</sup> June, 2022, the Applicant wrote notifying the Respondent that it had elected to treat its objection, lodged with the Respondent, on 22<sup>nd</sup> April 2022, as allowed, under S. 46(8) of the Stamp Duty Act.

### **Representation**

At the hearing, the applicant was represented by Mr. Joseph Luswata and Mr. Winston Churchill Ruhayana while the Respondent was represented by Ms. Gloria Twinomugisha, Mr. Tony Kalungi and Mr. Simon Peter Orishaba.

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

1. Whether the assessed Stamp Duty is payable by the Applicant?
2. Whether the objection decision was rendered out of time by the Respondent?
3. Whether Bank Guarantees and Bonds are security bond for the purposes of the Stamp Duty Act, 2014.
3. What remedies are available to the parties?

Mr. Edmund Nsasiwe, the Applicant's Head of Trade Operations, testified that in March 2015, the Respondent communicated to the Applicant that it had concluded a

Stamp Duty review on instruments executed or received by the Applicant in the period 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2021.

The witness testified that the instruments reviewed by the Respondent were 6,999 in number and the Respondent's Excel sheet of the workings showing the customers involved, the nature, value, date of issue or receipt of the instrument, the duty paid and the duty 'which ought to have been paid' was shared with the Applicant.

The witness stated that according to the Respondent's workings, the proper Stamp Duty for the instruments reviewed under the exercise was 1% of the value of the instrument but the Applicant had paid duty on the instruments at a flat rate of Shs. 5,000 or Shs. 10,000 or Shs. 15,000.

The witness testified that for instance, instrument1, was an Import Bill for Collection (IBC) which translated to Shs. 52,709,596. The witness stated that the Applicant collected and paid Shs. 5,000 as Stamp Duty from the beneficiary of the instrument but according to the Respondent's workings an amount of Shs. 527,095, was the proper duty payable, in respect of that instrument.

The witness stated that the Respondent sent its workings, along with, a letter stating that Stamp Duty had been underpaid on the Bonds, and Guarantees, Letters of Credit, Bid Bonds, Import Bill for Collection and Others but that Stamp Duty, was correctly paid on mortgages and debentures. The witness stated that following clarification, the letter referred to above, was corrected and another letter was issued, stating that the underpaid Stamp Duty, on the same instrument for the same period, was Shs. 7,353,393,635.

The witness testified that on 22<sup>nd</sup> April 2022, the Applicant objected to the Stamp Duty assessment and on 30<sup>th</sup> May 2022, the Respondent rendered its objection decision rejecting the Applicant's objection.

The witness stated that on 13<sup>th</sup> June 2022, the Applicant wrote to the Respondent informing it that it had elected to treat its objection, as having been allowed since the objection decision, had been rendered beyond the 30 day limitation period.

The witness described the various instruments issued by the bank as follows;

- a) Letters of Credit is a bank assurance to a foreign supplier of goods or services from a customer that on the presentation of compliant documents, the Bank will pay, in the event that the customer does not pay.
- b) Bonds or Guarantees, is a bank assurance to a third party (client), that the third party will be paid a stated amount on the occurrence of an event, which is usually the non-performance of a contract between the third party and the bank customer (contractor).
- i. A Bid Bond accompanies a bid for a job and assures a client that a bidder has the capacity to fulfill or perform the contract, if the contract is awarded to the bidder. The bid bond, is a percentage of the contract sum, usually 5-10%.
  - ii. An Advance Payment Guarantee assures the client that if there is, non-performance of the contract, the Bank will pay the third party the advance it made to the contractor. This type of Guarantee, is a requirement whenever the third party is advancing money to the contractor to undertake a stated project.
  - iii. A Performance Guarantee assures the third party that if the customer fails to perform the contract, the third party will be paid by the bank for the loss arising from the non-performance to the extent of the Guarantee.
  - iv. A Retention guarantee assures the third party that during a specified period of the completion of a project, the bank will fix or cause to be fixed the defects arising in the project.
  - v. An analysis of the amounts of the bond or guarantee instruments issued by the Applicant do not exceed 20% of the contract sum.
- c) An Import Bill for Collection is an arrangement between a customer of the bank and foreign supplier of goods or services for the bank to hold the shipping documents until the customer has paid for the goods or services. This mostly applies in contracts for the supply of goods.
- i. Under the Import Bill for Collection, in the event that the customer fails to pay for the goods or services the subject of the shipping documents, usually the invoice, packaging list, Bill of lading, Bill of exchange, commercial invoice, delivery note/airway bill or consignment note, certificate of origin or certificate of conformity, returned to the supplier's bank.

- ii. The Import Bill for Collection documents are issued or executed by a supplier of goods or the supplier's bank or by the shipping company and are sent by the supplier's bank to the Applicant bank.
  - iii. On receipt of the shipping documents from the supplier's bank, the Applicant bank processes the documents and issues an Advice Note to the customer. When the customer has paid for the goods under the shipping documents, the shipping documents are handed over to the customer, who can then clear and receive the goods from customs.
- d) Others: What is included under 'Others' are uncommon types of guarantees like guarantees given to courts, supplier guarantees etc.
- i. A guarantee given to a court, guarantees, the payment of a stated sum to a named beneficiary, in the event, a court decides a case, against the person applying for the guarantee.

The witness set out the following process for obtaining a trade facility from the Applicant specifically Bonds or Guarantees, Import loans or Bid Bonds;

- a) The customer must have a facility with the bank. In order to have a facility, bank customers execute facility letters for the facilities which may include overdraft, loans of various types and trade facilities.
- b) The facility letter specifies the type of facility, the facility amount, the total facility limit, the security held or required, conditions precedent and other terms of the relationship.
- c) The facilities were secured by various securities including property, trading stock, cash and personal guarantees. In cases, where the security was real estate, mortgages were executed by the customer and registered in the land registry at the Ministry of Lands.
- d) Customers desiring to take additional facilities, executed a further charge on the same property or other property if the value of the first property was less than the money being advanced. In some instances, some customers executed as many as six further charges for the same property or properties as security for facilities taken.
- e) In cases where the applications were made by companies and the security constituted assets like stock or cash, the customer would issue debentures.

- f) The mortgages and debentures including further charges or debentures were assessed to Stamp Duty at a rate of 0.5% of the amount secured by the either the mortgage, further charge, debenture or further debenture. This sum was debited from the customer`s account and paid by the Applicant to the Respondent as a condition for the registration of the mortgage, further charge, debenture or further debentures in the land office or the company registry.
- i. The bonds or guarantees or letters of credit issued at the request of customers such as under exhibit AEX20 at page 619 of the joint trial bundle of exhibit AEX21 at page 625, subsequent to registration of those charges, were issued on the security of those charges but in the Stamp Duty review, the Respondent treated those instruments as attracting Stamp Duty at the rate of 1% of their values. The instruments are listed under exhibit AE1 at page 5, line 16, at page 9, line 17-20, page 17, line 44-46 or page 89 line 4 and others.

The witness testified that most of the trade facilities granted to Uganda customers i.e Bonds and Guarantees or Letters of Credit, issued under the review period were secured by mortgages over real estate or debentures over company assets executed by the customers.

- a) After the registration of the security at the land office or at the companies registry, or at the same time as the security was being registered, the customer would come to the Trade department of the Applicant and apply for a trade facility (Bid Bond, Advance Payment Guarantee, Performance Guarantee, Letters of Credit) etc.
- b) The customer fills in an application form. The Application specifies the type of facility, the beneficiary and the amount.
- c) In respect of all the applications the customers authorized the Applicant to debit all amounts payable by the customer from the customer`s named accounts for the charges, expenses or amounts payable by the customer for the guarantee.
- d) Once the application was received, the same was assessed to determine the Applicant`s suitability for the facility by reference to the customer`s facility letter, which sets out the facility type, the limits, the security in place. The Guarantee or bond or other facility is only issued once the Applicant is satisfied that the application was compliant.

- e) A similar process was followed whenever the customer desired any of the trade facilities. There were no walk-in customers for which the Applicant issued any of the trade facilities during the period of the review. Every customer who got a trade facility had to have been issued with a current facility letter that set out the terms of engagement and to have provided security that was mainly mortgages or debentures for any of the trade facility.
- f) After the issuance of the trade facility, staff in the Applicant's Trade Operations department, accessed the return template from the Respondent's portal on a monthly basis, and populated it with the instruments issued or received, their amount and date. The template assigned the Stamp Duty payable.
- g) The Trade Department debited each customer's account with the Stamp Duty assigned to the instrument, by the Respondent's return template and credited the Applicant's Collection Account and thereafter, the bulk returns populated by the Trade Operation's Department were sent to the Finance Department of the Applicant.
- h) The Finance department consolidated the return from the trade department with returns from other departments of the Applicant and submitted a consolidated return to the Uganda Revenue Authority on a monthly basis.
- i) The Finance department of the Applicant debited the Collections account and paid the total Stamp Duty for such instruments per month.
- j) The witness testified that the Applicant has never paid Stamp Duty on any instrument, issued, drawn or executed or received from its funds. The Stamp duty was always collected from the customers of the Bank and remitted to the Respondent. Every customer agreed to this arrangement and no facility was extended to a customer who did not agree to pay Stamp duty on an instrument issued or received by the Applicant.

Okodi Harold, an officer in the Respondent's Domestic Taxes Office, testified that the performance bonds and guarantees are executed to indemnify third parties for non-performance of contractual obligations by the guarantor (Applicant) and possess the same legal effect and serve the same purpose as security bonds.

The witness testified that Advance Payment Guarantees, Performance Bonds, Supplier Guarantees, Goods/Services Guarantees, are all executed to secure the due

performance of a contract. These documents therefore have the same legal effect as Security and Indemnity Bonds.

The witness testified that Advance Payment Guarantees, Performance Bonds, Supplier Guarantees, Goods/Services Guarantees and Security Bonds attract Stamp Duty at the rate of 1% since they fall under the category of Security Bonds as provided for under Instrument No. 56 of Schedule II of the Stamps Duty Act, 2014.

The witness stated that on 30<sup>th</sup> March 2022, the Respondent carried out a Stamp Duty Audit on the Applicant in respect of Financial Instruments (Bonds and Guarantees) issued to its customers. The witness stated that for the period 1<sup>st</sup> January 2015 to 31<sup>st</sup> December 2021, the Respondent established that the Applicant made several underpayments of Stamp Duty on executed Bonds and Guarantees, as follows; 356 Advance Payment Guarantees of Shs. 5,297,210,741, 389 Performance Bonds of Shs. 2,769,274,887, 149 Supplier Guarantees of Shs. 967,216,921, 41 Goods/Services Guarantees of Shs. 124,142,151 and 9 Security Bonds of Shs. 51,365,092.

The witness testified that upon reviewing the above documents, it was established that the difference in the wordings and titling of the instruments did not change the purpose for which they were sought for from the Applicant bank and that the purpose of an indemnity is to protect or provide security against damage or loss to a contracting party and compensate the affected party against damage or loss sustained. The witness concluded therefore that in all scenarios, the Stamp Duty, on the instruments issued by the Applicant would be 1% as they all seek to indemnify the third party in case of default on the contractual obligations and provide for security against any damage or loss caused for breach of contractual duty.

The witness testified further that whereas the Applicant initially used to declare 1% in line with item 56 on the executed bonds and guarantees, it later decided to use nominal rates under item 16, in contravention of the Stamp Duty Act and ordinary banking norms. The witness stated that as a result, the Respondent issued an Additional Principal Stamp Duty Assessment for the periods January 2015 to December 2021 amounting to Shs. 7,353,393,635/- due to underpayment of Stamp Duty on executed bonds and guarantees as provided under S. 63 of the Stamp Duty Act, 2014. The witness stated that the Respondent's decision was justified under the law as

Performance Bonds and Guarantees attract Stamp Duty at the rate of 1% for the reason that they fall under the category of Indemnity bonds under the Stamp Duty Act.

Ms. Ruth Anne Agwang, a Manager in the Respondent's Independent Review of Objections, stated that the Respondent issued an Additional Principal Stamp Duty assessment for the period January 2015 to December 2021, amounting to Shs. 7,353,393,635 due to underpayment of Stamp Duty on executed bonds and guarantees. The witness testified that on 22<sup>nd</sup> April 2022, the Applicant filed a manual objection and on 17<sup>th</sup> May 2022, the Respondent by email requested the Applicant for an objection review meeting on 19<sup>th</sup> May and for supporting documents and detailed explanations in respect of the grounds of their objections. The Applicant's representative wrote to the Respondent by email stating that the Applicant's officials were out of office until 23<sup>rd</sup> May 2022 and requested that the meeting be rescheduled for 24<sup>th</sup> May 2022.

The witness testified that on 24<sup>th</sup> May 2022, a review meeting was held and the Applicant requested the Respondent to extend the time within which to make an objection on the basis that it was important for the Respondent to review information that was provided on 24<sup>th</sup> May 2022, after the expiry of the objection. The witness testified that the Respondent reviewed the Applicant's objection and established that performance bonds, advance payment guarantees, supplier guarantees, security bonds and goods/services guarantees were indemnity bonds since they represent payment on default in lieu of performance of contractual obligations. The witness testified that the Respondent further established that the Applicant used the term 'guarantee' interchangeably with 'indemnity' and the Applicant undertook to indemnify or guarantee to pay the beneficiary in the event of a breach of contractual obligations or non-performance. The witness testified further that the Respondent also established that advance payment guarantees or bonds are indemnity bonds because the Applicant makes good the payment of an advance payment in case of breach of a contract or non-performance.

The witness testified that the Respondent issued an objection decision disallowing the objection due to underpayment of Stamp Duty on executed bonds and guarantees for the period January 2015 to December 2021 and subsequently issued an objection decision on 30<sup>th</sup> May 2022. The witness stated that the basis for disallowing the

objection was that performance bonds, advance payment guarantees, supplier guarantees, security bonds and goods/services guarantees as declared by the Applicant are indemnity bonds falling under item 56 of Schedule 2 of the Stamp Duty Act and the Applicant therefore had an obligation to charge 1% on all the instruments issued for the period assessed.

The witness testified that pursuant to the above decision the Respondent established a variance of Shs. 7,353,393,635 between the payments made by the Applicant based on the nominal rates under item 16 of Schedule 2 and the payments that the Applicant ought to have made based on 1% as per item 56 of Schedule 2.

The witness testified further that by a letter dated 13<sup>th</sup> June 2022, the Applicant notified the Respondent that it had elected under the provisions of S. 47(8) of the Stamp Duty Act, to treat the failure by the Respondent to make an objection decision within 30 days, as decision allowing the objection. The witness stated that on 24<sup>th</sup> June 2022, the Respondent wrote to the Applicant explaining that the request by the Applicant's representative for an extension of time to make an objection decision beyond the statutory timelines by requesting to re-schedule the review meeting from 19<sup>th</sup> May 2022, to 24<sup>th</sup> May 2022, had been granted. The witness stated that therefore the election by the Applicant was unlawful as the Applicant had requested the Respondent to extend the time for reviewing their own objection.

#### Submissions of the Applicant

The Applicant submitted that the objection to the assessment was lodged with the Respondent on 22<sup>nd</sup> April 2022 and the Respondent rendered the objection decision on 30<sup>th</sup> May 2022. The Applicant submitted that it elected to treat its objection as allowed on 13<sup>th</sup> June 2022.

The Applicant submitted that the **Stamp Duty Act, 2014** requires the Commissioner General to render an objection decision on an objection properly lodged within 30 days after the date the objection was lodged. The Applicant cited **S. 47(8)** of the **Stamp Duty Act**, in support of this position.

The Applicant submitted that the objection having been lodged on 22<sup>nd</sup> April 2022; the objection decision ought to have been rendered by 22<sup>nd</sup> May 2022. The Applicant submitted that the decision was rendered on 30<sup>th</sup> May 2022, seven days late, by which

time, the Applicant's right to elect to treat the objection as having been allowed in terms of S. 47(8) had accrued and was exercised on 13<sup>th</sup> June 2022.

The Applicant submitted that in the instant case, after the expiry of the 30 days, the Respondent was barred from issuing any decisions. In support of this position the Applicant cited the decision of the Kenyan Tax Appeals Tribunal in **Liquid Telecom v. Commissioner Domestic Taxes, TAT Appeal No. 587 of 2023**. The Applicant also relied on the Kenyan decisions of **Eastleigh Mall Limited vs. Commissioner Investigations and Enforcement, Income Tax Appeal NO. 68 of 2020**; **Equity Group Holdings Limited vs. Commissioner of Domestic Taxes, TAT Appeal No. 27 of 2017**; **Vivo Energy Kenya Limited vs. Commissioner of Customs and Border Control, Application No. 346 of 2019**, for the proposition of the law that the observance of tax timelines are mandatory.

The Applicant submitted that after the 30 days limit, the Applicant's right to elect to treat the objection as allowed had accrued. The Applicant submitted that the right to treat an objection as allowed after the 30 days limit, is statutory and no timelines are fixed by statute for its exercise. The Applicant submitted that this right was invoked by it within a reasonable time as guided by the Interpretation Act.

The Applicant submitted that for S. 47(8) of the Stamp Duty Act to apply so that the objection is treated as having been allowed by the Commissioner, the Commissioner must have defaulted in rendering an objection decision 30 days after it was properly lodged and that the taxpayer must have elected in writing within a reasonable time to have the objection treated as having been allowed. The Applicant submitted that both these conditions have been fulfilled in the instant case. The Applicant submitted that there was no objection decision after 30 days and the election was taken within 20 days meaning that the objection was allowed. The Applicant invited the tribunal to find that the objection was allowed by the Applicant's election and the objection decision rendered by the Respondent was statute barred.

The Applicant submitted that the Stamp Duty Act, is a self-contained Code, meaning that in the absence of any express reference to another law, everything relating to stamp duty must be determined by looking at the Stamp Duty Act itself.

The Applicant submitted on the authority of the decision in **Uganda Revenue Authority vs. Uganda Consolidated Properties Ltd, Civil Appeal No. 31 of 2000**, that timelines set by statute are matters of substantive law and not mere technicalities and must be strictly complied with.

The Applicant also cited the decisions in **Photon Technologies Limited vs. Commissioner General Uganda Revenue Authority, HMMC No. 14 of 2016** and **Kumi Orthopaedic Centre Limited vs. Uganda Revenue Authority (2016-2020 UTLR 293)** and **Woodfix Technical Services Limited vs. Commissioner General Uganda Revenue Authority, HCCS No. 616 of 2012**, in support of the argument that once a party elects, to treat the failure by the Respondent, to serve an objection decision within the prescribed time, as allowing the objection, the Applicant is deemed to be liable to the amount admitted in the objection or as in this case not liable to any tax objected to.

The Applicant submitted that in the instant case, the entire assessment was contested. The objection decision made by the Respondent outside the prescribed time is not valid and the election made thereafter absolves the Applicant of any liability to pay the taxes assessed.

As an alternative issue, the Applicant submitted that, it is not liable to pay Stamp Duty as assessed on the instruments.

The Applicant submitted that it is a financial institution, and as such, issues, Guarantees and Bonds of several types, namely Bid Bonds and Letters of Credit, in favour of its customers and receives, Import Bills for collection on behalf of its customers.

The Applicant submitted that the above instruments are generally and collectively referred to as `bank trade facilities` and are offered as products to customers of the Applicant as a financial institution. The Applicant emphasized that these trade facilities are not randomly issued to walk-in-clients but are restricted to existing customers. The Applicant submitted that a person becomes a customer of the Applicant, only upon the execution of a facility letter. The Applicant submitted that the facility letters specify the type of facility, which includes bonds and guarantees.

The Applicant submitted that after the execution of the facility letter, a customer who wishes to draw on a facility, guarantee or bond makes an application for the same. In the case of Import Bills for Collection, these are trade documents/documents of title between a customer of the Applicant bank and a foreign bank/supplier. The Applicant submitted that the supplier's bank sends the documents to the Applicant who holds and only releases those documents to the customer if the supplier confirms that payments for the goods or services supplied to the mutual customer have been paid for.

The Applicant submitted that embedded in the process of obtaining any trade facility, is an agreement by the customer to meet all costs of the transactions including the attendant Stamp Duty. As an example, the Applicant cited exhibit AE7, where the customer authorized the Applicant to debit charges of the transaction from each of their named accounts. The Applicant submitted that the debits made in respect of exhibit AE7, included Stamp Duty.

The Applicant submitted that by the above documentation and the act of debiting each customer account for Stamp Duty for bond and guarantee transactions and all other dutiable transactions, the Applicant agreed with the customer that the customer is the one to pay Stamp Duty on the instruments. The Applicant submitted that such an agreement is permissible under Paragraph 1 Schedule 3 of the Stamp Duty Act.

The Applicant submitted that in the Application for the credit/trade facility, the customer authorizes the Applicant to debit all charges, Stamp Duty inclusive. The Applicant submitted that it has never paid Stamp Duty from its funds on any instruments issued, drawn, executed or received. The Applicant submitted that the Respondent, stated in the assessment, that the Applicant had incorrectly charged Stamp Duty.

In respect of Import Bills for Collection, the Applicant submitted that these instruments are only received by the Applicant. The Applicant submitted that the instrument, is drawn, made or executed by another person, not the Applicant. The Applicant submitted under the provisions of Paragraph 1 Schedule 3 to the Stamp Act, that the expense of providing Stamp Duty is on the person drawing, making or executing the instrument.

The Applicant submitted that it did not draw, execute or make the instrument in question and is not liable to pay Stamp Duty on the same, since the Act does not impose tax on the Applicant as a recipient. The Applicant cited the decisions in **Brunton vs. New South Wales Stamp Duties Commissioner (1913) AC 747** and **IRC vs. Gribble (1913) 3 KB 212**, for the statement of the law that the imposition of a duty or tax must be in plain terms.

The Applicant submitted that the assessed tax is excessive because in assessing the duty the Respondent, did not take into account, the down payment made in cases where more than one instrument was employed and that the duty on guarantees was Shs. 100,000 per guarantee for the period after June 2019.

The Applicant submitted that the trade facilities are secured by mortgages and debentures and are not issued in isolation. The Applicant submitted that the facility letters specify the security required for the facilities and in some cases the mortgages or debentures specifically secured the trade facilities. The Applicant submitted that in the year 2019, the Stamp Duty Act, was specifically amended to provide for Stamp Duty on bank guarantees and bonds at a flat rate of Shs. 100,000.

The Applicant submitted that in instances where guarantees and bonds issued were secured by mortgages and debentures, Stamp Duty of 0.5% of the value was paid to the Respondent on the mortgages or the debentures.

The Applicant submitted that it is a principle of Stamp Duty law that where several instruments are employed in a transaction of sale, conveyance or mortgage, the principal instrument is the one that attracts a higher duty, and it is that instrument that is charged with the highest duty and the rest of the instruments, so employed are charged a nominal rate. In support of this principle, the Applicant cited the decision in **Stanbic Bank and Others vs. Uganda Revenue Authority, HC Consolidated Civil Appeal No. 70 of 2007 and 792 of 2006**.

The Applicant submitted that in the instant case, the mortgages and debentures secured risks arising from the issuance of guarantees and bonds issued by the Applicant at the request of customers. The Applicant submitted that most customers of the Applicant secured their guarantees and bonds with mortgages and debentures.

The Applicant submitted that all other facility letters show that the trade facilities were secured by mortgages or debentures, which shows that these were transactions, where several instruments were deployed. Such instruments included mortgages or debentures that attracted or on which Stamp Duty of 0.5% was paid and bonds and guarantees that attracted (up to 2019), 1% under either item 36 or (up to 2022) could have come under item 56 of the Schedule as a security bond.

The Applicant submitted that under these circumstances, the Respondent should have demanded for the 0.5% balance given that guarantees and bonds employed along with other instruments attracted a higher duty than those other instruments should have been designated by the Applicant as the principal instruments under S. 4(3) of the Stamp Duty Act. The Applicant submitted that the parties having designated a lesser chargeable instrument; the Respondent's case should have been for the difference between the duty paid and the duty that should have been paid if there was a proper designation and identification of the principal instrument and not the entire 1% as claimed by the Respondent.

The Applicant submitted that from 1<sup>st</sup> July 2019, Guarantees and Bonds could only be charged under the amended and specific item 36 and not the general item 56 of the Second Schedule to the Stamp Duty Act. The Applicant submitted that under cross examination, RW1, was not aware that as at July, 2019, the duty rate under item 36 had been reduced from an Ad valorem rate of 1% to a specific rate of Shs. 100,000. The Applicant submitted that after June 2019, the rate of Shs. 100,000 applied on guarantees because it was specific and the general item 56 could not apply. The Applicant prayed this part of the dispute be remitted to the Respondent for a reconciliation under S. 19 of the Tax Appeals Tribunal Act.

The Applicant submitted that the Respondent imposed Stamp Duty on the different instruments in issue at 1% of the total value, under item 56 of the Second Schedule to the Stamp Duty Act, which applies to security bonds and mortgage deeds. The Applicant submitted that according to the Respondent the instruments in question, ought not to have been charged, at the nominal rate of Shs. 100,000. The instruments in question are Bonds or Guarantees, Letters of Credit and Import Bill for Collection. The Applicant submitted that the Respondent indiscriminately imposed duty of 1% on

all these instruments pursuant to item 56 of the Second Schedule to the Stamp Duty Act.

The Applicant submitted that at no time, during the relevant period, were any of the instruments in issue specifically defined by the Stamp Duty Act. The Applicant submitted that only a bond, as defined under the Act, to include an instrument by which a person obliges himself or herself to pay money to another, on condition that the obligation shall be void if a specified act is or is not performed. This definition is broadly and vaguely worded and can be said to encompass all types of bonds-indemnity, performance and security. The Applicant submitted that these bonds are charged differently and separately under item 16(bond), item 36 (indemnity bond, which was expanded in the year 2019 to include bank guarantees, insurance performance bonds and `similar debt instruments` and item 56 (security bond).

The Applicant submitted that for the instruments in issue to be indiscriminately chargeable under item 56, they should have been issued and executed by the bank not as bonds (item 16), bank guarantees or similar debt instruments (item 36), but the bank was acting as a surety to secure the due performance of a contract (or, after the 2022 amendment, to secure a loan or credit facility).

The Applicant submitted that the bank does not act in the position of a surety (as a principal with a primary obligation) to secure the due performance of a contract or to secure a loan or credit facility. The Applicant submitted that the bank merely provides a guarantee or bond, standing in the position of a bonded agent (with a secondary obligation) of the customer (who at all times bears the primary payment obligation) to pay over funds held for the account of the customer based on agreed terms. The Applicant submitted that as such the instruments in issue do not constitute security bonds.

The Applicant submitted that to the extent that there is ambiguity and uncertainty regarding what instruments constitute bonds (chargeable at nominal rates under item 16); bank guarantees, indemnity bonds and similar debt instruments (chargeable at nominal rates under item 36); and security bonds (chargeable at 1% under item 56). The Applicant submitted that these ambiguities should be resolved in favor of the Applicant. In support of this argument the Applicant relied on the decision in Stanbic

Bank Ltd and Others vs. Uganda Revenue Authority; HC Consolidated Civil Appeal No. 70 of 2007 and 792 of 2006.

The Applicant submitted that the reason for the amendments on items 36 and 56 of the 2<sup>nd</sup> Schedule is not difficult to fathom. Relying on the Parliamentary Hansard of 13<sup>th</sup> June 2019, the Applicant submitted that the

2019 amendment of item 36 was done to provide for a uniform Stamp Duty payable on bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments in order to reduce the cost of debt financing and ease tax compliance and administration. The Applicant submitted that to find bank guarantees and performance bonds are or were security bonds in the years 2015 to June 2019, chargeable at 1% of total value would be an unfavorable interpretation or resolution of ambiguity and is to impose an unfair burden upon the Applicant and its customers.

The Applicant urged the tribunal to find that the objection decision was rendered out of time after the Applicant's right to elect had arisen and the election by the Applicant extinguished the assessed tax. In the alternative, the Applicant invited the tribunal to find that the liability to pay the duty was shifted to the customers by agreement of the bank and its customers in accordance with the Stamp Duty Act. In the further alternative, the Applicant invited the tribunal to order a reconciliation on the basis that the duty chargeable is 0.5% in instances where guarantees and bonds were issued, as part of debentures and mortgages, in a conveyance transaction or Shs. 100,000/= in the period after June 2019. The Applicant also invited the tribunal to find that guarantees and bonds are not security bonds and that the duty already paid by the Applicant is sufficient.

#### Submissions of the respondent.

The Respondent submitted that the objection decision was rendered in time. The Respondent submitted that it is cognizant of the 30 day timeline, within which an objection decision should be rendered under S. 46(8) of the Stamp Duty Act.

The Respondent submitted that this limitation is subject to waiver where there is a necessity for the review of the tax payer's records for settlement of the objection and that the taxpayer has been duly notified. The Respondent relied on S. 26(9) and 26(10) of the Tax Procedures Code Act (TPCA), in support of this argument.

The Respondent submitted that on 17<sup>th</sup> May 2022 and on 20<sup>th</sup> May 2022, the Respondent duly notified the Applicant through emails addressed to PWC, the Applicant's auditors, to attend a review meeting on 19<sup>th</sup> May 2022, for the purposes of defending the grounds of its objection and for the purpose of submitting all documents in support of its objections. The Respondent submitted that it received a response from Mr. Marshall Richard, an Associate Director, at PWC, who informed the Respondent by email that he was out of office and would only return on 23<sup>rd</sup> May 2022. The Respondent submitted that due to the above events and correspondences, it issued its objection decision on 30<sup>th</sup> May 2022.

The Respondent submitted that the TPCA, regulates the procedure of the Stamp Duty Act by virtue of S.1 of the TPCA and paragraph d of Schedule 2 of the TPCA. The Respondent that as such, the waiver of the timelines laid down under S. 26(9) of the TPCA, applies to the 30 day timeline set out in the Stamp Duty Act. The Respondent submitted that, accordingly the assertion by the Applicant that the objection decision was rendered out of time, is mis-founded, as the same was deemed waived when documentation was requested from the Applicant for the purpose of rendering the objection decision.

The Respondent submitted that bonds and guarantees, constitute security bonds, in terms of item 56 of the Stamp Duty Act.

The Respondent submitted that the 2<sup>nd</sup> Schedule of the Stamp Duty Act, 2014, provided for rates of Stamp Duty payable, on various instruments covered under the Act, and under item 56, 1% of the total value of Security bonds or mortgage deeds was payable as Stamp Duty.

Under item 56, of the Act, security bonds or mortgage deeds, have been described, as having been executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract.

The Respondent submitted that, as guarantor, the Applicant issued financial instruments, known as bonds and guarantees to its customers on various tri-partite contracts, executed with third parties, which included advance payment guarantees,

performance bonds, retention guarantees, supplier agreements and goods/services guarantees.

The Respondent submitted that upon the execution of these contracts, the Applicant's clients undertook, to fulfill certain contractual obligations, while the Applicant bank undertook to pay an amount secured by the bond or guarantee to third party beneficiaries in case of any breach by the obligor upon demand from the beneficiaries. The Respondent submitted that the execution of performance bonds and guarantees for the purpose of the Applicant indemnifying a third party for non-performance of stated contractual obligations by its client, deems them security bonds, as they possess, the same legal effect as security and indemnity bonds, due to the similarity in character.

Relying on the decision in **Stanbic Bank Ltd & 7 others vs. Uganda Revenue Authority, HCT-00-CC-CA-170-2007 AND 792-2006**, Where the court held that the character of the instrument must be ascertained by reference to its legal effect when executed, the Respondent submitted that in order to correctly determine, the liability to Stamp Duty, the character of the instrument, that is subject to Stamp Duty, must be ascertained by reference to its legal effect when executed. The Respondent submitted that the character of an instrument can be ascertained from the definition of the instrument and from the purpose for which it was executed, by analyzing the content of the document. The Respondent submitted that otherwise taxpayers would evade Stamp Duty by simply keeping the title of the instrument different from the content.

The Respondent relied on the definition of 'bond' under **S. 1 of the Stamp Duty Act, 2014** and the decision of the tribunal, in **Stanbic Bank Holdings Ltd vs. URA TAT Application No. 56 of 2019**, as the basis for ascertaining whether the following instruments executed by the Applicant and its clients, are security bonds and are therefore chargeable to Stamp Duty rate under item 56 of the Act.

- 1. Advance Payment Guarantee on behalf of New Vision Printing and Publishing Corporation dated 8<sup>th</sup> February 2019.**

The Respondent submitted that the purpose of the instrument was for the printing of teacher and instructor education instructional materials for 2017-2022. The Respondent submitted that the Applicant guaranteed to indemnify the Ministry of

Education and Sports in case of failure by New Vision Printing and Publishing Corporation, to print teacher and instructor education instructional materials for 2017-2022.

The Respondent that the Applicant irrevocably undertook to pay the beneficiary a sum not exceeding in total, an amount of Shs. 96,697,800, s an advance payment guarantee in the event that a demand in writing was received by the bank indicating that the contractor was in breach of its obligation under the contract. The Respondent submitted that the Advance Payment Guarantee further provided that "this security is subject to yourselves and is not transferrable or assignable".

**2. The Performance Security Bond on behalf of Footsteps Furniture Company Limited dated 6<sup>th</sup> February 2019.**

The Respondent submitted that the purpose of the instrument was for the supply, delivery and fitting of office furniture for the new URA headquarter building.

The Respondent submitted that the Applicant bank guaranteed to indemnify Uganda Revenue Authority in case of failure by Footsteps Furniture to supply delivery and fitting of office furniture for the new URA headquarter Building.

The Respondent submitted that the Applicant irrevocably undertook to pay the beneficiary, upon a first written demand declaring that the obligor has defaulted under the contract, a sum not exceeding in total an amount of Shs. 259,963,027, as a security.

The Respondent submitted that the Performance Security further provided that the security was valid until 9<sup>th</sup> August 2019.

**3. The Retention Money Guarantee for USD 879,689.61 on behalf of El Nasr Company for Civil Works/Dott Services JV dated 11<sup>th</sup> December 2018.**

The Respondent submitted that the purpose of the above instrument was for the execution of the Arua Water Supply and Sanitation Project.

The Respondent submitted that the Applicant guaranteed to indemnify National Water and Sewerage Corporation, in case of failure by El Nasr Company for Civil Works/Dott Services to execute the Arua Water Supply and Sanitation Project.

The Respondent submitted that the Applicant undertook to pay the beneficiary an amount not exceeding USD 879,689.61 upon written demand from the beneficiary declaring that the obligor had defaulted under the contract. The Respondent submitted that the Retention Guarantee provided that "this security is subject to yourselves and is not transferable or assignable".

#### 4. **The Supplier Guarantee dated 8<sup>th</sup> October 2018.**

The Respondent submitted that the purpose of the above instrument was to supply Price Waterhouse Coopers with air travel. The Respondent submitted that the Applicant undertook to indemnify PWC an amount not exceeding USD 15,000 upon written demand from PWC declaring that Kenya Airways had defaulted on the contract.

The Respondent submitted on the basis of the decision of the tribunal in **Stanbic Bank Holdings Limited vs. URA** (supra), and the reference by the Applicant to the instruments in questions, as securities, the above instruments, were security bonds in terms of item 56 of the Stamp Duty Act \*As at 1<sup>st</sup> July 2019-30<sup>th</sup> June 2020). The Respondent submitted that their legal effect is similar to performance bonds and guarantees as they were executed for the sole purpose of indemnifying third party beneficiaries in case of non-performance of their contractual obligations.

The Respondent submitted on issues 2 and 3 together.

The Respondent submitted that the assessed Stamp Duty of Shs. 7,353,393,635 was due and payable to the Respondent by the Applicant.

The Respondent submitted on the basis of **S.3** of the **Stamp Duty Act** and Item 56 of the Second Schedule to the Stamp Duty Act, 2014 (As at 1<sup>st</sup> July 2019 – 30<sup>th</sup> June 2020) that Security Bonds and Mortgage Deeds, were subject to Stamp Duty at the rate of 1%. The Respondent submitted that on the basis of the above, a review was carried on the Applicant and an assessment of Shs. 7,353,393,635 was raised on the Applicant.

Relying on the decision in **Stanbic Bank Uganda Ltd & 7 others vs. Uganda Revenue Authority HCT-00-CC-CA-170-2007 and 792** (supra), where the court held that the liability of an instrument to stamp duty arose at the moment at which it was executed and depends on the law in force and the circumstances which existed at that time. The Respondent submitted that the assessed Stamp Duty of Shs. 7,353,393,635, was due and payable by the Applicant, and the same is not excessive as the Applicant has itself described the instruments in question as securities.

The Respondent invited the tribunal to find that the Applicant had failed to discharge the burden of proving that the Stamp Duty assessed was incorrect and that accordingly, the Applicant is not entitled to the remedies sought. The Respondent prayed that the Application be dismissed with costs.

In rejoinder the Applicant rejected the argument by the Respondent that the **TPCA** applies to the Stamp Duty Act, by virtue of **S. 26(9) and (10)** of the **TPCA**. The Applicant stated that Paragraph (d) of Schedule 2 to the **TPCA** relates to the Excise Duty Act and not the Stamp Duty Act. The Applicant stated that the Stamp Duty Act, is not listed in Schedule 2 of the **TPCA**, as one of the law to which the **TPCA**, applies. The Applicant reiterated its argument that the Stamp Duty Act, is a self-contained Code and that all matters relating to Stamp Duty, must be resolved by looking at the Stamp Duty Act.

The Applicant stated that the submission by the Respondent that item 56 of the Stamp Duty Act, applies to this case, is erroneous. The Applicant stated that the Respondent conveniently avoids making any reference to item 36, which the Applicant submits is applicable to bonds and guarantees. The Applicant submitted on the authority of **ATC Uganda Limited vs. Uganda Revenue Authority, TAT Application No. 17 of 2019**, that in cases of conflict, the specific provision takes precedence over a general provision.

The Applicant submitted further that in the year 2019, item 36 of the **Stamp Duty Act** was amended from "*indemnity bond*" to specifically cover "*Bank guarantees, insurance performance bonds, indemnity bonds and similar debt instruments*". The Applicant submitted that with the existence of the specific item 36 prescribing the duty payable on guarantees and bonds, recourse cannot be had to the general item 56 that prescribes duty payable on security bonds or mortgage deeds.

## DETERMINATION OF THE ISSUES

### 1. Whether the objection decision was rendered out of time?

It is the Applicant's assertion, that the objection decision, was rendered by the Respondent, outside the statutory period of 30 days, provided for under **S. 46(8)** of the **Stamp Duty Act**, and that the said objection decision, was therefore void *ab initio* and of no legal effect.

It is the Applicant's further assertion, that as a direct consequence of the foregoing, it elected to treat its objection, lodged with the Respondent, on 22<sup>nd</sup> April 2022, as allowed, under **S. 46(8) of the Stamp Duty Act**.

In response, the Respondent argued that the limitation prescribed under **S. 46(8)** above, stood waived by the provisions of **S. 26(9)** of the **Tax Procedures Code Act (TPCA)**, as a review of the Applicant's records was necessary for the purpose of issuing the objection decision and that the Applicant had been notified of this requirement.

The Respondent's further argument is that the request by the Applicant, for the objection review meeting, slated for 19<sup>th</sup> May 2022, to be rescheduled to 24<sup>th</sup> May 2022, amounted to a formal request by the Applicant to the Respondent, to render its objection decision outside the statutory period provided under **S. 46(8)** of the **Stamp Duty Act**. It is the Respondent's argument that by accepting to reschedule, the review meeting from 19<sup>th</sup> May 2022 to 24<sup>th</sup> May 2022, it acted on the express request of the Applicant with the result that the objection decision was lodged outside the statutory period of 30 days.

In resolving this issue, the following questions must be determined by the tribunal. Firstly, whether the objection decision was rendered by the Respondent out of time? Secondly whether the election by the Applicant was valid?

A determination by the tribunal, that the objection decision, was rendered out of time and that the election by the Applicant was valid, will have the effect of determining the entire Application, without the need to resolve the remainder of the issues.

It is not in dispute that the objection to the revised assessment was lodged by the Applicant on the Respondent on 22<sup>nd</sup> April 2022. It is also not in dispute that the Respondent rendered its objection decision on 30<sup>th</sup> May 2022.

**Part VI of the Stamp Duty Act provides for Objections and Appeals. S. 46** which provides for objections has been reproduced here below:

#### **46. Objection to decision**

(1) Where a person liable to pay duty is dissatisfied with a decision made under this Act, that person may, within forty-five days after service of the notice of the decision, lodge with the Commissioner an objection to the decision.

(2) An objection to a decision shall be in writing and state precisely the grounds upon which it is made.

(3) Where a person fails to lodge an objection within the period stated in subsection (1), the Commissioner may, upon application in writing by the person liable to pay duty, extend the time for lodging an objection.

(4) An application under subsection (3) shall only be granted where the Commissioner is satisfied that the failure of the person to lodge an objection was due to absence from Uganda, sickness or other reasonable cause.

(5) Where the Commissioner refuses to grant an extension of time under subsection (3), the person liable to pay duty may, within 30 days after service of notice of the decision, apply to the Tribunal for a review of the decision.

(6) After consideration of the objection to the decision, the Commissioner may allow the objection in whole or in part and amend the decision accordingly, or disallow the objection.

(7) The decision of the Commissioner under subsection (6) shall be referred to as an "objection decision".

(8) Where an objection decision has not been made by the Commissioner within thirty days after the person lodged the objection with the Commissioner, the

person may, by notice in writing to the Commissioner, elect to treat the Commissioner as having made a decision to allow the objection.

A perusal of the objection and the objection decision, admitted in evidence as exhibits RE1 and AE4 respectively, show that the objection decision was filed outside the statutory period of 30 days provided for under **S. 46(8)** above. This being the case, we must be determined whether the limitation period prescribed under **S. 46(8)** above was waived by **S. 26(9)** of the **TPCA** and whether the request by the Applicant for the objection review meeting to be rescheduled from 19<sup>th</sup> May 2022 to 24<sup>th</sup> May, 2022, had the effect of extending the time within which the Respondent was required to render the objection decision.

**S. 26(9)** of the **TPCA** states as follows:

(9) The time limit for making an objection decision is waived where a review of the records of the taxpayer is necessary for settlement of the objection and the taxpayer is notified.

The Applicant has submitted that the above provision applies to the **Stamp Duty Act** by virtue of **S. 1** of the **TPCA**.

**S.1** of the **TPCA** provides as follows:

**1. Application of Act**

This Act shall apply to every tax law specified in Schedule 2 to this Act.

**Schedule 2** of the **TPCA** provides as follows:

For the purposes of this Act, a reference to tax law means-

- (a) This Act;
- (b) The Income Tax Act;
- (c) The Value Added Tax Act;
- (d) The Excise Duty Act;
- (e) The Lotteries and Gaming Act;

- (f) Any other Act imposing a tax as the Minister may by statutory instrument declare in accordance with section **96(2)**.

**S. 96(2)** of the **TPCA** states as follows:

**96. Power to amend Schedules**

(1) The Minister may by statutory instrument, with the approval of Cabinet, amend Schedule 1 to this Act.

(2) The Minister may by statutory instrument with the approval of Parliament, amend Schedules 2 and 4 to this Act.

A perusal of **Schedule 2** and **S. 96(2)** above clearly shows that the **Stamp Duty Act**, is not among the tax laws provided for under **S. 1** of the **TPCA**. Accordingly, **S. 26(9)** of the **TPCA** is not applicable to **S. 46(8)** of the **Stamp Duty Act**. The argument by the Respondent that the 30 days limitation period provided for under **S. 46(8)** of the **Stamp Duty Act**, stood waived by **S. 26(9)** of the **TPCA** has no legal basis and cannot therefore stand.

The argument by the Respondent, that the request by the Applicant, for the objection review meeting to be rescheduled from 19<sup>th</sup> May 2022 to 24<sup>th</sup> May, 2022, had the effect of extending the time within which the Respondent was required to render the objection decision, is not supported by any law.

Extensions of time, are expressly provided for by statute. Limitation periods cannot be extended without express authority from the legislature. For instance, under **S. 46(1)** of the **Stamp Duty Act**, a limitation period of 30 days is prescribed for a person seeking to file an objection. **S. 46 (3)** and **(4)** provide for extension of this limitation period. However, no provision has been made for the extension of time within which the Respondent is required to lodge its objection decisions. In the absence of a clear statutory provision, we fail to see how a request to reschedule the date of an objection review meeting can be interpreted as having the effect of extending a statutory period of limitation.

For the above reasons we find that the objection decision was rendered outside the limitation period of 30 days provided for under **S. 46(8)** of the **Stamp Duty Act**.

In order for an election under **S. 46(8)** of the **Stamp Duty Act**, to be considered valid, the following conditions must be met.

Firstly, the Commissioner should have failed to render an objection decision within 30 days after the person liable to pay duty has lodged an objection with the Commissioner.

Secondly, the person who lodged the objection, should notify the Commissioner in writing that he has elected to treat the Commissioner as having made a decision to allow the objection.

In the instant case, it is not in dispute that the Commissioner failed to make the objection decision within the statutory period of 30 days.

Further, the Applicant's letter to the Respondent's Commissioner for Domestic Taxes, dated 13<sup>th</sup> June 2022 and admitted in evidence as exhibit AE6, clearly shows that the Applicant notified the Commissioner in writing that it had exercised its option of electing to treat the Commissioner as having made a decision to allow the objection.

The foregoing shows that the conditions for a valid election were met by the Applicant.

The legal effect of an election was set down by the High Court in **Photon Technologies Ltd vs. The Commissioner General Uganda Revenue Authority, Miscellaneous Cause 14 of 2016**, where Justice Madrama (*As he then was*) stated as follows;

*"The burden is on the Commissioner General to deliver an objection decision which would kick in any other procedure such as appeals or review where the taxpayer is aggrieved and seeks to challenge the objection decision.*

*In the absence of that, the law makes it clear upon election to treat the Commissioner as having allowed the objection, the taxpayer is deemed to be liable only to the extent that he or she admits the assessed amount. The entire tax assessed is disputed.*

*I must say that it would be negligent on the part of the Commissioner General not to write an objection decision within the stipulated time if there are any grounds for maintaining the assessment or any part of it.*

*The legal process of election relieves the taxpayer of any payments not admitted in the objection to the assessment if the Commissioner does not communicate a decision within the*

statutory period of 30 days. Enforcement of the assessment after election would be ultra vires section 33B (6) and (7) of the Value Added Tax Act Cap 349.”

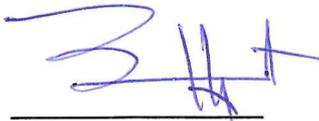
In its objection, the Applicant disputed the entire assessment and request that it be vacated in its entirety.

Considering ourselves bound by the decision in **Photon Technologies** above, we find that the election by the Applicant under **S. 46(8)** above, was valid. Accordingly, the Commissioner is deemed to have allowed the Applicant’s objection and the objection decision by the Commissioner is rendered void and of no legal effect.

The above being the case, the remainder of the issues, which could only properly arise from a valid objection decision are moot.

This Application is accordingly allowed with costs.

Dated at Kampala this 8<sup>th</sup> day of May 2025.



**MR. SIRAJ ALI**  
**CHAIRPERSON**