

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 44 OF 2022

THE REGISTERED TRUSTEES OF MENGO HOSPITAL APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY RESPONDENT

CORAM: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MR. SIRAJ ALI

RULING

This ruling is in respect of an application as to whether the applicant that embodies both business and charitable characteristics qualifies for tax exemption under the Income Tax Act.

The applicant is composed of the registered trustees of Mengo Hospital. On 6th November 2017, it applied for an income tax exemption. On 31st October 2018, the respondent rejected the application. The applicant objected and the respondent disallowed it.

Issues

1. Whether the applicant qualifies as an exempt organization under the Income Tax Act?
2. What remedies are available?

The applicant was represented by Mr. Onesmus Mwesigwa and Mr. Cephias Birungi whereas the respondent by Ms. Tayahwe Sheeba and Mr. Samuel Oseku.

The applicant's first witness, Dr. Mutumba Rose, the medical director of Mengo hospital stated that the hospital was founded and serves to promote the efforts of Church of Uganda, whose mission is to proclaim the gospel of Christ and achieve a religious mission to heal the sick. The witness stated that the hospital is therefore conceived out of religious ideas and is of a charitable nature. She stated that Mengo hospital under an educational advancement program provides medical training of doctors, nurses and medical

technicians. It conducts medical research and medical based education to the public. She stated that Mengo hospital under a charitable advancement program provides medical care which is charitable in nature; Its medical services are subsidized. It offers free or discounted services to the public. This is achieved through external funding from donations, grants and government funds. The hospital commits its resources to provide medical care and maintain public health. She stated that Mengo Hospital is a not-for-profit organization, with no profit objective, no profit benefit, no private benefit and no control by a few. Any savings made are ploughed back. She stated that the hospital runs free community-based services including eye care, immunizations, free HIV care, free counselling and HIV testing services. The hospital contributes to national epidemic control programs. She stated that the hospital's application for exemption was rejected on the grounds that the hospital is funded by fees as opposed to donations and therefore cannot be charitable in nature. She stated that respondent did not consider that without grants, donations and government funds and other income the hospital would not be able to operate. It also did not consider that saved funds are ploughed back for infrastructure improvement. It also did not consider that revenue collected did not confer any private benefit to any individual. She admitted that the applicant is not a church. It is not a requirement for one to be treated that he should be a Christian. It is not in the objectives that the applicant is mandated to do charitable work. She also admitted that the applicant has an investment as a profit-making activity. The surplus goes back to improving infrastructure. The patients are charged for treatment.

The applicant's second witness, Mr. Denis Kaweesi, an accountant with the hospital stated that the respondent used a wrong yard stick to determine whether the applicant was charitable. It ignored the fact that the applicant is an institution of public character and provides services to the general public. He further stated that the hospital's medical care is accessible to everyone and subsidized. He stated that in the financial year 2018/2019, the applicant treated 256,000 patients in its outpatient department, it immunized 70,457 babies at the hospital and 36,479 babies in outreach visits. He stated that the financial report for 2018/2019 indicates that income from donations and grants enabled the applicant provide subsidized and free services such as blood bank services, immunization, community-based health care, HIV counselling, testing, care and eye care

services, surgeries and inpatient treatment to the poor. The witness testified that the applicant utilizes surplus/unused funds for capital projects like the eye department.

He testified that the applicant's blood bank contributes 37% of blood collections in the central region. The hospital medical care is accessible to everyone and is subsidized. The hospital admits and treats patients without discrimination. It incurs high costs for consumables like drugs and labor. Without grants and donations, the hospital would not continue offering services to the public. In the financial years 2018 and 2019 income from patient fees was 77% and 78% respectively of the overall costs. The staff expenses in 2019 was Shs. 13,972,189,717 of which Shs. 1,047,650,675 came from grants and donations which is only 7.5% of the entire staff expense. The expenses incurred depend on availability of funds. Some expenditures are deferred because of non-availability of cash. Patients in the private wing pay fees.

The respondent's witness Mr. Lubega Francis, an officer in its domestic taxes department testified that the applicant applied for income tax exemption for the period 1st July 2016 to 30th June 2018. He stated that a review of the financial statements of the applicant for the years ended 30th June 2015, 2016, 2017 and 2018 revealed that donations and grant income comprised approximately 7% of the hospital's income whereas patients contribute approximately 76% of the gross income. The applicant's application for an income tax exemption was rejected for the following reasons;

- a. The applicant is not a charitable organization under the Income Tax Act.
- b. Most of the applicant's income is from patient fees charged at the normal rate.
- c. A review of the financial statements of the years ended 30th June 2015, 2016, 2017 and 2018 revealed that patient fees contribute approximately 76% of the gross income.

The applicant submitted that it qualified as a charitable organization of a public character under S. 2(bb)(i)(B) of the Income Tax Act and consequently its income was exempt from tax under S. 21(1)(f)(i) of the Act. The applicant relied on a Practice Note issued by the respondent on 24th July 2006 which sets out what ought to be proved before an organization could be considered as charitable. It cited Note 3 which states

"Note 3. Exempt Organization.

For purposes of the definition of exemption organization in Section 2 of the Income Tax Act, in order to be considered-

- a. "charitable" – an organization must be proved to provide services for the public benefit falling under any of the categories:
 - (i) The relief of poverty;
 - (ii) The advancement of education;
 - (iii) The advancement of religion; or
 - (iv) Other purposes beneficial to the community within the legal understanding of charity."

The applicant submitted that the term "public benefit" is not defined in the Income Tax Act. It cited *International School of Uganda v Uganda Revenue Authority* Application 16 of 2016 where the Tribunal stated that:

"The application of the ordinary rule of statutory interpretation is clearly stated by Lord Donovan in *Mangin v Inland Revenue Commissioner* [1971] 1 ALLER 179 at 82: "First the words are to be given their ordinary meaning. ... One has to look merely at what is clearly stated... One can only look fairly at the language used".

It also cited *Black's Law Dictionary*, 8th Edition p. 1264 which defines 'public' as; "1. relating or belonging to an entire community, state or nation. 2. Open or available for all to use, share or enjoy. 3. (Of a company) having shares that are available on an open market...".

It further cited *Oxford Advanced Learner's Dictionary* definition of "benefit" as follows;

"a. *Noun* [countable, uncountable] an advantage that something gives you; a helpful and useful effect that something has.

b. *Verb* [transitive] benefit somebody to be useful to somebody or improve their life in some way."

The applicant submitted that the nature of its services are those of a public nature. It provides health services solely for the benefit of the general public.

The applicant submitted that under S. 2(bb)(i)(B) of the Income Tax Act, the third and final requirement is that its object is not to be for profit. It submitted that its objects as per its certificate of registration as a corporate body/trust and the constitution of Mengo hospital are not for profit. The applicant submitted that there were no dividends shared among the

directors of the hospital. It utilizes surplus or unused funds for capital projects for example, the eye hospital.

In reply, the respondent contended that the applicant does not qualify as a charitable organization because it was not established for charitable purposes and is not exclusively pursuing such purposes. It submitted that the Income Tax Act does not define charitable'. The respondent relied on Note 3 of the Practice Note of 24th July 2006 which states what activities can be considered charitable. These include; "Relief of poverty, advancement of education, the advancement of religion or other purposes beneficial to the community within the legal understanding of charity." The respondent submitted that the provision of the said services does not in itself render an organization charitable so as to be entitled to income tax exemption. The said services must be provided on charitable terms.

The respondent cited the definition of "charitable" in *Black's Law Dictionary* 11th Edition p. 292 as "dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received." It also cited *Oxford Advanced Learner's Dictionary*, 5th Edition p. 187 which defines it to mean "for or connected with a charity." 'Charity' according to *Black's Law Dictionary* means "aid given to the poor, the suffering, or the general community for religious, educational, economic, public- safety or medical purposes." The respondent submitted that from the applicant's object clause, it is clear and not in contention that the hospital was set up to provide healthcare and educational services. What is in contention is whether the applicant provides healthcare and educational services on charitable basis as to bring it into the ambit of an organization exempt from income tax on charitable grounds. The respondent submitted that a perusal of the applicant's constitution reveals that the latter is not mandated to provide healthcare and educational services on a charitable basis. The object clauses of the applicant's constitution make no reference to it. On the contrary, the applicant's constitution mandates it to charge patient fees. There is no requirement that the patient fees should be subsidized. The respondent contended that charity was never in contemplation of the applicant and any alleged charitable activities undertaken by the applicant are done ultra vires its constitution.

The respondent cited *Yunus Social Business Foundation v Uganda Revenue Authority* Application 79 of 2020, which is on all fours with the current case. The Tribunal considered the question whether an organization, whose constitution permits it to carry on both business and charitable services can qualify for tax exemption status under the Income Tax Act. The Tribunal considered the definitions of a charitable organization and Charity in the *Black's Law Dictionary* and the Charities Act of UK and held that;

“From the above authorities, the definition of the terms, “charity” and “charitable activities” refer to an organization that is operated exclusively for charitable purposes, not an organization operated for both business and charitable purposes. It follows therefore that an organization operated for both business and charitable purposes would not qualify as a charitable organization for purposes of S.2 (bb)(i)(B) of the Act and would accordingly not be entitled to a tax exemption status.”

The respondent concluded that the applicant engages in activities in the nature of trade, commerce and/or business and the receipts from such activities constitute the bulk of its total receipts. Consequently, the applicant does not satisfy the requirement of exclusivity.

The respondent submitted that the applicant charges patient fees which constitute 76% of the latter's total receipts whereas donations constitute only 7%. In essence, the alleged beneficiaries of the applicant's charity are the principal funders of its activities. The respondent submitted that the price survey of patient fees tendered in by the applicant is unreliable as it does not identify the hospitals the latter compared with. The respondent submitted that the applicant operating on donations is not enough to confer charitable status on it. Any constraints suffered without donations are self-imposed and are an attempt to increase market share. This accordingly does not entitle the applicant to income tax exemption.

The respondent submitted that the alleged free services provided by the applicant are not supported by evidence. For instance, the applicant's financials indicate that it obtains revenue from HIV counselling, optical coherence tomography, outreach and eye clinic. The respondent argued that any free services rendered by the applicant are part of its corporate social responsibility. In its financials in 2018 and 2019 it incurred Shs. 17,188,939 and Shs.19,237,000 respectively.

The respondent submitted that the applicant's constitution permits it to partake in profit making activity. This was admitted by Dr. Mutumba Rose. Article IV (5)(a) of the constitutions allows the applicant to manage properties and investments belonging to the hospital. Under Article VII (1)(b); the finance committee reports to the board on all accounts, investments and other financial matters of the hospital. Under *Article XI (2)*.

"All subscriptions and pecuniary donations or legacies for the general purpose of the hospital and incomes of investments, fees paid by patients and all other monies from time to time forming part of the general revenue of the Hospital shall on the same day of being received be paid to the general accounts of the Hospital bankers."

Article XI. 8 on investments provides that

"(a) All monies may at any time standing to the credit of the general accounts which shall not be required for current expenses and which the board shall not determine to transfer to the Development account or any other account shall be invested by the Trustees in the purchase of securities on behalf of the Hospital as directed by the Board. "

(b) Any such securities held by the Trustees may be sold and the proceeds thereof reinvested in any investments of a like nature upon the direction of the Board of Governors."

The respondent submitted that that the applicant's financial statements show numerous profit-making activities and these include; Jajja Gwen guest house, farm in Gayaza, equity investments and biological assets amongst others. The applicant argues that the income generated from the above business activities are "ploughed back".

In rejoinder, the applicant cited *Crane Bank v Uganda Revenue Authority* High Court Civil Appeal 18 of 2010 where the court considered the meaning of "farming" in relation to S. 21 of the Income Tax Act. It held that; "In determining the meaning of a word in a statute, extraneous material that bears on the background against which the legislation was enacted must be taken into account." It submitted that the practice notes rank above the extraneous material.

The applicant also cited *Uganda Revenue Authority v Siraje Hassan Kajura and Others* SCCA 9 of 2015 wherein Justice Faith Mwendha stated that,

"In a taxing Act, one merely looks at what is said. There is no room for intendment. There is no equity about tax. There is no presumption about tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Also citing *Uganda Revenue Authority v China Jiefang (U) Ltd* Civil Appeal 57 of 1999 the applicant submitted that the respondent is not clothed with the discretion to divert from Sections 44(1) and (3) of the Tax Procedure Code Act whose collective effort is that a practice note is binding on the Commissioner.

Having heard the evidence and read the submissions of the parties, this is the ruling of this Tribunal.

The applicant applied for an income tax exemption in 2017 which was rejected in 2018. Before 2021 the Income Tax Act S. 2(bb)B defined an exempt organization to include a religious, charitable or educational institution of a public character. Since 2017 to now, a lot of water has flowed below the bridge. The law in the Income Tax Act on an exempt organization has changed from 2017 when the applicant filed for an exemption to when it filed its application. The Income Tax Amendment Act 2021 deleted the words 'of a public character' and inserted 'whose object is not for profit'. This implies that a religious, charitable or educational institution to qualify to be an exempt organization it must not have an objective of making profit. The Income Tax Amendment Act 2022 added research institution.

On 6th November 2017, when the applicant applied for an income tax exemption, exhibit REX1, it was for the period 1st July 2016 to 30th June 2018. On 15th January 2018, the respondent rejected the application, exhibit REX4, on the ground that that applicant is not a charitable institution as it obtained income from fees charged on patients. On 13th December 2018, the application lodged an objection, exhibit REX5. On 1st March 2019, the respondent made an objection decision. Surprisingly, it allowed the applicant's objection. The objection decision reads.

"We examined the audited accounts for the years ending 2016/17 and confirmed that none of the assets or profits conferred a private benefit to any member or the board or trustee.

In light of the above, your objection is allowed. You are advised to apply for exemption in accordance with S. 2(bb) on the Income Tax Act.”

This was followed by a letter dated 12th March 2019 requesting the applicant to file an online objection.

The applicant applied online in exhibit AEX7, for the period 1st July 2017 to 30th June 2018. On 18th January 2022, the respondent rejected the application for exemption. There was no objection or objection decision after the second rejection. The parties seem to have moved in a zig zag way. The respondent allowed the applicant's objection in one breath. It denied the application in another breath when it requested the applicant to file a fresh application. It gave the applicant the certificate with one hand and removed it with the other hand. When the respondent made the objection decision, it becomes functus officio. Therefore, it cannot require the applicant to make an application after allowing the objection.

The applicant filed for an exemption certificate for the period 1st July 2016 to 30th June 2018. The respondent found that none of the assets or profits of the applicant conferred a private benefit to any member or the board or trustee. In essence it agreed that the applicant was a charitable institution of a public character. Therefore, it ought to have issued the applicant with the exemption certificate and not requested it to apply for a fresh one. That was procedural wrong. The respondent having allowed the objection, the Tribunal finds that it ought to have granted the applicant an income tax exemption for the period 1st July 2016 to 30th June 2018. The Tribunal notes that the Income Tax Act at time provided for a charitable institution of a public character and it seems the respondent was in agreement with the applicant that it qualified for an exemption certificate. The Tribunal will not disturb that said finding as the applicant availed information to the respondent at objection stage.

The confusion when the respondent allowed the application and then rejected seems to have found its way into the hearing of this application. When the applicant filed this application, the issue agreed at the joint scheduling memo was “Whether the applicant qualifies for the grant of an income tax exemption?” The said issue is confusing because

it does not state the period of the income tax exemption. Both parties addressed the Tribunal on the Income Tax Act as amended as if they were applying for an income tax exemption certificate in perpetuity. The issue and the submissions indicated that the applicant was interested in an income tax exemption in perpetuity. There is no application by the applicant for an income tax exemption for the period after 2018. There is no objection and no objection decision in respect thereof. The Tribunal cannot determine or hear an application for an exemption which was not applied for. Therefore, the Tribunal will not grant an income tax exemption after June 2018.

Furthermore, the law has since changed from the date of the application for the exemption. Before 2021, a charitable institution of a public character would qualify for an exemption. However, since the amendment in 2021, being a charitable institution would not qualify one for an income tax exemption if its object was to make profit. The test changed.

Without prejudice, if the Tribunal was wrong to refuse to grant the application for exemption after 2018, because there was no application made to the respondent it will address whether the applicant is entitled to it currently. Currently, the Income Tax Act defines an exempt organization under S. 2(bb) of the Act. It states that

“An exempt organization means any company, institution or irrevocable trust:

1. Which is-
 - (A) An amateur sporting association
 - (B) A religious, charitable, or educational institution or research institution whose object is not for profit.
 - (C) A trade union, employees association, an association of employers registered under any law of Uganda, or an association established for the purpose of promoting farming, any law of Uganda, or an association established for the purpose of promoting farming, mining, tourism, manufacturing, or commerce and industry in Uganda,
 - (D) A body established by law for the purpose of regulating the conduct of professions, and
- ii. Which has been issued with a written ruling by the Commissioner currently in force stating that it is an exempt organization, and

- iii. None of the income or assets of which confers, or may confer a private benefit to any person.”

The applicant contended that it is a charitable institution. The Tribunal is required to determine whether the applicant is a charitable institution under S. 2 (bb)(i)(B) of the Income Tax Act.

Even where an organization is a charitable institution, its income may still be liable to tax. An exempt organization may be liable under S.21(1)(f) of the Income Tax Act which states that:

“The following amounts are exempt from tax-...

(f) The income of an exempt organization, other than-

- i. Property income, except rent received by an exempt organization in respect of immovable property and the rent is used by the lessor exclusively for the activities of the organization specified in the paragraph (bb)(i) of the definition of exempt organization in Section 2, or
- ii. Business income that is not related to the function constituting the basis for the organization’s existence.”

Therefore, even if the applicant is an exempt organization, its income may still be taxable if its property income or business income not related to the function constituting the organization’s existence

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In defining an exempt organization under S. 2 of the Act, Practice Note 3 issued by the Commissioner General on 24th July 2006 provides the following guidance-

“(a) “Charitable” an organization must be proved to provide services for public benefit falling under any of the following categories:

- i. The relief of poverty
- ii. The advancement of education
- iii. The advancement of religion or
- iv. Other purposes beneficial to the community with the legal understanding of charity.

(b) An institution of a public character – the benefit provided must be to the public at large or at least to a sufficient number of the community.”

One wonders whether the said definition can still stand after the amendment of the Income Tax Act. The Tribunal does not think so. S.44(3) of the Tax Procedure Code Act states that

a practice note issued under the Act is binding on the Commissioner until it is revoked by the Commissioner. The said Practice Note was issued before the Income Tax Act was amended to include not for profit. Under the new Section a charitable institution which has an object of obtaining profit is not an exempt institution. A practice note that is issued before an Act is amended cannot be said to be binding on a new amendment as it will make practice notes take precedence over Acts of Parliament. The Practice Note is only binding in respect of the old law. Therefore, the Tribunal will not apply it to the amendments.

The applicant contended that it is a charitable organization under S.2 (bb)(i)(B) of the Income Tax Act because it provides charitable services to the public. The advancement of education and religion are some of the categories considered when determining whether an entity qualifies as a charity and therefore entitled to an exempt status for the purposes of S.2 of the Act. The respondent on the other hand objects that the applicant does not qualify as a charitable institution for the reason that it was not established for charitable purposes as its constitution does not mandate it to carry out charitable activities. On the contrary, it mandates the applicant to engage in profit seeking activity. The applicant indeed engages in activities in the nature of trade, commerce and or business.

The word 'charitable' is defined by *Black's Law Dictionary* 10th Edition p.283 as

"1. Dedicated to a general public purpose, usu. for the benefit of needy people who cannot pay for benefits received. <Charitable contribution>. 2. Involved in or otherwise relating to charity <charitable foundation>."

While a 'charitable organization' is defined as:

"Tax. A tax-exempt organization that (1) is organized and operated exclusively for the religious, scientific, literary, educational, athletic, public safety or community service purposes. (2) does not distribute earnings for the benefit of private individuals and (3) does not participate in any way in political candidate campaigns or engage in substantial lobbying."

From the above it is not difficult to discern that the meaning of 'charitable' differs from 'charitable organization'. Without the word organization, it refers to the benefit of needy

person. While for an organization it is exclusively for religious in our case, or community service purposes. It does not distribute earnings for the benefit of private individuals.

The objects of an organization are found in its constitution or memorandum of incorporation. A perusal of the constitution of Mengo hospital, AEX 21 does not indicate that it was set up for charitable purposes. There is nothing to show that it was meant to provide services to needy persons. It states that the applicant proclaims the gospel. to accept Christ and also to provide medical and surgical advice and training. There is nothing in the constitution that states it will provide the medical and surgical advice and training free or to needy persons. It is not clear how a hospital provides religious services. Does it restrict itself to persons of a certain religion? Or does it encourage patients to pray before they are treated? While the hospital may provide community services there is no evidence that it is provided exclusively.

The fact that the applicant provides some charitable services and some chargeable services can be explained from the following excerpt from a paper titled "*Social Enterprise: Some Tax Policy Considerations*" by Jonathan Barret and John Veal which sheds some light on this phenomenon. It states

"In recent decades, almost all industrialized countries have experienced a phenomenal growth in socio-economic initiatives that belong neither to the traditional private for-profit sector nor to the public sector. This broad concept of socio enterprise is notoriously difficult to categorically define, particularly given the many variations in form and goals of the different entities operating in the field, and the diverse contexts in which the term is used across jurisdictions."

In an article by TASLAF Advocates dated 28th April 2022 titled "*Social Enterprise Taxation in Uganda- Defining a Charitable Institution for purposes of Exemption from Income Tax*", the author mentioned that social enterprises-organizations that pursue a double mission; to grow revenue and to have a social impact through emphasizing social outcomes rather than income generation do not qualify as charitable organizations for purposes of exemption from income tax in Uganda. The author states that such organizations cannot rely on the social impact aspect of their operations to classify their activities as charitable.

The problem the emergence of social enterprises presents for tax policy is that they blur the previously clear distinction between charity and business.

In *Yunus Social Business Foundation v Uganda Revenue Authority* Application 79 of 2020, the Tribunal noted

"From the above authorities the definition of the terms, "charity" and "charitable activities" refer to an organization that is operated exclusively for charitable purposes and not an organization operated for both charitable and business purposes. It follows therefore that an organization operated for both business and charitable purposes would not qualify as a charitable organization for the purposes of S.2(bb)(i)(B) of the Act and would accordingly not be entitled to a tax exemption status."

Therefore, an organization that offers both charitable and business services may not qualify for an income tax exemption. Its profitable or business activities may be subject to tax

From the evidence it is not disputed that the applicant charges fees for some of its services. It is also not denied that some of the said monies is invested. Article XI. 8 of the constitution of Mengo hospital on investments provides that

"(a) All monies may at any time standing to the credit of the general accounts which shall not be required for current expenses and which the board shall not determine to transfer to the Development account or any other account shall be invested by the Trustees in the purchase of securities on behalf of the Hospital as directed by the Board.

A taxpayer cannot invest monies unless it is from a profit. *Black's Law Dictionary* (supra) p.140 defines profit as "1. The excess of revenues over expenditures in a business transaction." In any case, if the applicant was making losses, it would have nothing to invest. S. 2(bb)(i)(B) states that the object of the charitable institution should not be for profit. Therefore, the fact that the applicant does not distribute dividends but has monies to invest may make it difficult from claiming to be a charitable institution. For this reason, an organization whose activities generate profits, cannot rely on the social impact aspects of its activities to seek exemption from income tax as a charitable institution under sections 21(1)(f) and 2(bb)(i)(B) of the Income Tax Act.

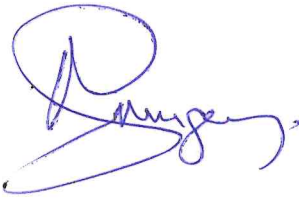
The applicant to emphasize that it is a no-profit organization and does charitable activities argued that it receives donations and grants. From the evidence adduced the applicant charges fees. It obtains about 76% of its income from fees. At the end of the financial years, it obtains surpluses which can be deemed to be profits which it invests or ploughs back to improve its infrastructure. Though the applicant stated that it provides free HIV counselling the financial statements show that it charges for the said services. The test for a not-profit organization is whether it makes surplus and not where the income comes from. It does not matter whether it is from donations or grants. The taxman is interested in taxing chargeable income and is also not interested whether it is distributed. When it is distributed, there are taxes due. Under S. 91 of the Income Tax Act, the respondent has powers to recharacterize transactions that do not reflect the substance. The applicant provides both charitable and profit-making activities. To ignore the profit-making activities and only consider the charitable activities which provide a small portion of the applicant's income would be to deny the taxman a chance from collecting taxes on chargeable income. It would also allow many profit-making institutions to hide under the disguise of charitable institutions to exempt their income from taxes. That is why the Income Tax Amendment Act 2021 inserted 'whose object is not to make profit' in S.2(bb)B. The word 'charitable' is still in contention, because a strict application would limit it to providing services to the needy. Giving subsidized services or discounts to a person who can afford them would not amount to being charitable. The decision by the respondent to consider the applicant as a non-exempt organization in light of the above and refuse to issue an exemption certificate cannot be said to be grossly irrational for the Tribunal to set aside.

In any case, even if the applicant was to be found to be a charitable institution, it engages in business activities, where the income in respect thereof would fall under business income, that is not related to the charitable function. For instance, it obtains revenue from HIV counselling optical coherence tomography, outreach and eye clinic (see exhibit AEX 12 p. 180 of the joint trial bundle). The applicant's financial statements show other profit-making activities and these include; Jajja Gwen guest house, farm in Gayaza, equity investments, school fees and biological assets.

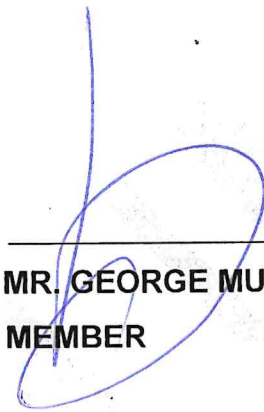
Taking all the above into consideration, this application is partially allowed with the following orders.

- i). The respondent ought to grant the applicant an exemption certificate of the period 1st July 2016 to 30th June 2018
- ii) The applicant does not qualify to be an exempt organization for the period thereafter as there was no application to the respondent thereafter.
- iii) The applicant is awarded half the costs of the application.

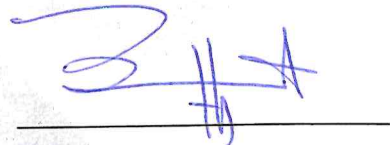
Dated at Kampala this 19th day of September 2023.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MR. SIRAJ ALI
MEMBER