THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL No. 0028 OF 2022

(ARISING FROM TAX APPEALS TRIBUNAL APPLICATION No. 069 OF 2021)

UGANDA REVENUE AUTHORITY ..... APPELLANT

VERSUS

K FILES LTD ..... RESPONDENT

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

JUDGMENT

Introduction

This is an appeal from the ruling of the Tax Appeals Tribunal in respect of an application by the Applicant (Respondent herein) for review of the Value Added Tax (VAT) assessment of UGX 103,684,531 arising from the Respondent's decision (Appellant herein), in which the Tribunal found in favour of the Respondent on 2nd June 2022.

Background

The Respondent is engaged in the business of records management and offsite storage. The Appellant conducted a review of the Respondent's tax status and established that the Respondent had unpaid Value Added Tax (VAT) of UGX 103,684,531 as principal tax due and payable. On 8th July 2021, the Appellant issued a reminder notice to the Respondent demanding VAT of UGX 103,684,531. On 13th July 2021, the Respondent objected to the reminder notice. On 15th July 2021, the Applicant made an objection decision disallowing the Respondent's objection on the ground that the demand notice had considered all provisions of the law including section 65A (1) and (2) of the VAT Act, Sections 38 & 40C of the Tax Procedures Code Act, 2014. The Respondent applied for a review of the matter to the Tax Appeals Tribunal, which delivered a ruling on 2nd June 2021 in its favour.

The Appellant being dissatisfied with the ruling and orders of the Tax Appeals Tribunal filed this appeal.

The grounds of appeal as stated in the Notice of Appeal are: -

1. Whether the Honorable Chairman and members of the Tax Appeals Tribunal erred in law when they misinterpreted section 38(1) & (2) of the Tax Procedure Code Act, thus reaching a wrong conclusion that the Appellant/URA had misapplied the Respondent/taxpayer's payments towards penal tax and interest instead of the principal tax, whereas not?
2. Whether the Honorable Chairman and members of the Tax Appeals Tribunal erred in law when they misinterpreted section 65A (1) of the VAT Act, thus reaching a wrong conclusion that any outstanding interest and penalty as at 30th June 2017 was waived whereas section 65A (1) of the VAT Act only waived interest that exceeds the aggregate of principal and penalty?
3. Whether the Honorable Chairman and members of the Tax Appeals Tribunal erred in law when they failed to properly evaluate the evidence on record, thereby erroneously finding as follows;
   a) That section 38(2) of the Tax Procedure Code Act states that if a taxpayer has more than one tax liability at a time, it implies that Section 38(1) thereof is referring to a total amount of a specific tax, whereas not?
   b) That it was the Respondent/taxpayer's construction that S.38 (1) of the Tax Procedure Code Act means that in cases where an amount paid by a taxpayer is not sufficient to cover the entire amount of principal tax first, then the amount remaining should be applied to the penal tax and the balance towards the payment of interest, whereas the said construction was of the Appellant/URA and not that of the Applicant, thereby wrongly allowing the Application?
   c) That a perusal of the Respondent/taxpayer's VAT ledger shows that the payments made by the taxpayer were applied towards the payment of penal tax and interest instead of principal tax, thereby reaching a decision contrary to Section 38(1) & (2) of the Tax Procedure Code Act and section 65A (1) VAT Act that has an effect of the taxpayer only paying principal tax and not paying any interest and penalty?
   d) That the Appellant should have notified the Respondent/taxpayer on any interest liability, whereas not?
   e) That what the Respondent/taxpayer calls interest and penalty outstanding is what the Appellant calls principal tax outstanding, whereas not?

4. Whether the Honorable Chairman and members of the Tax Appeals Tribunal erred in law in setting aside the outstanding VAT of UGX 103,684,531, without legal basis?

Representation

The Appellant was represented by Mr. Tony Kalungi of the Legal Services and Board Affairs Department, Uganda Revenue Authority while Mr. Kaweesi of M/s LIBRA Advocates represented the Respondent. Counsel for the parties herein, filed written submissions as directed by this Court.

Counsel for the Respondent raised preliminary objections on points of law as follows: -

1. That the Appellant's appeal was lodged out of time.
2. That grounds 3 and 4 of the Notice of Appeal are defective and ought to be struck out.

Whether the Appellant's appeal was lodged out of time

Counsel for the Respondent cited the provision of section 25(2) of the Tax Procedures Code Act, 2014 (hereinafter referred to as the "TPCA") and section 27(1) of the Tax Appeals Tribunals Act, Cap 345, to submit that the Tax Appeals Tribunal delivered its ruling on 2nd June 2022, and the Appellant ought to have lodged its Notice of Appeal within thirty (30) days from the date of 2nd June 2022, which should have been on or before 2nd July 2022 however, the Appellant lodged its Notice of Appeal eighteen (18) days outside the prescribed time on 20th July 2022, which renders the appeal incompetent.

Counsel relied on *Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd, CACA No.31*, on the proposition that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. That failure to comply with the rules renders the appeal incompetent.

In reply, Counsel for the Appellant submitted that the Notice of Appeal was filed via ECCMIS in this Honourable Court on 30th June 2022, which makes the appeal to have been filed after 28 days and within the stipulated 30 days as prescribed under section 27(1) of the Tax Appeals Tribunal Act, Cap 345.

Determination of the 1st preliminary objection.

This Court finds that the Electronic Court Case Management Information System(hereinafter referred to as "ECCMIS") is an automated system that facilitates the filing of cases online. Once a document is filed in the system, the case is registered and automatically given a registration number. Therefore, this appeal is deemed to have been filed when the system registered and allocated it a number.

Notably, the process in which a case is registered in the system does not necessarily require endorsement by the Registrar save for allocation of the case to a given judicial officer, and issuance of a requisite document such as a summons.

For the foregoing reason, I find the argument by Counsel for the Respondent that the Notice of Appeal was filed on 27th July 2022, when the Court endorsed the Notice of Appeal is untenable.

This Court therefore, finds that the Notice of Appeal filed through ECCMIS on 30th June 2022, after the lapse of 28 days from the date of 2nd June 2022, when the ruling was delivered by the Tribunal, was within the prescribed period of 30 days.

I am fortified in the above finding by the decision in ***Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd, CACA No.31 of 2000***, on the proposition of law that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

Accordingly, I find that this preliminary objection lacks merit.

Whether grounds 3 and 4 of the Notice of Appeal are defective and ought to be struck out

Counsel submitted that ground 3 of the Notice of Appeal offends Order 43 Rule1(2) of the Civil Procedure Rules because it is very argumentative, a narration of the Tax Appeals Tribunal ruling, and a repetition of grounds 1 and 2 of the Notice of appeal.

Counsel relied on the case of *Hassan Basajjabalaba and Another Vs Attorney General, SCCA No. 1 of 2018*, to submit that the Court struck out the ground of appeal because it was argumentative and offended Rule 82(1) of the Supreme

Court Rules, and that the said rule is similar to Order 43 Rule 1(2) of the Civil Procedure Rules, SI 71-1, which is applicable in this appeal.

Counsel further submitted that the said ground of appeal should be concise and not argumentative or a repetition of other grounds therefore, the ground fails the test of being concise as required by the Rules, and ought to be struck out.

In reply, Counsel for the Appellant submitted that Order 43 of the Civil Procedure Rules, and Rule 82 (1) of the Judicature Supreme Court Rules do not apply in appeals from the Tax Appeals Tribunal to the High Court, and that section 27 of the Tax Appeals Tribunal Act provides for the procedure of appeals from the Tax Appeals Tribunal to the High Court.

Determination of the 2nd preliminary objection

Ground 3 on the Notice of Appeal states as follows:

3. Whether the Honorable Chairman and members of the Tax Appeals Tribunal erred in law when they failed to properly evaluate the evidence on record, thereby erroneously finding as follows;

    a) That section 38(2) of the Tax Procedure Code Act states that if a taxpayer has more than one tax liability at a time, it implies that Section 38(1) thereof is referring to a total amount of a specific tax, whereas not?
    b) That it was the Respondent/taxpayer's construction that S.38 (1) of the Tax Procedure Code Act means that in cases where an amount paid by a taxpayer is not sufficient to cover the entire amount of principal tax first, then the amount remaining should be applied to the penal tax and the balance towards the payment of interest, whereas the said construction was of the Appellant/URA and not that of the Applicant, thereby wrongly allowing the Application?
    c) That a perusal of the Respondent/taxpayer's VAT ledger shows that the payments made by the taxpayer were applied towards the payment of penal tax and interest instead of principal tax, thereby reaching a decision contrary to Section 38(1) & (2) of the Tax Procedure Code Act and section 65A (1) VAT Act that has an effect of the taxpayer only paying principal tax and not paying any interest and penalty?
    d) That the Appellant should have notified the Respondent/taxpayer on any interest liability, whereas not?

e) That what the Respondent/taxpayer calls interest and penalty outstanding is what the Appellant calls principal tax outstanding, whereas not?

Section 28 (2) of the Tax Appeals Tribunals Act, Cap 341*(Revised Laws of Uganda, 2023 Edition, hereinafter referred to as "TAT Act")* provides that an appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

The decision in ***Vivo Energy Uganda Ltd Vs URA, HCMC No. 766 of 2019***, cited by Counsel for the Respondent is not binding on this Court.

Notably, section 28(2) of the TAT Act relates to only the question or questions of law that will be raised in the Notice of Appeal therefore, the said question or questions of law should be stated with accuracy in the Notice of Appeal.

This Court finds that in the instant appeal, the said ground is stated with a lot of narration, which makes it difficult to ascertain the precise question or questions of law.

For the foregoing reason, I find that this preliminary objection has merit. Accordingly, ground 3 of the appeal is struck out.

With regard to ground 4 that it is too general and broad. Counsel submitted that ground 4 does not specify the error of law that is complained of, and that the said ground does not precisely set out the exact point of objection for which the Appellant is faulting the Tribunal. That the mere setting aside of an assessment cannot amount to an error on the part of the Tribunal without pointing out the wrong in setting aside of an assessment.

In reply, Counsel for the Appellant submitted that the Appellant specified the error to be that it was a decision made or reached without legal basis. The Tribunal had no legal basis and that is the Appellant's point.

Counsel contended that the Appellant complied with the requirement in section 27 of the Tax Appeals Tribunals Act of specifying the point of law. That it is trite that reaching a decision even if it is discretionary without legal basis is an error in law and that the Respondent's argument that "*the mere setting aside (alone) of an assessment cannot amount to an error on the part of the Tribunal*" is wrong as a matter of fact and law.

Counsel further submitted that as a matter of fact, there was no assessment issued against the Respondent but rather a reminder notice, and as a matter of law, the Tax Appeals Tribunal has no powers to set aside an assessment (a taxation decision) without legal basis.

Determination of the 2nd preliminary objection on ground 4 of the Appeal

The phrase "an error of law" refers to instances where there is no evidence to support a finding or where the evidence contradicted the finding or where the only reasonable conclusion contradicted the finding. ***(See Edwards Vs Bairstow [1956] AC 14***, cited with approval in ***Barry Edwards Vs The Commissioner for Her Majesty's Revenue & Customs [2019] UKUT 0131(TCC) Appeal No. UT/2017/0172)***

I have taken into account what amounts to an error of law, and the guidance of the Supreme Court in ***Hwang Sung Ltd Vs M and D Timber Merchants, SCCA No.2 of 2018***, and find that ground 4 is stated in general terms, which does not either point out or illustrate the error with precision.

Accordingly, ground 4 of the appeal is struck out.

Consequently, the first preliminary objection is dismissed, and the 2nd preliminary objection is upheld.

This Court will now turn to consider the above 1st and 2nd grounds of appeal on merit as below.

Ground 1: Whether the Honorable Chairman and members of the Tax Appeals Tribunal erred in law when they misinterpreted section 38(1) & (2) of the Tax Procedure Code Act, thus reaching a wrong conclusion that the Appellant/URA had misapplied the Respondent/taxpayer's payments towards penal tax and interest instead of the principal tax, whereas not?

Submissions of Counsel for the Appellant

Counsel submitted that section 38 of the TPCA was enacted in 2016, and by the time section 40 of the TPCA was enacted, the former was still in existence, and applicable.

Counsel further submitted that prior to July 2021, before its amendment, section 38 of the TPCA provided as follows: -
"38. Order of payment

(1) When a taxpayer is liable for penal tax and interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of tax, penal tax, and interest due, the amount paid is applied in the following order—
(a) in payment of the principal tax;
(b) in payment of penal tax; and
(c) the balance remaining is applied against the interest due."
(2) If a taxpayer has more than one tax liability at the time a payment is made, subsection (1) applies to the earliest liability first.

Counsel contended that whereas section 38(2) of the TPCA was repealed as at July 2021, it applies to this matter since the VAT ledger AEX5 covers a period of July 2010 to July 2021 and that the Tribunal erred when it gave section 40c of the TPCA a retrospective application in total disregard of section 38(1) and (2) of the TPCA that existed prior to 30th June 2020 when section 40 of the TPCA was enacted.

Counsel further contended that before determining the interest and penalty to be waived under section 40c of the TPCA, one has to first apply section 38(1) and (2) of the TPCA for the period prior to 30th June 2020, which the Appellant did.

Counsel argued that section 38 of the TPCA had to be interpreted at the same time and alongside section 40c of the TPCA more so, where the purpose of section 40 was to waive interest and penalty as at 30th June 2020; had parliament intended to give it a retrospective effect, it ought to have stated so.

Submissions in reply by Counsel for the Respondent

Counsel submitted that the TPCA was enacted in 2014 and its commencement was gazetted on 1st July 2016, which implies that the payment allocation rule in section 38(1) of the TPCA became applicable to both the Appellant and the Respondent effective 1st July 2016. That whereas the Respondent's period under review was 2010 – 2020, the provision is only applicable for the period after 1st July 2016. For the period before July 2016, the practice was that the Respondent would lodge a VAT return with the Appellant and pay any tax declared in the return by the due date in accordance with sections 31 and 34 of the Value Added Tax, Cap 349.

Counsel further submitted that whereas the legal burden of proof rested on the Respondent to prove its case, having produced clear and unchallenged evidence to show that the Appellant misapplied the Respondent's payments, the evidential burden shifted to the Appellant to prove three things;(a) that the

demand of UGX 103,694,531 was justified;(b) that the ledger was proper and lawful, and that (c)the Appellant applied the Respondent's payments in accordance with section 38(1) TPCA.

Counsel cited *Kamo Enterprises Ltd Vs Krystalline Salt Limited, SCCA No.8 of 2018*, in which the phrase "evidential burden of proof" is defined as the burden of adducing evidence to prove a fact in one's favour; that while the evidential burden keeps shifting, the legal burden never shifts, to support their submissions.

Counsel contended that the Tax Appeals Tribunal rightly interpreted section 38(1) of the TPCA and that the plain meaning of the provision is that the Appellant should use the taxpayers' payments to first clear the principal tax, followed by the penal tax, and lastly interest; any contrary interpretation of the section or allocation of taxpayers' payments would lead to absurdities in at least three ways namely; the taxpayers' ledgers get distorted, the taxpayers' principal tax will always and forever be outstanding, and the taxpayer would not benefit from interest and penalty waivers extended to them by the Government.

Counsel further contended that in 2017 and 2020, the Government extended interest and penalty waivers to taxpayers in Uganda. That section 65A of the Value Added Tax (hereinafter referred to as "VAT" Act) which was introduced by the VAT(Amendment) Act, 2017 provides that:

1) The interest due and payable on unpaid tax shall not exceed the aggregate of the principal and penal tax.
2) For avoidance of doubt, where the interest due and payable as at 30th June 2017 exceeds the aggregate referred to in subsection (1), the interest in excess of the aggregate shall be waived.

Counsel submitted that section 40c of the TPCA, which was introduced by the Tax Procedures Code (Amendment) Act, 2020 provides that:

"Any interest and penalty outstanding as at 30th June 2020, is waived"

Counsel argued that the 2017 amendment waived interest that was outstanding where it exceeded the aggregate of principal and penal tax and that the 2020 amendment waived interest and penal tax that was outstanding as at 30th June 2020.

Counsel invited the Court to take judicial notice that this 2020 amendment in the tax law was an intervention by the Government to extend relief and benefits to businesses and taxpayers who were experiencing the harsh effects of the lockdown due to the COVID-19 pandemic. That the amendment therefore would

have the effect of waiving any outstanding interest including UGX 103,694,531 demanded from the Respondent.

Counsel further argued that while the Uganda Revenue Authority slip reflects the correct order of payment and whereas the Appellant knows or submits to have known the correct order of applying the payments, they did not apply the correct order. They instead applied the payments towards penal tax and interest first, then the principal tax last contrary to S.38 (1) of the TPCA.

Decision

For the avoidance of doubt, section 38 of the TPCA before the amendment in 2017 will be reproduced as follows:

"38. Order of payment
(1) When a taxpayer is liable for penal tax and interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of tax, penal tax, and interest due, the amount paid is applied in the following order—
(a) in payment of the principal tax;
(b) in payment of penal tax; and
(c) the balance remaining is applied against the interest due."
(2) If a taxpayer has more than one tax liability at the time a payment is made, subsection (1) applies to the earliest liability first.

Section 40c of the TPCA, which was introduced by the Tax Procedures Code (Amendment) Act, 2020 provides that:

"Any interest and penalty outstanding as at 30th June 2020, is waived"

The Tribunal at pg.7 of its ruling noted the major point of divergence between the parties in the interpretation of the phrase "total amount of tax" under s.38(1), in which the Respondent argued that the use of the words total amount of tax means the total amount of tax liability that has to be considered and not the specific tax while the Applicant contended that the payment made by the taxpayer ought to be applied to the specific tax liability declared in the taxpayer's return. The Tribunal held as follows:

> *"It is clear from a reading of section 38(1) above, that in arriving at its argument in respect of the phrase "total tax" the Respondent did not look at the above provision in its entirety. S.38(2) states that if a taxpayer has more than one tax liability at a time, implies that s.38(1) is referring to the total amount of a specific tax. The Respondent construed the above*

phrase "total amount of tax" in isolation of the rest of the section. This goes against the rule of statutory interpretation that each section in a statute must be construed as a whole. The Respondent's construction of the phrase "total amount of tax" also has the effect of rendering the remainder of the provision redundant."

In addition, the Tribunal held at pgs. 8-9 of the ruling that:

"A perusal of the Applicant's VAT ledger admitted in evidence as exhibit AEX5 on page 175 of the Applicant's trial bundle shows that payments made by the Applicant were applied towards the payment of penal tax and interest instead of the principal tax. This means that the application of s. 38 by the Respondent in practice is completely different from the position set out under s. 38 and from the information provided to taxpayers in the Payment Registration Slips. The Respondent has argued that as at June 2017, the Applicant's interest was only Shs. 1,619,234 and did not therefore exceed the outstanding principal and penal tax and that as at July 2020, the Applicant's interest was in negative, therefore despite the fact that it was alive to and took into account the provisions of both the VAT (Amendment) Acts of 2017 and 2020, there was no interest to be waived. Our view is that the misapplication of payments by the Respondent towards penal tax and interest instead of the principal tax distorted the ledger with the result that the ledger was no longer a correct representation of the Applicant's tax liability. We agree with the Applicant that if the Respondent had applied all the payments made by the Applicant in the order set out under S.38(1) the Applicant would have no outstanding principal tax liability and any outstanding penal tax and interest would have benefited from the waivers mentioned above. [Emphasis is mine] The evidence of the Applicant is that if it computed its payments they show that it paid principal tax. The Respondent states that the payments were applied to pay interest and penalty and therefore there is still some principal tax outstanding. If the Respondent had notified the Applicant of any outstanding liability of interest and penalty regularly and in a timely fashion this dispute would not have arisen. A taxpayer should be treated fairly… S.40C of the Tax Procedure Code Act waived any interest and penalty outstanding as at 30th June 2020. If the Respondent were to reconcile ledgers, where it uses payments made by taxpayers to first pay interest and penalty and not principal tax one may not be wrong to view it as an attempt to circumvent S.40C of the Tax Procedure Code Act especially where the legislature did not mention how the interest and penalty it waived should be arrived at. Where there is doubt to the application of a law, the taxpayer takes the benefit."

From the above excerpts of the ruling, this Court has taken into account that the Tribunal used the literal rule of statutory interpretation to hold that the taxpayers' payments regarding tax liability would be made towards the principal tax first, followed by penal tax, and lastly against the interest due.

It is, therefore, my considered view that the interpretation of section 38 of the TPCA in its entirety as above by the Tribunal was proper, and following the rules governing statutory interpretation that each section in a statute must be construed in its entirety. **(See Uganda Revenue Authority Vs Kajura, Civil Appeal No. 9 of 2015[2017] UGSC 63)**

I have considered further the period of review for the Respondent's tax liability from 2010 to 2021, and that the TPCA was enacted in 2014 and its commencement was gazetted on 1st July 2016, which implies that section 38(1) of the TPCA became effective on 1st July 2016; the practice before the period of 1st July 2016 was indicated by the Appellant, which was not in contention.

This Court finds that the application of section 38 of the TPCA by the Tribunal as above before the amendment in 2017, dealt with the allocation of payment on tax liability, where the said taxpayer makes payment that is less than the total amount of tax, penal tax and interest due, and section 40c, which was introduced in the amendment of 2020, waived interest and penal tax that was outstanding as at 30th June 2020, which partly covered the period under review of the Respondent's tax liability except the period of 1st July 2020 to 30th June 2021.

I therefore, agree with the submission of Counsel for the Appellant that the Tribunal erred when it gave section 40c of the TPCA a retrospective application in total disregard of section 38(1) and (2) of the TPCA that existed prior to 30th June 2020 when section 40c was enacted.

It's trite law that tax legislation is strictly applied and interpreted according to the language with no implied meaning or presumptions ***(See Attorney General Vs Bugishu Coffee Marketing Association Ltd [1963] EA 39 at pg. 41***, which cited with approval the case of ***Cape Brandy Syndicate Vs Inland Revenue Commissioners [1921] 1KB 64 at p.71)***.

The Courts, therefore, rely on the plain meaning of the words used however, where the words are unclear and ambiguous, the purpose of the law is considered (Purposive approach), as can be discerned from the Parliamentary deliberations in the Hansard. ***(See Supreme Court case of India in Reserve Bank of India Vs Peerless General Finance and Investment Co. Ltd and Others [1987]1***

SCC 424; Sea Ford Court Estate Ltd Vs Asher [1949] K.B 481, and Pepper Vs Hart [1993] AC 593 at 634-635)

In ***Pepper Vs Hart [1993] AC 593 at 634-635***, Lord Wilkinson stated that:

> *"Statute law consists of the words that Parliament has enacted. It is for the Courts to construe those words and it is the Court's duty in so doing to give effect to the intention of Parliament in using those words. It is an inescapable fact that, despite all the care taken in passing legislation, some statutory provisions when applied to the circumstances under consideration in any specific case are found to be ambiguous… The use of Parliamentary reports gives effect to the true intentions of the legislature"*

The Tribunal at pg. 6 of the ruling was alive to the purposive approach of statutory interpretation and stated as follows:

> *"The question which arises in respect of this amendment relates to the intention of the legislature in making the amendment in question. A perusal of the Hansard of 10th May 2017, which provides a record of the second reading of the Tax Procedures Code (Amendment) Bill 2017 and the Parliamentary Report of the Committee on Finance, Planning, and Economic Development on the Tax Procedures Code(Amendment) Bill, 2017, are both silent on this point. The only observation we can come up with is that the word "tax liability" was replaced with the word "principal tax" so as to bring clarity to the application of the section."*

This Court, therefore, finds that the Tribunal considered the question of what was the purpose of the amendment although, the purpose could not be established from the Hansard, and arrived at the conclusion that once there is ambiguity in the words used in a statute, such ambiguity should be resolved in favour of the taxpayer and found in favour of the Respondent. ***(See Bank of Baroda Vs Uganda Revenue Authority, CACA No.71 of 2013, and Stanbic Bank (U) Ltd & 7 Others Vs Uganda Revenue Authority, HCCS No. 792 of 2006 and 170 of 2007(Consolidated)***

Consequently, this Court finds that section 40(c) of the TPCA only applied as at 30th June 2020 and not to the entire period under review. I therefore, partly fault the Tribunal in their finding on the retrospective application of section 40(c) of the TPCA to the entire period under review yet the period of 1st July 2020 to 30th June 2021 was not covered by the 2020 amendment to the TPCA as above.

This ground of appeal therefore partly succeeds.

Ground 2: Whether the Honorable Chairman and members of the Tax Appeals Tribunal erred in law when they misinterpreted section 65A (1) of the VAT Act, thus reaching a wrong conclusion that any outstanding interest and penalty as at 30th June 2017 was waived whereas section 65A (1) of the VAT Act only waived interest that exceeds the aggregate of principal and penalty?

Counsel for the Appellant submitted that The Tribunal erred in law when it relied on merely the Respondent's stated case without proof of how section 65A of the VAT Act was not taken into account by the Appellant and placing the burden of proof on the Appellant contrary to section 18 of the TAT Act and section 26 of the TPCA.

Counsel contended that in the impugned ruling, the Tribunal did not provide that it is only the interest on unpaid tax that exceeds the aggregate of principal and penalty that has to be waived, thus an error in law. That despite S.65A of the VAT Act not providing for waiver of any penalty, the Tribunal held for the same to be waived, thus an error in law.

Counsel further contended that section 65A of the VAT Act did not waive principal tax but rather only interest in excess of the aggregate of principal and penalty.

In reply, Counsel for the Respondent submitted that it was not the duty of the Respondent to either prove the contents of the ledger prepared by the Appellant or to show that the ledger conforms to section 65A of the VAT Act. That to the contrary, it was for the Appellant to prove either that as of 30th June 2017, the Respondent's interest due and payable did not exceed the aggregate of the principal and penal tax and therefore the Respondent was not entitled to any waiver or that the Respondent's interest due and payable exceeded the aggregate of principal and penal and that the Appellant waived the interest.

Decision

Section 65A of the Value Added Tax (hereinafter referred to as "VAT" Act) which was introduced by the VAT(Amendment) Act, 2017 provides that:

"1) The interest due and payable on unpaid tax shall not exceed the aggregate of the principal and penal tax.

2)For avoidance of doubt, where the interest due and payable as at 30th June 2017 exceeds the aggregate referred to in subsection (1), the interest in excess of the aggregate shall be waived." [Emphasis added]

From reading the above provision, this Court finds that the 2017 amendment to the VAT Act waived interest that was outstanding where it exceeded the aggregate of principal and penal tax as provided under s.65A thereof.

The Tribunal at pg. 8 of the ruling stated that:

> *"A perusal of the Applicant's VAT ledger admitted in evidence as exhibit AEX5 on page 175 of the Applicant's trial bundle shows that payments made by the Applicant were applied towards the payment of penal tax and interest instead of the principal tax. This means that the application of s. 38 by the Respondent in practice is completely different from the position set out under s. 38 and from the information provided to taxpayers in the Payment Registration Slips. The Respondent has argued that as at June 2017, the Applicant's interest was only Shs. 1,619,234 and did not therefore exceed the outstanding principal and penal tax and that as at July 2020, the Applicant's interest was in negative, therefore despite the fact that it was alive to and took into account the provisions of both the VAT (Amendment) Acts of 2017 and 2020, there was no interest to be waived. Our view is that the misapplication of payments by the Respondent towards penal tax and interest instead of the principal tax distorted the ledger with the result that the ledger was no longer a correct representation of the Applicant's tax liability. We agree with the Applicant that if the Respondent had applied all the payments made by the Applicant in the order set out under S.38(1) the Applicant would have no outstanding principal tax liability and any outstanding penal tax and interest would have benefited from the waivers mentioned above. [Emphasis is mine] We agree with the Applicant that if the Respondent had applied all the payments made by the Applicant in the order set out under S.38(1) the Applicant would have no outstanding principal tax liability and any outstanding penal tax and interest would have benefited from the waivers mentioned above.*
> [Emphasis added]

This Court has taken into account the statement of reasons for the taxation decision by the Respondent on pages 175-176 of the Record of Appeal as follows:

"The Respondent verily believes that the Applicant is not entitled to the redress sought from the Tribunal for reasons that the Respondent conducted a review of the Applicant's tax status and established that the Applicant had an unpaid tax of Value Added Tax of UGX103,684,531 as principal tax due and payable. On 8th July 2017, the Respondent issued the Applicant a reminder notice demanding VAT of UGX 103,684,53…

On 13th July 2021, the Applicant objected to the reminder notice on the following grounds; a) The reconciliation and determination of the outstanding liability did not correctly take into account Section 64A (1) & (2) of the VAT Act that effectively waived any interest due and payable on unpaid tax that exceed the aggregate of the outstanding principal and penal tax, as at 30th June, 2017; b) The reconciliation and determination of the outstanding liability did not take into account section 40C of the TPCA, that waived any interest and penalty outstanding as at 30th June 2020, and c) The reconciliation and determination of the outstanding liability did not take into account the basis for the order of payment under section 38 of the TPCA that waived any interest and penalty outstanding as at 30th June 2020.

On 15th July 2021, the Respondent made an objection decision disallowing the Applicant's objection on the ground that the demand notice had considered all provisions of the law including Section 65A (1) and (2) of the VAT Act, Sections 38 & 40C of the Tax Procedure Code Act, 2014."

The Tribunal at pg. 9 of the ruling stated that:

> *"The Applicant's other argument was that s.65A (1) of the VAT Act provides that 'The interest due and payable shall not exceed the aggregate of the principal and penal tax.' The Applicant's case was that this was not properly taken into account by the Respondent. The Respondent did not call a witness to show that s.65A (1) of the VAT Act was taken into consideration when making reconciliations in the ledger. Taking the above into consideration the Tribunal holds that:*
>
> *1. The outstanding VAT of Shs. 103,684,531 assessed on the Applicant is set aside.*
>
> *2. Any outstanding interest and penalty as at 30th June 2017 and 2020 are hereby waived in accordance with s.65 of the VAT Act and S. 40 of the TPCA…"*

From the chronological analysis of the facts by the Tribunal in the above ruling, and the reasons for the objection by the Respondent above, this Court is certain that the Tribunal meant s.65A of the VAT Act, and not s.65 of the VAT Act as seen above.

It's settled law that where an application omits to cite any law at all or cites the wrong law but the jurisdiction to grant the order exists, the irregularity or omission can be ignored and the correct law inserted. ***(See Saggu Vs Road Master Cycles (U) Limited [2002] 1 EA 258 at 262,*** which cited with approval ***Nanjibhi Prabhudas & Co. Ltd Vs Standard Bank Ltd [1968] EA)***, and ***Re Christine Namatovu Tebajjukira [1992-93] HCB 85.***

Accordingly, this Court finds that the citing of a wrong law by the Tribunal is not prejudicial to the Appellant's case.

It is noteworthy that exhibit *AEX5* the ledger is the crux of this appeal in respect of the Respondent's VAT tax liability of UGX 103,684,531. This Court takes into account that there is a misapprehension of facts, and misapplication of the law on evaluation of the evidence by the Tribunal, which amounts to an error of law. ***(See Barry Edwards Vs The Commissioner for Her Majesty's Revenue & Customs [2019] UKUT 0131(TCC) Appeal No. UT/2017/0172)***

It is my understanding that the applicability of section 65A of the VAT Act was based on the fact that the Respondent herein was assessed VAT tax of UGX 103,684,531 by the Appellant. The Appellant argued that the said outstanding tax was the Respondent's VAT Tax liability as at July 2021. The Respondent contended that it made payments on the PRN generated from the self-assessments, and adduced evidence to prove that it did not have any outstanding tax liability as claimed by the Appellant.

It's trite law that whoever alleges a given fact, and desires the Court to give judgment on any legal right or liability dependent on the existence of any fact, has the burden to prove that fact unless it is provided by law that the proof of that fact shall lie on another person. ***(See sections 101 & 103 of the Evidence Act, Cap 8; section 28 of the TPCA, Cap 343, and section 19 of TAT Act, Cap 341 (Revised Laws of Uganda, 2023 Edition)***

In the Supreme Court case of ***Kamo Enterprises Ltd Vs Krystalline Salt Limited, SCCA No.8 of 2018***, cited by Counsel for the Respondent, the phrase "evidential burden of proof" is defined as the burden of adducing evidence to prove a fact in one's favour; that while the evidential burden keeps shifting, the legal burden never shifts.

This Court therefore finds that the evidential burden of proof shifted to the Appellant to prove that the Respondent's evidence was incorrect, which it failed to do. The Appellant having failed to adduce evidence, therefore, failed to discharge the evidential burden to the required standard, from which the Tribunal partly arrived at a wrong conclusion.

Accordingly, this ground succeeds.

I have considered the provision of section 28(3) of the TAT Act, in which this Court derives its powers to hear and determine the appeal, which arises from the decision of the Tax Appeals Tribunal, and to make orders as it thinks appropriate

by reason of its decision, including an order affirming or setting aside the decision of the Tribunal or an order remitting the case to the Tribunal for reconsideration.

Accordingly, for the reasons stated above, this Court makes orders that this appeal succeeds as follows:

1. Grounds 1 and 2 partly succeed to the extent of the period from 1st July 2020 to 30th June 2021.
2. The decision of the Tribunal is partly set aside on grounds 1, and 2 to the extent of the period in (1) above.
3. The dispute is remitted to the Tribunal to exercise its discretion to refer the matter back to the Commissioner General for reassessment of the Respondent's tax liability for the period in (1) above.
4. The Appellant is awarded one-third of the costs of the appeal and two-thirds of the costs in the Tribunal shall be paid to the Respondent.

Dated and delivered electronically on this 11th day of October 2024.

SUSAN ABINYO
JUDGE
11/10/2024