THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 116 OF 2021

WANA SOLUTIONS LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MS. ROSEMARY NAJJEMBA

RULING

This ruling is in respect of an application by the Applicant challenging the lawfulness of distress proceedings instigated by the Respondent against the Applicant. The Applicant seeks the following orders:

(i) A declaration that the closure of the Applicant's business premises and seizure of the Applicant's truck were unlawful;
(ii) The Applicant is not liable to pay the taxes demanded by the Respondent;
(iii) That the Tribunal awards the Applicant general and aggravated damages; and
(iv) Costs of the application be provided for.

1. Background Facts

The Applicant engages in the sale of liquified petroleum gas, gas cylinders and gas burner stoves. On 8 May 2018, the Respondent issued the Applicant with the following VAT assessments:

a) Assessment no. MA020218896004 dated 8 May 2018 for Shs. 75,646,269 for the period 1-30 June 2015. On 12 November 2019, following an objection filed by the Applicant's, the Respondent partially allowed the objection and issued an amended additional assessment which reduced the above assessment by Shs. 13,859,355.
b) Assessment no. MA020219061458 dated 4 October 2018 wherein tax amounting to Shs. 54,998,600 for the period 1-30 June 2017 was discharged.

It appears that sometime between May and July 2019, the Applicant applied to the Respondent for a payment plan and this was granted on 9 July 2019 for 3 installments. The instalment plan was for a tax liability of Shs. 365,831,875 comprised of PAYE of Shs. 52,199,382 and VAT of Shs. 312,632,493. However, there are no tax assessments on record in support of the above amounts.

On 2 August 2018, the Applicant applied for an extension of time to lodge a late objection to the VAT assessment of Shs. 75,646,269. The Application was approved and the Applicant proceeded to object against the assessment. On 12 November 2019, the Respondent issued an objection decision partially allowing the objection and reduced the assessment by Shs. 13,859,355.

The Applicant did not challenge the objection decision.

After this point, the facts get a bit longwinded.

It appears that the Applicant had a change of heart regarding the instalment plan and did not turn up to sign the memorandum of understanding committing to the plan. Consequently, on 20 November 2020, more than a year after the instalment plan, the Respondent wrote to the Applicant warning them that the Respondent would instigate recovery measures against the Applicant if the outstanding liability is not paid.

A year later, on 14 October 2021, the Respondent issued a warrant of distress against the Applicant to recover Shs. 286,857,212. This was followed by a third party agency notice dated 12 November 2021 which was issued by the Respondent to DFCU Bank, to collect the unpaid tax of Shs. 364,831,875.

On 28 October 2021, the Respondent, through their bailiffs, proceeded to seal off and close the Applicant's business premises.

Further, on 30 October 2021, while carrying out surveillance of the Applicant's business premises, the bailiffs established that the Applicant had broken the seals and was loading gas cylinders and other items onto a truck. The truck and cylinders where seized and taken to the Respondent's headquarters in Nakawa where they were detained. However, it turned out that the impounded truck did not belong to the Applicant and as a result, the truck was released to its rightful owner. Eventually, on 18 March 2022, the Respondent's bailiffs located the Applicant's owned truck

registration number UBB 676U and impounded it as part of the Respondent's recovery measures.

On 23 November 2021, the Applicant made a payment of taxes amounting to Shs. 48,502,300. It is not clear whether this was against the tax liability of Shs.75.6 million or Shs. 364.8 million or the Shs. 286.4 million.

On 30 November 2021, the parties held a meeting that reviewed the Applicant's VAT ledger for the period January 2015 to November 2021 to establish the Applicant's total unpaid taxes. According to the minutes of the meeting, it was established that the Applicant owed Shs. 153,942,939 in respect of VAT and Shs. 93,217,724 concerning PAYE.

On 21 December 2021, the Applicant filed this application on the grounds that the Respondent's recovery measures were unlawful. On 22 March 2022, the Respondent lifted the warrant of distress off the Applicant's business premises. However, the Respondent continued to detain the Applicant's truck.

2. Issues

The key issue for determination by the Tribunal are:

(i) Whether the closure of the Applicant's premises and the impounding of its truck was lawful;

(ii) Whether the Applicant is liable to pay the taxes; and

(iii) What remedies are available to the parties.

3. Representation

The Applicant was represented by Mr. Bernard Olok while the Respondent was represented by Ms. Gloria Twinomugisha and Ms. Rita Nabirye.

Mr. Magombe Festo, the Applicant's first witness testified that the Respondent sealed off the Applicant's business premises from 25th October 2021 until March 2022 when the Respondent's agents opened the Applicant's business premises after several protests.

Mr. Wasirwa Emmy of Kampala Tax Advisory Centre, the Applicant's 2nd witness stated in his witness statement that the Respondent unlawfully closed off the

Applicant's premises without any justifiable reasons for a period of five months from October 2021 to March 2022 in execution of a warrant of distress which was issued on 14th October 2021, demanding taxes amounting to Shs. 286,857,212/=.

During cross examination, Mr. Wasirwa stated that, upon accepting to negotiate for the opening of the offices, the Applicant looked into its tax liability and realized that it did not owe the said amount.

Mr. Wasirwa also stated that in execution of the warrant of distress, the Applicant's merchandise (gas and gas cylinders) was locked and sealed off inside the Applicant's premises by the Respondent through its agent Kamugasha Agencies Ltd.

On the other hand, Mr. Jotham Katumusiime, a Director in Kamugasha Agencies, was the Respondent's first witness. He testified that he was contracted by the Respondent to offer Debt Collection services in support of the debt recovery function of the Respondent. Mr. Katumusiime went on to state that he served the Applicant with a copy of the demand letter and warrant of distress on 28th October 2021. The witness testified that not only did he serve but also went ahead and engaged the Applicant in respect of the outstanding tax liability on the warrant.

Mr. Katumusiime further testified that on Saturday 30th October 2021, at about 1;00pm, while carrying out routine surveillance of the premises, he established that the Applicant had broken off the seals and was loading the gas cylinders, which had been sealed inside the premises, onto a truck. Resultantly, he informed the Manager Debt Collection Unit of the Respondent who instructed a team of URA officers to come to the premises.

During cross examination, Mr. Katumusiime testified that the gas cylinders were handed back to the Applicant and that the Respondent had evidence to this effect. However, the evidence was not adduced.

Ms. Esther Atuhaire, an Officer in the Respondent's Debt Collection Unit, appeared as the Respondent's second witness. She testified that the Respondent issued a warrant of distress to the Applicant, vide auctioneer Kamugasha Agencies Ltd, whereupon the Applicant's premises were sealed off.

Ms. Atuhaire confirmed during cross examination that the motor vehicle registration number UBB 677 U is still in the Respondent's premises pending negotiations that have not been concluded.

Ms. Atuhaire further testified that on 30th October 2021, while the auctioneer was carrying out surveillance on the Applicant's premises, it was established that the seals had been broken and the items which had been seized were missing.

4. Submissions of the Applicant

The Applicant submitted that the Respondent's warrant of distress was unlawful in as far as the Applicant's business premises were closed for 5 months contrary to the law. Therefore, the closure of the Applicant's premises for a period in excess of 14 days was an illegality.

The Applicant submitted that the Respondent's witness, RW2 stated during cross examination that the Respondent had been keeping the motor vehicle because of un-concluded negotiations and the case being in court. This reason, according to the Applicant was not satisfactory. To hold a motor vehicle for over 3 years was to simply waste the asset of the Applicant. The Respondent was supposed to have sold the motor vehicle by auction and not kept it for this entire period spanning over 3 years.

The Applicant submitted that the Respondent breached Section 32(5)(b) of the Tax Procedure Code Act (TPCA), Cap 343 by impounding the truck of the Applicant and keeping it for over 3 years instead of 10 days from the date of distress.

The Applicant further submitted that the procedure adopted by the Respondent to seize its empty gas cylinders numbering 163, made of 6 kilograms, 15 kilograms and 45 kilograms were never returned, together with the Applicant's truck.

The Applicant submitted that the Respondent's witnesses (RW2) admitted they took gas cylinders and promised to adduce evidence that the cylinders with gas were handed back. The Applicant went ahead to state that to its dismay, the Respondent closed its case without adducing evidence of the number of cylinders and whether they were indeed handed back to the Applicant.

According to the Applicant's submissions, this action by the Respondent contravened section 32(3) and (5) of the TPCA. At the time of seizing the gas cylinders (with gas

inside), no written statement was taken from the Applicant's officers. Secondly, after seizure of the gas cylinders, the Respondent never notified the Applicant of the goods seized and the terms of its release or disposal of the gas cylinders.

The Applicant further submitted that they dispute the tax liability as it is based on guess work by the Respondent. Specifically, the tax liability was supposedly arose from a reconciled tax position in AEX-10 (page 17) of the joint trial bundle which is a minute of a meeting which was not attended by the Applicant.

The Applicant also submitted that the continued detention of their truck by the Respondent was unlawful. This is because section 32 (5) of the TPCA requires the Commissioner General to dispose of the goods distressed by public auction within a period of ten (10) days and apply the proceeds towards the payment of the tax liability. The Applicant further submitted that the continued detention of the truck for a period spanning over three years resulted in wasting the Applicant's asset.

The Applicant also submitted that penal tax and interest claimed by the Respondent is illegal as section 2 of the TPCA (Amendment) Act, 2020 waived any interest and penalty outstanding as at 30 June 2020.

The Applicant prayed the Honorable Tribunal finds the Respondent to have acted with impunity and award the Applicant with general and punitive damages of Uganda Shillings one billion. In addition, the Applicant prayed that the Honorable Tribunal declares that the tax demanded as having no basis.

5. Submissions of the Respondent

The Respondent began their submissions by raising two preliminary objections that the application is improperly before the Tribunal as Mr. Magembe Festo had no authority to institute the suit against the Respondent since the assumed authority is premised on defective powers of attorney. Further, the respondent submitted that some of the assessments challenged by the Applicant are improperly before the Tribunal as the Applicant did not object to the assessments and no objection decision was issued by the Respondent regarding the assessments.

The Respondent further submitted that its trite law that a preliminary objection can be raised at any time in the proceedings of the case. The Respondent relied on the

decision in ***Makula International Ltd vs. His Eminence Cardinal Nsubuga & Anor (1982) HCB 11*** where it was held that;

"A court of law cannot sanction what is illegal and illegality once bought to the attention of court overrides all questions of pleading, including any admission made thereon" .

The Respondent therefore prayed that the application be dismissed on the grounds raised in their preliminary objections.

Regarding the merits of the case, the Respondent submitted that it carried out a returns examination on the Applicant's filed returns for the period 2014, 2015, 2016 and 2017 and established that the Applicant had under declared taxes in the return filings (Refer to AEX3,4,5 at pages 9-12).

The Respondent submitted that on 02/08/2018 the Applicant applied for an extension of time to lodge a late objection to the VAT assessment reference number MA020218896004 (Refer to AEX 6 at page 14 of the JTB)

The Respondent further submitted that on 06/08/2018, the Respondent approved the Applicant's Application to object to the VAT assessment of Shs. 75,646,269 reference number MA020218896004 (Refer to AEX 7 at page 15 of the JTB.)

The Respondent submitted that on 09/07/2019, it approved the Applicant's request for an installment payment plan for three installments of Shs. 121,610,625 per month and total installment plan for Shs. 364,831,375 that was comprised of both PAYE, VAT and interest accrued.

The Respondent submitted that the Applicant was requested to enter into a memorandum of understanding ("MoU") with the Respondent to formalize the installment payment but did not turn up to sign the MOU or make any payments.

The Respondent submitted that on 20th November 2020, the Respondent issued a notice to the Applicant indicating that the Applicant had breached the installment arrangement and should immediately settle the tax arrears (Refer to REX2 on page 28 of the JTB)

The Respondent further submitted that on 14th October 2021, the Respondent issued a warrant of distress to the Applicant for payment of Shs.285,857,212 which was the principal tax payable (Refer to REX 3 at page 29 of the joint trial bundle)

The Respondent submitted that on 12th November 2021, it issued a third-party agency notice appointing DFCU as collection agents for the Applicant for total unpaid tax of Shs. 364,831,875 (Refer to REX-2 of the joint trial bundle). In addition, the Respondent submitted that on 23rd November 2021, the Applicant made a payment of taxes amounting to Shs. 48,502,300 (Refer to REX-6 of the joint trial bundle)

The Respondent submitted that on 30th November 2021, upon request by the Applicant, the parties held a meeting that reviewed the Applicant's VAT ledger for the period January 2015 to November 2021 to establish the Applicant's total unpaid taxes of Shs. 153,233,269.34 (See AEX-2 at page 7-8 of the joint trial bundle).

The Respondent submitted that the Commissioner duly notified the Applicant on 14th October 2021 when he issued a warrant of distress. (See REX3 at page 29 of the JTB). This warrant of distress was received by the Company's officer on the 27th of October 2021. Therefore, the notice was adequately issued.

Furthermore, as testified by RW2, on 28th October 2021, the Respondent served the Applicant with a demand letter and engaged the Applicant in respect of the outstanding liability on the warrant, but the Applicant was still adamant and unwilling to pay the same.

The Respondent submitted that it was prompted to execute the warrant by sealing off the Applicant's premises in presence of their employees. However, the Applicant did not pay the tax liability owed. Further, the Respondent submitted that Applicant's actions of breaking open the Respondent's seals and loading gas cylinders on their truck in contravention of the warrant of distress were inappropriate and unlawful.

The Respondent submitted that when no efforts were made to clear the outstanding tax liability, in March 2022, it identified and located the Applicant's truck which was impounded for purposes of ensuring collection of the tax liabilities.

The Respondent submitted that their actions in closing the Applicant's premises and impounding the truck were legal, rational and procedurally proper. The Commissioner

General therefore exercised his discretion properly and acted legally when he closed the Applicant's premises and impounded the Applicant 's truck.

In the circumstances, they Respondent prayed that the Tribunal finds that the Applicant is liable to pay taxes as assessed.

6. The Applicant's submissions in rejoinder

The Applicant made the following submissions in rejoinder reiterating their earlier submissions. Specifically, that the preliminary objection relating to the power of attorney is misguided as the suit was filed by Wana Solutions Limited and not by the attorney.

The Applicant also submitted that the application is properly before the Tribunal as the Respondent does not mention which assessments were specifically not objected to. The Applicant also reiterated that the closure of their business premises beyond the statutory limit of 14 days was unlawful.

Further, the Applicant submitted that there was no agreement between the Applicant and the Respondent to the effect that the Applicant was liable to pay any tax and no evidence was led to this effect.

7. Determination of the Tribunal

Having listened to the evidence and studied the submissions of the parties, this is the decision of the Tribunal.

The dispute concerns the lawfulness of distress proceedings that were instigate by the Respondent against the Applicant to recover certain outstanding tax liabilities. The recovery measures involved sealing off the Applicant's business premises for over five months as well as impounding the Applicant's truck registration number UBB 676U.

Preliminary objections

Before we delve in the merits of the case, we must address first, the preliminary objection raised by the Respondent. The first preliminary objection concerns the validity of a power of attorney and the second concerns assessments that the Applicant did not object to but are before the Tribunal for consideration.

Defective power of attorney

The Respondent submitted that the case is improperly before the Tribunal as Festo Magembo, the donee of the powers of attorney had no authority to institute the suit against the Respondent since the assumed authority is premised on defective powers of attorney. The Respondent submitted that the power of attorney is defective as it is neither signed by the donee to indicate his acceptance of the authority. Further, the power of attorney does not bear the Applicant's company seal, it is not dated and is not signed in Latin character.

We have taken note of the Respondent's arguments regarding the preliminary objection. However, we have observed that the suit was filed by Wana Solutions Limited and not by Festo Magembo. Further, whilst the power of attorney is not dated and signed by the donee, this does prejudice the Respondent.

Given the significance of the questions raised by this dispute, namely, the lawfulness of the distress measures instigated by the Respondent, a more balanced approach would be to determine the case on its merits rather than dismiss it on a technicality.

Our approach is anchored on Article 126 (2) (e) of the Constitution of the Republic of Uganda which requires substantive justice to be administered without undue regard to technicalities.

Therefore, the preliminary objection fails.

Assessments not objected to

The Respondent submitted that the application is improperly before the Tribunal in respect to assessments that the Applicant did not object to. The Respondent's position is that the Applicant objected to one assessment – MA020218896004. Therefore, this is the only assessment is validly before the Tribunal.

We have studied the application that was filed by the Applicant and the evidence that was led during the hearing. The Applicant filed this application challenging the lawfulness of the Respondent's distress measures relating to the closure of the Applicant's premises and the seizure of its truck.

The closure of the Applicant's business premises pursuant to a warrant of distress issued by the Respondent is a taxation decision within the meaning of section 1 of the Tax Appeals Tribunal Act ("TAT"), Cap 341. The section defines a taxation decision to mean –

"any assessment, determination, decision or notice."

Further, section 2 of the Tax Procedure Code Act, Cap 343 ("TPCA") defines a tax decision to mean –

" a tax assessment or a decision on any matter left to the discretion, judgement, direction, opinion, approval, satisfaction or determination of the Commissioner General."

On 14 October 2021, the Respondent issued a warrant of distress against the Applicant, which set in motion distress proceedings against the Applicant that involved the closure of the Applicant's business premises for a period of five months. This qualifies as a taxation decision as it involved the discretion, judgement and direction of the Commissioner General.

Therefore, the application is properly before the Tribunal and the preliminary objection fails.

Merits of the application

a) **Whether the distress measures consisting of the closure of the Applicant's business premises for five months and the detention of the truck were lawful**

Before we delve in the merits of the case, it would be helpful to summarise the chronology of events leading up to the closure of the Applicant's premises and seizure of the truck.

Date	Narration	Tax Head	Amount
8/05/18	Respondent issues additional assessment MA020218896004 for June 2015	VAT	75,646,269
4/10/2018	Respondent issues additional assessment MA020219061458 June 2017	VAT	(54,998,600)

12/11/19	Respondent issues amended additional assessment varying earlier assessment MA020218896004	VAT	(13,859,355)
Net position	**The net liability from the three assessments above**		**6,788,314**
9/07/2019	Approved instalment plan	VAT & PAYE	364,831,875
20/ 11/2021	Respondent issues a demand notice for tax arrears	VAT & PAYE	364,831,875
14/10/21	Respondent issues warrant of distress against Applicant		286,857,212
28 /10 / 21	The Respondent closes the Applicant's business premises		
12/11 21	Third party agency notice	PAYE & VAT	364,831,875
23/11/21	Applicant makes a payment		48,500,000
30/11/21	Minutes of meeting show a revised liability	VAT & PAYE	246,271,359
14/12/21 & 28/02/22	Applicant writes to Respondent requesting vacation of warrant of distress		
18/03/ 2022	Respondent impounds the Applicant's truck		
25/03/2022	Premises are handed back to the Respondent and truck continues in detention		

As shown above, following the assessments that were issued in 2018 and the objection decision of November 2019, the Applicant applied for a payment instalment plan to pay a tax liability of Shs. 364.8 million in three equal instalments. The Respondent sent the Applicant a demand notice for the same amount in November 2021, three years after the approved payment plan. When the Applicant failed to pay the tax demanded, the Respondent issued a warrant of distress on 14 October 2021. This led to the closure of the Applicant's business premises on 28 October 2021. On 18 March 2022, the Applicant was found to have broken the Respondent's seals on the premises and was observed removing goods from the premises. The Respondent thereby seized the Applicant's truck and has since detained it.

In addition, as shown in the above table, at different times, there were changes to the Applicant's tax position – first, there were 3 VAT assessments whose net position

is the Shs. 6.7 million. This was followed by a new position of Shs. 364,831,875 that is depicted in the instalment plan and the third party agency notice. The warrant of distress shows a liability of Shs. 286,857,212 and post distress negotiations show an amount of 246 million. Other than the earlier VAT assessments, subsequent demands are not supported by formal assessments.

We now turn to the legal framework concerning enforcement proceedings.

The legal framework regarding enforcement proceedings

Enforcement proceedings are provided for in sections 33 – 39 of the Tax Procedures Code Act ("TPCA"). Specifically, distress proceedings are provided for under section 35 of the TPCA and measures involving the temporary closure of business premises are provided for under section 36 of the TPCA.

The warrant of distress

Section 35 of the TPCA empowers the Commissioner General, in writing, to issue an order for the recovery of unpaid tax by distress. The order shall specify:

(a) The amount of the unpaid tax liability;
(b) The property against which distress is to be executed and the location of the property; and
(c) The tax liability to which the order relates.

On 14 October 2021, the Respondent issued a warrant of distress against the Applicant. The warrant showed the amount of Shs.286,857,212 as the unpaid tax. The warrant also stated that the distress would be executed against goods, chattels and other articles used within Uganda in the Applicant's commercial transactions. The warrant also ordered for the breaking open of any building or place in day time.

Prior to the warrant of distress, there was an assessed liability of Shs. 75.6 million on 8 May 2018 which the Applicant objected to 12 November 2019 and was partially allowed. The Applicant did not contest the objection decision.

On 9 July 2019, pursuant to an application for an instalment plan, the Respondent granted the Applicant was granted approval to pay a tax liability of Shs. 364.8 million in three instalments of Shs. 121 million each. This liability covered both VAT and PAYE. It is not exactly clear how the tax liability for Shs. 364.8 million arose as there is neither a default assessment nor an additional assessment supporting the liability. However, since the Applicant on their own volition submitted an application for an instalment plan to the Respondent for Shs. 364.8 million, it would be reasonable to conclude that the Applicant was aware of this tax liability, which they did not contest.

On 20 November 2020, the Respondent issued the Applicant with a demand notice for the unpaid taxes of Shs. 364.8 million. Following the Applicant's failure to pay the outstanding tax, on 14 October 2021, the Respondent issued a warrant of distress against the Applicant.

A decision to recover unpaid taxes by distress must be made subsequent to uncontested assessments, determinations, decisions or notices made under specified Acts imposing tax ***(Bank of India V NC Beverages and Uganda Revenue Authority, Civil Suit 0009 of 2021).***

In the present case, there was an uncontested liability of Shs. 364.8 million which had been outstanding since 2019 when the Applicant's application for a payment plan was approved by the Respondent. Despite several reminders from the Respondent, the Applicant made no effort towards honouring the instalment plan.

According to section 29 (2) of the TPCA, an amount treated as tax shall be collected by the Commissioner General serving a notice of demand on the person liable for the amount. Further, section 29 (3) provides that the amount is payable on date specified in the notice being a date that is not less than twenty-eight days from the date of service of the notice.

The Respondent issued the Applicant with a demand notice in November 2020, a year prior to the warrant. Therefore, the Applicant was given ample time to pay the liability or commit to a new payment plan.

Therefore, the Respondent was justified in issuing a warrant of distress on 14 October 2021.

Further, the warrant of distress satisfied the requirements of section 35 of the TPCA as it showed the existence of an unpaid tax liability and indicated the property that was subject to the distress proceedings, which included *"all goods, chattels and other things wherever they may be found…used within Uganda in commercial transactions which you may find in any premises …in the use or possession of the said taxpayer"*

Consequently, the Respondent appointed an auctioneer, Kamugasha agency who sealed off the applicant's business premises to secure the trading stock which included gas cylinders.

The closure of the Applicant's business premises

Section 36 (1) of the TPCA empowers the Commissioner General to close down the whole or part of the person's business premises for default in paying tax that is due. The section states as follows:

"The Commissioner General or an officer authorized in writing by the Commissioner General for the purpose of this section may notify a person in writing of the intention to close down part or the whole of the person's business premises for default in paying a tax that is due and payable…"

The above provision does not impose a mandatory obligation on the Commissioner General to notify the taxpayer of the Commissioner General's intention to close the person's business premises. However, in the present case, the Applicant was notified, a year in advance, in November 2020, of the proceedings that would follow if the outstanding tax liabilities were not paid. Therefore, the Applicant was notified.

Further, section 36 (2) of the TPCA provides as follows:

"Where a taxpayer does not pay the tax due…the Commissioner General or authorised officer may issue an order to close down part or the whole of the business premises of the taxpayer for a period not exceeding fifteen days." (Prior to July 2022, the period was 14 days)

While the Respondent has the powers to close down a defaulting taxpayers' business premises, the above provision only allows the Respondent to close the premises for a period not exceeding 15 days.

In the present case, the Respondent's closed the Applicant's premises for five months which was contrary to the above provision. Therefore, the continued closure of the Applicant's business premises beyond the fifteen day period was unlawful.

Seizure of the Applicant's truck

On 18 March 2022, the Respondent seized the Applicant's truck, registration number UBB 676 U. According to testimony of the Respondent's first witness, the Applicant's truck was seized after the Respondent's bailiffs, when carrying out a surveillance of the Applicant's premises, established that the seals had been broken and gas cylinders were being loaded onto a truck.

The Respondent impounded the truck. However, it was later established that the impounded truck did not belong to the Applicant and the truck was released. On 22 March 2022, the bailiffs located the Applicant's owned truck and impounded it. The truck has since been detained to date. Therefore, the Respondent has held the truck for over two years.

The Applicant argues that the continued detention of the truck is contrary to section 35 (5) of the TPCA (formerly section 32 (5)) which provides as follows:

"(5) If the taxpayer does not pay the tax due and specified in the order under subsection (1), together with the costs of the distress –

(b) …within ten days after the distress is executed,

the properties subject to the distress proceedings may be disposed of by sale by public auction or in such other manner as the Commissioner of authorized officer may direct."

The above provision grants the Commissioner discretion to dispose of the distressed property within ten days or in such other manner as the Commissioner may direct.

However, in the present case, the Respondent has detained the Applicant's truck for more than two years. This is excessive and unreasonable in view of the ten day period provided for by the TPCA.

While section 35 grants the Respondent discretionary powers to either dispose of the truck or deal with it in any other manner as the Commissioner may direct, this discretion must be exercised in accordance with the mandate of the Respondent, which is to collect taxes due to government.

The purpose of distress proceedings is to recover taxes due to the government as tax is a debt to government. Therefore, the Respondent has a duty to ensure that distressed property is disposed of in a timely manner to recover the taxes due to the government. Taxpayers' property should not be detained or impounded for such long periods of time without disposal or returning the same to the taxpayer. This defeats the purpose of enforcement measures. By prescribing a ten day period, the intention of the Legislature was to ensure that tax collection is undertaken in the shortest period of time possible. The Respondent is not in the business of holding taxpayers' assets; their business is to collect tax revenue and this should be the primary focus of enforcement measures.

Therefore, the Respondent should have disposed of the property and used the proceeds to settle the tax liability. Any amounts in excess of the outstanding liability should be returned to the taxpayer.

By failing to do any of the above, the Respondent not only failed to collect the taxes due to the government in a timely manner but also wasted the Applicant's asset, which could have been used to generate income for the business, from which future tax could have been collected.

However, it should also be pointed out that the taxpayers' conduct in attempting to deal with the distressed property contrary to a lawful warrant of distress made a bad situation worse. Two wrongs do not make a right.

Where the Respondent has issued a warrant of distress against a taxpayer and / or sealed off the taxpayer's business premises as part of recovery measures, the taxpayer should not tamper with the seals or the distressed property until the warrant has been vacated. Therefore, it was wrong for the taxpayer to break the seals and deal with the distressed goods in a manner contrary to the warrant of distress.

Inconsistencies in the amounts owed by the taxpayer

It should however be pointed out that there were inconsistencies in the amount unpaid by the taxpayer. For example, after the Respondent issued the warrant of distress for Shs. 286 million, they also issued an agency notice against the Applicant's bankers to seek to recover Shs. 364.8 million, which was the subject of the instalment plan. Further, on 30 November 2021, a meeting was held between the parties which established a liability of Shs. 247,160,668 against which the Applicant. This comprised of Shs. 153,942,939 in respect of VAT and Shs. 93,217,724 in respect of PAYE.

Further, a review of the Applicant's VAT ledger also revealed inconsistencies. For example, the ledger shows an assessment of Shs 152,474,138.58 for the month of May 2018. However, according to the evidence, on 8 May 2018, the Respondent issued a VAT assessment MA020218896004 of Shs. 75.6 million (AEX 3). However, the ledger does not reflect this assessment. Instead, the ledger shows Shs. 152,474,138.58 in the month of May.

The above inconsistencies ought to have been reconciled as they cast doubt on the accuracy of the tax liability.

b) What remedies are available to the parties?

The Applicant prayed for the following remedies:

(a) General and punitive damages of Shs. 1 billion for closure of the Applicant's business premises which put the Applicant out of business.

Section 21 (6) of the Tax Appeals Tribunal Act empowers the Tribunal to make an order as to damages, interest or any other remedy against any party, and the order shall be enforceable in the same manner as an order of the High Court.

General damages

General damages are awarded at the discretion of the court to restore the plaintiff to the correct position that they would have been had the injury or damage not occurred. In the case of ***Mujib and Another v Attorney General, Civil Suit 160/ 2014,*** it was held:

"General damages are losses which flow naturally from the defendant's act. Therefore, general damages are damages which the law implies and presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result, or the necessary result of the wrong complained of.

The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. It is not also meant to punish the claimant and allow the defendant to go without repairing the actual loss caused to the claimant."

The Applicant submitted that the continued closure of their business premises for five months invariably caused the Applicant financial loss. However, loss of earnings must be specifically claimed and proved, in which case they are known as specific damages.

The Applicant has not proved the extent of the financial loss that they suffered. Therefore, general damages will not be awarded for loss of business.

However, we are mindful of the fact that the closure of the business premises and seizure of the vehicle for such a long period of time caused the Applicant a certain level of distress and suffering. Further, this invariably negatively affected their reputation amongst stakeholders such as customers and suppliers.

In the circumstances, we hereby award the Applicant general damages of Shs. 35,000,000.

Punitive / aggravated damages

Aggravated damages were defined in the case of ***Maruri Venkatta Bhaskar Reddy and 2 others v Bank of India, HCCS 804/2014*** as damages that are awarded by the court in form of an "extra compensation" to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted.

In ***El Termewy v Awdi & Ors (Civil Suit No. 95 of 2012) [2015] UGHCCD 4 (30 January 2015),*** the Hon. Justice Elizabeth Musoke stated:

"Punitive damages are an exception to the rule that damages generally are to compensate the injured person. These are awardable to punish, deter, express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. They are also awardable for the improper interference by public officials with the rights of ordinary subjects."

Punitive damages will not be awarded to the Applicant. In arriving at this decision, the Tribunal has taken into consideration the Applicant's conduct in breaking open the Respondent's seals and dealing with the distressed goods contrary to a subsisting warrant of distress. The Applicant did not act in good faith and awarding punitive damages would tantamount to condoning such behaviour.

The motor vehicle

As the Respondent has detained the Applicant's vehicle for over two years and has failed to dispose it off, the most appropriate course of action would be to release the vehicle back to the Applicant.

Therefore, the Respondent should immediately release the vehicle back to the Applicant.

Reconciliation of the Applicant's tax position

As indicated above, the Applicant requested the Respondent for a reconciliation of the Applicant's tax position. Further, this tribunal also observed inconsistencies in the tax allegedly due from the Applicant as the amounts changed several times. In the circumstances, it would be appropriate for the Respondent to reconcile the Applicant's tax ledgers to ascertain the Applicant's true tax position in the period 2015 to 2021.

The above reconciliation exercise should also deal with the issue of penalties and interest arising from any outstanding tax liabilities that the reconciliation will reveal. Therefore, the underlying tax liabilities / unpaid taxes are hereby remitted back to the Respondent for correct determination.

In view of the above, the Tribunal hereby makes the following orders:

(a) General damages of Shs. 20,000,000 are hereby awarded to the Applicant;
(b) The Respondent should immediately release the Applicant's truck, registration number UBB 676U;
(c) The underlying tax liability is hereby remitted to the Respondent to reconcile the Applicant's tax ledgers for the period 2015 to 2021 together with the Applicant; The position from the above reconciliation will constitute the Applicant's tax position for that period;
(d) The reconciliation should be completed and filed with the Tribunal by 15 March 2025; and
(e) Each party should bear their own costs.

Dated at Kampala this ....10th....day of ....February....2025.

CRYSTAL KABAJWARA
CHAIRPERSON

ROSEMARY NAJJEMBA
MEMBER

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 116 OF 2021

WANA SOLUTIONS LIMITED .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY .....RESPONDENT

Before: Ms. Crystal Kabajwara, Mr. Siraj Ali, Ms. Rosemary Najjemba

RULING

I have had the opportunity of reading in draft, the ruling of my colleagues, and wish to dissent as follows.

It is not in dispute that on 9th July 2019, the Respondent approved a request by the Applicant to pay tax in the sum of Shs. 364,831,875, in instalments. A year and five months later, on 20th November, 2020, the Respondent reminded the Applicant, that it was in breach of the arrangement to pay the above tax in instalments and requested the Applicant to immediately pay the entire tax amount. Approximately, a year later, on 14th October 2021, the Respondent issued a Warrant of Distress against the Applicant in accordance with **S. 32 of the Tax Procedures Code Act, 2014**, for the recovery of Shs. 286,857,212, being the tax due and payable by the Applicant. The Respondent`s agent, Kamugasha Agencies Ltd, executed the Warrant of Distress on Thursday 28th October 2021, by sealing off the Applicant`s premises at Seguku, along Entebbe Road. On Saturday 30th October 2021, two days after the premises in question were sealed off by the Respondent, the Applicant`s officials broke the seals and were found by the Respondent`s said agents, loading gas cylinders onto a truck. The Applicant committed an unlawful act by breaking the seals and entering the premises in question, for the purposes of taking away the gas cylinders. It is clear that the Applicant`s objective was to circumvent the Warrant of Distress which had been issued against it.

S. 70 of the **Tax Procedures Code Act,** provides that any person who enters premises, which have been temporarily closed for default in paying a tax, commits an offence.

On 21st December 2021, after having committed the above offence and without paying off the tax in dispute, the Applicant filed the instant application, contesting the tax, which it had previously acknowledged was due and payable. The above facts clearly show that the Applicant has come to the Tribunal with unclean hands.

In ***Keystone Driller Co. v. General Excavator Co. 290 U.S. 240 (1933)*** the United States Supreme Court stated as follows;

"It is one of the fundamental principles upon which equity jurisprudence is founded that, before a complainant can have a standing in court, he must first show that not only has he a good and meritorious cause of action, but he must come into court with clean hands. He must be frank and fair with the court, nothing about the case under consideration should be guarded, but everything that tends to a full and fair determination of the matters in controversy should be placed before the court".

"Whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy has violated conscience or good faith or other equitable principle in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy."

In the instant case, the Applicant has not been frank and fair with the Tribunal. In all its correspondences, in its witness statements and in its submissions, the Applicant fails to admit that it broke the seals which were lawfully placed by the Respondent on its premises and that this unlawful act was the immediate and necessary cause of the predicament that the Applicant now finds itself in.

By breaking the seals the Applicant acted contrary to the provisions of **S. 70** of the **Tax Procedures Code Act**. Accordingly, the Applicant hands are not clean. For this reason, the Tribunal should neither intervene nor award the Applicant any remedy.

Further, no lawful basis, exists for the award of general damages to the Applicant. The Applicant`s pleadings show that general damages were not pleaded by the Applicant. It is trite that general damages must be pleaded and proved. This was the position of the court in ***Kampala District Land Board & George Mitala v. Venancio Babweyana SCCA No. 2/2007.*** The Applicant cannot be permitted to make a claim for general damages in its submissions when this remedy did not form part of its pleadings.

The Applicant`s pleadings also show that the seizure of its truck registration number UBB 676U by the Respondent was not pleaded and does not form part of the Applicant`s claim before the Tribunal. It is well established that a party will not be allowed to succeed on a case not set out in his pleadings.

In ***Interfreight Forwarders (U) Ltd vs. East African Development Bank Ltd 1990-1994 1 EA 117 (SCU),*** The court underscored the importance of proper pleadings as follows;

"The system of pleadings is necessary in litigation. It operates to define and deliver it with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the Court will be called upon to adjudicate between them.

It thus serves the double purposes of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and which the Court will have to determine at the trial. See ***Bullen and Leake and Jacob's Precedent (12ed) at 3.***

Thus, issues are formed on the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a

case inconsistent with which the alleged in the pleadings except by way of amendment of the pleadings.

For the above reasons, if the plaintiff did not plead that the defendant was a common carrier, I think that he cannot be permitted to depart from what clearly appears to have been his case as stated in the plaint and claim that there was evidence proving that the defendant was a common carrier".

Applying the above decision to the facts of our case, the Applicant cannot be permitted to depart from its case by making a claim for general damages and for the unlawful seizure of its truck.

The bare minimum, expected of a party filing an application in the Tribunal, is that its pleadings should establish a clear and coherent case, and should set out the remedies being sought from the Tribunal.

S. 23 (2) of the **Tax Appeals Tribunal Act**, which provides that the proceedings of the Tribunal shall be conducted with as little formality as possible, cannot be interpreted to mean, that parties are at liberty, to set out one case in their pleadings and argue a different case in their submissions.

For the reasons above, I would have dismissed this application with costs.

Dated at Kampala this.....10th.....day of.....February.....2025.

MR. SIRAJ ALI
MEMBER