

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO. 108 OF 2023**  
**ARISING FROM APPLICATION NO. 47 OF 2023**

**NIVED ENTERPRIZES LIMITED.....APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY..... RESPONDENT**

**CORAM DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA**

**RULING**

This ruling is on an application for stay of proceedings of the main application 47 of 2023 challenging a Withholding Tax (WHT) assessment of Shs. 576,831,330.

The applicant applied for and was issued a WHT exemption for the period of 9<sup>th</sup> March 2023 to 30<sup>th</sup> June 2023. The respondent revoked the WHT exemption and issued a tax assessment. The applicant filed an application before the Tax Appeals Tribunal. It filed Miscellaneous Cause 111 of 2023 in the High Court challenging the constitutionality of the respondent's decision to assess WHT when there was an existing WHT exemption.

**Issues:**

1. Whether the application discloses sufficient grounds for grant of an order for stay of proceedings in Application 47 of 2023?
2. What remedies are available?

The applicant was represented by Mr. Joseph Alan Atwine while the respondent by Ms. Sheeba Tayahwe.

The application was supported by the affidavit of Mr. Isaac Kashaija, its director who deponed that on 12<sup>th</sup> June 2022, the applicant applied for judicial review in Misc. Cause

111 of 2023 in the High Court of Uganda. It is challenging the constitutionality of the respondent's action.

In reply, Ms. Christine Mpumwire, an officer in the respondent's Legal Service and Board Affairs department deponed that the dispute between the parties is essentially a tax dispute. The High Court is vested only with appellate jurisdiction over the Tax Appeals Tribunal. HCMC 11 of 202 was prematurely before the High Court as the applicant had not failed to exhaust available remedies. She stated that the subject matter and relief before the High Court are similar to those in the Tribunal. She stated that the applicant has filed for a temporary injunction before the High Court. The said application was similar to the one that was dismissed before the Tribunal which it never appealed against. She stated that there is no reason for the Tribunal to stay its own proceeding.

In rejoinder, Mr. Isaac Kashaija stated that the dispute is not a tax one but one of breach of fundamental rights and freedoms. The High Court has original jurisdiction. The matters in the High Court are different from the one in the Tribunal. He stated that application for temporary injunction is premised on grounds of illegality committed by respondent. He stated that there is reason to stay the proceeding because of the multiplicity of the illegalities committed by the respondent.

The applicant submitted that it applied for a stay of proceeding because of a multiplicity of illegalities, breaches of the constitution, abuse of court process and contempt of court orders committed by the respondent. The applicant submitted that there were three issues for determination.

- 1) Whether this is a matter for which the High Court is clothed with original jurisdiction?
- 2) Whether the application for judicial review is premature for failure to exhaust internal remedies?
- 3) Whether the applicant is entitled to the remedy of a stay of proceedings?

The applicant submitted that the illegalities were so overwhelming that it applied for judicial review in the High Court. It submitted further that Article 50(1) the Constitution of Uganda provides for the enforcement of rights and freedoms. It states that,

"Any person who claims that a fundamental or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a rights and competent court for redress which may include compensation."

It submitted that it filed HCMC 111 of 2023 *Nived Enterprises Ltd v Uganda Revenue Authority* before the High Court. The dispute between the applicant and the respondent is in three categories namely:

- (a) That the failure of the respondent to accord the applicant its rights and freedoms as enshrined under the constitution.
- (b) That the respondent's actions are an abuse of the court process
- (c) That the respondent is in contempt of court orders.

The applicant submitted that the respondent on 12<sup>th</sup> March 2023 cleared its merchandise at nil Withholding tax (WHT). However, the respondent demanded WHT from it when its goods arrived at the border, three days after it had granted the applicant a WHT exemption. It contravened the applicant's right of legitimate expectation. It submitted the decision by the respondent to assess the applicant WHT so as to forestall likely court action was an abuse of court process. The respondent deliberately stamped date of receipt of Misc Application 40 of 2023 as 30<sup>th</sup> and not 28<sup>th</sup> March 2023 which was an abuse of court process. The respondent revoked the applicant's WHT exemption on 29<sup>th</sup> March after being served with court documents which also an abuse of court process. The applicant submitted that decision to revoke its WHT exemption contravened Articles 28 and 44(c) of the Constitution of Uganda.

The applicant submitted that the High Court is clothed with original jurisdiction. Article 139(1) of the Constitution states that "The High Court shall subject to the provisions of this Constitution have unlimited original jurisdiction in all matters, appellate and other jurisdiction as may be conferred on it by this constitution or any other law". The applicant cited *Uganda Projects Implementation and Management Centre v Uganda Revenue*

*Authority* SCCA 2 of 2000 where the Supreme Court stated that " the original jurisdiction of the High Court cannot be taken away by any other law because it is conferred on it by the Constitution, which is the supreme law of the land. See Article 2 of the Constitution."

The applicant submitted Rule 7A(2) of the Judicature (Judicial Review) Rules states; "(1). The court shall grant an order for judicial review where it is satisfied that the decision-making body or officer did not follow due process in reaching a decision and that, as a result, there was unfair and unjust treatment." It submitted that Article 42 of the Constitution provides for a right to just and fair treatment in administrative decisions. The respondent, an agency of government, failed to observe the aforementioned constitutional provisions.

The applicant submitted that the respondent contended that this application was made prematurely, not having exhausted internal remedies. It submitted that the respondent relied on Rule 7A(1)(b) of the Judicature (Judicial Review) Rules, 2009 as amended where it is stated that; "The court shall, in considering an application for judicial review, satisfy itself of the following-(a) that the aggrieved person has exhausted the existing remedies available within the public body or under the law." The applicant submitted that there are exceptions to the general rule. It cited *John Ssentongo v the Commissioner Land Registration & 4 ors*, Misc. Cause 13 of 2019 page 12 where decision of *Housing Finance Company of Uganda Ltd v the Commissioner General URA HCMC 722 of 2005* as quoted stating that;

"I must hasten to add that there are exceptions to the "rule" at hand. If a matter in question or decision is questioned on the basis of the same being ...procured by ill will, or some other circumstances that make it imperative that judicial review may be embarked on, leave may be granted regardless of the existence of an alternative remedy."

The applicant submitted that in *John Ssentongo v the Commissioner Land Registration* (supra) Justice Boniface Wamala further stated that "Where the challenge is directed against the decision-making process, the judicial review option may be more preferable." He further stated that the rule of exhaustion of alternative remedies is not cast in stone,



and it applies with necessary modifications and circumstances of the particular case. It is a rule of discretion and not one of compulsion.

The applicant prayed that the Tribunal stays proceedings in Application 47 of 2023 until the High Court has heard and determined HCMC 0111 of 2023, and then the Tribunal be guided by the decision therein in concluding the matter before it.

In reply, the respondent submitted that according to *Halsbury's Laws of England* Volume 37 Para. 926 p. 290 an order for stay of proceedings is made very sparingly and in exceptional circumstances. It cited *Kenya Wildlife Service v James Metembeic (2019) eKLR* where the court stated that:

"Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial, Therefore, the test for stay of proceeding is high and stringent".

The respondent objected to the stay of proceedings in Application 47 of 2023.

The respondent submitted that the Tax Appeals Tribunal was specifically set up to hear and determine tax disputes. It is vested with original jurisdiction to adjudicate tax disputes under Article 152(3) of the Constitution of Uganda which states that "Parliament shall make laws to establish tax tribunals for the purposes of settling tax disputes." Parliament enacted the Tax Appeals Tribunals Act. S. 14(1) states that; "Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the Tribunal for a review of the decision." The respondent submitted that though the High Court is ordinarily vested with original Jurisdiction, it only possesses appellate jurisdiction in tax disputes. The respondent cited *Uganda Revenue Authority v Rabbo Enterprises (U) Limited and another* SCCA 12 of 2004 where Justice Lillian Tibatemwa- Ekirikubinza stated that; "The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunals and only taken before the High Court on appeal".

The respondent submitted that tax disputes are disputes that arise from taxation decisions made by it. A "taxation decision" is defined in S. 1(k) of the Tax Appeals Tribunal Act to mean "any assessment, determination, decision or notice." S. 3 of the Tax Procedures Code Act provides a broader definition of a "taxation decision to wit;

"a) A tax assessment.

b) A decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the commissioner..."

The respondent submitted that its decision to issue the applicant with WHT assessment and revoke its WTH exemption certificate fell under the ambit of taxation decisions. These are tax disputes over which this Tribunal has original jurisdiction. The High Court only possesses appellate jurisdiction in tax disputes. It would defeat the essence of bestowing original jurisdiction in tax disputes in Tribunal if it had to stay its proceedings in a purely tax disputes to await guidance from the High Court. The respondent prayed that this application for stay of proceedings is denied.

The respondent submitted the applicant was granted a temporary injunction which it purported to apply to other consignments of rice it intended to import. The temporary injunction only applied to the 5000 tonnes of rice imports which were the subject of Miscellaneous Application 41 of 2023. The applicant sought another temporary injunction which was dismissed by the Tribunal. The applicant never appealed the above decision but instead filed HCMA 301 of 2023 where it sought the same remedy. The application is still pending before the High Court. The respondent submitted that the applicant is forum shopping which is a form of abuse of court process.

The respondent submitted that the doctrine of *Lis Pendens* is provided for in S. 6 of the Civil Procedure Act which states that.

"No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed."

The respondent submitted that the application before the High Court and the Tribunal are substantially similar. The parties and the reliefs are the same. It submitted further that the Tribunal is clothed with the jurisdiction to grant the applicant such relief. The respondent cited *Kansai Plascon Uganda Limited v Uganda Revenue Authority* HCCA 37 of 2021 where Justice Stephen Mubiru held that the Tribunal has powers to conduct administrative merits review of the respondent's decisions. The Judge noted that;

"...administrative merits review concerns the reconsideration of both the factual basis and the lawfulness of a decision, and is thus wider than judicial review, which is limited to the latter. Administrative merits review of a decision involves a consideration of whether, on the available facts, the decision made was a correct one. including issues such as whether the actions or decisions made may be unlawful, unreasonable, unfair or improperly discriminatory."

...The Tribunal has the mandate to consider both the lawfulness of the decision it is reviewing and the facts going to the exercise of discretion. It generally has wide powers to set aside the original decision and substitute a new decision of its own."

The respondent submitted that S. 19(1) of the Tax Appeals Tribunal Act states that;

"For the purpose of reviewing a taxation decision, a tribunal may exercise all the powers and discretions that are conferred by the relevant taxing Act on the decision maker and shall make a decision in writing-

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and either-
  - (i) making a decision in substitution for the decision so set aside; or
  - (ii) remitting the matter to the decision maker for reconsideration in accordance with any directions or recommendations of the tribunal".

S. 21(6) of the Tax Appeals Tribunal states that;

"A tribunal may make an order as to damages, interest or gr other remedy against any party and the order shall be enforceable in the same manner as an order of the High Court."

The respondent submitted that Application 047 of 2023 was instituted on 27<sup>th</sup> March 2023. HCMC 0111 of 2023 was instituted on 22<sup>nd</sup> June 2023, about 3 Months after TAT

Application 047 of 2023. Under the Lis Pendens Rule the later proceedings (HCMC No. 0111 of 2023 for purposes of this case) cannot proceed.

The respondent submitted that Justice Stephen Mubiru in *Male H. Mabirizi Kiwanuka v Uganda Revenue Authority* HCMC 0084 OF 2021 noted that:

"The doctrine of exhaustion of administrative remedies is to the effect that a person challenging an agency decision must first pursue the agency's available remedies before seeking judicial review was created by courts in order to promote an efficient justice system and autonomous administrative mechanisms... The public law remedies are all discretionary in nature and although an Applicant may succeed in proving his or her case, he or she may nevertheless be refused relief on discretionary grounds. They are often described as remedies of last resort the courts will normally expect parties to have exhausted all other avenues where they are available."

The respondent submitted that the applicant has never objected to the respondent's taxation decision which are the subject of both Application 47 of 2023 and HCMC 0111 of 2023, Consequently, HCMC 0111 of 2023 was prematurely filed. The respondent submitted that the purpose of requiring an aggrieved party to object is to give the Respondent the opportunity to rectify any mistakes made in the execution of its mandate of tax collection. This would be frustrated if a tax payer is allowed to immediately resort to court upon encountering any grievances.

The respondent submitted that this application for stay of proceedings in Application 047 of 2023 is intended to aid the applicant maintain two sets of proceedings in two different forums based on the same facts. The respondent prayed that the tribunal puts an end to the applicant's forum shopping by tasking the applicant to elect which proceedings to pursue and which proceedings to discontinue and costs of this application.

In rejoinder, the applicant submitted that HCMC 0111 of 2023 before the High Court that is instituted under Article 50 of the Constitution. It submitted that S. 1 of the Human Rights (Enforcement) Act provides for the enforcement of human rights and freedoms guaranteed by the Constitution. It applies to the enforcement of human rights by a



competent court". The applicant submitted that the respondent after conceding that the High Court is clothed with original jurisdiction to hear and determine the application for judicial review, it contends that the application was made prematurely not having exhausted internal remedies. The applicant reiterated that in every general rule of law, there are exceptions.

The applicant prayed for that the tribunal refers this matter to the Constitutional Court for guidance since there are two Acts of parliament which contradict each other.

Having read the submissions of the parties, this is the ruling of the tribunal;

The applicant contended it was not given a fair hearing, a right to fair treatment, and there was infringement of its economic rights and that to natural justice by the respondent. The applicant filed Application 47 of 2023 before the High Court challenging its the infringement of its alleged constitutional rights by the respondent. It filed this application before the Tribunal seeking for it to stay its proceeding pending the determination of the constitutional petition. It is not in dispute that the high court has unlimited and or original jurisdiction over civil matters. However, the respondent argued that the Tribunal is a court of first instance in tax disputes. It argued the dispute of the applicant before the Tribunal is a tax one in nature. *In Uganda Revenue Authority v Rabbo Enterprises (U) Ltd & Anor* SCCA. 12 Of 2004 The Supreme court held that "The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunals and only taken before the High Court on appeal". Therefore, the Tribunal has to ask itself is it proper for it to stay its proceeding pending a constitutional petition in the High Court

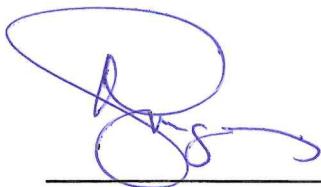
The applicant filed an application challenging a WHT assessment of 576,831,330 in respect of 5000 tons of rice imports. It also contested the respondent's decisions to revoke its WHT exemption certificate. S. 14 of the Tax Appeals Tribunal provides that "Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision." The dispute in Application 47 of 2023 in the High Court involves a taxation decision though the

respondent filed it as a constitutional matter. It is a tax dispute over which the Tribunal may exercise original jurisdiction. It is argued that the High Court only possess appellate jurisdiction. If the dispute in the High Court is different from the one in the Tribunal, we see no reason why the proceedings should be stayed. It would defeat the essence of bestowing original jurisdiction in tax disputes in the Tribunal if it had to stay its proceedings in a purely tax disputes to await guidance from High Court in a matter that is constitutional and different from the one in the Tribunal. The applicant has not shown how it would be prejudiced if the Tax Appeals Tribunal proceeded to listen to the tax dispute while the constitutional one is pending. In any case, the respondent maybe prejudiced if the tax dispute is not disposed of expeditiously as it may involve collection of tax.

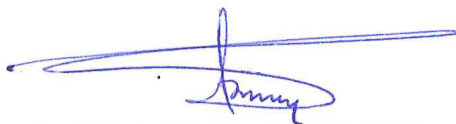
The Tribunal was set up to offer speedier, cheaper and more accessible justice in respect of resolving tax disputes. In *Heritage Oil & Gas v Uganda Revenue Authority* Miscellaneous Application 6 of 2011 this Tribunal stated that "One of the reasons a Tribunal is set up is to listen to matters expeditiously." In *Habumugisha Innocent v MTM Catering and Uganda Revenue Authority* Miscellaneous Application 23 of 2010 the Tribunal stated that it is reluctant to stay its own proceedings as it would prejudice the need to expeditiously hear tax disputes. A tax dispute should be resolved expeditiously to allow the taxpayer to continue its business normally.

Taking the above into consideration, the Tribunal exercising its discretion, hereby dismisses this application with costs to the respondent.

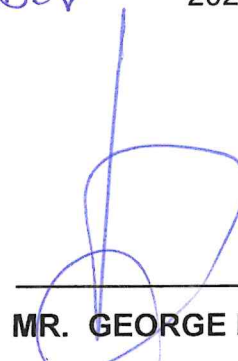
Dated at Kampala this 29th day of September 2023.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**DR. STEPHEN AKABWAY**  
**MEMBER**



**MR. GEORGE MUGERWA**  
**MEMBER**