IN THE REPUBLIC OF UGANDA

IN THE HIGH COURT O F UGANDA AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-OS-0009-2009

ROCK PETROLEUM (U) LTD ……..……..……..…… PLAINTIFFS

VERSUS

UGANDA REVENUE AUTHORITY…….……..… DEFENDANT

BEFORE: HON MR. JUSTICE LAMECK N. MUKASA

Representation:

Mr. Fred Muwema
Mr. Enoch Barata } **for the plaintiffs**
Mr. Terence Kavuma
Mr. Sirali Ali

Mr. Ali Sekatawa } **for the defendant**
Mr. Habibu Arike

Court Clerk:

Mr. Ojambo Makoha

JUDGMENT:

This suit was by way of Originating Summons dated 18th September 2009 brought by Rock Petroleum (U) Ltd suing by representative action on behalf of the Importers of Diesel and Petrol in Uganda and on its behalf against the Uganda Revenue Authority. The Plaintiffs claim to be interested in the proper construction of the Excise Tariff (Amendment) Act No 5 of 2008 as regards legality of the imposition and collection of Excise Duty hereunder for the purpose of determining their rights to a refund of monies collected under the said Act. The case is based on

affidavit evidence. The plaintiffs' case is supported by an affidavit sworn by Papoak Allan Dokoria, a director in M/s Rock Petroleum (U) ltd. Annexture A to the affidavit is a Representative Order issued on 7th April 2009 by this court. Annexture B is the list of Diesel and Petrol products importers in Uganda. The defendant filed an affidavit in reply deponed to by Doris Akol, the defendant's Assistant Commissioner in charge of Board Affairs, Policy and Rulings. In answer the plaintiff filed an affidavit in rejoinder deponed to by Terence Kavuma of Counsel for the plaintiff, Ms Muwema & Mugerwa Advocates and Solicitors.

The plaintiffs' case, as gathered from the affidavit in support, is that during the financial year 2007/2008, the Government of Uganda increased Excise Duty on Diesel from Ug shs450 to Ugshs 530 and on Petrol from Ugshs720 to Ugshs850 which the defendant started collecting from the importers. The plaintiff contends that the defendant's authority to impose and collect the increased Excise Duty was pursuant to the provisional collection order issued by the Minister of Finance under the Taxes and Duties (Provisional Collections) Act, Cap 348 but that the order expired and ceased to have effect after four months i.e. on the 1st November 2007. That after the expiry the defendant's continued imposition and collection of the increased Excise Duty without an enabling law was illegal. The plaintiff argues that the Excise Tariff (Amendment) Act No. 5 of 2008 by which the defendant was supposed to levy and collect the increased Excise Duty was passed and assented to belatedly on the 17th June 2008 with two fatal errors – i.e.

(i) Two commencement dates – i.e. 1st July 2007 and 1st July 2008.

(ii) Amendment of a non-existent 2nd Schedule of the Excise Tariff (Amendment) Act 2007.

The plaintiff therefore contends that the Excise Tariff (Amendment) Act No. 5 of 2008 was void and did not have the force of law and could not confer any authority on the defendant to collect the increased Excise Duty because it did not effect the intended increase in the tax or amendment of the law.

The Excise Tariff (Amendment) Act No. 5 of 2008 was subsequently corrected in respect of the above errors by way of corrigenda but the plaintiff contends that the corrections only took effect from the date of the last publication of the Uganda Gazette on the 23rd January, 2009. That all

tax collections by the defendant previous to that date which were not covered by the provisional collection order were illegal and thus refundable to the plaintiff and the other fuel importers.

The defendant's case on the other hand, is that the Ministry of Finance made various tax law amendments for the financial year 2007/2008. Such amendments were reflected in the Excise Tariff (Amendment) Act No. 4 of 2007, later followed by the Excise Tariff (Amendment) Act No 5 of 2008. That the tax amendments were given legal effect by the Taxes and Duties (Provisional Collection) Order 2007 which took effect on 1st July 2007. The defendant contends that it was thereby mandated to collect the taxes arising from the Excise Tariff (Amendment) Act No. 5 of 2008. Pursuant thereto the defendant assessed, collected and accounted for the Excise Duty arising as a result of the aforesaid tax amendments.

The defendant states that in the process of drafting and printing the Excise Tariff (Amendment) Act No . 5 of 2008 two inadvertent typographical errors were occasioned:-

(i) The long title, which makes reference to "second schedule" of the Excise Tariff Act Cap 338 (as amended) instead of "Schedule"

(ii) Section 2 of the Act which states the dates of commencement as 1st July 2008 instead of 1st July 2007.

The defendant contends that the above errors have since been rectified by way of corrigenda deleting the word "second" appearing in the long title to the Act and in section 2 of the Act and the date of commencement as 1st July 2007.

The defendant further explains that during the financial year 2007/2008 there was a delay in renewing the Taxes and Duties (Provisional Collection) 2007 which expires four months after it is issued in anticipation of the passing by Parliament of the various Tax Bills placed before it. That the failure to renew the Taxes and Duties (Provisional Collection) order was remedied / cured by the coming into force of the Excise Tariff (Amendment) Act No. 5 of 2008 with the effective date of 1st July 2007. The defendant contends that it legally collected the taxes due and

errors on the face of the Excise Tariff (Amendment) Act did not affect its validity. The defendant further contend that the plaintiff's suit is against the interest of the public fiscus.

The issues for Court's determination are:-

1. Whether the defendant could legally impose and collect increased Excise Duty on diesel and petrol from 1st November, 2007 onwards under the Excise Tariff (Amendment) Act No. 5 of 2008.
2. Whether the plaintiffs are entitled to a refund of monies collected by the defendant from the 1st November 2007 onwards under the Excise Tariff (Amendment) Act No. 5 of 2008.

The issues before me necessitate me first to set out the relevant Statutory provisions. Article 152 of the Constitution provides:-

> "(1) No tax shall be imposed except under the authority of an Act of Parliament.
>
> (2) Where a law enacted under clause (I) of this article confers powers on any person or authority to waive or vary a tax imposed by that law, that person or authority shall report to Parliament periodically on the exercise of those powers, as shall be determined by law."

As to the budget, Article 155 of the Constitution requires to be prepared and laid before Parliament in each financial year estimates of revenues and expenditure of Government for the next financial year.

The above constitutional provisions show that taxes can only be imposed under an authority of an Act of Parliament and tax variations must be reported to Parliament. The above provisions are mandatory.

Section 1 of the Taxes and Duties (Provisional Collection) Act empowers the minister, whenever the Government approves the introduction into the Parliament of a bill by which if the bill were passed into law, any tax or duty would be imposed or created, altered or removed, by Statutory Instrument to order that there shall be charged, levied and collected the tax or duty which would

become payable if the bill were passed into law and came into operation in place of the tax or duty which would otherwise be payable. When that instrument is issued the tax authority is provisionally empowered to collect the tax or duty varied pending Parliamentary approval. However, section 2 of the Act provides that, if not revoked, every such order shall cease to have effect:

> "(a) if the bill in respect of which the order is made is not introduced into Parliament within three months of the making of the order;
>
> (b) on rejection by Parliament of the bill in respect of which the order is made or on the consideration of the bill by Parliament being adjourned sine die;
>
> (c) on the expiration of four months after the date on which the order is expressed to come into operation or
>
> (d) on the bill (with or without modification) being passed into law and coming into operation."

But the Minister, with the approval of Parliament signified by resolution, is empowered from time to time by statutory order to extend the period by such further period as may be specified in the order.

The evidence adduced shows that the Budget for the Financial year 2007/2008 was on 14th June 2007 laid before Parliament by the Minister of Finance, Planning and Economic Development: Therein increases in Excise Duty were proposed on diesel from Ushs450 to 530 and Petrol from Ushs720 to Ushs850 per litre. The Minister by the Taxes and Duties (Provisional Collection) Order, 2007 authorised the provisional collection of the above increased Excise Duty pending the passing into law by Parliament the Bill for the Excise Tariff (Amendment) Act, 2007.

The Excise Tariff (Amendment) Act, 5 of 2008 was assented to on 17th June 2008. It provided:

"An Act to amend the Excise Tariff Act to replace the second schedule to the Act prescribing rates of excise duty.
Date of Assent: 17th June 2008
Date of Commencement: 1st July 2008.
Be it enacted by Parliament as follows:-

1. Commencement:
   This Act shall come into force on 1st July, 2007
2. Amendment of Cap 338.
   The Excise Tariff Act is amended by substituting for the second schedule the following :-
   ------"

In the schedule motor spirit (gasoline) was put at Shs850 per litre and Gas oil (automotive, light, amber for high speed engine) at Ugshs 530 per litre.

The Excise Tariff Act, Cap 338 had been earlier amended by the Excise Tariff (Amendment) Act, 4 of 2007 asserted to on 1st May 2007 and stated to have commenced on 1st July 2006. In sections 3 Act 4 of 2007 provided:

"3. (I) The principal Act is amended by substituting for the schedules to that Act the following new schedule –
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(2) For any reference in section 3A of the Excise Tariff Act to schedule 2 there is substituted a reference to the schedule."

The above shows that the Excise Tariff Act, Cap 338 as amended had only one schedule. There was no second schedule.

A corrigenda published in the Uganda Gazette Vol. CI No. 63 of 12th December 2008 provides:

"The Excise Tariff (Amendment) Act, 2008, Act No. 5 of 2008.
(Issued by the Uganda Printing and Publishing Corporation)
In printing the above Act, a typographical error was made in reference to the date of Commencement immediately above the words enactment and is corrected as follows:-

Date of Commencement: 1st July 2007"

Another corrigenda published in the Uganda Gazette Vol. CII No. 4 of 23rd January 2009 provides:

> "The Excise Tariff (Amendment) Act, 2008 Act No. 5 of 2008. (Issued by the Uganda Printing and Publishing Corporation). Correction is made in the Excise Tariff (Amendment) Act, 2008 (Act No 5 of 2008) by deleting the word 'second' appearing in the long title to the Act and in Section 2 of the Act."

Issue No: 1 **Whether the defendant could legally impose and collect increased Excise Duty on diesel and petrol from 1st November, 2007, onwards under the Excise Tariff (Amendment) Act No 5 of 2008**. Under section 2 (I) of the Uganda Revenue Authority Act, the defendant is established with the major mandate to administer and give effect to the various taxation laws in Uganda and for that purpose to assess, collect and account for all tax and non tax revenue of Government. URA is the biblical Zacchauas of the Government of Uganda.

For the defendant to impose and collect any tax there must be a law authorising that tax. Article 152 of the Constitution of Uganda provides that no tax shall be imposed except under the authority of an Act of Parliament. The Constitution further provides that any tax variation must be reported to Parliament.

It is an agreed fact that the Minister of Finance laid before Parliament the Budget Estimates for the Financial Year 2007/2008 (annexture C to the affidavit in support) The Minister therein

proposed increases in Excise Duty on diesel and petrol from Ushs450 and Ushs720 per litre to Ushs530 and Ushs850 per litre respectively. Pending enactment of the enabling law the Minister, pursuant to Section 1 of the Taxes and Duties (Provisional Collection) Act, on 15th June 2007 made the Taxes and Duties (Provisional Collection) Order 2007. With the Provisional Order in place the defendant assessed and collected Excise Duty as increased. Annexture B to the Defendant's affidavit in reply shows a summary of Excise Duty collected for the period. The Provisional Order was expressed to come into force on the 1st day of July 2007. The amendment of the financial year 2007/2008 were reflected in the Excise Tariff (Amendment) Act No 5 of 2008 (hereafter referred to only as "Act 5 /2008") The Act had two commencement dates,1st July 2007, and 1st July 2008 and was published in the Uganda Gazette No 33 Volume C. 1 dated 2th June , 2008. It is clear that on 1st July 2007 the Bill for Act 5/2008 had not yet been passed into law. By the provisions of section 2 of the Taxes and Duties (Provisional Collection) Act the Provisional Order ceased on the expiration of four months after the date it came into operation. There is no evidence of extension of the order adduced. It thus ceased to have effect on 1st November, 2007. Mr. Muwema submitted that thereafter the defendant did not have the legal mandate to collect the Excise Duty at the proposed increased rates of Ushs530 per litre of diesel and Ushs850 per litre of petrol. However, the defendant continued to so assess and collect the Excise Duty from the importers.

Eventually the enabling Bill was passed into law Act 5/2008 published on 27th June 2008. This was towards the close of Financial Year 2007 /2008. The issue is whether Act 5/ 2008 retrospectively legalised the assessments and collections of the increased Excise Duty made after 1st July 2007. The Act had two commencement dates – 1st July 2007 and 1st July, 2008. In view of the unclear date when Act 5/2008 came into force Counsel for the plaintiff argued that the Act was ineffective. He contends that since 1st July 2007 there has not been an enabling law for the defendant to assess and collect the increased Excise Duty.

On the other hand, both Mr. Arike and Mr. Sekatawa, Counsel for the defendant, argued that Act 5/2008 had gone through the requisite legislative procedures of Parliament of enactment of Statutes. They contend therefore, that its legal force cannot be challenged or disputed. With all due respect I do not agree. For example a Statute which has been legally enacted can be

challenged and declared void if found to be inconsistent with the Constitution, the supreme Law of Uganda.

Whichever commencement date is upheld it has retrospective enforcement of the Excise Duty already collected by the defendant from the fuel importers. Taxes already but otherwise unlawfully' assessed and collected are thereby retrospectively imposed on the tax payer. An illegality would thereby be legalised. In *Russell Vs Scolt (1948) 2 All ERI* at page 5 Lord Simonds stated:-

> "My Lords, there is a maximum of income tax law which, though it may sometimes be over stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. It is necessary that this maximum should on occasion be re-asserted and this is such an occasion."

Viscout Simon stated:-

> "I feel that the tax payer is entitled to demand that his liability to a higher charge shall be made out with reasonable clearness before he is adversely affected."

However Section 14 (4) of the Act of Parliament Act, Cap 2 provides:-

> "When an Act is made with retrospective effect, the commencement of the Act shall be the date from which it is given or deemed to be given that effect."

In the words of Craies on Statute Law (7th Ed, 1971) page 387:

> "A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing law or creates a new obligation, or imposes a new duty or attached a new disability in respect to transactions or considerations already past."

Tax collection encroaches on the taxpayer's financial power. So the Excise Duty increases announced in the Budget for the Financial Years 2007/2008 was an encroachment on the diesel and petrol importers revenue. Therefore Act 5/08 which was to legalise and operationalise the defendants assessment and collection of the increases, the legal assessment and collection of which had already lapsed with the effective operation of the Provisional Order, had the effect of attaching a new disability in respect of the transactions or considerations already past.

Mr. Sekatawa, Counsel for the defendant argued that the legislative intention was clear that the law applies retrospectively. As to the rule against the retrospective effect of a statute Counsel cited *Customs and Excise Commissioners Vs Shigleton (1988) STC 190 (Simon'sTax Cases)* where Simon Brown held:-

> "Finally, I must bear in mind that those authorities which indicate that in fiscal legislation an element of retrospectivity is generally regarded as less objectionable, and the presumption against it as less strong, that is usually the case. "

The leaned Judge also stated that the rule against retrospective operation raises a presumption only , and as such it may be overcome, not only by express words of the Act but also by circumstances sufficiently strong to displace it.

In *Shingleton case*, (above) the tax payer was required to notify the Commissioners by 10th July 1984 that he was liable to be registered for Value Added Tax. He did not until 13th May1986. Under the Value Added Tax Act 1983, the Commissioners made an assessment on the taxpayer for the period 25th July 1985 to 13th May 1986. On 25th July 1985, Section 39 (5) of the 1983 Act, whereby penalty was imposed for failure to notify liability to be registered, was suspended

by the penalty provision in the Finance Act 1985, Section 15 (3). The contention was that the Act cannot be applied where the default in respect of which the penalty is imposed took place before the 1985 Act came into force. Justice Simon Brown stated:-

> "In my judgement, S15 is clear it recognises a continuing obligation to notify a liability to register and unambiguously dictates what shall be the precise monetary penalty for any period of default in compiling with such obligation. There is thus, in my judgement, simply no room for applying a presumption against retrospectivity, there is not possible construction of the clear terms of the statute which can accommodate it ---- But even if this view be wrong, I would in any event hold by necessary implication the presumption against retrospectivity is rebutted, because there exists here ' circumstances sufficiently strong to displace it ---. The fact is that any risk of injustice consequent upon retrospectivity is likely to be more theoretical than real."

The learned judge found that, to hold otherwise, a taxpayer would be exempt from civil or criminal liability of any nature however long his continuing default persisted after the 1985 Act came into operation provided only that he had also been in default before that date. That Parliament cannot readily be thought to have intended such a construction.

In the instant case Act 5/2008 was assented to on 17th June 2008 and published in the Uganda Gazette of 27th June 2008 with a commencement date of either 1st July 2007 or 1st July 2008. What is enacted by Parliament is what follows the statement in an Act which states:

"Be it enacted by Parliament as follows:-------"

What follows is what Parliament enact in the body of the Act. In section 1 Act 5/2008 states:-

" This Act shall come into force on 1st July 2007."

This is a statement to the future. In the Excise Tariff (Amend) Act, 4, of 2007, assented to on 1st May, 2007 and published in the Uganda Gazette of 29th June 2007, Section 1 provides:-

> "This Act shall be deemed to have come into force on the 1st day of July, 2006."

Act 4/07 was clearly made with the retrospective effect provided for by section 14 (4) of the Acts of Parliament Act. Act 5/2008 does not have that clarity. This is aggravated further by it having yet another commencement date of 1st July, 2008 which was in the future of its assentment and publication. Act, 5 /2008 did not have the clarity required of a taxing statute. In light of the ambiguity in the commencement date Mr. Muwema argued that Act 5/2008 has never come into force.

Secondly, Act 5/2008 Section 2 provides:-

> "2 Amendment of Cap 338
> The Excise Tariff Act is amended by substituting for the second schedule the following ----"

It is an agreed fact that Cap 338 following the amendment by Act 4/07, had only one schedule. It did not have a second schedule. Mr. Muwema argued that the sole purpose of the Act 5/2008 as provided therein was:-

> "An Act to amend the Excise Tariff Act to replace the second schedule to the Act prescribing rates of excise duty."

He contended that Act 5/2008 was infective since it was intended to amend a non existing provision of the law or schedule. Further he argued that in light of the ambiguity in the commencement date Act 5/2008 has never come into force.

While admitting the two errors or mistakes Mr. Arike, Counsel for the defendant, submitted that the errors were typographical and have since been rectified in the corrigenda published in the Uganda Gazette Vol. CI No 63 dated 12th December 2008 and Vol. CII No 4 dated 23rd January 2009.

Black's Law Dictionary 8th Ed defines corrigenda as:

> " An error in a printed work discovered after the work has gone to press."

As regards the ambiguity of the commencement date of Act 5/2008 Mr. Muwema invited this Court to resolve the issue in favour of the tax payers. Halsbury's Law of England Vol. 44 (I) par 1009 states:-

> "--- ambiguous words are construed in favour of the person liable to the duty"

In *Maka Enterprises Vs URA HCCA No 2 of 2001* Hon Justice James Ogoola (as he then was) stated:

> "--- it is trite law that a taxing Act must be specific and clear."

His Lordship quoted Slade J in *A/G Vs Bugisu Coffee Marketing Association Ltd (1963) EA 39* where he stated that:

> "In a taxing Act one has to look merely at what is clearly said. There is no room for any **interdant** . There is no equity about tax, there is no presumption as to tax. Nothing is to be read in and nothing is to be implied. One can only look firmly at the language used"

The learned Judge then held:-

> "Court does not find the PFA and especially in section 6 thereof, the clarity of language and purpose required of a taxing statute. In

this respect court upholds the principle emaciated in *Kanjee Narajee Vs Income Tax Commissioner (1964) EA 257* at 258, to the effect that:

> "-- if the language of a Revenue Act is obscure the tax payer is entitled to demand that his liability to a higher charge should be made out with reasonable clearness before he is adversely affected"

The issue of ambiguity in a statute was also considered by Justice Kiryabwire in *Stanbic Bank Uganda Ltd & 7 other banks Vs Uganda Revenue Authority HCT-00-CC-CA-170-2007 and 792-2006 (Consolidated*). It was argued for URA in that case that the old legal maxim that in tax statutes ambiguity of language should be construed in favour of the tax payer had been over taken by a modern approach to interpreting tax statutes.

A number of authorities were cited to his Lordship. In his judgment he stated:-

> "The first set of authorities came from Canada. The first case is *Quebec Communicate wrabane Vs Notre Dame De Bosecours (1994)* 3 S.C.R. 3.
>
> The Court in that case refers to what it called the teleological approach to interpreting tax legislation. Under this approach a legislative provision should be given a strict or liberal interpretation depending on the purpose underlying it and that purpose must be indentified in light of the context of the statute, its objective and legislative intent. The teleological approach will favour the taxpayer or the tax department depending solely on the legislative provision in question and not on the existence of predetermined presumptions. The second case is:

The Queen Vs Golden (1986) ISRC 209

Which is an authority for the proposition that law is not confined to a literal and virtually meaningless interpretation of the Act especially where taxation, serves many purposes in addition to the old and traditional object of raising the cost of government from a "somewhat unenthusiastic public."

I was also referred to the case of *Stock Vs Frank (Tiptono) Ltd (1978*) I All ER 984 (HL) where it was held that:-

"A Court is justified in departing from the plain words of a statute when it is satisfied that there is a clear anomaly, Parliament could not have envisaged such an anomaly, the anomaly can be overcome without detriment to the legislative objective and the language of the statute is open to modification required to overcome the anomaly"

In the above case the schedule to the Stamps Act as amended in 2002 provided for two rates the first being Shs5000/= and the second 1% of the total value which the plaintiffs argued and Hon Justice Kiryabwire found unclear and ambiguous. He held:-

"--- the law is fairly settled that the ambiguity should be construed in favour of the tax payer. As to the Canadian 'teleological approach,' to the interpretation of the tax legislation, I am unable to see how it can displace this rule in these circumstances. There is clear doubt as to which of the two duties should apply. Furthermore the Court is not able to remedy the anomaly by using ordinary rules of interpretation of statutes. This part of the schedule is a real mess considering that valuation reports are a new addition to the law and yet the rate/tariff of duty remain unclear. Even if I have got the teleological approach wrong I find that it is

> only persuasive authority and not binding on this court. Court cannot be expected to choose between one or two duties, to be right duty to pay that is for the legislature to clarify."

I appreciate that His Lordship's judgment is not binding on me. I however agree with him that the cases cited in that case in support of the teleological approach are only persuasive and not binding on this court.

In the instant case the legislative intention in Act No 5/2008 was to give effect to the increases in the Excise Duty proposed in the Budget to the Financial Year 2007/2008. For the tax to be assessed and collected there had to be an Act in force. The period pending the coming into force of an enabling Act, the legislature provides for provisional assessment and collection under the Taxes and Duties (Provisional Collection) Act. The Excise Duty increases were intended to run effective with the Financial Year 2007/2008. The new financial year in Uganda runs from 1st July. It is therefore proper for the Legislature to enact the enabling Act with a retrospective effect date from 1st July to validate the assessments and collections made between the presentation of the Financial Year Budget and the enactment of the enabling Act. However to avoid the unlawful assessment and collection of tax, in the pendency of the enabling Act, the Minister is empowered to issue a Provisional Order. In the instant case the Provisional Order was made but had ceased to be in force by the time Act 5/2008 was assented to and published. When assented to on 17th June 2008 and published on 27th June 2008 Act 5/2008 had two dates of coming in force. One on 1st July 2007, a date pre-assentment or publication of the Act and the other 1st July 2008, a date post-assentment or publication of the Act. Section 1 of the Act stated:-

> "This Act shall come into force on 1st July 2007"

A future statement but with a passed date. The body of the Act did not carry a retrospective intent of the Parliament. In such circumstances I find myself unable to find the clear intention of the Legislature. I am, also unable to follow the teleological approach of interpretation to cure the ambiguity in the Act as to the date of its commencement.

The issue is whether the errors were curred by the corrigenda published in the Uganda Gazette. The corrigenda relied upon by the defendant are indicated as:-

"Issued by the Uganda Printing and Publishing Corporation."

That shows that the errors were corrected by the Uganda Printing and Publishing Corporation. Counsel for the defendant contend that the errors were typographical and were effectively cured by such publication of the corrigenda. Typographical error is error in print thus clerical in nature. Black's Law Dictionary (7th Ed) defines clerical error as:-

> "An error resulting from the minor mistake or inadvertence esp. in writing or copying something on the record and not from judicial reasoning or determination."

The errors in Act 5/2008 do not relate to spelling mistakes or wrong additions. They go to the main root of the Act as they affect the purpose and commencement date of the Act. The mandate to clarify such errors is only vested in the Legislature and cannot be exercised by a mere publisher. Article 79 of the Constitution provides:

> "(I) Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda.
>
> (2) Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament."

And article 91 provides:-

> "(I) Subject to the provisions of this Constitution, the powers of Parliament to make laws shall be exercised through bills passed by Parliament and assented to by the President
>
> -----

(8) A bill passed by Parliament and assented to by the President or which has otherwise became law under this article shall be an Act of Parliament and shall be published in the Gazette."

It is only Parliament which has the mandate to make law. It follows that it is only Parliament which can revoke, amend or correct mistakes in any law which has become an Act of Parliament. The defendant has not cited any provision which empowers the Uganda Printing and Publishing Corporation to correct errors made by the Parliament in any enactment of an Act of Parliament.

Without any amendment or correction by Parliament the issue now becomes what is the legal status of Act No 5/2008. The Act was intended to implement and legalise the increase of Excise Duty on Diesel from Shs450/= to Shs530 and on Petrol from shs720 to shs850 per litre. Before the Amendment by Act 5/2008 the Excise Tariff Act as amended by Act 4/07 had only one schedule where the Excise Duty on Diesel is shs 450 and Petrol shs720. The schedule to Act 5/2008 puts Excise Duty on Diesel at Shs530 and on Petrol at shs850,, thereby providing for the purpose of the Amendment which was , inter alia, to increase the rate of Excise Duty on Diesel and Petrol, respectively. Unfortunately the Amendment instead substitutes a non existing second schedule. In *Stanbic Bank Uganda Ltd & Other Vs URA* (supra) reference was made to Francis Bannion in his book Statutory Interpretation pages 568 – 569 where he writes:

"The schedule is an extension of the section which induces it. Material is put into a schedule because it is too lengthy or detailed to be conveniently accommodated in a section.-- – The schedule is often used to hive off provisions which are too long or detailed to put in the body of the Act."

Hon. Justice Kiryabwire held:-

" The schedule is just an extension of the section that induces it and is used to provide details to the said section as a matter of drafting convenience"

I entirely agree and I find that this is an appropriate situation where this Court can comfortably apply the teleological approach. I accordingly hold that the substitution of schedule by Act 5/2008 was of the only schedule to the Excise Tariff Act.

As to the commencement date of Act 5/2008, section 14 of the Act of Parliament Act provides:-

> " (I) Subject to this section, the commencement of an Act shall be such date as is provided in or under the Act or where no date is provided , the date of its publication as notified in the Gazette.
>
> (2) Every Act shall be deemed to come into force at the first moment of the day of commencement."

Where the date of commencement is found to be ambiguous, in my considered view, then recourse has to be made to the date of publication as though no date had been provided by the Act.

In the Kenyan Case of *TSS Grain Millers Ltd Vs Attorney General (2003) 2 EA 685* the Minister of Finance had by a Legal Notice reduced the Customs Duty payable but did not set a date by which his order would take effect. Section 27 (I) of the Interpretation and General Provisions Act of Kenya provides:

> "27 (I) All subsidiary legislation shall unless it is otherwise expressly provided in a written law, be published in the Gazette, and shall come into operation on the day of publication, or ------- "

The legal Notice was published in the Kenya Gazette on 21st May 1999. Court held that in the circumstances the effective date is the date of publication of the Legal Notice that is 21st May 1999. In light of the provisions of section 14 of the Acts of Parliament Act the above case provides good guidance. I accordingly find that Act No : 5/2008 came into force on the date of its publication in the Uganda Gazette, that is 27th June 2008. I therefore find that from 1st

November, 2007up to 27th June 2008 the defendant could not legally impose and collect the increased Excise Duty on Diesel and Petrol.

Issue No 2 whether the plaintiffs are entitled to a refund of the Monies collected by the defendant from 1st November, 2007 onwards under the Excise Tariff (Amendment) Act No 6 of 2008.

Section 3 (3) of the Excise Tariff Act provides:

> "----there shall be charged in respect of goods imported into Uganda, specified by the schedule to this Act, excise duties at the rates specified by the schedule."

As between 1st November 2007 and 27th June 2008 the defendant was collecting excise duties beyond the rates specified in the schedule then in force. Section 7 of the Act empowers the Commissioner General to grant a refund of any excise duty paid in accordance with the excise laws. Also section 3 of the Taxes and Duties (Provisional Act) provides:-

> "Any tax or duty paid in compliance with an order made under this Act which is in excess of the tax or duty payable immediately after the order ceases to have effect shall to the extent that is not refunded under any other law relating to such tax or duty which authorises refund of that tax or duty, be refunded:-
>
> (a) in the manner set out in the section 7(I) (a) of the Public Finance Act or
> (b) by being charged on and paid out of the Consolidated Fund"
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The period between 1st July 2007 and 1st November 2007 the defendant was lawfully mandated to assess and correct Excise Duty at the rates proposed in the Budget Estimates for the Financial

Year 2007/2008. Also from 27th June 2008, when the Act 5/2008 came into force, the defendant regained the mandate to assess and collect Excise Duty at the increased rate of shs530/= per litre of Diesel and Shs 850/= per of Petrol. As between 1st November, 2007 and 27th June 2008 the assessment and collection of Excise Duty at any rate beyond Shs 450/= per litre of Diesel and beyond Shs720/= per litre of Petrol was unlawful.

In his submission Mr. Sekatawa for the defendant submitted that Act 5/2008 has a retrospective effect and since its enactment there has been a law in force which retrospectively legalised the defendant's assessment and collection of Excise Duty over the period when there was no Provisional Collection Order. Further that it is within public interest that government should keep running within the year as Parliament debates the financial laws.

I entirely agree that the defendant must collect taxes for the Government to enable it implement its policies, and run the country. However, the Constitution puts in place modalities for proper and lawful taxation.

The subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. See ***Rusell Vs Scott*** (Supra). Tax can only be collected on authority of an Act of Parliament. At the expiry of the Provisional Order the Minister did not make any extension of the Order, the defendant did not move the Minister to do the needful and when Parliament enacted the would be enabling law it did so with ambiguities. The laxity of the defendant, executive or legislature cannot be visited on the tax payers. I agree with Mr. Muwema's submission that serving the public interest should not be used to promote illegality or breach of the law.

The law as referred to above, shows that refund of monies, unlawfully taxed or collected in excess of lawful tax is allowed.

In my considered judgment the plaintiff's claim must succeed. Judgment is accordingly entered in favour of the plaintiff and I make the following orders:-

1. The defendant shall within 30 days from the date of this judgment file in Court an account of all the monies collected from each of the diesel and petrol importers in excess of Ugshs450/= per litre of Diesel and Ugshs720 per litre of Petrol for the period between 1st November 2007 and 27th June 2008 .
2. The defendant shall in accordance with the excise laws refund to each of the Diesel and Petrol Importers the monies so collected in excess.

Unless Court has reason to order otherwise costs follow the event See. *Section 27 of the Civil Procedure Act*. I have no reason to order otherwise. So the plaintiff is awarded cost of this suit.

Hon. Mr. Lameck N. Mukasa

Judge

Date: 19th July 2010