THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

H.C.C.S NO 73 OF 2011

KINYARA SUGAR LTD)…... PLAINTIFF

VERSUS

THE COMMISSIONER GENERAL)

UGANDA REVENUE AUTHORITY)...… DEFENDANT

BEFORE HON. JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

The Plaintiff is a limited liability Company incorporated in Uganda and filed this suit against the Commissioner General, Uganda Revenue Authority for a declaration that it is entitled to tax exemption incentives under section 21 (z) of the Income Tax Act as amended by the Income Tax (Amendment) (No. 2) Act 19 of 2008 for income derived by it from its new plant and machinery procured to enhance its sugar cane processing capacity from 2200 tons of cane sugar per day to 3500 tons of cane sugar per day.

The case is that by the 1st of July, 2008 the Income Tax (Amendment) (No. 2) Act 19 of 2008 was promulgated and it amended section 21 of the Income Tax Act by adding a new tax exemption under subsection (z) thereof. Pursuant to the tax exemption section the Plaintiffs applied to the Defendant for tax exemption in respect of its intended investment in a new Plant and Machinery to expand its sugar cane crashing capacity from 2200 tons of sugar to the 3500 tons of granular sugar per day. The Plaintiff invested in new Plant and Machinery worth United States dollars 18,000,000. By a letter dated 12th November, 2009 the Defendant rejected the Plaintiff's application for exemption on the ground that it was not eligible under the amending section. The Defendant's reason was that the application for exemption should have been made "at the beginning of his or her business". Since the Plaintiff was incorporated and commenced business in 1993, it did not qualify for exemption. The Plaintiff maintains that the Defendant erred in law in rejecting its application for exemption. On the other hand the Plaintiff asserts that it meets the criteria set out in the Exempting Act. Consequently the Plaintiffs seeks declarations that the applicable law in relation to the Plaintiffs tax exemption application of the 9th of April, 2009 was the Income Tax (Amendment) Act (No. 2.), Act 19 of 2008. Secondly the Plaintiff seeks a declaration that the Plaintiff meets the five criteria set out in the amending section.

In its written statement of defence the Defendants denies the claim and maintains that on the 13th of April, 2010 the Defendant responded to the Plaintiff denying the application and citing the budget speech of 2008/2009 which indicates that the incentive was meant to attract new investments into the agro - processing industry and was not meant to benefit those already in the industry. Furthermore Plaintiff does not qualify for exemption under the quoted provisions of the Income Tax Amendment Act No. 2 of 2008 because (a) the investment of the Plaintiff did not qualify under the criteria set out under the section 21 relied upon. Secondly investments in existing plants to increase productivity are fully catered for under the provisions of the Income Tax Act which provides for capital deductions. Consequently exemption sought by the Plaintiff has no basis in law. The Defendant seeks a counter declaration that the Plaintiff does not qualify for exemption under the provisions of the law and for costs of the suit.

At the hearing of the suit the Plaintiff was represented by Counsel Masembe Kanyerezi assisted by Counsel Bwogi Kalibala of Messrs Masembe, Makubuya, Adriko, Karugaba and Ssekatawa Advocates (MMAKS Advocates) while the Defendant was represented by Mary Kuteesa of the Legal Services and Board Affairs Department of the Defendant.

Counsels signed a joint scheduling memorandum in which the following facts are agreed:

Agreed facts:

1. The Plaintiff is a limited liability company incorporated in Uganda and carrying on the business of growing sugar cane and processing it into cane sugar;
2. The Defendant is the Commissioner General of the Uganda Revenue Authority vested with the duty to administer and give effect to the taxing laws including the Income Tax Act as amended from time to time;
3. On the 1st of July, 2008, the Income Tax (Amendment) (No. 2) Act 19 of 2008 was promulgated (hereinafter referred to as the "the Exempting Act") which amended section 21 of the Income Tax Act (cap 340) by adding a new tax exemption under subsection (z) as follows;

    Section 21 (1);

    (z) The income of a person derived from agricultural where the person -

    (i) Applies in writing to the commissioner to be issued with a certificate of exemption at the beginning of his or her investment;

    (ii) Invests in new plant and machinery to process agricultural products for final consumption;

    (iii) Processes agricultural products grown or produced in Uganda;

    (iv) Is located at least 30 km outside Kampala District;

    (v) Commits to regularly fulfill all obligations in this Act relating to his or her investment;

4. On the 9th of April, 2009, the Plaintiff applied to the Defendant for a tax exemption in respect of its intended investment in new plant and machinery to expand its cane crashing capacity from 2200 tons of sugar cane per day to 3500 tons of sugar per day. The quantum and nature of the intended investment was set out in the application later.

5. On the 1st of July, 2009, being one year after the Exempting Act was promulgated, of the Income Tax (Amendment Act) Act 15 Of 2009 was promulgated lived there and (hereinafter referred to as the "the Amending Act");

6. The Amending Act amended and narrowed the scope of the agro - processing exemption incentive that had been introduced by the Exempting Act and provided as follows: -

"Section 21 of the Principal Act is amended –

a) By substituting for sub section (1) (z) the following –

(z) the income of a person derived from agro-processing where the person-

(i) applies in writing to the Commissioner at the beginning of his or her business to be issued with a certificate of exemption which the Commissioner shall issue within sixty (60) days of receiving the application;

(ii) invests in new plant and machinery to process agricultural products for final consumption;

(iii) processes agricultural products grown or produced in Uganda;

(iv) regularly files returns as required under this Act;

(v) regularly fulfils all obligations in this Act relating to his or her investment;

(vi) has been issued with a certificate of exemption for that year of income by the Commissioner."

7. By its letter of the 12th of November, 2009, 24th of December, 2009, 15 December, 2010 and 13th of April, 2010 the Defendant rejected the Plaintiff's application for exemption.

During the preliminary hearing learned Counsels for both parties agreed that they would not call any witnesses and they agreed on additional facts namely:

Agreed additional facts

8. The plant and machinery purchased by the Plaintiff expanded the production capacity but did not constitute a full production line capable, standing alone, of production of granular sugar. The production process and flow and how the new plant and machinery fits in the old line is indicated in agreed exhibit P5 attached hereto."

Counsel further put in written submissions on the agreed issues which are:

1. Whether the Plaintiff met the five criteria set out in section 21 (z) (i) to (v) of the Income Tax (Amendment) (No. 2.) of Act 2008 (the Exempting Act) and is as such entitled to a certificate of exemption under section 21 (z) (vi) of the Act?
2. Remedies, available to the Parties.

Written submissions of the Plaintiff

The written submissions of Counsel for the Plaintiff is that on the 15th of June, 2012 parties further agreed that out of five of the criteria set out in the relevant section in discussion of issue number 1, the Plaintiff had made four of the criteria. The only criteria which was disputed and which will be left for determination by the court was criteria under section 21 (1) (z) (ii). It was further agreed that section 21(1) (z) (i) to (v) are deemed to have been met.

In light of the agreement issue number one was further rephrased to read as follows:

"Whether the Plaintiff met the criteria set out in section 21 (z) (ii) of the Income Tax (Amendment) (No. 2) Act 2008 (the Exempting Act) and is as such entitled to a certificate of exemption under section 21 (z) (vi) of the Act."

Learned for the Plaintiff addressed the Defendant's contention that the Plaintiff did not meet the criteria in the Exempting Act based on interpretation of section 21 (z). The critical words were the person applying must "invest in new plant and machinery to process agricultural products for final consumption"

From the perspective of the Plaintiff the Defendant's contention is that because the plant and machinery were purchased by the Plaintiff and were for expansion of its existing production capacity, it was not a new investment with a complete production line and did not qualify for exemption under the exempting provision. The Defendant's contention according to the Plaintiff's Counsel was that the Exempting Act was intended for new businesses which were not previously involved in agro - processing sector and thus the exemption applied to a new production line and not an expansion of an existing capacity. He reasoned that this position is brought out in the letter of the Plaintiff exhibited before dated 13th of April, 2010 to the Defendants Commissioner Domestic Taxes which states as follows:

> ***o"… ur interpretation of section 21 (1) (z) of the Income Tax Act (cap 340) is that the exemption is intended for investments commencing 1st of July, 2008.***
>
> ***The exemption does not cater for the expansion of existing businesses through acquisition of new plant and machinery but was meant for new investments that had not been in existence prior to 1st of July, 2008".***

This is also the averment in the written statement of defence paragraph 4 (vi). The Plaintiffs position is that it falls squarely within the scope of the exempting act and specific provision referred to in the first issue. Learned Counsel submitted that there are two competing arguments and the starting point is to appreciate the evolution over time of the agro-processing tax exemption. The exemption was first introduced in the Budget Speech of the year 2008 and resulted in the Income Tax (Amendment) (No. 2.) Act 19 of 2008 the subject matter of the suit. There was thereafter an attempt to narrow the exemption introduced in the budget speech of 2009 being the Income Tax (Amendment) of Act 15 of 2009. It was further narrowed in the budget speech of 2011 which resulted in the Income Tax (Amendment) Act 2011. Learned Counsel reviewed the evolution of the exempting provisions and contended that in 2008 the exemption was to be applied for upon a new investment being made. He contended that factually and statistically new investments board in value and number are made by existing businesses which continued to expand in the same line of business rather than by new investments by new people. He prayed that the court takes judicial notice of this. Therefore the 2008 Act applied to both existing and new businesses. The issue is whether in the wording of section 21 (z) one can read that the exemption applied it to an existing business, by expansion of its existing productive capacity or whether it can be restricted to the parties by such the business of an entirely new and complete production line.

Learned Counsel submitted that as a matter of statutory construction, the ordinary and natural meaning of the phrase "*investment in plant and machinery to process agricultural products for final consumption*" by an existing business can be by expansion in output of an already existing production line for the purchase of additional plant and machinery to process a large quantity of agricultural products. Alternatively learned Counsel contended that the investment can be by purchase of a plant and machinery constituting a totally new standalone of production line to process the same quantity of an entirely different agricultural product. It was illogical and contrary to principles of statutory interpretation to give words their ordinary and natural meaning to argue that the latter but not the former was covered by the italicised words. The drafts person catered for exemption under four distinct agro-processing scenarios.

As far as existing businesses is concerned the first scenario is an expansion of production capacity relating to an agricultural product already being processed by the business through the purchase of additional plant and equipment. The second scenario concerns investment in an entirely new agro - processing production line to increase total output of an agricultural product which the business is already processing. The third scenario is investment in an entirely new production line to process an entirely new agricultural product which the business is not already processing.

In relation to a new business, the fourth scenario relates to an investment by way of the purchase of a new production line by a start up to process a new agricultural product. Learned Counsel submitted that each of the four scenarios constitute an investment in plant and machinery to process agricultural products for final consumption by a new or existing business.

In relation to the duration of exemption under the 2008 exemption regime, a certificate of exemption was not time bound or subject to annual renewals but subsists for the duration of the use of the plant and machinery.

The 2009 exemption

Learned Counsel contended that the 2009 exemption by stipulating that the application is made at the beginning of one's business narrowed down eligibility for exemptions to only new businesses. Consequently an exemption, cannot apply to expansion of an existing business of its production capacity or even entry by an existing business into a new agro - processing line.

As far as the duration of the exemption is concerned, under the 2009 exemption regime, the duration of the exemption was stipulated in the certificate and not the life of the plant and machinery as was the case under the 2008 exemption regime.

The 2011 exemption

Learned Counsel submitted that the exemption of the 2011 Act further narrowed the scope of the Agro - processing exemption. Firstly stipulated that a person or associate of a person already involved in Agro - processing in a particular agricultural product cannot by incorporating a new company/business obtain an exemption in relation to a new company/business with regard to the processing of a similar or related agricultural product. Secondly, a new company/business seeking exemption in Agro - processing cannot use plant and machinery that has previously been used in Uganda. Counsel submitted that the intention of the two amendments in 2011 was to prevent participants from incorporating new companies/businesses and carrying out the same businesses through these new entities for claiming exemptions or even ceasing operations and transferring the plant and equipment to a new company/business associated directly or indirectly with them and then claiming exemption.

As far as the duration of the 2011 Act is concerned, an exemption certificate was limited to one year though it may be renewed annually. This is contrasted with the 2009 position where a certificate of exemption could relate to more than one year of income provided the years as stipulated in the certificate. It is also different from the purposes of a position where a certificate of exemption was not time bound but applied during the duration of the use of the qualifying plant and machinery question.

Learned Counsel argued that the scope of the 2008 exemption and changes made subsequently in 2009 and 2011 amendments makes it clear that in 2008 an exemption was available to an already existing business which was expanding its production capacity provided it met other criteria of exemption set out in section 21 (z) of the Exempting Act. In support of the proposition that in the construction of an earlier statute one can have reference to a later statute as held in the case of **Jafferali M. Alibhai versus the Commissioner of Income Tax [1961] EA page 610 at page 614** the Court of Appeal of East Africa in the judgment of Sir Alistair Forbes stated at page 614 paragraphs A and B that a reference to a later Act for the purpose of clarifying a provision in an earlier Act is permissible. In the **Jafferali** case the latter statute was held to clarify and therefore lend support to a particular interpretation of an earlier statute. Learned Counsel criticised the Defendant for wanting to make the court believe that the qualifying words "*at the beginning of his or her investment*" to "*at the beginning of his or her business*" are immaterial and that in both cases the exemption only applied to new businesses and thus not to the Plaintiff was untenable. Learned Counsel submitted that after the 1 July 2009, Agro - processing exemptions applied only new business, for the period 1 July 2008 to 30th of June 2009, the Exempting Act provided for an exemption regime that extended also to existing businesses.

Learned Counsel maintained that having obtained an entitlement to an exemption in 2008 by meeting the exemption criteria under the Exempting Act, the Plaintiff cannot be said to have lost its entitlement to exemption upon the promulgation of subsequent and narrower provisions of the exemption law. The ground upon which the Plaintiff's application for exemption was rejected is not supported by law.

Learned Counsel made reference to section 13 of the Interpretation Act for the proposition that a right obtained and a statutory provision before the repeal in the absence of an express and specific revocation of the accrued right cannot be extinguished. Consequently the exemption of the Plaintiff was unaffected by the repeal or narrowing of the scope of exemption by the later statutes referred to in the submissions.

Consequently learned Counsel submitted that the Plaintiff is entitled to a certificate of exemption under the 2008 Act based on the new plant and machinery added to the production line which increased the input production capacity from 2200 tons per day to 3500 tons per day which is an increment in capacity of 59%. Furthermore the output capacity was also increased from 60,000 tons per year to 90,000 tons per year which is an increase of 50% as reflected in exhibit P5. The increase was due to the input production capacity brought about by the new plant and machinery.

As far as the duration of exemption is concerned, learned Counsel submitted that exemption under the 2008 Act like the ones under the 2009 and 2011 Acts is not time bound but subsists for the duration of the use of the qualifying plant and machinery. The exemption would of course apply only to the extent of the increment in income generated from the increased production and not to the old production.

Counsel therefore prayed for declaration that the Plaintiff met the criteria set out in section 21 (2) (i) (v) of the Exempting Act and is entitled to a certificate of exemption pursuant to the provisions of exemption in the Act.

Defendants written submissions in reply

Learned Counsel for the Defendant emphasised the agreed fact that the plant and machinery purchased by the Plaintiff increases the Plaintiff's production capacity for granular sugar but did not constitute a full production line, capable, standing alone, of producing granular sugar. The production process flow and how the new plant and machinery fits in the old line is as indicated in exhibit P5.

The first issue is whether the Plaintiff met the criteria set out in section 21 (z) (i) of the Income Tax (Amendment) (No.2) Act of 2008, the Exempting Act and as such entitled to a certificate of exemption under section 21 (z) (vi) of the Act.

Learned Counsel invited the court to examine each of the criteria listed in section 21 (z) of the Income Tax (Amendment) (No. 2) Act 19 of 2008. Learned Counsel reproduced section 21 (1) which provided that: "the following amounts are exempt from tax: and under (Z):

"***the income of the person derived from agriculture where the person –***

(i) ***applies in writing to the Commissioner to be issued with a certificate of exemption at the beginning of his or her investment;***
(ii) ***invests in new plant and machinery to processed agricultural products for final consumption;***
(iii) ***processes agricultural products grown or produced in Uganda;***
(iv) ***is located at least 30 km outside Kampala District***
(v) ***commits to regularly fulfil all obligations in this Act relating to his or her investment;***
(vi) ***has been issued with a certificate of exemption by the Commissioner;"***

Learned Counsel for the Defendant agreed that the Plaintiff had permit criteria (i) – (v) in order to qualify for criteria (vi). Learned Counsel agreed that the Plaintiff met the criteria (i), (ii) and (iv). He further contended that the Plaintiff could have met criteria (v) since it is just a commitment. However the Plaintiff did not meet the criteria set out in section 21 (1) (z) (ii) the Amendment Act which reads as follows: "*invests in new plant and machinery to process agricultural products for final consumption*;" learned Counsel submitted that the Plaintiffs investment was expansion of existing plant meant to increase production of sugar from 2200 tons to 3500 tons and was clearly an expansion of existing business. Consequently the Plaintiff did not invest in any *new plant* nor was the investment made *capable of producing sugar for final consumption*. She emphasised that this was an admitted fact. It is further demonstrated by admitted document exhibit P5 which outlines what the new plant and machinery does in the old line. The plant and machinery was not capable of processing agricultural products for final consumption as envisaged by the Exempting Act.

The Defendant did not err in law or failed to exercise its statutory duty to consider the issuance of an exemption certificate because the Plaintiff did not qualify for exemption.

Secondly learned Counsel for the Defendant submitted that investments in expansions were and still are catered for under the provisions for expenses for deriving income/deductions under section 23 (1) of the Income Tax Act which provides as follows:

"23 (1) Subject of this Act, for the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction –

(a) All the expenditures and losses incurred by the person during the year of income to the extent to which the expenditures or losses were incurred in the production of income included in gross income;"

Learned Counsel contended that this is similar to section 22 (1) (a) of the Income Tax Act 2011. She contended that the Plaintiff ought to have claimed expenses incurred in increasing its production from 2,200 tons to 3500 tons under section 22 of the Income Tax Act 2008. The Defendant does not contest the Plaintiffs right to offset expenses incurred in production of income but the Plaintiff need not confuse deductible expenses with exemption envisaged under section 21 (1) (z) of the Income Tax Act of 2008.

As far as the evolution of the law on tax exemption for agro - processing is concerned, learned Counsel submitted that the law is capable of being independently interpreted. Nonetheless, it is worth noting that subsequent amendments of 2009 and 2011 only serve to strengthen the argument of the Defendant that indeed the exemption was made for new businesses capable of processing agricultural products for final consumption and not for expansion of existing businesses.

As far as the exemption catered for under the 2008 amendment is concerned, learned Counsel emphasised the words under section 21 (1) (z) as relating to the person who derives income from agriculture where the person applies in writing to the Commissioner to be issued with a certificate of exemption *at the beginning of his or her investment*. She further highlighted the words "*commits* to regularly fulfil all obligations in this Act relating to his or her investment.

This is contrasted with the year 2009 where under subsection (i) the investor applies in writing to the Commissioner *at the beginning of his or her business* to be issued with a certificate of exemption. Secondly the person regularly files returns as required by the Act. Thirdly the certificate is issued *for that year of income* by the Commissioner.

In the legal regime of the year 2011 learned Counsel emphasised the words that the person who applies is defined as a person or an associate of a person who had not previously carried out Agro - processing of a similar or related agricultural product in Uganda. Thirdly, the plant or machinery made for Agro - processing must not have been previously used in Uganda by any person in Agro - processing to process agricultural products for final consumption. Fourthly the certificate of exemption is issued for that year of income by the Commissioner. Lastly the proviso that the certificate of exemption issued shall be valid for one year and may be renewed annually.

Counsel for the Defendant submitted that the 2009 amendment clarified the 2008 amendment by replacing the words *investment* with *business* to rule out any misconception from applicants like the Plaintiff who were catered for by other provisions such as section 22 of the Income Tax Act. Secondly the 2009 amendment changed the commitment to file returns to provision for an obligation to regularly file returns.

The 2011 amendment was even more specific by further clarifying that the applicant or associate of the applicant has not previously carried out the processing of a similar or related agricultural product in Uganda. Consequently such exemption is only for those commencing Agro - processing in Uganda.

The Defendants Counsel conceded that the draughtsman may have had challenges in articulating what was being exempted but in each year they clarified on this and none of the amendments can be confused to refer to expanding businesses like the case of the Plaintiff. Learned Counsel agreed with the principle in **Jafferali versus Commissioner of Income Tax** (supra) particularly the holding that subsequent legislation on the same subject may be looked at in order to see what proper construction should be put upon an earlier Act where the Act is ambiguous. She concluded that there is no doubt whatsoever that the exemptions were not meant for expansion of existing businesses but rather for new businesses. Alternatively the 2008 amendment only applied to a new product line but not an expansion of an existing one.

In rejoinder learned Counsel for the Plaintiff disagreed with the interpretation put by the Defendant's Counsel on the phrase: "new plant and machinery for production of products for final consumption". He contended that the words "capable" and "standing alone" were additions by the Defendant's Counsel. The key test he contended is whether there was investment in plant and machinery. He further contended that it does not have to be new machinery in the sense of coming from the factory. Furthermore he reasoned that there is no such thing as a complete production line. Even with cars, different parts may come from different countries. The seats may be manufactured in one country, the engine in a second country and some parts from still a third country. What is material is that if combined together they lead to the production of granular sugar. Consequently an investment in plant and machinery when combined produces granular sugar. He contended that if the drafts person had intended the plant and machinery to be a full production line, he or she would have said so.

On allowable deductions, learned Counsel submitted that the provisions deal with different situations. One deals with exemptions and another one with deductions. A total exemption is a difference subject matter. Furthermore he contended that the different years of the income tax law amendments had different intentions and it should be construed on the basis of its own language. They created separate legal regimes. Each Financial Act applies for a specific year and has a different/specific intention.

Judgment

I have carefully considered the written submissions of learned Counsels and also listened to the oral highlights of the submissions.

The contention between the parties arises from interpretation of the Income Tax (Amendment) (No. 2) Act 2008 being an amendment to section 21 of the principal Act. Particularly subsection (1) (z) (ii) and the words: "*invests in new plant and machinery to process agricultural products for final consumption*". In addition there was contention as to whether the investment had to be made by a new business. It is a question of fact that the Plaintiff is not a new business. Secondly, the Plaintiff has been engaging in agro - processing of sugar cane up to the stage of producing granular sugar.

It's further an agreed fact that the Plaintiff applied for exemption from income tax under the 2008 amendment referred to above. It is further agreed that the plant and machinery which the Plaintiff imported and installed cannot on its own produce granular sugar from sugarcane. It is therefore a question of fact that the Plaintiff increased its capacity to produce granular sugar by importing new plant and machinery. It expanded its sugarcane crashing capacity from 2200 tons of sugar cane per day to 3500 tons of sugar cane per day. The application letter of the Plaintiff states inter alia that the plant will include:

> ***"This will include additional equipment in the milling plant, process house, installing additional juice and syrup heaters, additional processing equipment and power substation. Please note that the company generates power that it uses in its plant. The proposed expansion will also involve upgrading of the factories current evaporation capacity and various factory systems."***

The letter also indicated that the company will be investing US$18 million in new plant and machinery for the proposed sugarcane crashing capacity which comprised of about 20 items listed in the application letter.

In a letter dated 12th of November 2009, the Defendant rejected the Plaintiff’s application and wrote as follows:

> ***"We wish to clarify the exemption is intended for investments commencing 1st of July 2008. Such investments should be in new plant and machinery. Our team from Masindi field office which visited your premises established that you have been in existence since 1993 and as such do not qualify as an investment commencing 1st of July 2008.***

In light of the above we wish to inform you that you do not qualify for exemption as provided by the law."

The second letter of the Defendant is dated 24th of December 2009 and is addressed to the Executive Director of the Plaintiff. The letter having made reference to the relevant provisions of the law continues to say:

> "***We wish to clarify that the exemption is intended for investments commencing 1 July 2008. It is our considered opinion that the exemption does not cater for the expansion of business from new investments in plant and machinery but was meant for new investment, that is those that have not been in existence prior 1st of July 2008.***
>
> ***In light of the above we wish to reiterate our earlier position that your company does not qualify for the exemptions as the law does not provide for investments that were in operation prior 1 July 2008 even if they invest in new plant and machinery."***

The third letter of the Defendant is dated 15th of February 2010. Again after quoting the relevant provisions of the law the Defendants Commissioner Domestic Taxes goes on to conclude:

> "***Our interpretation of the above provision is that the exemption is intended for investments commencing 1 July 2008. And as such the exemption does not cater for the expansion of a business through new investments in plant and machinery. It was meant for new investments, that is, those that have not been in existence prior 1st of July 2008. The incentive was introduced to encourage new investments in the Agro - processing sector.***
>
> ***In light of the above we wish to reiterate our earlier position that your company does not qualify for exemption as the law does not provide for investments that were in operation prior 1 July 2008 even if they invest in new plant and machinery. In case you are not satisfied by our interpretation we advise that appeal to the Tax Appeals Tribunal as provided by section 100 of the Income Tax Act."***

The final letter reflecting the position of the Defendant relied upon by the Plaintiff is dated 13th of April 2010 and reads as follows:

> ***"... however our interpretation of section 21 (1) (z) of the Income Tax Act cap 340 is that the exemption is intended for investments commencing 1 July 2008.***
>
> ***The exemption does not cater for the expansion of existing business through acquisition of new plant and machinery but was meant for new investments that have not been in existence prior to 1 July 2008. The incentive was meant to attract new players in the field of Agro - processing as evidenced by the words in the budget speech 2008/2009;***

> ***… To attract investments in this sector especially in rural areas… exempt income arising out of new Agro - processing investments commencing 1 July 2008 from income tax…"***

> We appreciate the fact that you have invested in new plant and machinery leading to increase in your production. However, this investment does not satisfy the conditions provided under section 21 (1) (z) of the ITA, this is because you were in the Agro - processing business before the introduction of the incentive and as such cannot be said to have commenced on or after the 1st July 2008.
>
> We advise that the acquisition of new plant and machinery be dealt with under the provisions that provide for capital deductions in the Income Tax Act.
>
> In light of the above we are unable to issue the certificate of exemption as requested."

There are three lines of argument which run through the grounds given by the Defendant for disqualifying the Plaintiff from the tax incentive introduced by the 2008 amendment of the Income Tax Act.

The first line of argument was that the Plaintiff is not a new business or investment because it came into existence around the year 1993. This argument hinges on the phrase "investments commencing 1st of July 2008". It applies a restricted meaning to the word "investment" which is related to the word "business entity". It looks at investment as the commencement of a business enterprise but not necessarily the commitment of capital for production of goods and services by an existing business. The second line on the other hand deals with the word "investment" itself irrespective of which business entity, whether new or old. It makes the point that the exemption was meant for "new investments" and not expansion of existing investments. I.e. agrees with the conclusion of the Defendant that it applies to investments commencing 1st of July 2008. The third line of argument was that the Plaintiff was catered for under provisions for capital deductions under the Income Tax Act and there was no need to additionally apply for incentives.

Apparently learned Counsel for the Defendant did not dwelt a lot on the aspect of the Plaintiff being an old business entity. From her submissions I take it that she dwelt more on the aspect of the commitment of capital for the production of goods and services. According to the written submissions of the Plaintiff’s Counsel, it was agreed that the Plaintiff met all the other criteria under the Exempting Acts namely section 21 (z) (i) to (v). Consequently at page 4 of the written submissions the Plaintiff’s Counsel contends that the only issue left for determination by the court was whether the Plaintiff met the criteria under section 21 (1) (z) (ii). What has been presented to court is a point of law arising from construction of statutory provisions. The statute has to be interpreted in its entirety to establish whether the Plaintiff qualified for exemption. Counsels therefore could not properly agree to confine the analysis of entitlement of the Plaintiff to a particular subsection of the exempting section. Furthermore, the letters of the Defendant which show the grounds for rejection of the applicant’s application for exemption include the conclusion the Defendant made that the Plaintiff was an existing business which did not commence on 1 July 2008.

In her opening address the Defendants Counsel did dwell on the words in the provision of law that the person seeking exemption must apply for exemption at the beginning of his or her investment. The words *at the beginning of his or her investment* are supposed to indicate that it applies to new businesses that had just commenced. These words appear in subsection (z) (i) which reads as follows: "***applies in writing to the Commissioner to be issued with a certificate of exemption at the beginning of his or her investment;"*** The words if not contextualised are ambivalent. One may start by looking at the words "**at the beginning**". The word beginning suggests the commencement of the investment or business. Investment may be commenced by an old business. However the Plaintiff was an old business. The words "investment" has been interpreted to mean a new investment because of beginning with the words "beginning of his or her investment". The logical question to ask is when the investment began. The words are also taken to apply specifically in relation to the application for exemption and are related directly to the timing of that application. In other words an application has to be made at the beginning of the investment. The apparent ambiguity arises from the definition of the word "investment". The Plaintiff applied for exemption from income tax on income derived from agriculture through importation and installation of new plant and machinery. The words at the beginning of an investment may be applied here. However, it is also capable of the meaning ascribed to it by the Defendant if not clearly contextualised as we shall examine later. That is to say, the words may be taken to mean the beginning of a new investment or the commencement of a new investment in the sense of a new business enterprise or undertaking.

The subsequent amendments to the Act demonstrate clearly that Parliament was trying to focus the law to capture specific objectives. Can it be concluded that Parliament was trying to refine the law because the previous provisions were ambiguous? We shall examine such a proposition in due course. Both Counsels relied on the subsequent Acts to the 2008 amendment/Exempting Act to make opposite arguments. As far as the Plaintiff is concerned, Parliament tried to narrow down the statutory provision because the earlier one was wide enough and entitled the Plaintiff. On the other hand learned Counsel for the Defendant maintained that the subsequent amendments actually gave the intention of Parliament to deal with new investments that commenced after 1 July 2008. They went on narrowing the scope of the Act to capture the person who was being given the incentive. To a certain measure both Counsel seems to conclude that the law was ambiguous. I would not however take this as a concession of the Defendant that the earlier provision was capable of including the Plaintiff. The task of the court is only to establish whether the Plaintiff is entitled to exemption under the Exempting Act referred to.

In rejoinder the Plaintiff’s Counsel submitted that each Financial Act for each financial year has its own intention. It should be therefore be read as it is. I have great sympathy for the subsequent arguments of the Plaintiff’s Counsel on the interpretation of financial Acts. The sympathy has its foundation in the financial provisions in chapter 9 of the Constitution of the Republic of Uganda.

Article 155 of the Constitution provides that the President shall cause to be prepared and laid before Parliament each financial year estimates of revenues and expenditure of Government for the next financial year. The Financial Acts deal with revenue estimates and therefore tax law regimes reflecting government policy. It would therefore be necessary to read each Financial Act as it is. The incentive referred to and from the evidence was part of the budget speech of the Minister of Finance. The Ministers speech however is not admissible as an aid to construction as what exactly transpired in the house is not part of the evidence. The law was enacted, possibly after debate and should be interpreted as it is. Though there need not be amendments every year, in this particular case there were several amendments each financial year dealing with provision of tax incentives for those engaged in agro - processing. For the moment, there is no need to refer to the budget speech of the Minister prior to the amendment of the Act. What is material is to determine the controversy from the tenets of statutory interpretation as far as tax law is concerned.

Lord Denning held about half a century ago that Parliament should not be expected to determine everything with exactitude. He explained the duty of Court in cases where the meaning of an enactment is uncertain in the case of **Seaford Court Estates Ltd v Asher [1949] 2 All ER 155**. The primary duty of the court is to establish the intention of Parliament and reach a construction of the provision to achieve this. In the English Court of Appeal judgment of **Seaford Court Estates Ltd v Asher [1949] 2 All ER 155**, the issue for determination was whether there was an increase in rent under a statutory provision. This depended on interpretation of the facts as to whether there was a transfer of a burden or liability to constitute an increase in rent. The provision of law interpreted was section 2(3) of an Act of 1920 which read as follows:

> "***Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act."***

The court had to determine whether there was an increase in rent by virtue of interpretation of the statutory provision. The county court judge held that there had been no "transfer of a burden or liability" to the landlords within s 2(3) of the Act of 1920, and gave judgment in favour of the tenant on the basis of his inference.

On principles of interpretation Denning LJ said at page 164:

> ***The question for decision in this case is whether we are at liberty to extend the ordinary meaning of "burden" so as to include a contingent burden of the kind I have described. Now this court has already held in Winchester Court Ltd v Miller, that s 2(3) of the Act of 1920 is to be liberally construed so as to give effect to the governing principles embodied in the legislation, and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. (Emphasis added).***

Lord Denning gave the general principle to be applied which is to ascertain the intention of parliament. However, before the intention of parliament can be ascertained there is a process of construction which includes interpretation of the statutory provision to determine its application. Other aids may only be sought after failure to ascertain the meaning or application of the provision or enactment. Secondly, Counsels for both parties proceeded from the premises that the relevant enactment which gives incentives to agro processors may be ambiguous. However both Counsels did not conclude that the relevant provisions were ambiguous. In fact learned Counsel for the Defendant submitted that the relevant provision which gives incentives can be interpreted as it is. Strangely this is also the conclusion of learned Counsel for the Plaintiff. The failure to address whether the incentive provision is ambiguous or ambivalent or capable of diverse meanings is further evidenced by reliance by both parties on the case of **Jafferali M Alibhai versus the Commissioner of Income Tax [1961] EA 610.** Both Counsels agreed on the principle which is found on holding number two in the digest of the case that subsequent legislation on the same subject maybe referred to as an aid to construction where an earlier Act is ambiguous. I must point out however that learned Counsel for the Defendant did not concede that the statute to be interpreted was ambiguous. This is the implication brought about by reliance on the case of **Jafferali** (supra). The statement of law in **Jafferali** (supra) was also considered in the case of **Kirkness (Inspector of Taxes) v John Hudson & Co Ltd [1955] 2**

All ER 345 where Viscount Simonds reviews the principles for reliance on earlier or later Acts interpretation of statutory provisions at page 350 of the judgment. He says:

> In the first place, I will quote a passage from Lord Buckmaster's speech ([1928] AC at p 156). He cites the following words from the judgment of Lord Sterndale MR in Cape Brandy Syndicate v Inland Revenue Comrs ([1921] 2 KB at p 414):
>
> > ***"I think it is clearly established in A.-G. v. Clarkson that subsequent legislation on the same subject may be looked to in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier'."***

Lord Buckmaster said:

> ***"This is, in my opinion, an accurate expression of the law, if by 'any ambiguity' is meant a phrase fairly and equally open to divers meanings, but in this case the difficulty is not due to ambiguity but to the application of rules suitable for one purpose to another for which they are wholly unfit."***

The quotation supports the conclusion that reliance can only be had on a later Act if the section of the Act sought to be interpreted is ambiguous or capable of diverse meanings. Lord Simonds further expands on the circumstances in which recourse may be had to a later Act. I will quote it at length at page 352:

> ***My Lords, it follows from what I have said that, even where two Acts are to be read together, it is not permissible to make what is clear in the earlier Act obscure and ambiguous by reference to something in the later Act. The contrary view would be in direct conflict with the decision of this House in the Ormond case. What, then, is meant, it may be asked, when it is said that the earlier and later Acts are to be read as one, and how is the decision in the Ormond case to be reconciled with what the Earl Of Selborne LC said in International Bridge Co v Canada Southern Ry Co Canada Southern Ry Co v International Bridge Co? My Lords, I think that the question is easily answered. In the first place, if the earlier Act contains such an ambiguity as I have described, then the proposition can be accepted in its widest sense and recourse can be had to the later to explain the earlier Act. But, secondly, if there is no ambiguity in the earlier Act, then the proposition must have a more limited meaning, and it will be the earlier Act to which recourse may be had to explain a provision of the later Act. It is on the same principle that, where there has been a judicial interpretation of words in a statute, those words will be deemed to have the same meaning in a subsequent statute dealing with the same subject-matter. I am aware that Lord Selborne used***

language capable of a wider interpretation, but what he said must be read in the context of that case, in which the difficulty arose, not on the earlier, but on the later, Act and it was to the former that recourse was had to explain the latter. It was not necessary to his decision to hold that an unambiguous provision of an earlier Act can be interpreted by reference to a later one, and I cannot suppose that he meant to decide anything of the kind."

In summary Lord Simonds concludes that where an Act contains ambiguity recourse can be had to a later Act to explain the earlier Act. Secondly if there is no ambiguity then the principle has limited application. I would further mention the principles of interpretation of tax statute that they are to be strictly construed. If the intention of Parliament can be discerned from the wording of the statute, then there would be no need to look beyond the wording of the section. This was laid out in **Inland Revenue Commissioners v Hinchy [1960] 1 All ER 505 at 512** per Lord Reid:

> ***What we must look for is the intention of Parliament, and I also find it difficult to believe that Parliament ever really intended the consequences which flow from the Crown's contention. But we can only take the intention of Parliament from the words which they have used in the Act and, therefore, the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences and however strongly we may suspect that this was not the real intention of Parliament. The Court of Appeal found it possible to adopt a secondary meaning for the crucial words."***

Furthermore, general principles for interpretation of tax statutes are laid out in the case of **Mangin v Inland Revenue Commissioner [1971] 1 All ER 179** by the Privy Council when Lord Donovan who delivered the majority opinion set out 4 principles of interpretation.

a. ***Firstly "words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices."***
b. ***Secondly, '… one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' (Per Rowlatt J in Cape Brandy Syndicate v Inland Revenue Comrs ([1921] 1 KB 64 at 71), approved by Viscount Simons LC in Canadian Eagle Oil Co Ltd v Regem.)"***
c. ***Thirdly, "the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted."***

d. ***Fourthly, "the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction."***

Firstly it would be useful to set out the uncontroversial object of the legislature in the 2008 amendment of the Income Tax Act. This object is to give incentives to investors investing in agro - processing. The incentive is through exemption from income tax where the income is derived from agriculture and provided certain conditions are fulfilled. Both Counsels agreed that six conditions are laid out. The first condition is that the applicant for exemption must apply in writing to the Commissioner to be issued with a certificate of exemption at the beginning of his or her investment. The beginning of an investment seems at first blush to introduce some apparent ambiguity as to whether it is in a new investment in terms of commencement of a new line of business or a new investment by injection of capital in an existing operation/investment. The conclusion of the Defendant is that the 2008 Exemption Act applied to investments commencing after 1 July 2008.

The second condition which is the crucial condition on which both parties dwelt at length is that the applicant must invest in a new plant and machinery to process agricultural products for final consumption. The other conditions are not controversial. These are the conditions that the applicant must process agricultural products grown or produced in Uganda; be located at least 30 km outside Kampala District; the applicant must commit to regularly fulfil all obligations in the Act related to his or her investment and finally the Commissioner issues a certificate of exemption to the applicant.

Notwithstanding that the other conditions are not controversial; they give the intention of Parliament. An incentive by its nature is meant to encourage something such as an activity. In this case it can be clearly concluded that the intention of Parliament was to encourage investment in new plant and machinery to process agricultural products for final consumption. In other words it was an incentive to the Agro - processing industry broadly speaking. Secondly, Parliament clearly intended to encourage the processing of locally grown agricultural produce. Thirdly, Parliament intended that the investment is to be located outside the city of Kampala. An additional safeguard was to encourage the fulfilment of the provisions of the Income Tax Act as far as the investment is concerned.

The controversy or ambiguity may only relates to who is eligible for exemption under the Income Tax (Amendment) (No 2) Act 2008. The crucial question in this regard is whether Parliament intended to promote the Agro - processing industry through encouraging new investors? Did Parliament only intend to encourage investment in Agro - processing without reference to who the investor is? To further refine the question, was the intention of Parliament to encourage new investors in the field of Agro - processing? The other questions are irrespective of who the investor is and is whether Parliament intended to encourage new investments? Can an old investment entity make a new investment in the same line of production? Obviously, if the intention of Parliament is to encourage the industry, then the question as to who makes the investment would not be very material. This is because anybody who invests in the industry for which incentive has been provided would boost the industry as intended by Parliament. Therefore the incentive would encourage both new players and old players.

The preamble to the Act provides that it is:

> ***An Act to amend the Income Tax Act Cap 342 to provide for the taxation of income of airlines; to provide incentives to persons engaged in Agro - processing; to exempt business income of persons derived from operating and managing educational institutions; exempt from income tax interest on deposit auction funds;" (Emphasis added)***

The Preamble to the amendment explicitly provides that it is meant to provide incentives to persons engaged in Agro - processing. In the case of **Attorney-General v HRH Prince Ernest Augustus of Hanover [1957] 1 All ER 49** it was held by the House of Lords that the preamble to an Act may be used as an aid to determine the intention of Parliament where the statutory provision sought to be interpreted is vague or ambiguous. Every statute has to be read in its context which includes the preamble. At pages 54 – 55 per Viscount Simonds explained the principle.

> ***But, where it is in the preamble that the reason for restriction is to be found, the difficulty is far greater. For, as has so often been said, Parliament may well intend the remedy to extend beyond the immediate mischief. The single fact, therefore, that the enacting words are more general than the preamble would suggest is not enough. Something more is needed, and here lies the heart of the problem. On the one hand, the proposition can be accepted that***
>
>> ***"… it is a settled rule that the preamble cannot be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms."***
>
> I quote the words of Chitty LJ which were cordially approved by Lord Davey in Powell v Kempton Park Racecourse Co Ltd ([1899] AC 143 at p 185). On the other hand, it must often be difficult to say that any terms are clear and unambiguous until they have been studied in their context. That is not to say that the warning is to be disregarded against creating or imagining an ambiguity in order to bring in the aid of the preamble. It means only that the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so, he is not entitled to say that it, or any part of it, is clear and unambiguous. To say then that you may not call in aid with preamble in order to create an ambiguity in effect means very little, and, with great respect to those who have from time to time invoked this rule, I would suggest that it is better stated by saying that the context of the preamble is not to influence the meaning otherwise ascribable to the enacting part unless

> there is a compelling reason for it. And I do not propose to define that expression except negatively by saying (as I have said before) that it is not to be found merely in the fact that the enacting words go further than the preamble has indicated. Still less can the preamble affect the meaning of the enacting words when its own meaning is in doubt."

The above case was followed by the High Court of Kenya in the case of **Lall v Jeypee Investments Ltd [1972] 1 EA 512** where the court held that each statute has to be interpreted on the basis of its own language. That words derive their colour and content from their context and the object of legislature is a paramount consideration. They followed the holding in **Prince Ernest Augustus of Hanover vs. Attorney General** (supra). Learned Counsel Masembe suggested that the words of the Amending Act namely the Income Tax (Amendment) Act 2008 should be read as it is. This too is the Defendant Counsel's submission. Why should Counsels reach to different conclusions? The Act does not does not define who could be persons engaged in Agro - processing are. However, when the entire statutory provision is read in context, the meaning becomes clearer and unambiguous.

Section 2 thereof provides for the application of the Act. It provides that the Act applies to years of income commencing 1 July 2008. The Defendant concluded from this provision that it applied to investments commencing first of July 2008. This conclusion is not supported by section 2 of the Exempting Act. The Exempting Act deals with years of income and not the entity deriving the income. Section 2 provides as follows:

> ***"This Act applies to years of income commencing on or after 1 July 2008, except for Part IXA which shall apply to years of income commencing on or after 1 July 1997."***

It may however be concluded that the provision deals with investments made after the 1st of July, 2008 in agro - processing, namely investment in plant and machinery. Certain key words are used in the Preamble to the Act. It provides incentives to persons engaged in Agro - processing. Who are these persons? The persons targeted by the intended incentive are not defined by the preamble. Secondly section 21 (1) (z) provides for "... The income of a person derived from agriculture where the person…" Again it does not define who a person or the person is. The qualifying words of the provision are that the income is to be derived from agriculture subject to the conditions spelt out in the subsection.

Further restriction was put on subsection (z) (i) through use of the words "applies in writing at the beginning of his or her investment". The provision explicitly deals with the investment and not the person or entity. The words *his* or *her* are not determinant of who the entity is as to whether it is a new business or an old business. The words are only determinant on the question of when the application should be made. The application has to be made at the beginning of his or her investment. A further extension of this argument leads to an absurdity in defining when an investment begins. This may lead to a misconstruction of the provision which suggests that it has to be a new investment. The term "new investment" is misleading and not supported by the context in which the words "***beginning of his or her investment***" are used. The absurdity would be to conclude that it applies to new businesses. When it is put in context the words "investment" can only relate to new plant and machinery to process agricultural products for final consumption.

As noted and when put in context the word "investment" can only be restricted by the subsequent provision in subsection (z) (ii) which specifically provides for what kind of investment is being talked about. It is very explicit that it has to be an investment in new plant and machinery to process agricultural products for final consumption. This would disclose the intention of Parliament which is to encourage investment in new plants and machinery to process agricultural products for final consumption. Such a construction is consistent with the preamble which provides that the Act was to provide incentives to persons engaged in Agro - processing. The conclusion is inevitable. The amendment of section 21 of the Principal Act by the Income Tax (Amendment) No 2 Act 2008 by inserting subsection (z) did not restrict any person engaged in Agro - processing from applying for a certificate of exemption. Furthermore, the manifest intention of Parliament was to boost Agro - processing. The person applying may be already engaged in Agro - processing. What is material is that that person must invest in new plant and machinery to process agricultural products for final consumption. It is my further conclusion that the enactment is not ambivalent or ambiguous. It is clear and there would be no need to revert to the later enactments to ascertain the meaning of the phrase: “invests in new plant and machinery to process agricultural products for final consumption;” the context of the enactment makes it clear that investment in new plant and machinery may be made by anybody engaged in agro - processing. The subsequent evolution of the law cannot change the meaning or construction of the 2008 exemption.

Learned Counsel for the Defendant principally restricted her arguments to whether the new plant and machinery was capable of producing agricultural products for final consumption. She seemed not to dwell a lot on the letters of the respondent/Defendant which brought out the position that the exemption was intended for investments commencing first of July 2008. This is a question of semantics. We have already shown that the Act applies to years of income commencing 1st of July, 2008. It is necessary to restrict the provision to its wording as dealing with the application with regard to years of income commencing 1st of July, 2008. The other concerns of the Defendant can be dealt with under other provisions that qualify applicants for incentives.

The exemption dealt with incentives to persons who invest in new plant or machinery for the production of agricultural products for final consumption. I would therefore deal with the submissions of learned Counsel for the Defendant on the restricted line of argument which is whether the investment for which income tax exemption is sought had to be in a complete plant and machinery that processes agricultural products up to the stage where it is ready for final consumption.

It is an agreed fact that the new plant and machinery imported by the Plaintiff only added capacity and was not capable on its own to process cane sugar into granular sugar. It is also agreed that it enhanced the output of the Plaintiff by enabling it to produce 50% more granular sugar. The new plant and machinery increased the cane crushing capacity of the Plaintiff by 59%. Was this an investment in new plant and machinery to process agricultural products for final consumption?

For emphasis subsection (z) (ii) of section 21 (1) of the Income Tax (Amendment) (No 2) Act 2008 is reproduced for ease of reference. It reads as follows:

> ***"invests in new plant and machinery to process agricultural products for final consumption;"***

Learned Counsel for the Defendant submitted that the provision envisages a complete plant or unit that processes agricultural product from its raw state up to when it is ready for consumption. Secondly, that investments in expansions were and are still well catered for under the provisions for expenses for deriving income under section 23 (1) of the Income Tax Act. The Plaintiff’s Counsel disagreed that the provision deals with a complete unit or factory capable of producing an agro processed product from its raw stage up to when it is ready for final consumption. Secondly, that capital expenses for deriving income deal with a specific issue and not incentives.

The principles of interpretation which I have outlined above make it clear that tax statutes should be interpreted as they are without any additions where possible. In this particular case the words ***"process agricultural products for final consumption***" does not limit the kind of agricultural product which may be the input for the processing of the final product. The words "for final consumption" are also not clear as to whether it is meant for human consumption or as a component or raw material for another industry. Supposing that the Plaintiff produces jaggery from cane sugar. Another industrialist buys the jaggery and converts it into a bio fuel that can run vehicles, is the industrialist someone processing agricultural products for final consumption? In the first place jaggery would be made out of crushed sugarcane. It may be used to produce alcohol or a bio fuel which may run engines. The industrialist would not be getting a raw product from the field but a semi processed product. Would the industrialist not be said to be processing agricultural products for final consumption? On the other hand the Plaintiff who produces the jaggery would be feeding another industry. Wouldn't that be a final consumption for the secondary industry? Is someone who makes briquettes for use in industry processing agricultural products for final consumption? Supposing the briquettes are made from coffee husks?

Because of the potential of the words used to bear different kinds of meanings, it cannot be concluded without looking at the object of the enactment that an investor has to invest in new plant or machinery which processes agricultural products from its raw form until when it is turned into a form for final consumption. What the customer consumes is relative. A customer who consumes crushed sugarcane juice may be a final consumer. Nonetheless, it is an agreed fact that the Plaintiff increased the capacity by investment in new plant and machinery for the production of granular sugar. If an objective test is applied, it is the investment in the new plant and machinery which led to the increase in the production of granular sugar. To put it in another way, the investment in new plant and machinery increased the capacity of the Plaintiff to produce 50% more granular sugar. It would be absurd to give an incentive to a smaller producer who brings a small factory capable of producing 1000 tons or even 500 tons of granular sugar per day, and fail to give the same incentive to an industrialist who increases capacity from an existing capacity from 1000 tons of sugar to 4000 tons of sugar on the ground that it is not capable of producing granular sugar standing on its own. It would be objective criteria to say that the investment in the new plant and machinery whatever it does to increase the capacity led to the increase in production of granular sugar to a much greater degree than a smaller person who invested in a smaller plant and machinery which hardly produced 500 tons of granular sugar.

If the objective of Parliament is to increase agro - processing, then their objective is met by anybody entering into the industry. It will not matter whether the increase was in the capacity of existing machinery or an entirely new production line. It would not matter who the player investing in the new plant and machinery is in terms of whether it is in new business entity or an old one. What is material is that the end result should be agro processed products for final consumption. Again objectively, it is the new plant and machinery which increases the product for final consumption. It is therefore the new plant and machinery which makes a new increase in capacity and hence the quantity of the final product. There will be no difference in quality or effect whether it is a complete production line standing on its own or the enhancement of existing industrial capacity. The result would have been an increase in agro - processing productive capacity. If it is argued that the object of legislature is to increase the number of players, or to control monopoly, then there may be some justification in insisting that only new players should be given incentives to enter into the industry. No such limitation can be read into the words of the enactment I have quoted above. It is therefore my conclusion that there would be an increase in the production of agricultural products for final consumption irrespective of whether the investment is made by new players or old players. There would be an increase in the production of agricultural products for final consumption whether the investment is made in new plant and machinery that only enhances existing capacity or introduces a new line of production. The objective of Parliament to encourage investment in Agro - processing under the 2008 enactment would be met.

As far as the second argument is concerned, section 22 of the Income Tax Act allows a deduction for purposes of ascertaining the chargeable income of a person for a year of income, all the expenditures and losses incurred by the person during the year of income to the extent to which the expenditures or losses were incurred in the production of income including in gross income.

Allowable deductions are deductions that cut across the board. They apply to any body for purposes of ascertaining the chargeable income of that person for a year of income. They are not incentives but ensure that the chargeable income of a person arises out of the profit that person makes during the year of income in issue. By deducting expenditures incurred in the production of income, the law ensures that only the income of the person chargeable is charged with tax. The provision deals with ascertainment of chargeable income. The 2008 Exemption Act on the other hand gives incentives to investors in agro - processing irrespective of the provisions for ascertaining the chargeable income of a person for any year of income. I therefore do not agree that provisions for allowable deductions apply in the circumstances of the case. The Plaintiff's case is that it is entitled to incentives under the 2008 Act because it invested in new plant and machinery for processing agricultural products for final consumption. The Plaintiff indeed invested in new plant and machinery for processing agricultural products for final consumption.

In the circumstances the Plaintiff met the criteria set out in section 21 (z) (i) of the Income Tax (Amendment) (No. 2.) Act of 2008 in that it invested in new plant and machinery to process agricultural products for final consumption. Issue number one is therefore answered in the affirmative.

Issue number 2 on remedies:

The Plaintiff prayed that a declaration issues to the effect that the Plaintiff met the criteria set out in the law and as such is entitled to the issuance of a certificate of exemption pursuant to the provisions of the Exempting Act to subsist for the duration of the use of the qualifying plant and machinery.

A certificate of incentive is issued by the Commissioner. Correspondence shows that the Commissioners refused to issue a certificate of exemption on erroneous grounds. The limited power of the court is to clarify the law. In the circumstances, the court will only declare that the Plaintiff is entitled to a certificate of exemption as a person who qualifies for exemption pursuant to the Exempting Act on the basis of its application for exemption under the 2008 amendment of the Income Tax Act.

The Plaintiff is awarded costs of the suit.

Judgment read in open court this 31st day of August 2012

Hon. Mr. Justice Christopher Madrama

Judgment delivered in the presence of:

Counsel Bwogi Kalibala holding brief for Masembe Kanyerezi for the plaintiff

Counsel Mbeeta Haruna holding brief for Mary Kuteesa for the Respondent

Charles Okuni: Court Clerk

Hon. Mr. Justice Christopher Madrama

31st day of August 2012