

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 40 OF 2013

AIRTEL UGANDA LIMITED ..... APPELLANT

VERSUS

10 COMMISSIONER GENERAL

UGANDA REVENUE AUTHORITY ..... RESPONDENT

*(An appeal from the decision of the High Court of Uganda (Commercial Division) by Hon. Mr. Justice Geoffrey Kiryabwire, dated 18<sup>th</sup> October, 2012 from High Court Civil Suit No. 457 of 2010)*

15 CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF THE COURT

20 This is an appeal from the decision of Geoffrey Kiryabwire, J (as he then was) in High Court Civil Suit No. 457 of 2010 delivered on the 18<sup>th</sup> day of October, 2012.

Brief background

25 The background to this appeal as far as we could ascertain from the Court record is as follows:- The appellant company was the plaintiff at the High Court, it instituted a suit against the respondent for declarations that interest imposed upon it on a disputed but later settled tax is contrary to the law and is unjust. Prior to the said suit, the appellant had on 19<sup>th</sup> May, 2004 lodged an objection with the Tax Appeals Tribunal (herein after referred to as TAT) objecting to the tax assessment by the respondent. The appellant accordingly paid 30 percent of the disputed tax as required under *Section 15(1)* of the Tax Appeals Tribunal Act. The assessment by the

5 respondent was upheld by TAT and subsequently by the High Court on appeal. A  
further appeal to the Court of Appeal was dismissed, the result of which the  
appellant was required to pay the whole of the originally assessed tax of Shs  
428,269,883/= which had remained outstanding. Thereafter, the appellant paid the  
said whole of outstanding tax. Upon payment of this sum the respondent made a  
10 demand for interest on that sum amounting to a total of Shs 1,555,836,915/=. The  
appellant effected payment of the interest but without prejudice to his rights to  
challenge it in a Court of law which it duly did by filing the relevant suit in the High  
Court. The learned trial Judge found in favour of the respondent thereby dismissing  
the suit with costs hence this appeal.

15 The grounds of appeal are as follows:-

1. *The learned trial Judge erred in law, when in answer to the first issue, he held that the defendant has a right to claim interest because it is provided for under the law.*
2. *The learned trial Judge erred in law in holding that payment of 30 percent of the tax in accordance with Section 15 of the Tax Appeals Tribunal Act does not absolve the tax payer from paying penalties in the event that the disputed tax under the Act is found to be payable.*
- 20 3. *The learned trial Judge erred in law in dismissing the suit with costs.*

### **Representation**

25 At the hearing of this appeal Mr. Joseph Byamugisha together with  
Mr. Lukawa learned Counsel appeared for the appellant while Ms. Patricia Ndagire  
together with Ms. Mwajuma Nakku learned Counsel appeared for the respondent.

The parties sought and were granted leave to proceed by way of written  
submissions but were also permitted to make brief oral arguments. It is on the basis  
30 of the written submissions and the brief oral arguments that this appeal has been  
determined.



### Appellant's case

On ground 1, the learned trial Judge is faulted for having found that, the appellant was liable to pay a penalty on the unpaid tax at the rate specified in the law. It was submitted that, penal tax is imposed for criminal liability as stipulated under *Section* 10 65 of the Value Added Tax Act. A penal tax is imposed when a person has committed or continued to commit a criminal offence by failing to pay the tax imposed when it is due. It was argued that lodging a notice of objection with the Tax Appeals Tribunal does not amount to a commission of a criminal offence. It was submitted that, *Section 15(1)* of the Tax Appeals Tribunal Act requires a tax payer who has lodged a 15 notice of objection to pay 30 percent of the tax assessed. Retaining 70 percent of the tax assessed by the tax payer which is still in dispute does not amount to a criminal offence and cannot therefore be liable to pay penal tax.

In respect of ground 2, the learned trial Judge is faulted for having found that *Section* 15 of the Tax Appeals Tribunal Act does not absolve the tax payer from paying 20 penalties in the event that the disputed tax under the Act is found to be payable. Counsel argued that, the penal interest accrues only after the Courts have determined in the objection or appeal that the tax is payable.

On ground 3, it was submitted that the learned trial Judge wrongly dismissed the suit with costs.

25 He asked Court to allow the appeal with costs.

### Respondent's reply

In reply to ground 1, it was submitted that penal tax/interest is a creature of statute which is provided for under *Section 34* of the Value Added Tax Act. It was argued that the consequence of not paying the tax assessed attracts a penal tax in form of 30 interest at the rate specified. It is stipulated for under *Sections 65* and *66* of the Value Added Tax Act. Counsel contended that, the assessment was issued on 25<sup>th</sup>



5 February 2004 for the period of 2000 to 2003. The due date for payment of the tax  
as specified in the assessment was 25<sup>th</sup> February 2004 and as such the trial Court  
simply confirmed an already existing position of the law, the appellants taxability  
and due date did not arise out of the Court Judgment but was rather a creature of  
law. The statutory interest for late payment merely captures the concept of time  
10 value for money, it is not a punishment per se.

In response to ground 2, Counsel argued that, payment of 30 percent of the tax  
assessed does not absolve a tax payer from the responsibility of paying the full  
amount assessed but it is rather measure put in place by statute to prevent  
unreasonable delays and vexatious appeals from tax payers to enhance revenue  
15 collection. The balance that remains outstanding accrues interest. It was submitted  
that the appellant failed to pay the full amount of the tax assessed when it was due  
as provided for under *Section 65* of the Value Added Tax Act and as such it omitted  
to perform its obligation to pay tax that was assessed. The interest levied upon the  
appellant started to accrue from the due date specified in the assessment and not  
20 from the Judgment date or from the date of payment of 30 percent of the tax due.

Counsel asked Court to uphold the Judgment of the High Court and dismiss the  
appeal with costs.

### **Resolution**

We have read the record of appeal, the conferencing notes and submissions by the  
25 parties to this appeal. We have also read the authorities cited and relied upon by  
both Counsel.

This Court is required under *Rule 30* of the Rules of this Court to re-appraise the  
evidence of the trial Court and come to its own decision. See: *Fr. Narcensio Begumisa  
& others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17 of 2002* and *Uganda  
30 Breweries vs Uganda Railways Corporation, Supreme Court Civil Appeal No. 6 of 2001.*



5 We shall therefore proceed to reappraise the evidence and come to our own  
conclusion as required by law. This appeal relates to an important question of law  
regarding the collection of taxes. Whether a tax payer who contests the tax  
assessments through the tax appeals tribunal ought to be subjected to penal tax in  
the event the objection is subsequently dismissed? The appellant has argued that  
10 having objected to tax assessments through legally recognized avenues, he cannot  
be subjected to penal tax, which criminalises nonpayment of tax. On the other hand  
the respondent has submitted that the tax due is payable upon assessment and  
therefore if a tax payer who opts to object to an assessment instead of paying the tax  
he/she subjects himself/herself to penal sanctions which attracts penal interest.

15 *Article 17 (1) (g)* of the 1995 Constitution provides as follows;-

*"17. Duties of a citizen.*

*(1) It is the duty of every citizen of Uganda-*

*(g) to pay taxes"*

20 Furthermore *Article 152 (1)* grants powers to Parliament to impose taxes through  
legislations. The Constitution recognizes the inevitability of tax disputes, under  
*Article 152 (3)* it empowers Parliament to make laws to establish tax tribunals for  
the purpose of adjudicating upon tax disputes. Pursuant to the foregoing provisions  
the Parliament set up the Tax Appeals Tribunal under the Tax Appeals Tribunal Act,  
Cap. 343.

25 The Tax Appeals Tribunal Act grants any person who is aggrieved by a decision  
made under a taxing Act by the Uganda Revenue Authority to appeal the decision  
and upon any such application the said Tribunal may review the taxation decision in  
issue under *Section 14* of the Tax Appeals Tribunal Act, Cap. 343. Upon lodging an  
objection to the assessment, *section 15 (1)* of the same Act provides that a taxpayer  
30 shall only be required to pay 30 percent of the tax assessed or that part of the tax  
assessed which is not in dispute, whichever is greater pending final resolution of the  
objection.



5 According to the facts before us, the appellant duly complied with the relevant provisions of the law in the issue. However the objection lodged to the relevant Tribunal was dismissed, upon which the appellant paid all the assessed tax, as set out in the initial assessment.

That was not enough for the Uganda Revenue Authority, the respondent herein. 10 After the appellant had paid all the assessed tax, the respondent again demanded interest on the unpaid 70 percent of the initial assessment which had remained unpaid by the appellant during the Tax Appeals Tribunal proceedings . It proceeded under *section 65 (3)* of the Value Added Tax, Cap. 349 which provides that;-

15 *“A person who fails to pay tax imposed under this Act on or before the due date is liable to pay a penal tax on the unpaid tax at a rate specified in the Fifth Schedule for the tax which is outstanding.”*

In our view, both the Value Added Tax Act, Cap. 349 and the Tax Appeals Tribunal Act, Cap. 343 derive their legitimacy from the 1995 Constitution and must be read together as they all have constitutional basis. Reading the relevant provisions 20 together, it would be absurd to come to a conclusion that a person who objects to an assessment is deemed to have failed to pay that tax. This is because the Constitution envisages that disputes relating to tax assessments may arise and when that ensues the provisions of the Tax Appeals Tribunal Act apply. The requirement to pay 30% of the objected tax suspends the requirement to pay the whole sum which is 25 objected to which may only be paid after the objection is dismissed.

We note that prompt payment of taxes is necessary to support service delivery by the Government of Uganda. However, the tax tribunal which has the power of the High Court is required to apply the rules of natural Justice. One of the cardinal rules of natural justice is a right to a fair hearing. This is a non-derogable right under 30 *Article 44 (c)* of the Constitution.

A person who has objected to a tax assessed, appealed against it, paid 30 percent of the assessed tax, paid interest on arrears cannot in our view be penalized for having



5 sought redress by the Tax Appeals Tribunal. The law in our view protects him or her  
from penalties during the period of dispute resolution. To hold otherwise would  
create an absurdity in which a person appealing a tax assessment is treated as a  
criminal tax defaulter under *Section 65(3)* of the Value Added Tax Act and penalized  
by imposition of a penal tax. Such person would have been wrongly put in the same  
10 position as a smuggler or a tax cheat. With all due respect we do not accept the  
reasoning and conclusion arrived at by the learned trial Judge on this question of  
law.

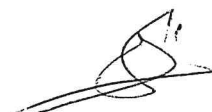
We find merit in this appeal which is hereby allowed.

Accordingly we set aside the judgment and orders of the High Court and substitute it  
15 with this judgment. We make the following orders and declarations:

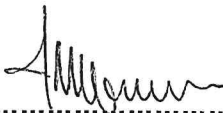
- 1) A declaration that the interest of Ug. Shs. 1,555,836,915/= which was imposed  
on the appellant by the respondent had no legal basis whatsoever, it is not due or  
owing to the respondent.
- 20 2) An order that any interest or penalty that may have been paid by the appellant to  
respondent in respect of the period during which the dispute was pending before  
Tax Appeals Tribunal be refunded to the appellant with interest at 15 percent  
per annum from the date that payment was made.
- 25 3) The respondent shall pay costs at this Court and the Court below.

We so order.

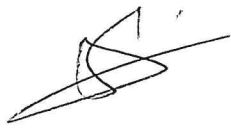
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Dated at Kampala this .....12<sup>th</sup>..... day of .....Nov..... 2019.

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**Kenneth Kakuru**  
**JUSTICE OF APPEAL**

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**Ezekiel Muhanguzi**  
**JUSTICE OF APPEAL**

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**Christopher Madrama**  
**JUSTICE OF APPEAL**