

UGANDA / JUDGMENT

Uganda Revenue Authority v DAVEX Company Limited (Miscellaneous Application 76 of 2023) [2023] UGTAT 69 (8 August 2023) [2023] UGTAT 69

COURT

Tax Appeals Tribunal (Uganda)

BEFORE

Mugenyi, Chairperson, Akabway, Panel Member,
Mugerwa

CASE / FILE NUMBER

Miscellaneous Application 76 of 2023

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THE REPUBLIC OF UGANDA IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA MISC APPLICATION NO. 76 OF 2023 ARISING FROM MISCELLANEOUS APPLICATION NO. 57 OF 2023 ARISING FROM APPLICATION NO. 67 OF 2023

UGANDA REVENUE AUTHORITY APPLICANT VERSUS

DAVEX COMPANY LIMITED RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA.

RULING

This ruling is in respect of an application to review an order of a temporary injunction issued against the applicant.

The respondent imports rice from Tanzania to Uganda. It is challenging the applicant's decision to cancel its WHT exemption. The respondent filed Miscellaneous Application 37 of 2023 where the Tribunal granted a temporary injunction restraining the applicant, its servants and or agents from enforcing collection measures against the applicant in respect of paying 6% Withholding Tax (WHT) of Shs. 1,849,416,192. It was ordered that the respondent pays 30% of the tax in dispute and that each party bears its own costs. The applicant upon scrutinizing the exemption certificates adduced before this court for grant of the temporary injunction alleges that the certificates had already been revoked and were of no legal effect. The applicant filed this application seeking to set aside the temporary injunction order issued by this Tribunal.

Issues

1. Whether there is sufficient cause for the court to review the order granted?
2. What remedies are available to the parties?

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Parties were ordered to file submissions. Only the applicant filed submissions.

The applicant submitted that S. 82 of the Civil Procedure Act (CPA) provides that;

"Any person considering himself or herself aggrieved-

- (a) by a decree or order from which an appeal is allowed by this Act but from which no appeal has been preferred, or
- (b) by a decree or order from which no appeal is allowed...

may apply for a review of the judgment to the court which passed the decree or made the order.

Order 46 Rule 1 of the Civil Procedure Rules (CPR) reiterates this provision but adds a condition to the effect that the applicant's desire to apply for the review is-

"From discovery of new and important matter or evidence, which after the exercise of due diligence, was not within his or her knowledge or could not be produced at the time when the decree was passed, or the order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason."

The applicant submitted that Order 41 Rule 4 of the CPR provides that; "Any order for an injunction may be discharged, or varied, or set aside by the court on application made to the court by any party dissatisfied with the order."

The applicant submitted that where a statute sets out a procedure to be followed in the event of a dispute, the said procedure should be exhausted before coming to the Tribunal. There is no appeal before the Tribunal. The application by the applicant was premature as it did not exhaust the procedure set out in the EACCMA in respect of custom disputes. The applicant submitted that S. 229 of the East African Community Customs Management Act (EACCMA) provides

- "(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.
- (2) The application referred to under subsection (1) shall be lodged with the commissioner in writing stating the grounds upon which it is lodged".

It submitted that S. 230 of the EACCMA provides that a person dissatisfied with the decision of the Commissioner under S. 229 may appeal to a Tax Appeals Tribunal. The applicant submitted that in *Gakou and Brothers Enterprises Ltd v Uganda Revenue Authority* Application 29 of 2020, this Tribunal held that the procedure for resolving customs disputes is set out in the EACCMA. The

applicant submitted that the respondent ought to exhausted all procedures before they applied to the Tribunal for a review. The applicant prayed that this application is allowed since the main Application No.67 of 2023 was prematurely before this Tribunal.

The applicant submitted that in *Game Discount World (U) Ltd v Uganda Revenue Authority** Application .025 of 2020, this Tribunal held that "The Tribunal like any other court would first need to look at the legality of the Application before it, before it can address the legality of the statement of reasons". The applicant submitted that the respondent has never objected to the revocation of the exemption certificate and no objection to review has been filed by the applicant. The revocation is lawful and premised on the respondent's noncompliance to only import goods upon which the exemption certificates were granted. There was no prima facie case to warrant grant of the temporary injunction in Misc Application 57 of 2023 and the applicant prayed that it be set aside. The respondent ought to have objected to the applicant's decision to revoke the exemption and the applicant in turn would have made a decision in this regard and only if the respondent was dissatisfied would it have appealed to the Tax Appeals Tribunal. Hence the main application was lodged prematurely before this Tribunal before exhaustion of the other legal procedures enshrined in the EACCMA.

The applicant submitted that the mandate of the applicant is to collect taxes and in **Alcohol Association of Uganda and another v The Attorney General and Uganda Revenue Authority* High Court Misc. Application 744 of 2019 the court held that;

"The courts should be reluctant to restrain the public body from doing what the law allows it to do. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold."

The Justice further stated that,

"The main rationale for this is rooted in the fact that the courts cannot as matter of law grant an injunction which will have effect of suspending the operation of legislature".

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The applicant submitted that the respondent intentionally presented before the Tribunal an invalid tax exemption certificate, well knowing the same had expired, which concealed the fact that it was for the purpose of deceiving, defrauding, or causing the applicant as a Revenue Authority to rely on the same to its detriment. The applicant due to the false representations by the respondent has not been able to execute its statutory mandate of collection of taxes since the temporary injunction granted restrains it, its servants and agents from enforcing collection measures in respect of 6% WHT of Shs. 1,849,416,192.

The applicant submitted that in *AZK Services Limited v Crane Bank Limited* Civil Suit 334 of 2016, the Court held that:

"The Law dictionary (@ the Law.com) defines Misrepresentation as an intentionally or sometimes negligently false representation made verbally, by conduct, or sometimes by nondisclosure or concealment and often for the purpose of deceiving, defrauding, or causing another to rely on it detrimentally; also: an act or instance of making such a representation".

The applicant submitted that, the consistent thread in the above legal authorities is that upon discovery of new and important matter or evidence, which after the exercise of due diligence, was not within his or her knowledge or could not be produced at the time when the decree was passed, or the order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, a party may apply to court for it to review an order or decree passed by it.

The applicant submitted that in *Red Concepts Limited v Uganda Revenue Authority* Application 36 of 2018, the tribunal emphasized the crucial necessity of information and documentation when it observed that:

"Where a statute requires one to give information or other particulars, the said information should be accurate to enable public authorities act on it. If the information is false or misleading, the tribunal cannot turn a blind eye to it as this would be tantamount to condoning an illegality and perpetrating fraud."

The applicant submitted that, when the respondent came to court seeking a temporary injunction against the applicant, which order was granted, the respondent knowingly relied

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on certificates that had been long revoked and of no legal effect to acquire the court order. The applicant prayed that the tribunal reviews the order granted and sets aside the same as the respondent obtained the same through concealment of the fact that the exemption certificates attached to the application for a temporary injunction order were invalid, the respondent misrepresented to have valid exemption certificates, which it did not possess. The respondent on the basis of the misrepresentation sought and obtained a benefit before this Tribunal. Had the court been alive to the facts pertaining to the validity of the tax exemption certificates, the court wouldn't have been persuaded to grant the order to the respondent.

The applicant submitted that the respondent has never filed an affidavit in reply nor served it. In *Samwiri Mussa v Rose Achen* (1978) HCB 297, Justice Ntabgoba held that "Where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted." The applicant submitted that the connotation of the above precedent is that where no affidavit in reply is filed, the averments in the affidavit in support and the pleadings stand unchallenged.

Having read the application and submissions of the parties, this is the ruling of the tribunal.

The applicant filed this application seeking to review an order for temporary injunction. It contends that the respondent did not object to the applicant's decision to revoke its exemption certificate. Furthermore, the said certificate had expired. Hence the main application was lodged prematurely before this Tribunal before exhaustion of the other legal procedures enshrined in the EACCOMA.

The Tribunal notes that the applicant did not file any submissions. However, it filed an affidavit in response to the application. Nevertheless, the Tribunal will go ahead to determine the application.

The applicant seeks to review an order of the Tribunal. Order 40 of the Civil Procedure Rules which deals with application for review reads

"Application for review of judgment.

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- (1) Any person considering himself or herself aggrieved—
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order."

Therefore, the Tribunal has to ask whether the applicant has ground for review of the order passed.

The applicant contends that the respondent did not object to the respondent's decision to revoke their exemption. S. 229 of the East African Community Customs Management Act said Act provides that:

- "(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.
- (2) The application referred to under subsection (1) shall be lodged with the commissioner in writing stating the grounds upon which it is lodged".

S. 230 of the East African Community Customs Management Act said Act provides that; "(1) a person dissatisfied with the decision of the Commissioner under S. 229 may appeal to the Tax Appeals Tribunal established with accordance with S. 231".

The Tribunal states that the above contention ought to have been brought up at the hearing of the application for a temporary injunction and not at time of review. If the said information is true, it was within the respondent's knowledge at the time of hearing of the application of the injunction to address them.

The applicant submitted that the respondent is relying on revoked certificates of exemption. The Tribunal notes that it is the applicant who issued the WHT exemption certificate. Therefore, it ought to have known when it expired or should expire. At the time

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the temporary injunction was granted that information on the status of the certificate was within the purview of the applicant. Therefore, it is not new information nor is there any error on the face of the record.

In the circumstances, there is no evidence that warrants the review of the order of temporary injunction. This application is dismissed with costs.

Dated at Kampala this

\$8th\$ day of

2023.

DR. ASA MUGENYI CHAIRMAN

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DR. STEPHEN AKABWAY MEMBER

MR. GEORGE MUGERWA MEMBER

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