

UGANDA / JUDGMENT

# URA v Globe World Engineering (U) Ltd (Miscellaneous Application No. 152 of 2020) [2022] UGCommC 12 (24 January 2022)

[2022] UGCommC 12

## COURT

Commercial Court of Uganda

## BEFORE

Gaswaga, J

## CASE / FILE NUMBER

Miscellaneous Application No. 152 of 2020

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## THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

### M. A. NO. 152 of 2020

\*(Arising out of Appeal No. 37 of 2018)\*

UGANDA REVENUE AUTHORITY:.....APPLICANTS VERSUS

GLOBE WORLD ENGINEERING (U) LTD :.....RESPONDENTS

### BEFORE: HON. JUSTICE DUNCAN GASWAGA RULING

- [1] This is a ruling on an application brought under Section 98 of the Civil Procedure Act, Cap 71, Section 33 of the Judicature Act Cap 13 and Order 52 rules 1,2 and 3 of the Civil Procedure Rules SI 71-1 for orders that; \*the memorandum of appeal lodged by the respondent in this court vide Civil Appeal No. 37 of 2018 be struck out with costs on grounds of being filed before a wrong forum and that costs of the application be granted to the applicant.\*
- [2] The grounds of this application were detailed in the affidavit of **Bakashaba Donald** in support of the application and these are that; the applicant, Uganda Revenue "Authority is the respondent in Civil Appeal No. 37 of 2019 filed by Globe World Engineering (U) Ltd and the appeal seeks to challenge the objection decisions of the Commissioner General of Uganda Revenue Authority. That challenging an objection decision of the applicant amounts to a tax



dispute and the proper procedure for handling a tax dispute is by filing an application for review before the Tax Appeals Tribunal. That as such Civil Appeal No. 37 of 2019 filed in this court by way of Notice of Appeal and Memorandum of Appeal is misconceived, unknown to the law and an abuse of court process, that orders be made striking out or dismissing the respondent's appeal with costs and that it is in the interests of justice that this application be granted.

[3] This application raises two issues to wit;

**\*1. Whether the appeal was filed before the wrong forum? 2. What are the remedies available to the parties?\*** Issue <sup>1</sup>

[4] It was submitted for the applicant that the appeal is misconceived and bad in law and that the only avenue available for challenging an objection decision is a review application filed in the Tax Appeals Tribunal. See **Article 152(3) of the Constitution of the Republic of Uganda, Section 14 of the Tax Appeals Tribunal Act and Section 25 of the Tax Procedure Code Act, 2014**. That this matter ought to come to the High Court as an Appeal from the Tax Appeals Tribunal by virtue of **Section 27 of the Tax Appeals Tribunal Act**. This was the position in **Uganda Revenue Authority Vs Rabbo Enterprises (U) Ltd & Anor, Supreme Court Civil Appeal No. 12 of 2014**. That section 1(1)(k) of the Tax Appeals Tribunal Act defines a taxation decision to mean any assessment, determination, decision or notice. Further that the same is defined in Section 3 of the Tax Procedure Code Act to mean a tax assessment; or a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the commissioner, other than a decision in relation to

a tax assessment. That as such the proper forum for this appeal is an application for review before the Tax Appeals Tribunal and that the argument that jurisdiction is derived from Section 100 of the Income Tax Act cannot suffice since the same was repealed by the **Tax Procedure Code Act, 2014**. See **Section 77 thereof**. That the respondent's action amounts to abuse of court process.

- [5] In response thereof, it was submitted for the respondent that the applicant is estopped from deviating from its earlier decision since on the objection decision, specifically section c, the respondent was advised to either apply for review with the Tax Appeals Tribunal or lodge an appeal with the High Court.
- [6] In rejoinder thereof, the applicant stated that appeals are creatures of Statute and as such the respondent cannot rely on an objection decision to lodge an appeal.
- [7] **Article 152 (3) of the Constitution of the Republic of Uganda, 1995** states thus;

**\*"Parliament shall make laws to establish tax tribunals for the purposes of settling tax disputes. "\*"**

[8] **Section 14 of the Tax Appeals Tribunal Act** is to the effect that; **\*Tribunal to review taxation decisions.\***

> \*(1) Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision.\*

> \*(2) The tribunal has power to review any taxation decision in respect of which an application is properly made.\*

[9] Section 25 of the Tax Procedure Code Act, 2014 reads as follows;

**\*Review of an objection decision.\***

\*(1) A person dissatisfied with an objection decision may, within thirty days after being served with a notice of the objection decision, lodge an application with the tax appeals tribunal for review of the objection decision.\*

\*(2) A person dissatisfied with a decision of the Tribunal may, within 30 days after being served with a notice of the decision, lodge an application with the High Court for review of the decision.\*

- [10] All the above provisions of the law point to the fact that the court of first instance for review of a tax objection decision is the Tax Appeals tribunal. The High Court ought to be had recourse to when the dissatisfied party is appealing a decision of the Tax Appeals Tribunal. This was further confirmed by the Supreme Court in the case of **Uganda Revenue Authority Vs Rabbo Enterprises (U) Ltd & Anor, Supreme Court Civil Appeal No. 12 of 2014** to the effect that; \*the proper procedure is that all tax disputes must first be lodged with the Tax Appeals Tribunal and only taken to the High Court on Appeal.\*
- [11] In the circumstances therefore, this application was filed in the wrong forum. It should have been filed in the Tax Appeals Tribunal first. As such, this issue is answered in the affirmative.

## Issue 2

- [12] It was submitted that the Notice of Appeal and the Memorandum of Appeal were improperly filed and as such ought to be struck out. The applicant further prayed for costs of the suit.
- [13] Following the discourse on issue 1, it is apparent that indeed Civil Appeal No. 37 of 2018 was filed in the wrong forum and is hereby struck out. The appellant therein is advised to file the appeal

before the right forum. Costs of this application are awarded to the applicant.

<sup>I</sup> so order

Dated, signed and delivered at Kampala this 24th day of January 2022

Duncan (^aswaga

JUDGE

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Prepared on 14 October 2026 · Esheria