THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 032 OF 2020

COMMISSIONER GENERAL
UGANDA REVENUE AUTHORITY::::::::::::::::::::::::::::APPELLANT
VERSUS

AIRTEL (U) LTD::RESPONDENT

(Appeal and Cross-Appeal from the decision of the Court of Appeal (Kakuru, Muhanguzi and Madrama, JJA) in Civil Appeal No. 40 of 2013 dated 12th November, 2019)

CORAM: HON. MR. JUSTICE ALFONSE OWINY-DOLLO, CJ
HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. MR. JUSTICE STEPHEN MUSOTA, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

This is an appeal and cross appeal from the decision of the Court of Appeal (Kakuru, Muhanguzi and Madrama, JJA) in Civil Appeal No. 40 of 2013 dated 12th November, 2019.

Background

The respondent is a company engaged in the business of providing various telecommunication services. It started operating in Uganda after acquiring the assets and assuming the liabilities of Celtel Uganda Ltd which was also engaged in the same business. On 26th February, 2004, the appellant served on Celtel a tax assessment consisting of excise duty, Value Added Tax (VAT) and penal tax in the amount of Ug. Shs. 1,024,209,566/=. The outstanding tax had been arrived at following an audit by the Uganda Revenue Authority into Celtel's tax affairs. Celtel accepted liability in relation to only part of the tax debt and disputed the other part. The disputed tax debt consisted of VAT in the amount of Ug. Shs. 358,652,458/= and penal tax of Ug. Shs. 253, 161,660/= for a combined total of Ug. Shs. 611,814,118/=.

Celtel lodged objections against the tax debt in the Tax Appeals Tribunal. Before filing of the suit, Celtel, in accordance with the law, paid 30% of the tax debt, in the amount of Ug. Shs. 183,544,235/=. The Tax Appeals Tribunal considered and dismissed the celtel's objection. Subsequent appeals by Celtel to the High Court and the Court of Appeal were dismissed and the decision of the Tax Appeals Tribunal was upheld.

In 2010, the respondent acquired the assets and assumed the liabilities of Celtel including the tax debt referred to above. The respondent then opted to pay the unpaid balance left by Celtel or 70% of the disputed tax which amounted to Ug. Shs. 428,269,883/=. However, the appellant informed the respondent that during the pendency of the tax objection proceedings, the unpaid tax had been accruing interest and that its tax liability had increased to Ug. Shs. 1,555,836,915/=. The respondent disputed this assessment but paid the amount as assessed by the appellant but reserved its right to challenge the validity of the assessment in court.

The respondent subsequently lodged a suit in the High Court to challenge the appellant's assessment that interest had accrued on the unpaid tax during the tax objection proceedings. The respondent sought for a declaration that the interest was unjust and was also imposed by the appellant contrary to the law; an order directing the appellant to refund the sum collected as interest; interest, general damages and costs of the suit. The High Court (Kiryabwire, J (as he then was) found that the interest imposed on the respondent was penal tax and was imposed for failing to pay outstanding VAT by the due date stipulated under the Value Added Tax Act. The High Court further found that although the respondent had a right to lodge an objection to the tax assessment as it did, the mere fact of lodgment of the objection did not absolve the respondent from paying penal tax from the due date if the respondent's objection was unsuccessful. The High Court therefore found no merit in the respondent's suit and dismissed it with costs. The respondent appealed to the Court of Appeal.

The Court of Appeal considered that the appeal raised a question of whether a tax payer who objects to a tax assessment in the Tax Appeals Tribunal ought to be subject to a penal tax in the event that the tax payer's objection

is subsequently dismissed. The Court of Appeal found that the due lodgment of an objection in the Tax Appeals Tribunal by payment of 30% of the disputed tax suspends the requirement to pay the sum objected to, until the objection is dismissed. The Court of Appeal found that the law protects a tax payer from penal tax on the unpaid balance of 70% of the disputed tax during the pendency of the objection proceedings and any appeals therefrom. On the basis of those findings, the Court of Appeal allowed the respondent's appeal and set aside the judgment and orders of the High Court.

The appellant now appeals to this Court on the following grounds:

"1. **The learned Justices of Appeal erred in law and fact in holding that, having rightly paid interest on tax arrears (70% of tax due), the respondent was penalized by the appellant in penal tax for having sought redress frim the Tax Appeals Tribunal, whereas not.**

2. **The learned Justices of Appeal erred in law by holding that a person who objects to a tax assessed, appeals against it (to Tax Appeals Tribunal) pays 30% of the tax assessed cannot be penalized under S. 65 (3) of the Value Added Tax Act and that such person is legally protected.**

3. **The learned Justices of Appeal erred in law in interpreting S.65 of the Value Added Tax Act relating to penal tax vis-à-vis the right of a person to object to the tax assessed thereby erroneously holding that a person objecting to a tax assessment is not deemed to have failed to pay the tax.**

4. **The learned Justices of the Court of Appeal erred in law in holding that the interest penalty of Shs. 1,555,836,915 imposed on the respondent by the appellant had no legal basis whereas the same interest was 70% tax arrears and was grounded on the law.**

5. **The learned Justices of Appeal erred in law in holding that the respondent is entitled to refund of the interest penalty of Shs. 1,555,836,915 paid to the appellant after making a correct holding that a tax payer/respondent has a duty to pay interest on tax arrears, thereby reaching an erroneous and contradictory decision and conclusion in the matter.**

6. **The learned Justices of Appeal erred in law by setting aside the orders of the High Court and substituting its own orders which were unjustified in the circumstances."**

The appellant prayed this Court to: 1) allow the appeal, set aside the judgment and orders of the Court of Appeal and reinstate the judgment and orders of the High Court; 2) grant the appellant the costs in this Court and the costs below.

The respondent opposed the appeal, and also filed a cross-appeal on the following ground:

> **"The learned Justices of Appeal erred in law in not awarding interest on the sum of Ug. Shs. 1,555,836,915/= at statutory rate of interest from the date the payment was made until refund in full."**

The appellant opposed the cross-appeal.

Representation

At the hearing, Mr. Baluku Ronald Masamba, Ms. Barbra Ajambo Nahone, Mr. Aliddeki Ssali Alex and Mr. Agaba Edmond, all learned counsel, in the Uganda Revenue Authority Legal Department appeared for the appellant. Mr. Albert Byamugisha, learned counsel, appeared for the respondent.

Counsel filed written submissions.

Appellant's submissions

Counsel for the appellant submitted on the grounds of appeal in the following manner: first, grounds 1, 2 and 3 jointly, and thereafter grounds 4, 5 and 6 jointly.

Grounds 1, 2 and 3

Counsel submitted that grounds 1, 2 and 3 raise the key question of whether the Court of Appeal gave the correct import of Section 65 (3) of the Value Added Act, Cap. 349 (VATA) and other applicable provisions in so far as they applied to the penal tax assessed on the respondent. Counsel submitted that Section 65 (3) imposes penal tax in the following terms:

> **"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."**

Counsel further submitted that the Fifth Schedule to the VATA stipulates that the penal tax payable under Section 65 (3) shall take the form of interest, as follows:

> **"The rate of interest chargeable as penalty shall be 2% per month, compounded."**

Counsel contended that Section 65 (3) of the VATA is applicable whenever a person fails to pay VAT tax, by the due date which under Section 34A of the VATA is, insofar as applicable to the present case, the date of assessment of the amount of VAT due and payable. Furthermore, that the highlighted provision is aimed at penalizing a person who fails to remit VAT tax by the due date.

Counsel further submitted that the Court of Appeal erred when it found that the penal tax imposed under Section 65 (3) is suspended when the taxpayer objects to the VAT tax by filing a court action. Counsel submitted that that finding was not supported by the literal interpretation of the highlighted provision which does not explicitly state so. In counsel's view, the correct interpretation is that Section 65 (3) when read together with the Fifth Schedule, imposes, without exception, interest penalty on tax not paid by the due date i.e either the 15th of the following month, date stated in the tax assessment or the date a taxable transaction occurred.

Counsel further faulted the Court of Appeal for finding that Section 65 (3) creates an absurdity and submitted that it did not, and that, on the contrary, the provision served a beneficial purpose to the whole Ugandan public.

Counsel further submitted that the Court of Appeal erred in carrying out a constitutional interpretation exercise in its judgment yet it was not sitting as a Constitutional Court. The constitutional interpretation exercise, according to counsel, related to the application of Article 44 (c) of the 1995 Constitution in determining the import of Section 65 (3). Counsel submitted that the Court of Appeal was determining an ordinary appeal and ought not to have based on Article 44 (c) to read a meaning into Section 65 (3).

Counsel also submitted that the Court of Appeal erred when it considered that Article 44 (c) insulated the defaulting tax payer from the penal tax under Section 65 (3). Counsel emphasized that Article 44 (c) which provides for access to courts had no bearing on the present case, as imposition of a penal tax did not prevent access to courts which is the right guaranteed under Article 44 (c).

Counsel further faulted the Court of Appeal for failing to apply the literal meaning of the words employed in Section 65 (3) and instead applying other meanings that were unwarranted in the circumstances. Counsel submitted that under the relevant provision, a person who fails to pay VAT tax by the due date is liable to penal tax notwithstanding that he/she subsequently lodges a court action objecting to the tax in the Tax Appeals Tribunal. Counsel reasoned that this was because there was no law that prevents application of penal tax because of lodging such court actions. Further, that moreover, failure to pay the tax predates and is not contemporaneous with the court action, and thus the court action cannot insulate the tax payer from his/her earlier default in paying the tax by the due date.

Furthermore, counsel submitted that the rationale for the interest imposed under Section 65 (3) is to address a situation where a defaulting tax payer has kept the Uganda Revenue Authority and the entire Uganda public from tax he/she owes. Counsel drew an analogy with interest on other court awards which, as was stated in **Uganda Revenue Authority vs. Stephen Mabosi, Supreme Court Civil Appeal No. 1 of 1996 (unreported)** is imposed because the defendant has kept the plaintiff from using his/or her money. Counsel made a further comparison with interest on court awards by submitting that interest accrues notwithstanding that the defendant lodges further appeals. In the same vein, interest on penal tax will accrue whether or not the tax payer lodges an objection to the tax in the courts. In counsel's view, to absolve a person from paying interest on penal tax on grounds that the person objected to the tax assessed as the Court of Appeal did, would encourage VAT cheats, create a huge loss of tax revenue and frustrate the legitimate purpose of Section 65 (3).

Counsel urged this Court to find that imposition of penal interest under Section 65 (3) does not infringe upon the right to access to courts because a tax payer who successfully objects to a tax is cleared and does not pay any accrued interest. An unsuccessful tax payer on the other hand should have to pay interest which has been accruing throughout the litigation process, a risk the tax payer brought on himself in pursuing meritless litigation. This is similar to interest that would be awarded on special damages which also accrues throughout the litigation process.

Counsel also submitted that the Court of Appeal rendered an erroneous interpretation that Section 15 of the Tax Appeal Tribunal Act, Cap. 345 has the effect of suspending the operation of Section 65 (3). Counsel submitted that nowhere is it provided in Section 15 that payment of 30% of the disputed tax absolves the tax payer from paying interest so as to suspend Section 65 (3).

In view of the above submissions, counsel submitted that grounds 1, 2 and 3 of the appeal ought to be allowed.

Grounds 4, 5 and 6

In support of grounds 4, 5 and 6, counsel submitted that the appellant assessed Ug. Shs. 1,555,836,915/= as penal tax owed by the respondent under Section 65 (3) of the VATA. He supported the decision of the High Court that the said tax was lawfully assessed. He cited **Income Tax Commissioner vs. Roshanali Nazeraly Merali and Another [1964] 1 EA 95** where the Court upheld penal tax and treated it like any other tax. He further submitted that this holding was in accordance with Section 66 (6) of the VATA which treats penal tax as tax. Counsel submitted that exemption from tax including penal tax can only be granted by Parliament and not a Court of law as the Court of Appeal purported to do. In support of this submission, counsel cited the case of **Uganda Revenue Authority vs. Siraje Hassan Kajura and Others, Supreme Court Civil Appeal No. 9 of 2015 (unreported)** where it was held that provisions dealing with tax exemptions must be strictly construed. Counsel urged this Court to find that the penal tax was rightly assessed pursuant to Section 65 (3) and ought to stand.

Counsel submitted that grounds 4, 5 and 6 of the appeal ought to succeed.

Respondent's submissions

Counsel for the respondent submitted on grounds 1, 2, 3, 4 and 5 jointly, followed by ground 6 independently.

Grounds 1, 2, 3, 4 and 5

Counsel for the respondent supported the decision of the Court of Appeal which in his view correctly gave the position of the law which is that a person who objects to a tax assessment is not liable to penal tax under Section 65 (3) of the VATA. Counsel submitted that Section 65 (3) imposes criminal liability on a person who fails to pay VAT by the due date. However, according to counsel, a person who lodges an objection in the Tax Appeals Tribunal (TAT) does not attract such liability. Counsel submitted that proceedings in the TAT are permitted under Section 14 and 15 (1) of the Tax Appeals Tribunal Act, Cap. 345 (TAT Act). In this connection, Section 14 provides:

> **"(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."**

Section 15 (1) provides as follows:

> **"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."**

Counsel submitted that the above-highlighted provisions, since they are provisions of a latter statute have the effect of repealing Section 34 (3) of the VATA which provides that:

> **"Where an objection to or a notice of appeal against an assessment has been lodged, the tax payable under the assessment is due and payable and may be recovered notwithstanding that objection or appeal."**

Counsel further submitted that the respondent was not liable to pay the interest of Ug. Shs. 1,555,836,915/= as imposed by the appellant because the said interest was not imposed by any of the Courts in which the dispute

over the tax assessed was tried. Counsel contended that the interest as computed by the appellant had the effect of varying the decisions of the various courts which did not award interest.

Counsel also refuted the appellant's submission that the Court of Appeal declared Section 65 (3) of the VATA unconstitutional. He submitted that that was not the case and that the Court of Appeal merely interpreted the provision while taking into account other relevant provisions of the 1995 Constitution and the TAT Act.

Ground 6

In relation to ground 6, counsel submitted that the Court of Appeal had the legal authority to reverse the decision of the High Court as it did, if it deemed it fit, and thus the Court of Appeal committed no legal error.

Consideration of the Appeal

I have carefully studied the record and considered the submissions of counsel for either side and the law and authorities relied on.

The key question for determination is whether the Court of Appeal gave the proper import of the relevant legal provisions on penal tax as they applied to the respondent's circumstances. The circumstances were that the respondent became liable to pay the tax debt of Celtel Uganda Ltd, a company it acquired in or around 2010. The tax debt became payable on 26th February, 2004 when the Uganda Revenue Authority served an assessment on Celtel Uganda Ltd for a sum of Ug. Shs. 1,024,209,566/= which consisted of VAT and Excise duty tax and a penalty. Celtel paid part of the tax but disputed another part which consisted of VAT in the amount of Ug. Shs. 358,652,458/= and penal tax thereon of Ug. Shs. 253, 161,660/= for a combined total amount of Ug. Shs. 611,814,118/=.

VAT is imposed under the **Section 4** of the **Value Added Tax Act, Cap. 343 (VATA)** which provides as follows:

> **"4. Charge of tax.**
>
> **A tax, to be known as a value added tax, shall be charged in accordance with this Act on—**

(a) every taxable supply in Uganda made by a taxable person;

(b) every import of goods other than an exempt import; and

(c) the supply of any imported services by any person."

The due date for payment of VAT in so far as is relevant to this appeal was set out under Section 34 of the VATA which has since been repealed. **Section 34** provided as follows:

"34. Due date for payment of tax.

(1) Tax payable under this Act is due and payable—

(a) in the case of a taxable supply by a taxable person in respect of a tax period, on the date the return for the tax period must be lodged;

(b) in the case of an assessment issued under this Act, on the date specified in the notice of assessment; or

(c) in any other case, on the date the taxable transaction occurs as determined under this Act.

(2) ...

(3) Where an objection to or a notice of appeal against an assessment has been lodged, the tax payable under the assessment is due and payable and may be recovered, notwithstanding that objection or appeal.

(4) ...

(5) ..."

The tax in issue in this case fell under Section 34 (1) (b) because it was assessed on Celtel in accordance with that provision. The tax was assessed following a tax audit by Uganda Revenue Authority in which it was discovered that Celtel had not been remitting VAT in relation to certain taxable supplies for the period April 2000 to July 2003. It will be noted that in the first place, a tax payer is, under Section 31 of the VATA, obliged to lodge a tax return with the Commissioner General for each tax period within fifteen days after the end of the period. It is only after the tax payer has defaulted on voluntarily lodging a tax return that the Commissioner General is, under Section 32 of the VATA, empowered to make and serve an assessment on the tax payer. In the present case, Celtel defaulted on its obligation to timely

file tax returns in relation to the VAT, and as a result, the Commissioner General, made and served a tax assessment on it in accordance with the law. In those circumstances, Celtel was already a tax defaulter for failing to file tax returns in accordance with the law. Furthermore, as Celtel failed to pay the tax on date of 26th February, 2004 when it was filed with an assessment, it was also a defaulter from that date.

It will be noted that the VATA imposes a penal tax where a tax payer defaults in paying tax on or before the due date. Section 65 (3) provides as follows, in this connection:

> **"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."**

The penalty stipulated under the Fifth Schedule is as follows:

> **"The rate of interest chargeable as penalty shall be 2 percent per month, compounded."**

As observed earlier, Celtel failed to pay tax as required under the VATA for the period between April 2000 and June, 2003. It appears that it was not aware of the obligation to pay tax for that period as it did not file returns during the said time. It took an audit by the Uganda Revenue Authority in order to reveal Celtel's outstanding tax obligations for that period. Celtel's unpaid VAT for that period was Ug. Shs. 358,652,458/=. A penal tax of Ug. Shs. 253, 161,660/= had also accrued. It goes without saying that a person notified of outstanding VAT and penal tax is obligated to clear his debt. The consequence of failure to clear one's debt is obviously that further penal tax will accrue and the person will be required to pay a higher tax debt.

But what if a person lodges a tax objection to the VAT and penal tax assessed? Does that suspend the accrual of further penal tax until after the objection proceedings are concluded? It is necessary to note here that **Section 14** of the **Tax Appeals Tribunal Act, Cap. 343 (TATA)** permits the lodging of tax objections in the Tax Appeal Tribunal. Section 14 provides as follows:

> **"14. 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.

(3) A tribunal shall in the discharge of its functions be independent and shall not be subject to the direction or control of any person or authority."

Further relevant is Section 15 (1) of the TATA which provides as follows:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

I wish to note that, in my view, the requirement to pay 30% of the disputed tax assessed is a procedural requirement which gives the tax payer the right of audience in the Tax Appeals Tribunal in relation to the tax objected to.

The Court of Appeal found that the above highlighted provision of the TATA suspends penal tax until after the objection has been determined in the TATA and on any further appeal. The learned Justices stated in their judgment as follows:

"The requirement to pay 30% of the objected tax suspends the requirement to pay the whole sum which is objected to which may only be applied after the objection is dismissed."

The learned Justices of Appeal further stated:

"A person who has objected to a tax assessed, appealed against it, paid 30 percent of the tax assessed, paid interest on arrears cannot in our view be penalized for having sought redress by (sic) 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 position as a smuggler or tax cheat."

The Court of Appeal therefore found that the law suspends the application of penal tax during the pendency of tax objection proceedings. Counsel for the appellant has criticized this finding on ground that it is not supported by any law. On the other hand, counsel for the respondent submitted that the provisions of Sections 14 and 15 (1) of the TATA impliedly suspend the application of penal tax during the pendency of tax objection proceedings as found by the Court of Appeal.

In my view, the correct position on application of penal tax during the pendency of tax objection proceedings may only be reached upon proper construction of all applicable provisions of the law. As I said earlier, Section 65 (3) imposes a penal tax where a tax payer does not pay tax on the due date. Further, my interpretation is that Section 14 of the TATA provides for appeals to the TAT while Section 15 (1) imposes procedural requirements that must be fulfilled before lodging the appeals to TAT. Thus basing on the language employed, none of those provisions provides for suspension of penal tax during the pendency of tax objection proceedings. Neither do the provisions of Article 44 (c) of the 1995 Constitution which enshrine the right to a fair hearing as a non-derogable right. The imposition of penal tax does not, per se, affect the right to fair hearing or the right to access to Courts as the tax payer is still permitted to institute court process despite the imposed penal tax. Thus, while I believe that the Court of Appeal was entitled to apply the provisions of Article 44 (c) and that doing so did not amount to a constitutional interpretation exercise as submitted by counsel for the appellant, I think that the said provision was inapplicable in the present case.

In **Uganda Revenue Authority vs. Kajura, Civil Appeal No. 09 of 2015 (unreported)**, this Court, citing **Cape Brandy Syndicate v IRC [1921] 2 KB 64**. reiterated the cardinal principle of interpretation of tax statutes:

> **"In a taxing Act, clear words are necessary in order to tax the subject. In a taxing Act, one has merely to look at what is clearly said. There is no room for an intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in it, nothing is to be implied. One can only look fairly at the language used."**

The above principle can properly be extended to determine whether penal tax imposed by a Taxing Act becomes suspended in certain circumstances. The principle is that any such suspension may only be justified upon what is clearly stated in a Statute and not by intendment. In the present case, the Court of Appeal reached its decision on suspension of penal tax by intendment. The learned Justices of Appeal put together provisions in the Constitution, VATA and TATA that did not expressly talk about suspension of penal tax and stated:

> **"In our view, both the Value Added 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 have a constitutional basis. Reading the relevant provisions, 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 apply. The requirement to pay 30% of the objected tax suspends the requirement to pay the whole sum which is objected to which may only be paid after the objection is dismissed."**

In my view, the above observations are not supported by the relevant tax acts. Penal tax is payable where a person fails to pay tax by the due date which in this case is the date the person was served with an assessment. The person may choose to file objection proceedings but pursuant to Section 65 (3) of the VATA, the penal tax will continue to accrue until the date of payment of the outstanding tax in full. If Parliament had intended for the penal tax to be suspended until after the conclusion of the tax objection proceedings and any appeals arising therefrom, it would have expressly stated so in the VATA or the TATA. The failure of Parliament to legislate expressly on the suspension of penal tax in those circumstances meant that no such suspension was intended by Parliament. However absurd one considers Parliament's position, it may only be changed by Parliament through amendment of the relevant laws. It is not for any Court to introduce a new position by intendment as the Court of Appeal, with the greatest of respect, did in the present case.

There may be various policy considerations in favour and/or against suspending penal tax during the pendency of tax objection proceedings, and some of these have been advanced in this case. Overall, it may be stated that tax penalties are aimed at ensuring compliance with tax laws. Thus, where, as in the present case, a person has failed to file timely tax returns which leads to the person retaining revenue that is due to the Uganda Revenue Authority and the public, penal tax serves the purpose of punishing the person and ensuring tax compliance in future. Where such a person lodges a tax objection that is later found to be meritless, some will argue that the person should pay penal tax that accrued during the pendency of the proceedings. In this connection, counsel for the appellant rightly drew an analogy between penal tax awarded in such circumstances and interest a Court may, at the conclusion of the trial, award on special damages to cover the period of the litigation.

On the other hand, as the Court of Appeal and counsel for the respondent believe, where the law allows for lodging of tax objection proceedings, it may be fair to suspend accrual of penal tax during the pendency of those proceedings.

However, in my view, it is not for the Court, while conducting statutory interpretation, to frame policy one way or the other. The Court must merely state the position of the law as it is.

Therefore, the question of whether the Court of Appeal gave the proper import of the relevant legal provisions on penal tax as they applied to the respondent's circumstances must be answered in the negative. For the reasons given above, the Court of Appeal erred in finding that accrual of penal tax is suspended during the pendency of tax objection proceedings. That finding is not supported by the relevant tax laws. It therefore follows that the Court of Appeal erred when it ordered a refund of Ug. Shs. 1,555,836,915 paid by the respondent as unpaid VAT and penal tax thereon that accrued during the pendency of tax objection proceedings instituted by the respondent. The respondent is not entitled to a refund of the said money.

Grounds 1, 2, 3, 4, 5 and 6 are resolved accordingly.

Cross appeal

The cross appellant relied on the following ground of cross appeal:

> **"The learned Justices of Appeal erred in law in not awarding interest on the sum of Ug. Shs. 1,555,836,915/= at statutory rate of interest from the date the payment was made until refund in full."**

The sole ground of the cross appeal must fail. The sole ground of the cross-appeal alleges that the Court of Appeal ought to have ordered interest on the money ordered to be refunded. But having earlier found that the money the subject of the refund was lawfully collected, the question of interest cannot succeed.

In conclusion, and for the reasons give above, I would allow the appeal and dismiss the cross appeal, and make the following orders:

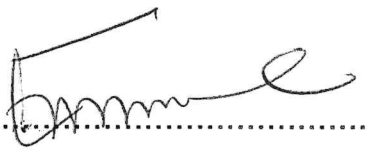
a) The decision of the Court of Appeal is set aside.

b) The decision of the High Court dismissing the respondent's suit in the High Court is reinstated.

c) The respondent is not entitled to a refund of Ug. Shs. 1,555,836,915/= as the same was lawfully collected.

d) The appellant is granted the costs in this Court and the Courts below.

Dated at Kampala this 12th day of Sept 2023.



Elizabeth Musoke

Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CORAM: OWINY-DOLLO, CJ; MWONDHA, CHIBITA, MUSOKE & MUSOTA, JJSC

CIVIL APPEAL NO. 032 OF 2020

COMMISSIONER GENERAL
UGANDA REVENUE AUTHORITY.....APPELLANT

VERSUS

AIRTEL (U) LTD..... RESPONDENT

(Arising from the decision of the Court of Appeal in Civil Appeal No. 40 of 2013)

JUDGMENT OF OWINY-DOLLO; CJ

I have had the benefit of reading in draft the judgment of my learned sister Musoke, JSC, and I concur with the reasoning, conclusions, and orders proposed therein.

Since Mwondha, Chibita, Musota, JJSC, also agree, orders are hereby issued in the terms proposed by Musoke JSC in her judgment.

Dated, and signed at Kampala this 12th day of Sept 2023

Alfonse C. Owiny - Dollo

Chief Justice

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

(**Coram**: Owiny-Dollo, CJ, Mwondha, Chibita, Musoke, Musota, JJSC)

CIVIL APPEAL NO 032 OF 2020

Commissioner General
Uganda Revenue Authority ..... Appellants

Versus

Airtel Uganda Limited ..... Respondent

(Appeal and Cross Appeal against the decision of the Court of Appeal at Kampala before Kakuru, Muhanguzi and Madrama, JJA dated 12th November, 2019 Civil Appeal No. 40 of 2017)

JUDGMENT OF MWONDHA JSC

I have had the benefit of reading in draft the judgment of my learned Sister Elizabeth Musoke, JSC and I concur with the analysis, decision and the orders proposed.

Dated at Kampala this 12th day Sept of 2023

Mwondha
JUSTICE OF THE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: OWINY-DOLLO, C.J, MWONDHA, CHIBITA, MUSOKE, MUSOTA, JJ.SC

CIVIL APPEAL NO: 032 OF 2020

COMMISSIONER GENERAL
UGANDA REVENUE AUTHORITY :: APPELLANT

VERSUS

AIRTEL UGANDA LIMITED :: RESPONDENT

[Appeal and Cross-Appeal from the decision of the Court of Appeal at Kampala (Kakuru, Muhanguzi and Madrama, JJA) dated 12th November, 2019 in Civil Appeal No. 40 of 2013]

JUDGMENT OF MIKE CHIBITA, JSC

I have had the benefit of reading in draft the judgment of my learned sister, Justice Elizabeth Musoke, JSC and I agree with her conclusion and orders she has proposed.

Dated at Kampala this ....12th....day of ....Sept....2023

Hon. Justice Mike Chibita
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 032 OF 2020

(Arising out of the decision of the Court of Appeal (Kakuku, Muhanguzi and Madrama, JJA) in Civil Appeal No. 40 of 2013)

COMMISSIONER GENERAL UGANDA

REVENUE AUTHORITY :::::::::::::::::::::::::::::::: APPELLANT

VERSUS

AIRTEL (U) LTD :: RESPONDENT

CORAM: HON. JUSTICE ALFONSE OWINY_DOLLO, CJ
HON. JUSTICE FAITH MWONDHA, JSC
HON. JUSTICE MIKE CHIBITA, JSC
HON. JUSTICE ELIZABETH MUSOKE, JSC
HON. JUSTICE STEPHEN MUSOTA, JSC

JUDGMENT OF STEPHEN MUSOTA, JSC

I have had the benefit of reading in draft the judgment by my sister Hon. Justice Elizabeth Musoke, JSC.

I agree with her analysis, conclusions and the orders she has proposed. I have nothing useful to add.

Dated this 12th day of Sept 2023.

Stephen Musota
JUSTICE OF THE SUPREME COURT