THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CORAM: OWINY - DOLLO, DCJ; KAKURU, EGONDA-NTENDE, OBURA, & MUHANGUZI, JJA/JJCC.

CONSTITUTIONAL PETITION No. 3 OF 2009

(Reference from the Tax Appeal Tribunal in Application No. 25 of 2007)

BETWEEN

FUELEX (U) LIMITED} ..... APPLICANT

AND

UGANDA REVENUE AUTHORITY} ..... RESPONDENT

RULING OF OWINY - DOLLO; DCJ

This matter has come to this Court, under the Constitutional Court (Petitions and References) Rules 2005, by way of a reference from the Tax Appeals Tribunal. The Applicant herein had lodged and objection with the Tax Appeals Tribunal against the levy, by the Respondent, of the sum of U. Shs. 160,525, 530/= (One hundred and sixty million, five hundred and twenty-five thousand, five hundred and thirty only), as tax payable by the Applicant from its fuel business covering the period running from June 2005, to September 2006. The issue of the constitutionality of the mandatory payment of 30% of the tax levy objected to arose before the Tax Appeals Tribunal; which then formed the opinion that a substantial question of law as to the interpretation of the Constitution had arisen.

The sole question the Tribunal framed and referred to this Court for determination is: -

"Whether section 15 of the Tax Appeals Tribunal Act contravenes Articles 21 and 126 (2) (a) of the Constitution of the Republic of Uganda 1995, in as far as it requires a tax payer who has lodged a notice of

objection to an assessment to, pending final resolution of the objection, pay 30% of the tax assessed, or that part of the tax assessed not in dispute, whichever is greater."

Section 15 of the Tax Appeals Tribunal Act, whose constitutionality is in question, provides as follows: -

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

It was contended by the Applicant that the provision for the 30% payment in the impugned section 15 of the Act contravened the constitutional right to a fair hearing enshrined in the Constitution in as Article 44 (c). Admittedly, the right to a fair trial is a component of access to justice as a right; but this is only possible where the disputants are accorded the opportunity to appear before a Court, Tribunal, or other adjudicatory body, in the first place. Otherwise, without appearing before an adjudicating body, the issue of fair trial would not arise. It underscores the point that it does not suffice to conduct a trial. The cause of justice is best served when the parties to the trial are accorded equal opportunity to present the merits of their respective cases before Court. This is the essence of the protection of rights provided for under Articles 21 (1) and 44 (c); which are, respectively, with regard to equality of treatment before the law, and the right to be accorded a fair hearing in any dispute.

Authorities abound, both within our jurisdiction and in other jurisdictions in the Commonwealth, on this issue. In ***Re: President's Reference of the Constitution of Vanuatu and the Broadcasting and Television Bill 1992, [1993] 1 LRC*** or ***Law Reports of the Commonwealth, 141***, the impugned Bill granted the Minister powers to remove any member of the statutory

corporation without giving reasons therefor; and prevented such action of the Minister from being contested in a Court of law. The issue for determination was whether the term *'protection of law'*, provided for in the Constitution, guaranteed both procedural fairness and fundamental rights. The Court held that the provision in the Constitution covers fundamental rules of natural justice, as was recognised under common law. It clarified that the phrase 'protection of law' should not be given a narrow application to cover *'rules of natural justice'* only; but must be applied to cover rights of access to Courts of justice.

The Court was emphatic that the Legislature has no power to deny access to Court to anyone who is aggrieved by a provision in any legislation or act of a person or institution, to enforce such person's fundamental rights and freedoms; as to do so would be in breach of the Constitution to which Acts of Parliament are subordinate. In ***Re: Rivas and the Belize Advisory Council [1993] 3 LRC 261***, section 54 (15) of the Belize Constitution provided as follows: -

"The question whether or not the Belize Advisory Council has validly performed any function entrusted to it by the Constitution or any other law shall not be inquired into by any Court of law."

The Constitutional Court held, at p. 269, that: -

> *"Unique or not, any institution, be it an inferior Court or a superior tribunal, which deals with the legal and human rights of any subject, in any capacity whatsoever, must conform to the time honoured and hallowed principles of fundamental rights and natural justice. allegations that there has been a breach of any of these principles in relation to any person, must in my view be subject to inquiry by the Supreme Court; irrespective of the calibre of the institution in respect of which allegation has been made."*

In ***Attorney General vs Ali & Ors [1989] LRC 474***, which also dealt with the issue of access to Court of law, Harper J.A. held at pp. 525-526 that: -

"... a citizen whose Constitutional rights are allegedly being trampled upon must not be turned away by procedural hiccups. Once his complaint is arguable, a way must be found to accommodate him so that other citizens become knowledgeable of their rights ..."

In ***Juandoo vs Attorney General of Guyana (1971) AC 972***, the Constitution had provided that Parliament should put in place a law regulating the enforcement of fundamental rights and freedoms; but Parliament had not done so. When the Respondent sought to rely on the absence of the specific rules as a bar to the aggrieved person from bringing his complaint in Court, the Court held that: -

"... the clear intention of the Constitution that a person who alleges that his fundamental rights are threatened should have unhindered access to the High Court, is not to be defeated by failure of Parliament or the rule making authority to make specific provisions as to how that access should be gained."

In the Tanzanian case of ***Pumbun & Anor vs Attorney General & Anor [1993] 2 LRC 317***, the Government Proceedings Act had provided that prior consent of the Attorney General was required, before anyone could bring a suit against government. This provision was challenged; on the ground that it afforded the executive the power to impede or obstruct access to justice by an aggrieved person. The Court of Appeal held that it was the constitutional right of any aggrieved person to have recourse to the High Court in search of redress; and this, notwithstanding that some other remedy, such as mandamus or certiorari, may be available to such a person. The Court therefore held that the impugned provision

of the Government Proceedings Act, was in contravention of the fundamental right of access to Court provision of the Constitution.

In the Singapore case of ***Howe Yoon Chong vs Chief Assessor and Computer of Property tax [1991] LRC (Const) 243***, the Appellant contended that the assessment of his property, for taxation purpose, at a rate above other properties of the same category, was in breach of the provision in the Constitution of Singapore that *"all persons are equal before the law and entitled to equal protection of the law"*, the Privy Council cited, with approval, American cases on equal protection; and stated at p.247 as follows: -

> *"In **Sunday Lake Iron Co. vs Township of Wakefield 247 U.S. 350 (1918) 352**, the Supreme Court made the following statement of principle:*
>
> *'The purpose of the equal protection clause of the 14th Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents ..."*

A person who alleges that a legislation derogates from the fundamental rights and freedoms protected under the Constitution, or claims that his or her rights have been infringed on, bears the responsibility to establish a prima facie case that this is so. In ***NTN Pty Ltd. & NBN Ltd. vs The State 1988 9 (Const) LRC 333***, Court held that: -

> *"The Petitioner must demonstrate a prima facie case that his rights has been affected ... ... the nature of the evidence depends on the manner in which the fundamental rights is said to be affected by the legislation ..."*

In ***Charles Onyango Obbo & Andrew Mwenda vs The Attorney General - Constitutional Appeal No. 2 of 2002***, Byamugisha Ag. JSC held as follows: -

"The petition alleged that section 50 (supra) is inconsistent with and/or is in contravention of the provisions of the Constitution. The petition ended with one of the prayers seeking a declaration that the section is inconsistent with the provisions of Articles 29 (1) (a) and (b), 40 (2), and 43 (2) (c) of the Constitution. ... the burden was on the Appellants to prove that the State or somebody else under the authority of any law has violated their rights and freedoms to publish guaranteed under the Constitution. Once that has been established, the burden shifts to the State or the person whose acts are being complained of to justify the restrictions being imposed or the continued existence of the impugned legislation."

In ***Queen vs Oakes [1987] LRC 477***, the Supreme Court was construing the import of provisions of section 1 of the Charter in the Constitution of Canada - the equivalent of Article 43 of the Uganda Constitution - which provides for limitations on fundamental rights in a free and democratic society. The Court held, at pp. 498 - 499, as follows: -

"A second contextual element of interpretation of section 1 is provided by the words 'free and democratic society'. Inclusion of these words as the final standard of justification for limits on rights and freedoms refers Court to the very purpose for which the Charter was originally entrenched in the Constitution: Canadian society is to be free and democratic. The Court must be guided by the values and principles essential to a free and democratic society; which I believe embody, to name a few, respect for cultural and group identity, and faith in social and political institutions, which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the Charter; and the ultimate standard

against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified.

The rights and freedoms guaranteed by the Charter are however not absolute. It may become necessary to limit rights and freedoms in circumstance where their exercise would be inimical to the realization of collective goals of fundamental importance. For this reason, section 1 provides criteria for their justification for the limit on rights and freedoms guaranteed by the Charter. These criteria impose a stringent standard of justification, especially when understood in terms of the two contextual considerations discussed above, namely, the violation of a constitutionally guaranteed right or freedom, and the fundamental principle of a free and democratic society.

The onus of proving that a limit on a right or freedom guaranteed by the Charter is reasonable and demonstrably justified in a free and democratic society, rests upon the party seeking to uphold the limitation. It is clear from the text of section 1 that limits on the rights and freedoms enumerated in the Charter are exceptions to the general guarantee. The presumption is that the rights and freedoms are guaranteed, unless the party invoking section 1 can bring itself within the exceptional criteria, which justify their being limited. This is further substantiated by the use of the word 'demonstrably'; which clearly indicates that the onus of justification is on the party seeking to limit ..."

At page 500 thereof, after holding that the party seeking to invoke the limitation on the rights and freedoms must present to Court the available alternative means for the implementation of the objectives for which the limitation is sought, the Court held further as follows: -

"To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First the objective, which the measures responsible for a limit on a Charter or right or freedom are designed to serve, must be of sufficient importance to warrant overriding a constitutionally protected right or freedom ... ... The standard must be high in order to ensure that objectives which are trivial or discordant with the principles integral to a free and democratic society do not gain section 1 protection ... ... It is necessary at a minimum that an objective relates to concerns which are pressing and substantial in a free and democratic society, before it can be characterized as sufficiently important. ... ..."

The Court also held that once an important objective has been realized, the party invoking the limitation provision in the Charter must satisfy Court that the means taken to effectuate the important objective are justified. For this, it is incumbent on the Court to balance the interests of society against that of the individual.

In the instant case before this Court, the impugned provision of section 15 of the Tax Appeals Tribunal Act is a variant of infringement on the fundamental rights and freedoms enshrined in the Constitution; because it has the grave effect of not merely restricting or fettering, but altogether barring, or serving as an absolute impediment to access to Courts of justice by an aggrieved person who desires to be accorded the protection of the law. The Act contravenes Article 20 (1) and (2), which provide, respectively, that fundamental rights and freedoms of the individual are inherent and not conferred by the State; and that all organs and agencies of the State, and all persons must respect, uphold, and promote the fundamental rights and freedom. I would add here that the fundamental rights and freedoms are not conferred by the people either; but by divine power, which is superior to the people or the State.

I should however point out that in resolving issues of legislation, Court should always bear in mind that the responsibility to legislate does not lie with the Courts of law. That is the legitimate function of Parliament; as is enshrined in the Constitution, under the doctrine of separation of powers between the three arms of government. Parliament may enact an oppressive, unconscionable, or unpalatable law; or a law that confers on a person or a group of persons, arbitrary, or capricious, or detestable powers. Such legislation would certainly be unjust; and would not deserve a place in the country's statute books. However, Courts have no power to strike down an Act of Parliament on the ground only that the enactment is unjust. That is the function and responsibility of Parliament to exercise through repeal of the offending legislation.

However, owing to the supremacy of the Constitution in our legal dispensation, a Court of law can intervene and strike down a legislation, or a provision thereof, where it finds that the legislation or an impugned provision thereof is inconsistent with, or in contravention of, some provision of the Constitution. In ***Duport Steels Ltd & Ors vs Sirs & Ors (1980) 1 WLR 142***, at 157, Diplock L.J., with whom the other members of the Court agreed, stated Per Curiam as follows: -

"A statute passed to remedy what is perceived by Parliament to be a defect in the existing law, may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed; if it had it would have made some provision in the Act in order to prevent them. It is at least possible that Parliament, when the 1974 and 1976 Acts were passed, did not anticipate that so widespread and crippling use as has in fact occurred would be made of sympathetic withdrawal of labour and of secondary blacking and picketing in support of sectional interests able to exercise 'industrial muscle'. But if this be the case, it is for Parliament, not for the judiciary,

to decide whether any changes should be made to the law as stated in the Acts ... ...

These are matters on which there is a wide legislative choice, the exercise of which is likely to be influenced by the political complexion of the government and the state of public opinion at the time amending legislation is under consideration. It endangers public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the Court before whom the matter comes consider to injurious to the public interest."

In ***Olive Casey Jaundoo vs Attorney General of Guyana [1971] 3 WLR 13***, at 19, in a judgment delivered by Lord Diplock, the Judicial Committee of the Privy Council, sitting on appeal from the Supreme Court of Judicature of Guyana, when confronted with the issue of application of strict rules of procedure and the need to render substantive justice, pronounced itself on the matter as follows: -

"To "apply to the High Court for redress" was not a term of art at the time the Constitution was made ... ... It was a newly created right of access to the High Court to invoke a jurisdiction which was itself newly created ... ... The clear intention of the Constitution that a person who alleges that his fundamental rights are threatened should have unhindered access to the High Court is not to be defeated by any failure of Parliament or the rule-making authority to make specific provision as to how that access is to be gained."

In our constitutional arrangements, the right of access to Court for any person who claims that his or her fundamental rights, or freedom,

guaranteed and protected under the Constitution, has been infringed on by anyone or authority, is expressly and consistently provided for under various Articles in the Constitution; a few of which are listed here. Article 28 of the Constitution provides as follows: -

*"28. **Right to a fair hearing.***

(1) In the determination of civil rights and obligations, or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial Court or tribunal established by law."

Article 50 of the Constitution provides as follows: -

*"**50. Enforcement of rights and freedoms by Courts.***

(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation.

(2) Any person or organization may bring an action against the violation of another person's or group's human rights."

Article 138 (2) of the Constitution provides on access to justice as follows: -

*"The High Court shall sit in such places as the Chief Justice may, in consultation with the Principal Judge, appoint; and in so doing, the Chief Justice shall, as far as practicable, ensure that the High Court is accessible to all the people." **(emphasis added).***

Article 44 of the Constitution provides as follows: -

*"**44. Prohibition of derogation from particular human rights and freedoms.***

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms: -

(a) ... ...

(b) ... ...

(c) the right to fair hearing;

(d) ... ..."

Article 26 of the Constitution, which is on property rights, and protects every person from deprivation of property, provides in Clause (2) thereof that: -

"No person shall compulsorily be deprived of property or any interest in or right over property of any description except where the following conditions are satisfied -

(a) ... ...

(b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for -

(i) ... ...

*(ii) a right of access to a Court of law by any person who has an interest or right over the property." **(emphasis added).***

It is important to appreciate that this provision in the Constitution, for protection of property rights, is manifestly couched in language, which first emphasizes the imperative of property rights as one of the fundamental rights enshrined in the Constitution. After this guarantee of the rights, limitation on the enjoyment of the property rights, as an exception to the provision guaranteeing the fundamental rights provision, is then introduced as a rider. However, the limitation on the enjoyment of the property rights, imposed by the exception to the fundamental rule, is itself fettered by the non derogable, or unavoidable provision for, right of access to Court as a fundamental right.

Then, Article 45 of the Constitution provides as follows: -

*"45. **Human rights and freedoms additional to other rights.***

The rights, duties, declarations, and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned."

This provision of the law means the fundamental rights and freedoms guaranteed and protected in the Bill of rights, under Chapter 4 of the Constitution, are neither exhaustive nor exclusive. Accordingly, then, other rights, such as property rights, which are provided for in the Constitution, but not within Chapter Four thereof, have the same force of law as the rights specified in the Bill of rights. The Courts of judicature have a central role in the equal protection of this, as with all other fundamental rights.

All these provisions of the Constitution referred to above recognize and guarantee the right of access to justice as a fundamental right. Access to justice manifests itself through a legal regime that ensures equal access to the protection of the law. This is not only achieved by ensuring that aggrieved persons have physical access to a Court of justice, or such justice mechanisms as tribunals, arbitration, and as well, mediation and conciliation, or any other adjudicating body. It is an imperative of equal importance that the enabling law is positive; in that it accords equal protection of the law to all persons appearing before an adjudicating body in search of justice. The right of equal access to justice must therefore always be guaranteed as a fundamental right; and must be treated as non derogable right.

In the instant case before this Court, it is worthy of note that the impugned provision of section 15 of the Tax Appeals Tribunal Act,

requiring prior payment, of 30% of the assessed tax levy, to the Uganda Revenue Authority, before a taxpayer can lodge an objection with the Tax Appeals Tribunal, is unjust; as it favours one of the disputants, to the detriment of the other. This is exacerbated by the provision that the objector must make the impugned payment to the adversary in the dispute. The impugned provision of the Act clearly offends the rule of law provision enshrined in the Constitution, which guarantees equal access to justice for everyone; and negates all forms of equity known to the law. The maxim *"having one's day in Court"* underscores the importance of the right of access to Court for the protection of the law, as one of the guaranteed fundamental rights. It recognises and emphasizes the vital function of the Court in the protection of rights.

Therefore, any impediment, barrier, or obstacle, or obstruction, to the exercise of right of access to Court - for instance inaccessible location of the Court premises - negates the enjoyment of the right of access to justice for the protection of the law. In ***Foundation For Human Rights Initiative vs Attorney General - Const. Petition No.53 of 2011***, the question was the constitutionality of powers granted to the Police, under section 24 of the Police Act, to arrest any person if the police officer has reasonable cause to believe that such a person has either committed, or is likely to commit a breach of the peace. This Court held that the limitation put on the enjoyment of fundamental freedoms by the impugned provision of the Police Act, was lawful as it was permissible in a free and democratic society for the public good.

By this, the Court in effect recognized that the powers of arrest conferred on the police by the impugned provision of the law, was preventive justice; which is permissible for the greater good of society. In arriving at this decision, the Court was informed and bolstered by the several protective provisions of the Act guaranteeing and ensuring

access to the Courts of law for any person so arrested. Furthermore, Court was satisfied that the impugned provision of the Police Act is in accord with the provision of Article 23 (1) (c) of the Constitution; which permits conditional restrictions on personal liberty, as follows: -

"No person shall be deprived of personal liberty except in any of the following cases: -

> *(a) for the purpose of bringing that person before a Court in execution of the order of a Court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda;*
>
> *... ... ...*
>
> *(h) as may be authorized by law, in any other circumstances similar to any of the cases specified in paragraphs (a) to (g) of this clause."*

I should like to reproduce here, in extenso, what I said in that case, on the necessary fetters imposed on personal freedom and liberty: -

"Indeed, it is for good cause that the Constitution, and the Police Act enacted in accord with it, recognize the need to place limitations on personal liberty. I find the restrictions necessary and acceptable in a free and democratic dispensation; hence, they are justified. For any society to operate without regulations and necessary restrictions to its enjoyment of freedom and liberty, it would be a recipe for lawlessness, disorder, and resultant chaos; which would be gravely injurious to the interests and well-being of the society. ... ...

It is worthy of note that the Constitution is cognizant of the fact that such permissible restrictions on personal liberty are subject to abuse by those vested with the power to enforce such restrictions. Hence, it

provides safeguards against abuse of the powers of restrictions on the enjoyment of personal liberty provided for in Article 23 of the Constitution. Such safeguards are by provisions for access to justice by the person so arrested and detained. ... Such a person, as is provided for under article 23 (4) (b), must be released or produced before a Court of law within 48 hours of the detention of such a person.

... ...

Where a person has been so arrested and detained without being arraigned before a Court of law within the forty-eight hour period provided for in the Constitution, then Court can be moved by an habeas corpus application for the production, before Court, of the person detained beyond the forty-eight hours permissible under the law. Under article 23 (9) of the Constitution, "the right to an order of habeas corpus shall be inviolable and shall not be suspended." This means the remedy of habeas corpus, as a safeguard against restrictions on personal liberty, is non-derogable.

Finally, if it turns out that a person was unlawfully arrested, restricted, or detained, then he or she shall be entitled to compensation, pursuant to the provision of article 23 (7); which states as follows: -

"A person unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that other person or authority whether it is the State or an agency of the State or other person or authority."

It was owing to the explicit fetters imposed on the powers vested in the police to implement the limitations on guaranteed rights and freedoms through arrest of suspects, as is shown above, that made this Court hold that the impugned provisions of the Police Act, are not inconsistent

with, or in contravention of the Constitution; but are limitations imposed on the enjoyment of guaranteed freedoms, which is acceptable and demonstrably justifiable in a free and democratic society. It is the recourse to Court provisions that serve as a bulwark against the limitations on the freedoms and rights as is provided for in the Constitution and various laws.

In the instant matter before this Court, it is noteworthy that the impugned provision of the Tax Appeals Tribunal Act is textually identical with the provision of section 34 C (3) of the Value Added Tax (as amended by the Finance Act, 2001), which gave rise to interpretation of provisions of the Constitution in the case of ***Uganda Projects Implementation and Management Centre vs Uganda Revenue Authority – SC Const. Appeal No. 2 of 2009.*** The facts of that case were that the Uganda Revenue Authority had levied Value Added Tax (VAT) on the Petitioner's community mobilization and voter education activities. The Petitioner filed an objection with the Tax Appeals Tribunal, contending that the activities taxed by the Respondent were not taxable supplies; and contended further that if they were taxable, then the Respondent ought to have demanded payment from the Electoral Commission.

The Respondent challenged the objection on grounds including that the Applicant had not paid the requisite 30% of the tax it had objected to, prior to lodging the objection; hence the application was incompetent. The Applicant contended that the provision of the Act imposing payment of 30% of the tax levied, prior to objecting to the Tribunal against it, contravened Articles 21 and 126 (2) (a) of the Constitution. The Constitutional Court, to which the matter was referred for interpretation of the Constitution held that the impugned provision of the Act was not in contravention of the Constitution. It was argued in the Supreme Court, on appeal, that the restrictions in the impugned

provision of the Act, in effect denied the Appellant the right of access to Court of justice; hence, it exceeded what was acceptable and demonstrably justifiable in a free and democratic society.

The Supreme Court however, while recognising that access to Court is one of the fundamental human rights, upheld the decision of the Constitutional Court that the impugned provision of the Value Added Tax Act was not unconstitutional. Lady Justice Kitumba JSC in her lead judgment, with which the other members of the Coram concurred, held in just one sentence that the provision of the Value Added Tax Act requiring prior payment by an aggrieved tax payer, of the 30% of the tax assessed by the Uganda Revenue Authority, before such tax payer applies for review of the tax assessment it challenges, did not apply only where a tax payer conceded that it was liable to tax assessment but only contested the quantum. It equally applied to the tax payer who contended that its activities were not liable to being taxed at all.

It is quite apparent that in coming to this decision, the Supreme Court did not fully or adequately address itself to the issue of access to justice as a fundamental right; the denial of which would be unconstitutional. While this is so, I must hasten to point out that, however, the Courts of judicature operate under the discipline of hierarchical order; which ensures that a decision by a higher Court of record binds all Courts below that Court, on the principle of *'stare decisis et non quieta movere'* which, according to ***Black's Law Dictionary***, means: to *'adhere to precedents, and not to unsettle things that are established'*; and is more commonly in use as *'stare decisis'*, which means: *'to abide by, or adhere to, decided cases.'*

Thus, the interpretation of the Constitution by the Supreme Court, in the ***Uganda Projects Implementation and Management Centre*** case (supra), with regard to the constitutionality of the provision of the Value Added

Tax Act with regard to the unequal treatment accorded the disputants, which is in *'pari materia'* (on all fours) with that of the Tax Appeals Tribunal Act now in issue, fully binds this Court. I can say no more than to express my fervent wish and hope that the Supreme Court will at some point, have occasion to revisit its decision on this matter; and settle the law in this regard with finality. In the event, despite my finding that the impugned provision of the Tax Appeals Tribunal Act contravenes provisions of the Constitution pointed out herein above, I would most regrettably dismiss this reference; with no orders as to costs as the parties had indicated at the hearing that they were willing to abandon the reference, but were compelled by Court to proceed nonetheless as the issue was one of law, and not of facts.

In the result, this Court makes the following orders: -

(i). By majority decision (Kakuru, Egonda-Ntende, Muhanguzi, JJA/JCC; Owiny - Dollo, DCJ, and Obura JA/JCC, dissenting): Section 15 of the Tax Appeals Tribunal Act - in so far as it compels an objector to a tax assessment whose challenge is not with regard to the amount of tax payable, to pay to the tax authority 30% of the tax assessed - is inconsistent with Article 44 of the Constitution; hence it is unconstitutional.

(ii) By majority decision (Kakuru, Egonda-Ntende, Muhanguzi, JJA/JCC (Owiny - Dollo, DCJ, and Obura JA/JCC, dissenting): The Petitioner is awarded half of the costs of the reference.

Dated, and signed at Kampala this 24th day of July 2020

Alfonse C. Owiny - Dollo

Deputy Chief Justice

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL REFERENCE NO. 03 OF 2009

BETWEEN

FUELEX (U) LTD ..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

[Reference from the Tax Appeal sitting at Kampala in Tax Appeals Tribunal Application NO. 25 of 2007]

CORAM: Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ
Hon. Mr. Justice Kenneth Kakuru, JA/ JCC
Hon. Mr. Justice Egonda-Ntende JA/ JCC
Hon. Lady Justice Hellen Obura, JA/ JCC
Hon. Mr. Justice Ezekiel Muhanguzi JA/ JCC

RULING OF JUSTICE KENNETH KAKURU, JA/ JCC

I have had the benefit of reading in draft the Judgment of my learned sister The Hon. Lady Justice Hellen Obura. She has ably set out the background to this reference and I have found no reason to repeat it here. I generally agree with her decision in so far as it follows the decision of the Supreme Court in *Uganda Projects Implementation and Management Centre vs Uganda Revenue Authority, Supreme Court Constitutional Appeal No. 2 of 2009.*

The decisions of the Supreme Court are binding on this Court under *Article 132 (4)* of the Constitution which provided as follows:-

> *'(4) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.'*

However, this Court is not required to follow a decision of the Supreme Court where it appears to it that facts before it differ from those upon which the Supreme Court made its decision or where the decision was made *per incurium.*

We are required in this matter to determine the constitutionality of Section 15 of the Tax Appeals Tribunals Act (TAT), which stipulates as follows:-

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

Rules of interpretation of Statutes are now well settled. The primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. The words of the statute are to be construed so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used. See:- The essence of the Law Salmond on Jurisprudence, Eleventh Edition P. 152

Burton J in *Warburton vs Loveland (1929) 1 H &B IR 623, P648* observed:

> *"I apprehend it is a rule in the construction of statutes, that, in the first instance, the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with any expressed intention, or declared purpose of the statute, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged so far as to avoid such inconvenience, but no further."*

Lord Wensleydale called it the 'golden rule' and adopted it in *Grey vs Pearson (1857)6 HL 61, P 106* and thereafter it is usually known as Lord Wensleydale's Golden Rule. This is another version of the golden rule. His Lordship expressed himself thus:

> *"I have been long and deeply impressed with the wisdom of the rule, now I believe universally adopted at least in the courts of law in Westminster Hall that in construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further."*

It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the *grammatical construction, unless that* is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further.

According to Odgers, Construction of Deeds and Statutes, second Edition, pp 289-90, there are three methods of judicial approach to the construction of a statute, namely, (a) the literal; (b) by employing the Golden Rule; and (c) by considering the mischief that the statute was designed to obviate or prevent. *Vacher vs London Society of Compositors[1913] AC 107, P. 117, per Lord Macnaughten, Lord Atkinson, Lord Moulton* is an example of the employment of all three methods approached. The question there was whether under Section 4(1), Trade Disputes Act 1906, any tortuous act by trade unions was protected or only such tortuous acts as were committed in contemplation or furtherance of a trade dispute.

The House of Lords took the former view and, in delivering their opinions, Lord Macnaughten adopted the Golden Rule from *Grey vs Pearson (1857) 6 HL Cas 61, 26*

LTCh 473. Lord Atkinson followed the literal approach in the case of *Cooke vs Charles A Vageler [1901] AC 102, P. 107*, while Lord Moulton discussed the history of the statute and applied the mischief method.

It is one of the well-established rules of construction that if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the legislature. It is equally a well-settled principle of construction that where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, fiction or confusion into the working of the system See: Collector of Customs, Baroda v Digvijayasinhji Mills AIR 1961 SC 1549, P. 1551; ShriRam v State of Maharashtra AIR 1961 SC 674, P 678; quoted and relied on in Markandey Singh, IPS v ML Bhanot, IPS (1988) 3 SCC 539.

Viscount Simon, L.C. in Nokes vs Doncaster Amalgamated Collieries Ltd (1940) AC 1014 explains thus,

> *"Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where in construing general words, the meaning of which is not entirely plain there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction."*
>
> *We should avoid a construction which would reduce the legislation to futility or the narrower one which would fail to achieve the manifest purpose of the legislation. We should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective*

result. Thus, if the language is capable of more than one interpretation, one ought to discard the literal or natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to reasonably practical results."

In *Luke vs R.R.C (1963) AC 557*, Lord Reid said: "An intention to produce an unreasonable result is not to be imputed in a statute if there is some other construction available. Where to apply words literally would defeat the "obvious intention of the legislation and produce a wholly unreasonable result" we must do some violence to the words and so achieve that obvious intention and produce a rational construction. Though our standard of drafting is such that it rarely emerges, but a problem may arise where more than one meaning arc available through the words of the statute, that meaning should be chosen which is reasonable and rational."

In *Gill vs Donald Humberstone & Co. Ltd.,* (1963) 1 WLR 929 per Lord Reid: 'Beneficial laws are addressed to practical people, and ought to be construed in the light of practical consideration, rather than a meticulous comparison of the language of their various provisions. If the language is capable of more than one interpretation, we ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practical result."

I now proceed to apply the above rules of interpretation to Section 15 of the TAT Act (Supra). It appears to me quite clearly that, the reference to an assessment in that Section is in respect of an amount payable by the tax payer as assessed by the tax authority. That amount, from the wording of the Section, must be in dispute. The tax authority contending that it is due and payable on one hand and on the other the tax payer contending that a different and lower amount is payable, or has been paid or is not due.

It appears to me clearly that the words "shall, pending final resolution of the objection pay 30 percent of the tax assessed or that part of the tax assessed or not in dispute whichever is greater" refer to a dispute arising from the amount of tax assessed.

This section does not in my humble view extend to a situation where the tax payer for example contends that he or she is exempted from a tax upon which the assessment is based or where a waiver has been obtained or the objector is not a tax payer in Uganda, or where the tax was assessed under a wrong or non-existent law.

In those instances the Tax Appeals Tribunals Act is required first to determine the question as to whether or not the tax payer lodging the objection is indeed a 'tax payer' within the meaning of that law or under the head item assessed. If for example the tax assessed is Value Added Tax (VAT), and the objection is that, the objector is not liable to pay VAT at all, then in my view Section 15 would not apply. The Tax Appeals Tribunals Act would be required first to resolve the issue as to whether or not the objector is liable to pay that tax. When that question is answered in the affirmative, then the provisions of Section 15 would apply but not before.

In Commissioner General, URA vs Zain International BV, Court of Appeal Civil Appeal No. 0011 of 2012, the Court of Appeal was dealing with a question as to whether the respondent in that matter was liable to pay the tax assessed. The facts of that case were briefly as follows:-

> *'The appellant on 10th March 2011 issued a tax assessment purportedly "on the disposal of Zain Uganda," on the grounds that the shares disposed in the Netherlands were those held indirectly by Zain International BV in Celtel (Uganda) Ltd. The respondent promptly filed an objection to the said tax assessment and pointed out to the appellant that no shares or property of Celtel Uganda Ltd were ever transferred. On 11th July 2011, the*

appellant on considering the objection issued an objection decision which stated that:

> *"Whereas the transaction had initially been taxed (i.e Tax Assessment of 10/3/2011) as one arising out from disposal of shares, we submit that the transaction under consideration is one of gain arising from the disposal of an interest in immovable property located in Uganda."*

However no fresh tax assessment was made on the respondent following the objection decision stage that the tax assessment of 10th March 2011 was erroneously based on the disposal of shares. The appellant never the less sought to enforce the said tax assessment against the respondent. The respondent objected to both the appellant's tax assessment and objection decision.'

The nature of the objection in the above cited case was that the objector was not liable to pay any tax, under the head upon which the assessment had been made, contending that it had not sold any of the shares or transferred any property in Uganda. This was in fact conceded to by the Uganda Revenue Authority. However, Uganda Revenue Authority sought to use the same assessment this time under another head "gain arising from the disposal of an interest in immovable property located in Uganda" without raising a fresh tax assessment under that specified head.

The Court of Appeal upheld the decision of the High Court. It found that Uganda Revenue Authority ought to have raised fresh tax assessment under the relevant head. In that case it could be stated that there was no assessment in the terms of Section 15 of Tax Appeals Tribunals Act and therefore that Section was inapplicable.

My humble opinion is that in a dispute such as that described above *albeit* arising from a 'tax assessment', Section 15 of Tax Appeals Tribunals Act would not apply. I say so because the dispute was not about the amount payable and therefore the 30 percent payment would not be applicable. In *Commissioner General URA vs Zain International Bv case* (Supra) the tax assessed was Ugsh. 211billion. 30 percent of that amount is a colossal sum of money to be paid in a matter in which the dispute is not about the amount of tax payable but rather whether the objector was liable to pay any taxes in Uganda. A literal interpretation of Section 15 of TAT would result into an injustice and absurdity

The issues I have raised above appear not to have been conversed at the hearing of this dispute nor were they conversed at the Supreme Court during the determination of *Uganda Projects Implementation and Management Centre case* (Supra). To that extent that decision is *per incurium* and *Articles 132(4)* does not extend to it.

I find that, Section 15 of Tax Appeals Tribunals Act is not unconstitutional in so far as it applies only to disputes over the tax amounts as assessed. Its constitutionality comes into question where its applicability is sought to extend to parties whose disputes are purely legal and or technical and where the issue for determination before the Tax Appeals Tribunals does not relate only to the amount of tax payable.

The right to a fair hearing is a non-derogable, under Article 44 of the Constitution which provided as follows:-

> *"44. Prohibition of derogation from particular human rights and freedoms.*

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—

(a) freedom from torture and cruel, inhuman or degrading treatment or punishment;

(b) freedom from slavery or servitude;

(c) the right to fair hearing (Emphasis added)

(d) the right to an order of habeas corpus.

Derogation is defined as:-

"The partial repeal of law, usually by subsequent act that in a way diminishes its original content, (Judicial on line dictionary).

An occasion when the rule of law is allowed to be ignored (Advanced Oxford dictionary New 8th Edition)."

Article 44 of the Constitution makes it clear that no law shall abridge, limit or lessen, shrink or otherwise derogate the right to a fair hearing. It is not subject to the limitation imposed under *Article 43* of the Constitution.

Article 21(1) stipulates that:-

"All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law."

A law that requires one party to a civil dispute to pay 30 percent of the amount of money that has been determined as payable by the adverse party, places on the objector at a disadvantage. It places upon the objector a burden that the adverse party does not have to bear. Further still, it places the adverse party, this time, the tax authority, at an advantage, that is, the objector is required to pay money to it before the dispute can be entertained. It

may be argued that, whenever the Tax Appeals Tribunals Act finds for the objector, the Uganda Revenue Authority has to refund the money. But usually this is too late. For an objector who does not have the 30% his/her objection however plausible cannot be heard and therefore he/she cannot get an opportunity to be heard. Once the opportunity to be heard is denied on account of failure to raise the 30% of the assessed tax, Uganda Revenue Authority is at liberty to recover the whole of the disputed sum whether that amount is legally owing or not and irrespective of what decision the Tax appeals Tribunal would have made.

This in my humble opinion cannot be consistent with the right to fair hearing envisaged under *Article 44* of the Constitution. I must emphasize that neither the 1962, nor the 1967 Constitution of Uganda contained similar Articles. The framers of the 1995 Constitution purposefully, intended to ensure that parties before Courts of law are placed at the same footing. Section 15 of Tax Appeals Tribunals Act, derogates from the principle and right of fair hearing enshrined in the 1995 Constitution, to the extent that it places one party at a disadvantage, while at the same time giving advantage to other. This in my view cannot be described as fair. A hearing premised on the above cannot be said to be fair hearing. A fair hearing includes the right to be heard. The right to be heard includes a right to appeal. Under the impugned Section a person who cannot raise the 30% of assessed tax is denied justice on account of inability to pay. It may be equated to a boxing match at which one of the contestant's arms is tied behind his back. I find this to be unfair and unjust.

Accordingly I would declare that Section 15 of Tax Appeals Tribunals Act is unconstitutional as it is inconsistent with *Article 44 (c)* of the Constitution so far as it subjects an objector to a tax assessment whose objection does not relate to the amount of tax payable, to pay to the tax authority 30 percent of the tax assessed .

I would award one half of the costs of this Reference to the applicant since it has only partially succeeded.

Dated at **Kampala** this ……24th……day of ……July……..2020.

.....

Kenneth Kakuru

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA

(Coram: Owiny-Dollo, DCJ., Kakuru, Egonda-Ntende, Obura & Muhanguzi, JJCC / JJA)

Constitutional Reference 03 of 2009
(Arising from TAT Application No. 25 of 2007 at the Tax Appeals Tribunal)

BETWEEN

FUELEX (U) LTD==========APPLICANT

AND

UGANDA REVENUE AUTHORITY==========RESPONDENT

JUDGMENT OF FREDRICK EGONDA-NTENDE, JCC / JA

I have had the benefit of reading in draft the judgment of my brother, Kakuru, JCC / JA, and I agree with it. I have nothing useful to add.

Dated, signed and delivered at Kampala this 24th day of July 2019

Fredrick Egonda-Ntende
Justice of the Constitutional Court/ Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO.03 OF 2009

(Coram: Owiny-Dollo, DCJ, Kenneth Kakuru, Egonda-Ntende, Hellen Obura, Ezekiel Muhanguzi, JJA)

FUELEX (U) LTD::: PETITIONER

VERSUS

UGANDA REVENUE AUTHORITY:: RESPONDENT

(Reference from the Tax Appeals Tribunal sitting at Kampala in Tax Appeals Tribunal Application No. 25 of 2007)

RULING OF HELLEN OBURA, JA.

This is a reference from the Tax Appeals Tribunal in which a question for Constitutional interpretation was raised as follows:

> *"Whether section 15 of the Tax Appeals Tribunal Act contravenes Article 21 and Article 126 (2) (a) of the Constitution of the Republic of Uganda 1995 in as far as requires a tax payer 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."*

During the hearing of this reference, Mr. Martin Mbanza held brief for Mr. Enock Barata, counsel for the petitioner while Mr. Ronald Baluku appearing together with Ms. Tracy Basiima represented the respondent.

Mr. Mbanza submitted that he had instructions to withdraw the reference as the petitioner was no longer interested in the Constitutional interpretation.

Mr. Baluku responded that the issue for interpretation has been overtaken by events as the Supreme Court in the case of ***Uganda Projects Implementation and Management Center vs Uganda Revenue Authority, SC Constitutional Appeal No.2 of 2009*** interpreted the

Constitutional question on whether payment of 30% of the assessed tax by a party who has lodged a notice of objection to an assessment is discriminatory under Articles 21 and 126 (2) (a) of the Constitution.

I have had the opportunity to read the above cited Supreme Court decision. The facts in that case were that Uganda Projects Implementation and Management Centre, a Non-Government Organization and the appellant in the matter, carried out a number of community activities mobilizing the population during the National Housing and Population Census 2002 and voter education during the National Referendum 2005. The respondent, Uganda Revenue Authority audited the appellant's accounts and made a demand of Ug. Shs. 394,700,051/= as Value Added Tax (VAT) arising out of the appellant's community mobilization and voter education activities. The appellant objected to the demand on the grounds that VAT could not be charged on the said projects as there were no taxable supplies and that in any event, even if there was, the monies would be collectable from the Electoral Commission. The respondent disallowed the objection and issued third party agency notices upon the appellant's bankers. All the appellant's monies were taken by the respondent but the notices were not satisfied for lack of sufficient funds.

The appellant filed an application before the Tax Appeals Tribunal (TAT) seeking a review of the Respondent's decision. When the hearing of the application before TAT began, the respondent raised a number of preliminary objections. One of those objections, which was the subject of the appeal to the Supreme Court, was that the application which had been filed by the appellant was premature and incompetent because the appellant had not complied with section 34 C (3) of the Value Added Tax Act Cap 349 as amended by the Finance Act of 2001 by paying 30% of the tax in dispute or that part of the tax assessed not in dispute whichever is greater.

The appellant contended before TAT that the requirement under section 34 (C) (3) of the Value Added Tax Act, Cap 349 (VAT Act) to pay 30% of the tax assessed before it could lodge an appeal against the assessment contravenes Articles 21 and 126 (2) (a) of the Constitution as it

amounted to a denial of the right to access justice. The appellant requested that the matter be referred to the Constitutional Court for resolution pursuant to Article 137(5) of the Constitution. TAT granted the request and the question which was framed for determination and interpretation by the Constitutional Court read as follows:

> *"Whether S.34 C (3) of the Value Added Tax Act Chapter 349 as amended by the Finance Act 2001 contravenes Articles 21 and 126 (2) (a) of the 1995 Constitution of Uganda in as far as it requires a person, before lodging an application with the Tax Appeals Tribunal, to pay to the Commissioner General 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater".*

The Constitutional Court found and declared that the impugned section 34 C (3) of the VAT Act as amended by the Finance Act, 2001 does not contravene Articles 21 and 126 (2) (a) of the Constitution. The appellant was dissatisfied with the decision and appealed to the Supreme Court.

The panel of 7 Justices of the Supreme Court who heard this appeal, dismissed it and upheld the decision of the Constitutional Court. Her Lordship Kitumba JSC who delivered the lead judgment which the other justices on the panel concurred with stated as follows;

> *"The issue of collection of taxes inspite of objection which was raised by Mr. Barata is not an issue for constitutional interpretation. It may be hardship on the taxpayer but according to Article 17 of the Constitution a citizen has a duty to pay taxes and to do so promptly, so that government business can go on. This is what was discussed in the* ***Metcash Trading Co. Ltd case (Supra). "The principle of pay now and argue later"*** *The tax payer has to pay his tax then argue later.*
>
> *I am unable to fault the ruling of the Constitutional Court that the limitation on the appellant's right of access to court was constitutionally justified under Article 43 of the Constitution."*

The above case challenged section 34 C (3) of the VAT Act as amended by the Finance Act, 2001 which provides thus;

"A person shall, before lodging an application with the Tribunal, pay to the Commissioner General, thirty percent of the tax in dispute or that part of the tax assessed not in dispute, whichever is the greater."

The instant reference is in regard to section 15 of the TAT Act 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 note that much as the question for constitutional interpretation in the above case stemmed from section 34 C (3) of the VAT Act as amended by the Finance Act, 2001 and not section 15 of the TAT Act cited in the instant reference, there is a similarity in construction and purpose of both provisions as they relate to payment of 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater. In addition, the questions for constitutional interpretation raised in both cases are similar in nature as they relate to whether or not the above statutory provisions contravene Articles 21 and 126 (2) (a) of the Constitution in so far as they require payment, by a person lodging an application with TAT, of 30% of the tax assessed or in dispute or that part of the tax assessed not in dispute, whichever is greater.

As noted herein above, this Court by unanimous decision found that section 34C (3) of the VAT Act as amended by the Finance Act, 2001 does not contravene Articles 21 and 126 (2) (a) of the Constitution in so far as it requires a person, before lodging an application with TAT, to pay to the Commissioner General 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater. This decision was upheld by the Supreme Court.

There was therefore no need to make this reference as the question relating to the constitutionality of payment of 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater, by a person before lodging an application with TAT has already been determined.

In the premises, it follows that the answer to the question framed for interpretation by this Court in this reference is in the negative. Costs of this reference is awarded to the respondent.

Dated at **Kampala** this 24th day of July 2019

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Hon. Lady Justice Hellen Obura

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 03 OF 2009

(Coram: Owiny-Dollo, DCJ, Kenneth Kakuru, Egonda-Ntende, Hellen Obura, Ezekiel Muhanguzi, JJA)

FUELEX (U) LTD.....PETITIONER

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

(Reference from the Tax Appeals Tribunal sitting at Kampala in Tax Appeals Tribunal Application No. 25 of 2007)

RULING OF EZEKIEL MUHANGUZI, JA

I have had the benefit of reading in draft the ruling of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA.

I agree with his decision entirely and the order for costs of this reference.

Dated at Kampala this 24th day of July 2019.

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Ezekiel Muhanguzi

JUSTICE OF APPEAL/CONSTITUTIONAL COURT