THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.166 OF 2018

1. **TURYAKIRA JOHN ROBERT**
2. **ODUR ANTHONY ---------- APPLICANTS**

VERSUS

UGANDA REVENUE AUTHORITY---------- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for enforcement of rights under Article 50 and 126(2) of the Constitution seeking for orders for Judicial reliefs namely that;

a) A declaration that the decision, and conduct of the respondents taxing and or collecting and enforcing tax on mobile money deposits threatens and infringes their fundamental human right to property guaranteed by Article 26 of the 1995 Constitution of the republic of Uganda.

b) A declaration that mobile money depositors are entitled to prompt, Full and complete refund of their monetary property erroneously taxed from their mobile money deposits since July 1, 2018.

c) A declaration that the respondent's taxation and or collection of tax on mobile money deposits is illegal and erroneous.

d) An order commanding the respondent to immediately refund all money collected as tax on mobile money deposits to owners.

e) A permanent order/injunction restraining any further erroneous taxation or collection and enforcement of taxes on any mobile money deposits.

f) An Order for general damages and interest on the erroneous tax/duty to each of the affected persons.

g) Costs of this application be paid by the respondents.

h) Any other orders the court deems appropriate in the circumstances.

The grounds in support of this application were stated in the supporting affidavits of the applicants setting out the background to this application.

The Parliament of Uganda enacted a law-The Excise Duty (Amendment) Act that required the collection of tax on mobile money deposits effective 1st July 2018.

The Respondent (URA) ordered telecommunications companies to collect taxes on all mobile money deposits claiming falsely, in her **29th June, 2018** written directive that **"receiving in this context includes getting or acknowledging receipt of money on a mobile money account from any source including cash deposits and transfers from bank account to mobile money account."**

The above wrong impression would be corrected by the Respondent in a later, **4th July 2018** directive, stating correctly, that **"no tax should be charged on the said deposits**" since cash deposits on mobile money accounts and transfers from bank account to mobile money account is mere digitalization of one's own money. The latter directive (4th July 2018) indeed clarifies that **"the above clarification supersedes our earlier position in this subject matter."**

On **July 12th 2018**, the Applicants sued and challenged the illegality of mobile money deposits and demanded a refund.

After more than a week, on **July 24, 2018**, the Respondent ordered the refund of the 1% mobile money deposit tax.

The respondent opposed this application and averred that Parliament passed the Excise Duty (Amendment) Bill which introduced among others the Over the top tax

That on the 21st day of June 2018, the President assented to the Excise Duty (Amendment) Bill 2018.

The respondent is mandated to collect taxes on behalf of the Government, on the 29th June 2018 requested the respective telecommunication companies to furnish her with the statistical information in light of paragraph 13(f) of the Excise Duty (Amendment) Act 2018 which included among others revenue collected.

That on the 4th day of July 2018, the respondent clarified that mobile money deposits do not attract tax and as such requested the respective telecommunication companies to not to collect the taxes on mobile money deposits.

The respondent contended that the suit is overtaken by events since no tax is being charged on mobile money deposits and taxes earlier collected have been refunded by the different telecommunications.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

The issues to be determined by this Honourable Court are:

1. Whether this Honourable court has jurisdiction to entertain this matter
2. Whether the case is overtaken by events
3. Whether the taxation of mobile money deposits is illegal
4. What remedies are available to the parties?

The applicant was represented by Mr Kiiza Eron whereas the respondent was represented by Mr Ssali Alex Aliddeki, Mr Baluku Ronald Masamba and Mr Lomuria Thomas Davis.

Preliminary Objections

The respondent has raised an objection that the procedure offends rules set out in the Enforcement of fundamental rights as provided under article 50 of the Constitution. The main contention by the respondent is that Attorney General was not joined to the proceedings.

The respondent argued extensively on this point for more than half of her submissions tried to drive this point home. The rules cited by the respondent's counsel are instructive on the consequences of failure to add Attorney General. The failure does not render the application incompetent and the court would be at liberty to order for the addition the Attorney General if need be.

The use of shall is merely directory and this would not be used to strangle the application filed properly before court.

The preliminary objection is dismissed accordingly.

Whether this Honourable court has jurisdiction to entertain this matter

The respondent cited the case of ***URA vs RABO ENETERPRISES SCCA NO. 12 of 2004*** as the basis for their objection to the jurisdiction of this court to hear a dispute of this nature.

The instant case, however, is a human rights enforcement action under Article 50 of the 1995 Uganda Constitution. This is a human rights case. The applicable procedural and jurisdictional law for the same is the said Article 50 and **The Judicature (Fundamental Rights and Freedoms) (Enforcement procedures) Rules, 2008**. High court has the jurisdiction over human rights enforcement decisions.

If there ever was doubt as to whether money is property, and that illegal taxation violates the right to property, the Kenyan case of **Okiya Omtatah Okoiti v Commissioner General, Kenya Revenue Authority & 2 others [2018] eKLR** settles the matter in holding that:

> ***"Tax inherently infringes the right to property, being an expropriation of one's hard-earned money.*** *It follows that for the tax to be lawful, the*

*law introducing it must not only be lawful, but it must meet the Article **24** analysis test in that it must be reasonable and justifiable in a open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the nature of the right or fundamental freedom; the importance of the purpose of the limitation; the nature and extent of the limitation; the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose."*

There is no dispute that High Court is the forum for enforcement of human rights including the right to property guaranteed in chapter Four, Article 26 of the 1995 Uganda Constitution.

There is also no pretending there is a Tribunal more suitable than the High Court to enforce human rights.

The question of jurisdiction cannot be ably interrogated without looking at the pleadings. The cause of action is human rights. The remedies sought cover human rights declarations, illegality and refund among others. No court is more appropriate to handle these issues and grant these remedies.

The applicants' claim before court is brought as acclaim for enforcement of rights and specifically a right to property. The application of the Supreme Court case of *URA vs RABO ENTERPRISES* to the present case is totally misplaced and baseless. The applicant brought this case under Article 50 and 126(2) of the Constitution and indeed the respondent's counsel has argued in favour of dismissing the same for offending the Enforcement of Rights procedure that require the joinder of Attorney General.

This court has jurisdiction to hear and determine an application of this nature and it is not a tax dispute within the meaning of the Tax Appeals Tribunal.

Whether the case is overtaken by events

The applicants counsel contended that one of the remedies sought is a declaration that the taxation of mobile money deposits infringed Article 26. This can never be overtaken by events.

The other remedy sought is the declaration of the same taxation of mobile money deposits as illegal and in violation of the very statue sought to be enforced. This remedy is mirrored in issue on illegality. Illegality or non compliance with the law cannot be overtaken by events. Not even a refund colours the original noncompliance with legality so as to render an inquiry into legal mootness. Just like human rights violations are not subject to the law of limitation, they cannot be overtaken by events.

The respondent's counsel submitted that on the 29th June 2018, the different telecommunication companies were asked to collect 1% tax on deposits. However, on 4th July 2018, before the applicants filed this suit, the respondent clarified its position and directed all the telecommunication companies to stop collecting the 1% on the deposits.

That the applicants filed this application on 12th July 2018, after the respondent had duly written clarifying the position on taxation of mobile money deposits.

According to them, there was no taxation on mobile money deposits by the time the suit was filed and as such there was no live dispute between the parties. Counsel cited the case of ***Environment Action Network vs Joseph Eryau Court of Appeal Civil Application No. 95 of 2005***; The court of Appeal held that;

"*The reliefs which the respondent is seeking on appeal cannot be granted because there is no live dispute between the parties. Courts do not decide cases for academic purposes because orders must have practical effect and must be capable of enforcement*…"

The present application was filed by the applicants on the 12th day of July 2018 and by the said date the Commissioner General had already written a clarification

in her letter dated 4th July 2018 to All Internet Service Providers and Licensed Telecommunication Firms as follows;

Item 13(f) 1% on Mobile Money Transactions

1. *Receiving;*
   Receiving in this context does not include cash deposits on a mobile money account and transfers from bank account to mobile money account since this is digitalization of one's own money. No tax should be charged on the said deposits. However, a receipt by way of transfer from one mobile money account to another is "receiving" and is subject to the 1% Excise Duty"

The applicants attached this letter to their application as annexture "A", which implies that they were fully aware of the changed circumstances and the non-applicability of the 1% on cash deposits and transfers from bank account to mobile money account.

I wonder why the applicants decided to file this application. Was it over zealousness or trying to gain some popularity out of a court case.

The present application falls in the mootness doctrine which bar court from deciding moot cases; that is cases in which there is no longer any actual controversy. The exercise of judicial power depends upon existence of a case or controversy.

Therefore the courts will not hear or decide a case unless it includes an issue that is not considered moot because it involves the public interest or constitutional questions. Courts should be slow to embark upon unnecessary wide and general enquiry and should confine their decisions as far as may reasonably practicable within the narrow limits of the controversy arising between the parties in the particular case.

The court should not decide issues in abstract. The court cannot embark upon an enquiry whether there was any misuse or abuse of power in a particular case, unless relief is sought by the person who is said to have been wronged by the misuse or abuse of power. This application disguises as public interest litigation

without any sufficient proof of any damage suffered apart from general statement that money was allegedly collected from the general public.

The function of a Court of law is to decide an actual case and to right actual wrongs and not to exercise the mind by indulging in unrewarding academic casuistry or in pursuing the useless aim of jousting with windfalls.

The issues being raised in this application were already clarified and resolved by the letter of the Commissioner General dated 4th July 2018 and was also further buttressed by another letter dated 24th July 2018 directing all customers who had been taxed between 1st -4th July 2018 should be refunded their money.

What remedies are available to the parties?

In the result I find this application to be lacking in merit and overtaken by events and it's hereby dismissed.

I hereby order that each party bears its own cost of the application.

SSEKAANA MUSA
JUDGE
8th /02/2019