IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

COMMERCIAL DIVISION

Reportable

Civil Appeal No. 0014 of 2022

(Arising from Tax Appeals Tribunal Misc. Applications No. 58 and 61 of 2022)

In the matter between

NILE BREWERIES LIMITED ..... APPELLANT

And

1. UGANDA REVENUE AUTHORITY }
2. STANBIC BANK UGANDA LIMITED } ..... RESPONDENTS
3. STANDARD CHARTERD BANK (U) LTD }

Heard: 19th August, 2022.
Delivered: 27th August, 2025.

Civil Procedure *- Appeals from the Tax Appeals Tribunal - section 28 (1) of The Tax Appeals Tribunals Act - Appeals lie to the High Court from final decisions made in proceedings before the Tribunal including applications for review of a taxation decision and all ancillary final orders made before, during and after such proceedings, which are separate but related to the main application for review - Contempt of Court powers - the Tax Appeals Tribunal powers in relation to contempt ex facie curiae the tribunal is limited by section 37 of The Tax Appeals Tribunals Act, to criminal contempt - The Tribunal is not vested with power over contempt ex facie curiae the tribunal of a civil nature.*

Tax Administration *- interpretation of tax laws - section 15 (1) of The Tax Appeals Tribunals Act - the requirement to deposit 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater - adoption of the "modern" or "purposive" approach rather than the literal approach to interpretation - words and expressions defined in a later Act on the same subject may provide an authoritative exposition of the same words in similar context in earlier statutes based on the presumption that the Legislature intended that the same interpretation should be followed for construction of those words in the earlier statutes - the provision does not exclusively refer to an assessment by the tax administration; it also includes a self-assessment - the requirement to deposit 30% of the tax assessed or that part*

of the tax assessed not in dispute applies only to the scope of the amount in dispute submitted to the jurisdiction of the Tribunal.

JUDGMENT

STEPHEN MUBIRU, J.

The background;

[1] Sometime during the year 2022, the appellant made self-assessments for Local Excise Duty and Value Added Tax. The 1st respondent later carried out an audit of both declarations subsequent to which it raised additional administrative assessments for both taxes. The appellant paid the self-assessed amounts but disputed the amounts demanded by the 1st respondent on account of the additional administrative assessments of both taxes. Pending the determination of its application to the Tax Appeals Tribunal seeking review of the additional administrative assessments, the appellant filed Miscellaneous Application No. 24 of 2022 seeking a temporary injunction restraining the 1st respondent from collecting the disputed tax. In a ruling delivered on 7th March, 2022 the Tribunal restrained the 1st respondent on condition that the appellant paid 30% of "the tax in dispute, or that not in dispute, whichever is greater." The 1st respondent demanded for payment of 30% of the tax in dispute, but the appellant declined contending that the amount it had paid already representing the tax not in dispute, was greater than 30% of the tax in dispute being demanded. In a bid to recover the payment, the 1st respondent on 19th April, 2022 issued third party agency notices to the 2nd and 3rd respondents, which both respondents declined to honour.

[2] The 1st respondent then on 29th April, 2022 filed Miscellaneous Application No. 58 of 2022 under section 34 (now 37 in the 2023 Revised Edition) of *The Tax Appeals Tribunals Act* and Rules 30 and 31 of *The Tax Appeals Tribunals (Procedure) Rules,* seeking to have the appellant, the 2nd and 3rd respondents sanctioned for contempt of the Tribunal's conditional injunction order. It was the 1st respondent's

case that the appellant, the 2nd and 3rd respondents had refused, failed or neglected to remit 30% of the tax in dispute as directed by the Tribunal and should therefore be sanctioned for contempt. The 1st respondent in turn filed Miscellaneous Application No. 61 of 2022 seeking the Tribunal's interpretation of the conditional injunction order in light of section 15 of *The Tax Appeals Tribunals Act* contending that having paid the undisputed amount of both taxes which was greater than 30% of the tax in dispute, the 1st respondent should be deemed to have complied with the conditional injunction order. The Tribunal consolidated bot applications.

The Ruling of the Tax Appeals Tribunal;

[3] In its ruling delivered on 6th May, 2022, the Tribunal decided that the expression "the tax assessed" in section 15 of *The Tax Appeals Tribunals Act* refers to an assessment as objected to by the taxpayer and/or what was decided in the objection decision. By statute, the Tribunals mandate is limited to the tax in dispute and does not extend to that which is not dispute. The Tribunal does not concern itself with the self-assessed or paid tax. If after objection the parties agree on an amount not in dispute, then the taxpayer should pay that amount if it is greater than 30% of the amount in dispute. The Tribunal cannot resort to the aid of *The Tax Procedures Code Act* enacted in 2014 in the interpretation of provisions of *The Tax Appeals Tribunals Act* enacted in 1998. "Therefore the Tribunal holds that the 1st respondent should pay 30% of the tax in dispute as mentioned in its objection decision." Miscellaneous Application No. 61 of 2022 seeking the Tribunal's interpretation of the conditional injunction order in light of section 15 of *The Tax Appeals Tribunals Act* was accordingly struck out.

[4] With regard to Miscellaneous Application No. 58 of 2022 seeking to have the appellant, the 2nd and 3rd respondents sanctioned for contempt of the Tribunal's conditional injunction order, the Tribunal found that section 34 (now 37 in the 2023 Revised Edition) of *The Tax Appeals Tribunals Act* is concerned with punishment of contempt of the Tribunal as a crime. "The Tribunal does not have criminal

jurisdiction and cannot try contempt of the Tribunal as a crime. Therefore, the applicant cited and brought its application under the wrong law." The application ought to have been made under section 98 of *The Civil Procedure Act*, however citing the wrong law is not fatal.

[5] This should be considered as an action for civil contempt since it was commenced by notice of motion rather than by charge sheet. Although the temporary injunction order directed the appellant to pay 30% of the tax in dispute, or that not in dispute, whichever is greater, the appellant paid neither. It is not in dispute that there was a lawful order. It is the appellant that stopped the 2nd and 3rd respondents from payment of an amount representing 30% of the tax in dispute. That direction was given wilfully and in bad faith. The order was not appealed but instead the appellant filed its application for interpretation following the one filed against it for contempt. The 2nd respondent, although it was only served with a third party agency notice, referenced the injunction as the basis of its refusal to pay. This was not a reasonable basis upon which it harboured a doubt regarding its obligation to pay. The 3rd respondent was served with a third party agency notice and also given a copy of the temporary injunction order. It interpreted the order selectively by deliberately or mischievously ignoring the clause obliging the appellant to pay 30% of the tax in dispute. The decision not to pay was wilful and malafide.

[6] Both the 2nd and 3rd respondents were found to be in contempt of the temporary injunction order of 7th March, 2022. The Tribunal however held that it "does not have criminal jurisdiction to impose a fine under the said section," 34 (now 37 in the 2023 Revised Edition) of *The Tax Appeals Tribunals Act*. It nevertheless imposed a fine of shs. 20,000,000/= on the appellant "for directing the 3rd respondent not to pay the 30% in civil contempt of court. The 2nd respondent is fined shs. 30,000,000/= for deliberately ignoring to implement the court order which it denied it did not receive yet it acknowledged it in a letter. The 3rd respondent is also fined shs. 30,000,000/= for after receiving the order of 7th March, 2022 refusing to honour it and deliberately misinterpreting [it] so as to frustrate the

payment of 30% of the tax in dispute. The said fines should be collected by the applicant and paid into the consolidated fund. "The 2nd and 3rd respondents were on 19th April, 2022 served with their party agency notices which under the law should be honoured on the date of receipt. The third party incurs personal liability for the amount of tax demanded when it violates this requirement. The 1st respondent instead sough an award of general damages against the two respondents. They were jointly ordered to pay general damages of shs. 28,071,755/= representing 24% interest on the amount indicated in the agency notice over a period of ten days, with additional interest at the rate of 2% per annum thereon from the date of the ruling until payment in full. The 1st respondent was awarded the costs of those proceedings.

The grounds of appeal;

[7] Being dissatisfied with the decision, the appellant appealed to this Court on the following grounds, namely;

1. The Tax Appeals Tribunal erred in law when it made a finding of contempt against the appellant without jurisdiction.
2. The Tax Appeals Tribunal erred in law when it misconstrued the provisions of section 15 of *The Tax Appeals Tribunals Act* and failed to distinguish between the tax assessed and the tax in dispute.
3. The Tax Appeals Tribunal erred in law when it erroneously held that under section 15 of *The Tax Appeals Tribunals Act* the Tribunal should only concern itself with the tax in dispute and not that which is not in dispute.
4. The Tax Appeals Tribunal erred in law in disregarding the clear provisions of section 15 of *The Tax Appeals Tribunals Act* and erroneously held that the intention of the Legislature was for the tax payer to pay 30% of the tax in dispute or the amount which is not in dispute, whichever is greater.
5. The Tax Appeals Tribunal erred in law when it failed to interpret section 15 of *The Tax Appeals Tribunals Act* and disregarded the undisputed Value Added Tax and

the local Excise duty for the tax assessed in the period between January, 2021 and August, 2021, that the 1st respondent had paid.

6. The Tax Appeals Tribunal erred in law when it held that sections 2 and 23 of *The Tax Procedures Code Act*, 2014 in as far as they define the "tax assessed" and "additional assessment" have no bearing on the interpretation of section 15 of *The Tax Appeals Tribunals Act* which provides for and makes a clear distinction between the "tax assessed" and "tax in dispute."

[8] On that account, the appellant seeks orders that; - (i) the ruling of the Tax Appeals Tribunal be set aside; and (ii) the appeal be allowed; and (iii) the respondents bear the costs of the appeal.

The submissions of counsel for the appellant;

[9] Counsel for the appellant submitted that the appellant has a right of appeal in so far as the Tribunal relied on provisions of *The Civil Procedure Act* to sanction the appellant. Leave to appeal is required only for orders made under The Civil Procedure Rules and not the Act. Whereas section 34 (now 37 in the 2023 Revised Edition) of *The Tax Appeals Tribunals Act* mandates the Tribunal to punish any act or thing which would constitute contempt if the Tribunal were a Court of record, and specifies only penal sanctions for such conduct, the Tribunal instead invoked its inherent jurisdiction and imposed a civil sanction. In doing so, the Tribunal erroneously relied on general provisions of the law in disregard of the specific provision granting it only the power to punish for criminal contempt. The specific section has no provision for imposing a fine exceeding twenty-five currency points. The application before the Tribunal had been specifically made under section 34 of *The Tax Appeals Tribunals Act* limiting the fine to a maximum of shs. 500,000/= yet the Tribunal imposed a fine of shs, 20,000,000/= which was beyond the limit fixed by statute.

[10] In any event, the appellant had not committed any contempt. It is trite that conditional injunctive orders lapse upon failure to fulfil the condition. Failure to fulfil a condition cannot be construed as a contemptuous act. The appellant's failure to pay the 30% tax should have resulted in vacating the order rather than a finding of contempt. When the injunction lapsed, the 1st respondent issued third party agency notices. Non-compliance with an agency notice triggers personal liability of the defaulting party for which reason action would have been taken against the 2nd and 3rd respondents. By the order of injunction, the appellant was directed to pay "30% of the tax in dispute or the amount of tax not in dispute, whichever was greater," yet in the body of the ruling it decided that the appellant was to pay "30% of the tax in dispute as mentioned in its objection decision." This created ambiguity in the order. The appellant paid in full the amount not in dispute in compliance with the terms of the order, yet it was found in contempt for not paying 30% of the disputed amount as mentioned in its objection decision. The amount paid in full was higher than the latter. The appellant was not motivated by ill will or defiance in the non-compliance, but out of an honest interpretation of the law only that the Tribunal disagreed with it. The appellant subsequently paid the 30% of the disputed amount as mentioned in its objection decision, but under protest.

[11] The Tribunal misdirected itself when it opted to focus on the tax in dispute and disregarded the tax assessed yet the former arises from the latter. In doing so, it gave section 15 of *The Tax Appeals Tribunals Act* a purposive meaning for which reason it ought to have considered the definition of the expression "additional assessment" found in *The Tax Procedures Code Act*. The 2nd and 3rd respondents are properly joined to the appeal since the two applications; the contempt application and the one for were consolidated.

<u>The submissions of counsel for the 1st respondent;</u>

[12] Counsel for the 1st respondent submitted that the appellant has no right of appeal from a decision of the Tax Appeals Tribunal regarding a finding of contempt of

court since it did not arise from a proceeding of a tax dispute. The appellant should have sought leave first to appeal the decision. The appellant is approbating and reprobating when it seeks to benefit from the order of injunction while at the same time it challenges the imposition of the 30% tax on the amount in dispute or that not in dispute, whichever is the is greater. When the appellant's application seeking a declaration that it had complied with the requirement to deposit 30% of the tax in dispute was dismissed, the appellant went ahead and paid rendering this appeal moot. The 2nd and 3rd respondents are improperly joined to the appeal since they were not parties to the application from which the appeal arises. Section 34 (now 37 in the 2023 Revised Edition) of *The Tax Appeals Tribunals Act* mandates the Tribunal to impose sanctions for civil contempt. That provision does not impose a pecuniary limit on the power to sanction civil contempt. The order was clear and unambiguous.

The decision;

[13] By virtue of section of *The Appeals Tribunals Act*, appeals to this Court are limited to points of law and not on matters of fact or mixed law and fact. Put briefly, questions of law are questions about what the correct legal test, interpretation or application is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests.

[14] In appeals restricted to points of law, the primary function of the first appellate Court is to review the lower court or Tribunal's decision for errors in the application or interpretation of legal principles, rather than re-evaluating the facts or evidence presented at trial. This means the Court examines whether the lower court or Tribunal followed the correct legal procedures, correctly applied existing laws, or failed to determine a material issue of law, but it does not conduct a full rehearing of the case by subjecting the evidence presented to the trial lower court or Tribunal to a fresh and exhaustive scrutiny and re-appraisal before coming to its own

conclusion. It only corrects errors in legal reasoning or interpretation made by the Tribunal. This Court has power to consider the facts of the case as well as inferences there from as might have been drawn by the Tribunal, where appropriate, in determining a point of law, namely; whether the relevant law was rightly identified and applied or whether the law was wrongly applied in arriving at the decision that was arrived at.

i. Competence of the appeal;

[15] There is no inherent, inferred or assumed right of appeal (see *Mohamed Kalisa v. Gladys Nyangire Karumu and two others, S. C. Civil Reference No. 139 of 2013*). According to section 28 (1) of *The Tax Appeals Tribunals Act*, a party to a proceeding before a tribunal may, within thirty days after being notified of the decision or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court. Appeals therefore lie from "a proceeding before a tribunal." A proceeding before a Tribunal generally is any formal process or activity that seeks to resolve a dispute, enforce a right, or apply the law through or by the Tribunal. It includes any process involving presenting evidence and/or arguments before the Tribunal, invoking its power to enforce the law pursuant to any procedural means of seeking redress from the tribunal, whereupon the tribunal then makes a determination of facts and law. It covers all pre-hearing, hearing, and post-hearing stages of any existing or reasonably anticipated quasi-judicial, judicial or administrative actions of the Tribunal.

[16] However, section 1 (h) of *The Tax Appeals Tribunals Act* has given "proceedings" in relation to the Tribunal, a restricted meaning limited to; (i) an application to a tribunal for review of a taxation; (ii) an application to a tribunal for an extension of time under section 16 (2) of the Act: or (iii) an application to a tribunal for reinstatement of an application under section 26 (4) of the Act. In statutory interpretation, the principle of specific enumeration, known as "*expressio unius est exclusio alterius*" (the expression of one thing excludes others), suggests that by

explicitly listing certain items or categories, a legislature implicitly excludes unmentioned items from the scope of the law. It would follow that by specifically listing the types of proceedings from which appeals lie, the Legislature excluded all other categories of proceedings.

[17] This in turn triggers the “exhaustiveness principle,” to the effect that when a statute lists specific types of proceedings from which appeals lie, it is understood to implicitly exclude all other types of proceedings from being appealable, in the absence of express statutory provisions to the contrary. This principle ensures that only those categories of orders or decisions explicitly designated as appealable by the Legislature can be subject to an appeal, providing clarity and finality in the legal system. In doing so, the court should be mindful of the need to interpret statutes so as to avoid absurd or patently unreasonable results, even if the interpretation is hard to square with the literal language of the statute, bearing in mind that mere oddity does not equal absurdity.

[18] A court will construe a statute by applying the plain meaning of the words used unless it would lead to absurd or nonsensical results that the Legislature could not possibly have intended. Courts will not construe statutes as to lead to injustice, oppression or an absurd consequence or produce absurdity (see *Wansey v. Perkins, 135 ER. 55 at 63*; *Perry v. Skinner, 150 ER 843 at 845*; *Becke v. Smith (1836) 2 M&W 191; (1836) 150 ER 724 at 726*; *Church of the Holy Trinity v. United States, 143 U.S. 457 (1892)* and. The absurdity must be so gross as to shock the general moral or common sense. It should be ridiculously inconsistent with reason or the plain dictates of common sense.

[19] Interpreting the expression “an application to a tribunal for review of a taxation” as excluding ancillary orders made before, during and after such proceedings, which are separate but related to the main application for review of a taxation, would lead to an absurd, oppressive or unjust result that the Legislature could not possibly have intended. The Tribunal’s jurisdiction does not terminate upon the

determination of an application, but may encompass other matters related to the application, such as the enforcement of an order made pursuant to the application. That the application is a proceeding while such other matters related to the application are not, would be an absurd interpretation.

[20] In the same vein, that a Tribunal should have powers of imposing a punishment by way of imprisonment or a substantial fine against which there is no right of appeal, is a preposterous result that no reasonable person could intend. In order to avoid such an outcome, the right of appeal from a review of a taxation should be construed as including appeals from ancillary final orders, on matters incidental to the main decision or order.

[21] While interlocutory orders are ordinarily appealable only if a statute specifically authorises an appeal before a final judgment, final orders in ancillary proceedings may be appealed. When an ancillary proceeding concludes with a "final order" i.e. one which resolves all issues within that specific ancillary matter, that final order can be appealed. The decision appealed in the instant case is in the nature of a final order made in proceedings ancillary to an application to the Tribunal for review of a taxation. The appeal in the instant case is from a ruling or decision of the Tribunal delivered on 6th May, 2022. The Notice of appeal was filed on 9th May. 2022, which is within time.

ii. <u>The interpretation and application of section 15 of The Tax Appeals Tribunals Act;</u>

[22] In grounds 2 to 6 of appeal, the appellant faults the Tribunal on bass of multiple reasons regarding the manner in which it went about the interpretation and application of section 15 of *The Tax Appeals Tribunals Act* to the facts before it. The appellant challenges the conclusions drawn by the Tribunal that the expression "the tax assessed" refers to an assessment as objected to by the taxpayer and/or what was decided in the objection decision; that it does not

concern itself with the self-assessed or paid tax not in dispute paid by the appellant but only with tax in dispute; and that it cannot resort to the aid of *The Tax Procedures Code Act* in the interpretation of section 15 (1) of *The Tax Appeals Tribunals 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.

[23] The panoply of tax legislation is notoriously complex and can be difficult to interpret. The majority of statutes have definition sections that explain the specific meaning of words or phrases used within that statute, to avoid confusion, reduce repetition, and ensure clarity in their application and in order to ensure that specific terms are understood and applied consistently throughout the entire statute. However, not every word or expression used in the statute is defined in that section. For words or expressions defined in that section that are nevertheless plain and explicit, i.e. having only one meaning in view of the text and the facts of the particular case to which the statute is to be applied, justified literally or contextually by fair use of language, issues of interpretation do not arise. However, occasionally the need for interpretation arises in respect of words or phrases not specifically defined in the statute, which yet bear more than one meaning in view of the text and the facts of the particular case to which the statute is to be applied.

[24] In a general sense, interpretation is an objective, intellectual process of ascribing an appropriate meaning to words in instances where there is uncertainty or doubt about the true meaning of a statutory provision. Interpretation is a craft by which a fair and practical meaning is ascribed to words through juridical logic and sound reasoning using a web of accepted aids, maxims and canons. The most commonly used modalities of statutory interpretation are grammatical, purposive, contextual, teleological and comparative. These techniques are complementary of each other and each may also be resorted to during a single interpretive exercise. Historically,

courts adopted a literal approach to interpreting tax legislation. The literal rule requires that a taxing statute should be interpreted strictly, and taxes cannot be imposed by inference or analogy. The law requires clear wording to impose a tax, and equitable considerations or assumptions are irrelevant in interpreting taxing statutes. For example, in *Partington v. Attorney General (1869) LR 4 HL 100* it was held that:

> Taxing Acts are to be interpreted/constructed strictly, the legislation that imposes a tax must be interpreted precisely according to the language used. In other words, if the person sought to be taxed comes within the letter of the law he/she must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the government seeking to recover tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

[25] Consequently, "in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used" (see *The Cape Brandy Syndicate v The Commissioners of Inland Revenue [1921] 1 KB 64*). "The words of a taxing Act must never be stretched against a tax payer. There is a very good reason for that rule, so long as one adheres to the natural meaning for the charging words, the law is certain or at least as certain as it is possible to make it, but if courts are to give to charging words what is sometimes called a liberal construction, who can say just how far this will go?" (see W.*M. Cory & Son Ltd v. Commissioners of Inland Revenue [1965] 1 ALL E.R 917*).

[26] However, the literal approach to interpretation which views a law-text through a narrow lens that isolates the text from its context, may lead to a distorted meaning. Hence the adoption of the "modern" or "purposive" approach which requires that the words of the statute in their grammatical and ordinary sense, be read harmoniously with the objects of the Act. It does not, however, give judges licence

to substitute their policy preferences for those of Parliament. For example, in *Pepper (Inspector of Taxes) v. Hart [1992] UKHL 3; [1993] AC 593; [1992] 3 WLR 1032* the underlying issue was the tax treatment of a fringe benefit, namely the right of public school masters to have their children educated cheaply at the school where they taught. Prior to the introduction of *The Finance Act 1976*, it was clear that such benefits were not taxable, because there was a specific provision to that effect in the earlier legislation.

[27] Problems had arisen with the taxation of concessionary travel for railway and airline workers. These had been resolved by a decision of the Special Commissioner of Income Taxes in favour of the taxpayers' argument that the value of the benefit was the marginal cost of providing the concessionary travel, which was in practice nil, since the train or plane in question would have operated in any event. The Revenue had unsuccessfully argued that the value was a proportional share of the cost of the operation. This ruling was accepted as applying by analogy to the provision of education, although there was a marginal cost for accommodation, books etc.

[28] Section 61 (1) of *The Finance Act, 1976* charged to tax in the case of a director or higher paid employee the cost of any benefit provided to him or members of his household by reason of his employment. Section 63 (2) provided that "the cost of a benefit is the amount of any expense incurred in or in connection with its provision, and ... includes a proper proportion of any expense relating partly to the benefit and partly to other matters." For some years the Revenue continued to deal with fringe benefits in the form of free or concessionary access to services provided by the employer as they had done under the earlier legislation, namely by assessing only the marginal cost. They then decided that the change in statutory wording justified them in reasserting the average cost argument. The taxpayers contended for the marginal cost. It was common ground that the contribution actually made (20% of the usual fees) more than covered the actual marginal cost of food, laundry, stationery etc. It was also common ground that, as the school in

question was non-profit making, the proportional cost was roughly equivalent to the full fee. The issue was therefore the interpretation of the relevant provisions, especially section 63 (2).

[29] This issue (which clearly had very substantial ramifications for other similar fringe benefits) ultimately came before the House of Lords and was argued in the usual way before a committee of five Law Lords. They were, it appears, divided on the question of interpretation of 5.61 and 5.63 by the application of orthodox principles. The majority accepted that the breadth of the statutory language, especially the last clause of section 63 (2), justified the Revenue's interpretation. Before giving judgement "it came to [their] Lordships' attention that an examination of the proceedings in Parliament which led to the enactment of sections 61 and 63 might give a clear indication which of the two rival contentions represented the intention of Parliament in using the statutory words."

[30] Being required to determine whether the benefit of a "concessionary fee" scheme offered to Hart and others teachers at a private school for their children, which allowed them to be educated at a reduced rate at the school, was liable to tax, it would be necessary to allow reference to the Hansard as an aid to construction of the statute. Although it was not currently permitted, the House of Lords resorted to the Hansard in its interpretation of *The Finance Act 1976* and relied upon a statement in the Hansard made at the time *The Finance Act* was passed in which the minister gave this exact circumstance as being one where tax would not be payable. Lord Griffiths had this to say on the purposive approach:

> The days have passed when the courts adopted a literal approach. The courts use a purposive approach, which seeks to give effect to the purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.

[31] Lord Brown Wilkinson on reference to the Hansard had this to say:

> ……. reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words.

[32] There is therefore a trinity in play: words, context and purpose (see *News Corp UK & Ireland Ltd v. Commissioners for His Majesty's Revenue and Customs [2023] UKSC 7; [2024] AC 89, at para 27*). Hence when interpreting a statute, Courts should examine the purpose behind it, rather than simply using the text of the statute itself.

[33] The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (see *Stubart Investments Ltd. v. The Queen, [1984] 1 SCR 536*). Where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive, hence interpretation presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter. A single Legislature, or a consistent legislative process, would not intend for laws on the same topic to contradict each other. The Tribunal and the Courts are therefore required to consider a word or phrase in the context of the entire statute, as well as within the broader context of other related statutes. Purposive interpretation gives effect to a meaning which best advances the fulfilment of the broader aims of a statute.

[34] One of the canons of interpretation is that the Legislature uses language consistently so that the same words bear the same meaning throughout an enactment, and in other enactments dealing with the same subject. A meaning that

achieves greater coherence with other statutes and the common law is to be preferred to one that produces incoherence (see *For Women Scotland Ltd v. The Scottish Ministers [2025] UKSC 16 at paras 13 and 160*). Where interlocking statutes come into conflict and there is no express indication of which law should prevail, two presumptions have developed in the jurisprudence to aid in this task. These are that the more recent law prevails over the earlier law and that the special law prevails over the general. The first presumes that the legislature was fully cognisant of the existing laws when a new law was enacted. If a new law conflicts with an existing law, it can only be presumed that the new one is to take precedence. The second presumes that the legislature intended a special law to apply over a general one since to hold otherwise would in effect render the special law obsolete.

[35] The "Whole Act Rule" of interpretation is based on the presumption that related statutes should be read "as if they were one law." This canon of construction requires courts to interpret different legislative provisions in a way that avoids conflict and promotes a unified, coherent body of law, reflecting the presumed intent of the legislature to create a consistent legal framework. The goal is to prevent contradictory or inconsistent interpretations that would undermine the legislative purpose or create legal uncertainty. Interpreting a statute therefore means the finding of a single, sensible, consistent meaning for the whole. Application, on the other hand, means determining whether the facts of the given case do or do not come within the single meaning so chosen. On basis of the same logic, for the purpose of interpretation or construction of a statutory provision, Courts and Tribunals can refer to or can take help of other statutes on the same subject. A later statute on the same subject may help resolve ambiguity in an earlier statute, but does not alter the meaning of the earlier clear language.

[36] The expressions "tax assessed" and "that part of the tax assessed not in dispute" used in section 15 (1) of *The Tax Appeals Tribunals Act* are not defined. While the appellant contended that both expressions include self-assessed or paid tax, the

Tribunal differed and found in essence that the former is limited to "the tax assessed but disputed" or as contained in an objection decision, while the latter concerns that in respect of which a compromise is reached after the submission of the dispute to administrative review, or following a taxation or objection decision. It was therefore a misdirection on the part of the Tribunal when in light of such disparity in interpretation, when it disregarded *The Tax Procedures Code Act, 2014* on ground that it was a later statue, when one of its avowed objectives as reflected in its long title is "to harmonise and consolidate the tax procedures under existing tax laws." It follows that words and expressions defined in this latter Act provide an authoritative exposition of the same words in similar context in earlier statutes based on the presumption that the Legislature intended that the same interpretation should be followed for construction of those words in the earlier statutes.

[37] That being the case, Part VII of *The Tax Procedures Code Act,* classifies tax assessments into four categories, namely; self-assessment, default assessment, advance assessment and additional assessment. Self-assessment is defined by section 22 thereof as a "return" treated as having been made by a taxpayer of the amount of tax payable. A taxpayer who submits a self-assessment return in the prescribed form for a tax period is treated, as having made an assessment of the amount of tax payable. Additional assessment is defined by section 25 thereof as an "[amendment to] a tax assessment" made for a tax period to ensure, inter alia, that the taxpayer is liable for the correct amount of tax payable in respect of the period.

[38] Under the system of large taxpayers' voluntary compliance, self-assessment imposes on the taxpayer, in the first instance, responsibility for calculating taxable income and the tax due on that income. Because some business entities abuse the trust bestowed on them by the law to under declare or not to declare their income, hence evading payment of taxes, the taxpayer's calculations may be reviewed by revenue officials when returns are filed and may be subject to further

audit. There may be or may not be a difference between the liabilities reported by the taxpayers on their returns and the liabilities calculated by the tax administration.

[39] Although an assessment is generally the process by which the tax authority reviews tax returns to confirm their correctness and determine the final tax liability, such that tax returns are mere documents filed with the tax authority that report income, expenses, and other relevant financial information, for purposes of assessment, that is not the case with the self-assessment scheme. Under the self-assessment scheme, the review of the details disclosed in the self-assessment tax returns filed by the large taxpayers is done in order to ascertain their accuracy and compliance. Self-assessment is technically not a mere report of taxable income by the tax payer that forms part of their tax returns, it is an actual assessment of the amount of tax payable. It thus fits within the type of assessment that is envisaged by section 15 (1) of *The Tax Appeals Tribunals Act*.

[40] That section therefore does not exclusively refer to an assessment by the tax administration; it also includes a self-assessment. The self-assessment tax return is not necessarily the final calculation; it may be accepted or not accepted as correct by the tax administration. When after auditing self–assessment tax returns the tax authority makes any adjustments to it, intended to ensure that the taxpayer is liable for the correct amount of tax payable in respect of the period, that adjustment constitutes an additional assessment.

[41] The “tax assessed [being] in dispute” or “not in dispute” may therefore arise from either the original tax liability as self-assessed by the taxpayer or from an additional assessment raised by the tax administration. This is because the self-assessed tax liability may be disputed by the tax authority, while the additional assessment may be disputed by the taxpayer. The obligation to pay 30% tax before resolution applies only after a tax dispute is submitted to the jurisdiction of the Tribunal. Tax

disputes arise when there is a disagreement between taxpayers and tax authority regarding the interpretation or application of tax laws.

[42] Disputes on account of “tax assessed” may arise in connection with any of the four modes of assessment, i.e. self-assessment, default assessment, advance assessment and additional assessment. These disputes may concern various issues such as the accuracy of a tax return, the eligibility for tax deductions or credits, the correct amount of tax liability, or transfer pricing adjustments. When the dispute concerns the correct amount of tax liability, the disputed quantum may arise from either the tax-payer’s self-assessment or the tax administration’s additional assessment.

[43] Appeals to the Tribunal are preferred on basis of taxation decisions or objection decisions. Section 15 (1) of *The Tax Appeals Tribunals Act* requires the deposit to be made pending final resolution of the objection. It therefore applies to the scope of the amount in dispute submitted to the jurisdiction of the Tribunal. Sometimes the entire amount will be in dispute while on other occasions only a part of it may be in dispute. Where the entire amount demanded is in dispute, the 30% deposit requirement will be applied to the entire amount in dispute. Where only a part of the amount assessed is in dispute, the 30% deposit requirement will be applied either to that part of the amount assessed that is not in dispute or to the part that is in dispute, whichever is greater.

[44] In the instant case, the dispute was not over the quantum of the appellant’s self-assessed tax but over the 1st respondent’s adjustment of the taxpayer’s declared income or expenses, resulting in disagreements over the correct tax amount contained in the additional assessment. The entire amount stated in the additional assessment was disputed. In Tax Application No. 46 of 2022 the appellant sought to challenge the 1st respondent’s objection decisions made on 17th February, 2022 regarding the appellant’s objections to the additional assessments. The appellant contended that the 1st respondent had unlawfully assessed and charged shs.

8,093,539,724/= as Local Excise Duty in respect of goods that the appellant had exported and shs. 6,098,292,276/= as Value Added Tax on exported sales.

[45] The dispute thus concerned eligibility for tax deductions or credits, and not the accuracy of the appellant's tax return. The quantum in dispute was limited to the amount stated in the additional assessment and not the self-assessment. There was no agreement between the parties regarding any part of that amount, hence the 30% deposit requirement applied to the entire sum stated in the additional assessment. That the appellant had paid the amount arrived at in its self-assessment prior to the filing of the application for review, was irrelevant.

[46] The Tribunal therefore came to the correct conclusion when it applied section 15 (1) of *The Tax Appeals Tribunals Act* only to the quantum arising from the disputed form of assessment, i.e. the 1st respondent's additional assessment, rather than an assessment that was not in direct dispute before it, i.e. the appellant's self-assessment. Although there were midsections in the Tribunal's analysis leading to that conclusion, I find that in the final result they were inconsequential. For different reasons therefore, I come to the same conclusion and as a result find no merit in grounds 2 – 6 of the appeal.

iii. Exercise of the Tribunal's jurisdiction to punish contempt;

[47] In the first ground of appeal, the appellant faults the Tribunal for having made a finding of contempt against the appellant and thereby proceeded to impose sanctions against it. The appellant contends that the Tribunal did so without jurisdiction.

[48] Contempt of court is a legal concept empowering courts to address threats to the orderly conduct and integrity of judicial proceedings in the form of disrespectful or disruptive behaviour and disobedience to court orders. Administrative tribunals too possess contempt powers, allowing them to sanction individuals for disrupting

proceedings, disobeying orders, or showing disrespect, though the extent of these powers is often defined by specific legislation. There is no doubt that such a power is essential to the maintenance of orderly proceedings and public respect which the courts and administrative Tribunals with quasi-judicial power must enjoy if they are to function efficiently.

[49] In dealing with contempt, it is important to distinguish between the notions of criminal contempt and civil contempt. The purpose of criminal contempt is punishment for conduct calculated to bring the administration of justice by a Tribunal into disrepute. On the other hand, the purpose of civil contempt is to secure compliance with the process of a Tribunal including, but not limited to, the process of a Tribunal. Civil contempt is constituted in the failure to do something which the party is ordered by the Tribunal to do for the benefit or advantage of another party to the proceeding before the Tribunal, while criminal contempt is constituted by acts done in disrespect of the Tribunal or its process or which obstruct the administration of justice or tend to bring the Tribunal into disrespect.

[50] A civil contempt is not an offence against the dignity of the Tribunal, but against the party in whose behalf the mandate of the Tribunal was issued, and a fine is imposed for his indemnity. But criminal contempts are offences upon the Tribunal such as wilful disobedience of a lawful writ, process, order, rule, or command of Tribunal, and a fine or imprisonment is imposed upon the contemnor for the purpose of punishment (see *Black's Law Dictionary*, 6th ed. (St. Paul: West Publishing Co., 1990), at p. 319). Contempt that is coercive, compensatory or remedial in nature is civil contempt while that which is designed solely to punish the violation of an order is considered criminal.

[51] Coercive contempt is prospective; it seeks to future obedience and is resorted to until the party has complied with the order. In contrast, criminal contempt is retrospective; it responds to past violations. Civil contempt benefits a party directly, by directly indemnifying the party for the harm the contemnor caused by violating

the order, while criminal contempt is the state's method of punishing a recalcitrant without benefiting opposing litigants directly. The proceeding and remedy are for civil contempt if the punishment is restitutional, compensatory or remedial, and for the complainant's benefit where the primary purpose is to provide a remedy for an injured party and to coerce compliance with an order; but they are for criminal contempt where the sentence is punitive, to vindicate the court's or tribunal's authority, used to punish a person for violating an order or expressing disrespect for the court or tribunal.

[52] Contempt *in facie curiae* consists of misconduct in the actual court room and contempt *ex facie curiae* is directed to conduct outside the court room, exemplified by conduct scandalising the Court and by refusing to obey orders of the Court. It is trite that every court is deemed to have the power to punish contempt. It is inherent in all courts and its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice (see *Florence Dawaru v. Angumale Albino and another, H.C. Misc. Application No. 96 of 2016*; *Michaelson v. United States, 266 U.S. 42 (1924)*; *In re Hayes, 48 200 N. C. 133, 156 S. E.2d 791 (1931)*; *Attorney General of Québec v. Hébert [1900] 2 Q.B. 36, at 40* and *ex parte Robinson, 86 U.S. (19 Wall.) 505 (1873*). This authority is an intrinsic aspect of a court's ability to function effectively and is not always explicitly granted by statute but rather arises from the need to administer justice, protect the authority of the court and the dignity of the judiciary from insult or scandal, prevent interference, prejudice, or obstruction of justice, ensuring the public can trust the judicial process and in order to maintain a respectful and orderly environment necessary for fair legal proceedings.

[53] It is a matter of statutory interpretation whether an administrative tribunal possesses authority to punish persons for contempt whether committed *in facie curiae* of or *ex facie curiae* the tribunal. Administrative tribunals too when exercising quasi-judicial powers may generally find persons in contempt *in facie*

curiae and punish them without the need for judicial endorsement. The power to punish for contempt *in facie curiae* (disrespectful or disorderly conduct which interferes with the operation of the tribunal in the actual hearing room while in session) characterised as jurisdiction over civil contempt for breaches of its orders and instructions, is a special jurisdiction which is inherent in all tribunals for the protection of the public interest in the proper running of administrative justice. Administrative tribunals must have adequate means of compulsion to secure compliance with their orders and to facilitate the examination of witnesses and the production of testimony. If adequate sanctions are unavailable, effective action will be prevented and the administrative process will lose one of its primary values.

[54] Hence the power to commit for contempt *in facie curiae* is a part of the common law, developed by the courts through judicial decisions. They may exercise contempt powers in order to carry out their quasi-judicial functions. Orderly management of administrative justice requires that those who persist in disturbing or slowing down quasi-judicial proceedings be punished without undue delay.

[55] There is however a presumption against the conferral of power upon tribunals to punish for civil and criminal contempt *ex facie curiae*, a presumption that only clear statutory language can displace. The power to impose a fine or imprisonment in order to compel the performance of a legal duty can only be exerted under the law, by a competent quasi-judicial tribunal having jurisdiction in the premises. Consequently, the administrative tribunals' power to punish for contempt *ex facie curiae* is, at present, more limited than that of Courts. It is feared that the power of administrative tribunals to punish for contempt committed *ex facie curiae* is liable to result in inquiries which may well involve a tribunal in areas which are practically impossible to define in terms of jurisdiction and completely foreign to its own area of jurisdiction, which by definition is limited, such that if they are without any means of ensuring that their lawful orders are observed, the better option is for the courts to come to their aid rather than exercise such a power which is supervisory in nature. The Tribunals' primary role in the legislative scheme is that of dispute

resolution; they have no general supervisory power, and the task of enforcement is generally left to Courts.

[56] While at common law only courts of law have the power to punish for contempt *ex facie curiae*, clear and unambiguous statutory language can override the common law and confer *ex facie curiae* contempt powers on an administrative tribunal (see *Chrysler Canada Ltd. v. Canada (Competition Tribunal), [1992] 2 SCR 394* and *Re Diamond and the Ontario Municipal Board, [1962] O.R. 328*). In this context, section 37 (d) of *The Tax Appeals Tribunals Act* is thus indicative of the intention of Parliament to give the Tribunal contempt powers going beyond those *in facie curiae* which an administrative tribunal would ordinarily exercise, now extending to *ex facie curiae* conduct of a criminal nature. The Tribunal therefore misdirected itself when it found that it does not have criminal jurisdiction to impose a fine under the said section. It is a power though to be exercised, not with coercive or remedial intent, but rather solely to punish the violations and prohibited conduct specified therein. Exercise of that power triggers most of the procedural safeguards accorded a criminal proceeding.

[57] Contempt is manifested by acts or utterances which; (i) scandalise or tend to scandalise, or lower or tend to lower the authority of the tribunal; or (ii) prejudice, or interfere or tend to interfere with, the due course of any quasi-judicial proceeding before the tribunal; or (iii) interfere or tend to interfere with, interrupt, obstruct, create a disturbance or tend to obstruct, the conduct of administrative justice in any other manner. Generally speaking, a failure to comply with an order of the Tribunal, whether a procedural one or otherwise, may constitute contempt of the Tribunal. The contempt for which the appellant was accused arose over alleged breach of the Tribunal's orders and thus is a species of contempt *ex facie curiae*, and as such fell within the purview of section 37 (d) of *The Tax Tribunals Act*, punishable as criminal contempt.

[58] Contempt of court must be proven to the criminal standard, that is, beyond a reasonable doubt. Notwithstanding the more onerous burden of proof, proceedings for contempt of court are civil proceedings and not in the nature of a criminal trial. The applicant must prove: (i) that the respondent knew of the terms of the relevant order; (ii) acted or failed to act in a manner that involved breach of the order; and (iii) knew of the facts which made his or her conduct a breach. Typically, proving that the order has been properly served on the respondent is enough to show that the respondent knew of the terms of the relevant order. Such orders must include a penal notice, which warns the respondent of the consequences of non-compliance with the order, for example, by including wording such as: "If you the within-named [….] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized."

[59] Disregarding orders or judgments arising from civil proceedings, or in not doing something ordered to be done in a cause, is ordinarily not criminal in its nature. However, when the element of public defiance of the courts' or tribunal's process in a way calculated to lessen societal respect for the courts or tribunals is added to the breach, it becomes criminal. In terms of the latter instance, disgrace is brought upon the court's or tribunal's moral authority. The gravamen of the offence is the open, continuous and flagrant violation of a court or tribunal's order without regard for the effect that behaviour may have on the respect accorded to such edicts. A criminal contempt violates the public's rights generally since courts and tribunals serve as the public's instrument of justice.

[60] Contempts which tend to bring the administration of justice into scorn, or which tend to interfere with the due course of justice, are criminal in their nature; but contempt in disregarding orders or judgments of a Civil Court, or in not doing something ordered to be done in a cause, is not criminal in its nature (see *United Nurses of Alberta v. Alberta (Attorney General), (1990) 104 A.R. 246*). A person who simply breaches a court order is viewed as having committed civil contempt. However, when the element of public defiance of the court's process in a way

calculated to lessen societal respect for the courts is added to the breach, it becomes criminal. Criminal contempt (of a court order) must be a public defiance of a court order, and must be done with intent of the consequences of the defiance and knowledge that the action would depreciate the court's authority.

[61] This distinction is very important because it is only criminal contempt which may be dealt with under section 37 (d) of *The Tax Tribunals Act*. While publicity is required for the offence, a civil contempt is not converted into a criminal contempt merely because it attracts publicity, rather because it constitutes a public act of defiance of the Tribunal in circumstances where the contemnor knew, intended or was reckless as to the fact that the act would publicly bring the Tribunal into contempt.

[62] To qualify as criminal contempt, conduct occurs mainly in three categories: actions or omissions undermining or lowering the authority of a court or tribunal, interfering with normal judicial or quasi-judicial processes, and interfering with the administration of justice. There must also be a real risk that public confidence in the due administration of justice would be undermined. Judicial authority, in the form of criminal contempt power, is then vindicated through punishment and fines. The general goals of criminal contempt are to punish and deter, as well as to vindicate the public interest in obedience to lawful orders.

[63] A proceeding resulting in the imposition of non-compensatory contempt fine for the violation of an order will be deemed a criminal contempt proceeding. The evidence before the Tribunal did not prove to the required standard that any of the respondents intended or was reckless as to the fact that not paying the 30% tax of the amount in dispute would publicly bring the Tribunal into contempt. In any case, the Tribunal abdicated the limited power given to it to punish *ex facie curiae* conduct of a criminal nature, and instead invoked the power to sanction *ex facie curiae* conduct of a civil nature, with which it is not vested. Moreover, the contempt

power is an extraordinary remedy, an exception to the tradition of fair and complete hearings. Its use should be carefully restricted to cases of actual obstruction.

[64] In the instant case, there was no need at all to invoke the contempt power. Failure to comply with 30% deposit requirement of the entire sum in dispute, as a condition for the temporary injunction order, ought to have resulted in the lapsing of the injunction and a possible dismissal of the Tax application.

Final Orders;

[65] I find that the Tribunal abused its contempt powers and acted in an arbitrary manner. Consequently, the first ground of appeal succeeds. The finding of contempt against the appellant and the resultant sanctions are set aside. Having succeeded only in part, the appellant is awarded half the costs of the appeal.

Delivered electronically this 27th day of August, 2025. …Stephen Mubiru……

Stephen Mubiru
Judge,
18th August, 2025

Appearances;

For the appellant : M/s Kampala Associated Advocates.
For the 1st respondent : The Legal Services & Board Affairs Department.