

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

***[CORAM: TUMWESIGYE, NSHIMYE, MWANGUSYA, MWONDHA,
TIB A TEM WA -EKIRIK XJBINZA JJ.SCJ***

CIVIL APPEAL NO.12 OF 2004

BETWEEN

UGANDA REVENUE AUTHORITY:..... APPELLANT

AND

RABBO ENTERPRISES (U) LTD

MT. ELGON HARDWARES LTD :..... RESPONDENTS

[An appeal from the judgment of the Court of Appeal at Kampala 20 before Honourable Justices (G.M.Okello, C.N.B. Kitumba and A.Twinomujuni JJA), dated 30th July, 2004,Civil Appeal No.55 of 2003.J

Representation

Mr. Ali Sekatawa, Mr. Habib Arike and Ms. Angel Nairnba appeared 25 for the appellant while Mr. Innocent Taremwa appeared for 1st Respondent.

JUDGMENT OF PROFESSOR LILLIAN TIBATEMWA- EKIRIKUBINZA.

This is a second appeal from the Court of Appeal .The brief background to the appeal is that the respondents sued the Commissioner General of URA in the High Court for recovery of trade goods and commercial trucks seized by the appellant and her agents. The reason for the seizure was that the Respondents had failed to pay tax for tons of cement that were imported into Uganda. The Respondents on the other hand contended that they had cleared all 15 the taxes and therefore the seizure and impoundment of their goods and vehicles was illegal. As a result, the Respondents claimed the value of the cement and the loss of earnings for the trucks. In considering the matter, High Court Judge, Okumu Wengi raised concern about the nature of the case before him. He held that since 20 the High Court was not a tax tribunal the dispute should have been first presented before the Tax Appeals Tribunal. That the High Court deals with appeals from the Tribunal.

Dissatisfied with the High Court decision, the Respondents preferred an appeal to the Court of Appeal. The essence of the appeal was that the learned trial Judge erred in holding that the High Court did not have original jurisdiction to hear tax disputes and only deals with tax appeals from the tribunal.

The Court of Appeal found that, the legal basis of the jurisdiction of the High Court is basically to be found in **Article 139 of the Constitution** and **Section 16 (1) of the Judicature Act**. That, both **Article 139** of the **Constitution** and **Section 16 (1) of the Judicature Act** confer power on the High Court with unlimited original jurisdiction in all matters. This meant that the original Jurisdiction of the High Court can only be changed by amending the Constitution.

The Court of Appeal further found that the mere fact that the Tax Appeals Tribunal Act was set up in compliance with **Article 152(3) of the Constitution**, does not give that Act any power to override a provision of the constitution.

That an Act of Parliament cannot repeal, deter or reverse a provision of the Constitution unless there was an Act to amend the Constitution because the Constitution is the Supreme law of the land.

The Court of Appeal went on to state that the conferment of appellate jurisdiction on the Tax tribunal by **Section 27 of the Tax Appeals Tribunal Act** over the decisions of tax cases has no effect on the original jurisdiction of the High Court conferred by **Article 139 (1)** of the High Court.

That meant that a party who is aggrieved by the decision of the tax authorities on tax matters may choose either to apply to the Tax Appeals Tribunal for review or file a suit in the High Court to redress the dispute. The choice is his or hers. Once he or she goes direct to the High Court, that court cannot chase him or her away on the ground that it lacks original jurisdiction in the Constitution.

In regard to whether the dispute was a tax dispute or ordinary tort, G.M Okello JA in his lead judgment held as follows:

“Section 14 (1) of the Tax Appeals Tribunal Act empowers Tax Appeals Tribunal to review taxation decisions. Taxation decision is defined in Section 1 (k) of the Act to mean: “any assessment, determination, decision or notice. ”

The complaint here is neither about tax assessment, determination, decision nor notice. It is about seizure.

I am aware that Section 114 (2) of the customs and management Act empowers the Commissioner General to place a lien on any goods belonging to any person to whom duty is due, within a bonded Warehouse under the control of the custom and any goods afterwards or entered for export by that person until such duty is paid. Section 114 (3) empowers the Commissioner General to issue a distress warrant.

In my view, this does not change the position. Where there is, like in this case, a seizure, the issue will be seizure ... Seizure is not a taxation decision within the meaning given here above. Therefore this is an ordinary tort. Even if it were a taxation decision, it would not have made any difference. The High Court would have original jurisdiction over it because High Court has unlimited original jurisdiction over all matters. ”

Uganda Revenue Authority being dissatisfied with the Court of Appeal decision preferred a second appeal to this Court on the following two grounds:

1. The Learned Justices of the Court of Appeal erred in fact and law when they held that the matter was an ordinary tort and not a tax matter.

2. The Learned Justices of the Court of Appeal erred in Law when they found that the High Court had original jurisdiction to determine tax matters.

The appeal was filed in this Court in 2007. However, before the determination of the appeal,

Parliament passed the Finance Act No. 18 of 2008 which waived all tax arrears, duty, interest and penalties due on or before 30th June 2002 and were still outstanding by 30th June 2008. The effect of the Act was that the respondent was no longer liable to pay the tax.

However, when the appeal came up for hearing, counsel for the appellant submitted that although the Finance Act had waived 30 the respondent's tax liability, there was still need to proceed with the appeal for purposes of clarifying points of law based on the grounds on which the appeal had originally been filed in this Court as indicated above.

Appellant's submissions

The appellant's counsel submitted that the decision to seize the 1st Respondent's consignment and imposition of a lien for the unpaid taxes falls within the meaning of a taxation decision.

Counsel cited Sections 99 (1) and Section 2 of the East African Customs and Transfer Tax Management Act.

Section 99 (1) provides:

"All goods imported into the country are liable to pay duty unless exempt by the appropriate laws in place."

Section 2, defines unaccustomed good as: "dutiable goods on which the full duties have not been paid and any goods, whether dutiable or not, which are imported or preferred or in any way dealt with contrary to the provisions of the Customs laws."

While relying on the above provisions of law, counsel submitted is that the 1st respondent imported dutiable goods and was therefore liable for customs duties.

In support of the action of imposing a lien on the Respondent's goods and vehicles, counsel cited **Section 114 (2) of the East African Customs and Transfer Tax Management Act Cap 27.**

The Section provides:

Any goods in a bonded warehouse or under Control of customs which belong to any person from which duty is due, and any goods afterwards imported or entered for export by that person, shall be subject to a lien for such debt and may be detained by the Commissioner-

General until such duty is paid and the claim of the Government shall have priority over the claims of whatever nature of any other person upon the said goods and the goods may be sold to meet the duty due if it is not paid within two months after the goods are detained.

Section 114 (3) of the Act further provides:

Where any duty payable to the government under subsection (1) or as penalty under this statute by a person is not paid one month after the due date of

payment, the Commissioner-General may authorize distress to be levied upon the following items-

(a) Goods, chattels and effects anywhere in the Country;

Counsel for the appellant also relied on the case of **Buzzard and Electrical (Pty) Ltd vs. 158 Jan Smuts Avenue Investments (Pty) Ltd 1996 (4) SA 19 (SCA)** wherein the Supreme Court of South Africa stated that a lien did not exist in vacuum, but to secure or reinforce an underlying claim.

In light of the above authorities, Counsel argued that the lien imposed on the vehicles was dependent on the demand letter to the 1st Respondent demanding payment of taxes worth Uganda Shillings 424, 769,945 together with penalties, which was the main claim.

In opposing the reasoning of the Court of Appeal Justices that **Section 1 (k) of the Tax Appeals Tribunal Act** limits a taxation decision to mean assessment, determination, decision or notice, the Appellant's counsel submitted that a taxation decision is not only limited to an assessment but to any notice/ decision and includes letters, minutes of the meetings at which decisions are made.

That the seizure of the goods and vehicles arose out of an assessment of the taxes which had not been paid. It is this that led 25 the Commissioner General to make a decision of seizure. As such, the Commissioner General's directive constituted a taxation decision within the meaning of **Section 1 (k) of the Tax Appeals Tribunal Act**.

Counsel prayed that this Court overturns the Court of Appeal decision that seizure is not a taxation decision.

Ground 2

In regard to this ground, it was submitted that **Article 139 (1)** of the **Constitution** which confers unlimited jurisdiction on the High Court is subject to other provisions of the Constitution. Counsel 35 argued that the Court of Appeal failed to give meaning to the proviso "subject to" in Article 139 (supra). That the Court merely placed undue emphasis on the High Court having unlimited original jurisdiction.

Counsel submitted that the provision "subject to" according to New Oxford dictionary of English means dependent or conditional upon. That as such, the High Court's unlimited original jurisdiction is regulated by other provisions of the Constitution under which the Tax Tribunal is established and has original jurisdiction in tax matters.

Counsel prayed that this Court overturns the Court of Appeal finding that the High Court has unlimited original jurisdiction over 15 all matters including tax matters.

Further, counsel prayed that this Court overturns the Court of Appeal's finding that a party who is aggrieved by a tax decision of the tax authority may choose either to apply to the Tax Appeals Tribunal for review or file a suit in the High Court to redress the dispute.

Respondent's Submissions

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On the other hand, counsel for the respondent argued that the High Court has unlimited original jurisdiction to hear and determine any matter. Counsel relied on **Article 139 (1)** of the

Constitution that provides for the High Court's unlimited jurisdiction and also **Section 16** of the **Judicature Act**.

It was also submitted that Article 152 (3) of the Constitution upon which the appellant relied to argue that the Tax Tribunal other than the High Court had jurisdiction was misconceived. **Article 152 (3)** of the **Constitution** provides:

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

Counsel argued that by virtue of **Article 2 (2)** of the **Constitution**, the law made by Parliament (The Tax Appeals Tribunal Act) under Article 152 (3) (supra) could not oust the unlimited jurisdiction of the High Court. **Article 2 (2)** provides:

Supremacy of the Constitution.

If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

That, the Constitution is the Supreme law of the land which gives validity of all other Acts of Parliament. Therefore, Section 27 of the Tax Appeals Tribunal Act which confers appellate jurisdiction on the High Court over decisions of the Tribunal did not in any way affect the unlimited original jurisdiction of the High Court. To buttress this argument, counsel relied on the decision of **Commissioner General of Uganda Revenue Authority vs. Meera Investments Limited SCCA No.22 of 2007** wherein Kanyeihamba, JSC inter alia held that:

"The conferment of the appellate jurisdiction on the High Court by Section 27 of the Tax Appeals Tribunal has no effect on the original jurisdiction of the High Court conferred by Article 139 (1),"

In regard to the argument on interpretation of constitutional provisions, counsel for the respondent submitted that the argument was misguided as the same was never raised at the Court of Appeal or High Court. That the appellant was seeking to smuggle in the issue of constitutional interpretation.

Counsel also submitted that Section 14 of the Tax Appeals Tribunal Act, Cap 345 gave a litigant choice on where to file a tax dispute- either in the High Court or the Tax Tribunal. In support of this view, counsel relied on **Section 14** of the **Tax Appeals Tribunal Act** which provides that: **"Any person who is aggrieved by a decision made under a taxation act by the Uganda Revenue Authority may apply to the Tribunal for a review of the decision."**

Counsel argued that the word “may” appearing in Section 14 does not make it mandatory for an aggrieved party to apply to the Tax Appeals Tribunal for review of a tax matter.

Consideration of the Court

Two central issues arise from the grounds for the Court’s consideration;

1. Whether the seizure of the respondents’ goods and vehicles is strictly a tort or a tax dispute.
2. Whether or not the High Court has unlimited original jurisdiction to adjudicate tax disputes.

Issue 1

Whether the seizure of the respondents’ goods and vehicles is strictly a tort or a tax dispute.

A tort is defined as a civil wrong. It was the respondents’ contention that the act of the appellant of seizing their vehicles and goods was a civil wrong. On the other hand, the appellant contends that the seizure of the goods and vehicles arose out of a statutory remedy provided under **Section 144 (3) (supra) of the East African Customs and Transfer Management Act.**

I note that the act of seizure of the goods by the appellant was in exercise of a remedy provided for in law also known as a statutory lien. **Halsbury’s Laws of England, Volume 28, fourth edition, page 223** states that:

A statutory lien arises by virtue of a statute and is different from a common law lien because the primary question will be the meaning of the statute and it will not necessarily follow that the principles affecting a common law lien are intended by the statute to apply.

In the present case, the lien imposed on the goods, out of which the dispute arose, was premised on a statutory provision - Section 144

(supra) of the East African Customs and Transfer Tax Management Act.

The dispute between the parties arose out of an attempt by URA to use power granted to it by

statute to enforce payment of what the tax body perceived as taxes owed by the respondent. On the other hand, the respondent denied liability. In such circumstances there was need to resolve the dispute. What would be adjudicated would be whether or not the respondent in fact and in law owed tax to URA. This question would have to be resolved before an ancillary question would be determined: whether a statutory lien existed over the goods, whether URA was using the law of seizure appropriately. The said questions involve interpretation of tax law, they hinge on the question whether or not the respondent owed tax to URA. Whether or not an entity owes tax money involves tax assessment and tax decisions. Even where URA is found to have erred in its assessment and subsequent decisions, such error does not amount to a tort.

In the circumstances, I find that the seizure arose out of a tax assessment on the imported goods. It is therefore my considered view that the learned Justices of Appeal erred when they categorized the seizure of goods as a tort.

Therefore, ground 1 succeeds.

Issue 2

Whether or not the High Court has unlimited original jurisdiction to adjudicate tax disputes,

The term jurisdiction as defined in Words and Phrases Legally Defined, Volume 3, I-N at page 13 means:

Authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be extended or restricted by

the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters which the particular court has cognizance or as to the areas over which the jurisdiction shall extend, or it may partake both these characteristics. If the jurisdiction of an inferior court or tribunal ...depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in

order to decide whether it had jurisdiction; ...where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. (My emphasis)

Following from the above definition, it is a trite principle of law that the jurisdiction of a court must be found in Statute.

Article 139 of the Constitution provides for the Jurisdiction of the High Court thus:

Jurisdiction of the High Court.

- (1) The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.**
- (2) Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court.**

On the other hand Article 152 (3) of the Constitution provides that: “Parliament shall make laws to establish tax tribunals for the purposes of settling tax disputes.”

Pursuant to the above Constitutional provision, Parliament enacted the Tax Appeals Tribunals Act cap 354. The short title of the Act states as follows: “An Act to establish tax appeals tribunals pursuant to Article 152 (3) of the Constitution.”

Section 14 provides:

“Tribunal to review taxation decisions.

(1) Any person who is aggrieved by a decision made under a

taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision.

- (1) The tribunal has power to review any taxation decision in respect of which an application is properly made.
- (2) A tribunal shall in the discharge of its functions be independent and shall not be subject to the direction or control of any person or authority.” (Emphasis of Court)

It is a cardinal rule of law that in interpreting the Constitution, it should be read as a whole. The Supreme Court in **Nyakaana vs. National environment Management Authority and Others (Constitutional Appeal No. 05 of 2011)** in emphasizing the rule, cited the authority of **Paul K. Ssemwogerere and 2 others vs. Attorney General, Constitutional Appeal No. 1 of 2002**, wherein the court held that in interpreting the Constitution, the entire Constitution has to be read as an integrated whole with no particular provision destroying the other but each sustaining the other so as to promote harmony of the Constitution. Furthermore, all provisions bearing on a particular issue should be considered together so as to give effect to the purpose of the Constitution.

Article 139 (1) of the **Constitution** provides that, the High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.

My understanding of the above Constitutional provision is that the High Court exercises its unlimited jurisdiction subject to other provisions of the Constitution. One such provision envisaged in Article 139 (1) is Article 152 (3) of the Constitution which provides for Tax Appeals Tribunals.

The establishment of Tax Tribunals is rooted in the Constitution - Article 152 (3) of the Constitution - which not only gives name to these quasi-judicial tribunals but also envisages their establishment through an Act of Parliament. The Article also specifically empowers the said entities to handle taxation disputes. It is in line with this that Parliament enacted the Tax Appeals Tribunals Act.

I therefore respectfully disagree with the conclusion and reasoning is of the Court of Appeal to the effect that a finding that a tax dispute should start with the Tribunal and only go to the High

Court as an appeal would tantamount to an Act of Parliament taking away the constitutionally given powers of the High Court. It is the Constitution itself which, through Article 152 (3) limit the original jurisdiction of the High Court and empowered the Tribunals with jurisdiction. The powers of the High Court are subject to the Constitution.

I also respectfully disagree with the holding of the Court of Appeal that a litigant can choose whether to take a tax matter to the High Court as a court of first instance or to the Tax Appeals Tribunal. It must be noted that under **Section 3 of the Tax Appeals Tribunal Act: a person is not qualified to be appointed chairperson of a tribunal unless he or she is qualified to be appointed a judge of a High Court.** Furthermore, under Section 30, a person cannot be appointed a registrar of the Tax Tribunal if she or he is not qualified to be a registrar of the High Court. I opine that it would be bizarre that our legal regime would give power to an individual to choose where to lodge a complaint by offering choices between institutions equally qualified to handle the matter.

In addition to the foregoing, it is apparent from a look at various provisions of the Act that proceedings before the Tax Tribunal are treated as judicial proceedings. For example, **Section 19 of the Tax Appeals Tribunal Act** states that a decision of a tribunal shall have effect and be enforceable as if it were a decision of a court; and under **Section 21**, a Tribunal may make an order as to costs against a party, and the order shall be enforceable in like manner to an order of the High Court.

I am also emboldened in my opinion by **Section 27 of the Tax Appeals Tribunal Act** which provides that a party dissatisfied with a decision of the Tribunal may appeal to the High Court. The Section provides thus:

Appeals to the High Court from decisions of a tribunal.

- (1) 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, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the tribunal.
- (2) An appeal to the High Court may be made on questions of law only, and the

notice of appeal shall state the question or questions of law that will be raised on the appeal.

(3)The High Court shall hear and determine the appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the tribunal or an order remitting the case to the tribunal for reconsideration.

It would be bizarre that the legal regime would give the High Court dual jurisdiction.

The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunals and only taken before the High Court on appeal.

In support of his argument that Article 152 (3) does not oust the unlimited original jurisdiction of the High Court in all matters, the respondent relied on the lead judgment of Kanyeihamba J.S.C in the case of The Commissioner General Uganda Revenue Authority vs. Meera Investments, Civil Appeal No.22 of 2007.

In the Meera case, the respondent (Meera) filed a Civil Suit in the High Court seeking specified declarations regarding its liability to pay taxes on certain properties. The suit was based on the fact that the Uganda Investment Authority, under statutory powers derived from Statute No.1 of 1991, issued a certificate of incentives to the respondent exempting some of its properties from tax liability.

Later, the Commissioner General URA decided to impose and demanded tax against some of the properties of the respondent which it claimed were included in those exempted from taxation by the Investment Authority. The respondent objected to the demands of that tax and proceeded to sue the appellant in the High Court, for actions the respondent deemed to be contrary to and in conflict with the statutory powers and decisions of the Uganda Investment 20 Authority, another statutory corporation.

URA (the appellant) raised three preliminary objections, one of which was that the matter in issue was a dispute with inbuilt internal and appeal procedures laid out that exclude original jurisdiction of the High Court. The High Court overruled the objection. The respondent

appealed to the Court of Appeal on the ground that the learned judge erred in rejecting the submission that the matter was prematurely before court.

The learned Justices of Appeal upheld the learned trial judge's decision. URA appealed to the Supreme Court *inter alia* on the ground that the Court of Appeal erred in not holding that the suit was prematurely before the High Court.

It was contended for the appellant (URA) that the law establishing the Uganda Revenue Authority provides an internal mechanism for resolving any dispute arising from the assessment of and demand for tax. Counsel supported his contention on this matter by citing provisions of the **Tax Appeal Tribunal Act**, (cap. 196), which was enacted in compliance with **Article 152 (3) of the Constitution**. He cited Sections 16 (1), (4), (6), (7) and 18 (a) and (b), 19, (3) and (6) 20, 22(2) of the same Act. Consequently, Counsel for the appellant contended that the suit before the High Court was premature since a dispute had to be resolved internally first before a party could invoke the jurisdiction and powers of the court.

On the other hand, counsel for the respondent opposed the appeal and supported the findings and decisions of the courts below on the objection. Counsel emphasized that under both the Constitution of Uganda and other laws, the High Court has unlimited jurisdiction to hear any civil or criminal matter raised before it and therefore, the appellant's submission that that jurisdiction excludes taxation matters is wrong in law and unattainable.

Counsel for the respondent rejected the argument that the original suit in the High Court was filed prematurely. They contended that the proceedings before court now did not arise out of a taxation matter but out of the Commissioner's decision to challenge or ignore the decision of the Uganda Investment Authority, another statutory body that exempted the respondent from various heads of taxes.

Counsel contended that, therefore the dispute between the parties is not about the nature or quantum of taxes, it was not whether the tax assessment was fair or unfair, issues which statute empowers the Tax Appeals Tribunal to determine first. That the issue is about whether the Commissioner General can ignore or interfere with the decisions of the Uganda Investment Authority; whether the Commissioner General of the revenue authority, a statutory body, has the powers to override those of the Uganda Investment Authority, another statutory body.

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In his judgment, Kanyeihamba JSC held *inter alia* that the case was about the conflict between the provisions of the Income Tax Act and the Value Added Tax Act, and that their interpretation and nature of application is a matter for a court of law and not for the parties or a tax tribunal. He further stated that the case was based on a tax payer challenging URA's powers to impose tax on property (and not on whether the tax assessment was fair). That having found that the case was not concerned with the mere assessment, demand and refusal to pay tax but with the interpretation of and relationship between the Uganda Revenue Authority Act and the Uganda Investment Act, the need to first present the matter to the Tax Tribunal did not arise.

It is possible that had the learned Justice come to the conclusion that the dispute was concerned with demand and fairness of assessment, he would have held that the matter had to be presented to the Tribunal. I am inclined to believe that it is because the dispute revolved around powers granted by two Acts of Parliament to different entities that the learned Justice made a finding that it was the High Court to deal with what was in essence an issue of statutory interpretation. The holding of the learned Justice of the Supreme Court that the Meera dispute properly belongs to the jurisdiction of the High Court and not of a tax tribunal, and that Article 139 (1) of the Constitution which gives the High Court unlimited original jurisdiction in all matters remains superior and mandatory, must therefore be understood in the context of that case. Consequently, my conclusion is that to that extent, the decision in Meera Investments (Supra) is distinguishable from the matter before us since I have already held that the matter in issue before us constituted a tax matter/dispute.

I further take note of the fact that in **Meera Investments**, Kanyeihamba JSC did not discuss the meaning of the phrase "*subject to the provisions of this Constitution?*", found in Article 139 (1) of the Constitution, a phrase which, as already discussed in this judgment above, places the powers of the High Court within the wider context of the constitution as an entire document. Further still, the learned Justice did not address his mind to the cardinal rule of law that while

adjudicating matters touching the constitution, a court must read the constitution as an integrated whole with no particular provision destroying the other. Article 139 deals with the power of the High Court to resolve disputes and so does Article 152 (3). The learned Justice did not address his mind to the need to give effect to the purpose of the legislature in providing for the establishment of Tax Tribunals while aware of the ‘unlimited’ original jurisdiction of the High Court. For these two identified lapses, I find that the Meera decision was made *per incurium*. To that extent, I am not bound to follow the Meera decision cited by Counsel for the respondent as authority for the proposition that Article 152 (3) does not oust the unlimited original jurisdiction of the High Court in some taxation matters. I am therefore obliged to proceed under Article 132 (4) of the Constitution which provides as follows:

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“The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears too it right to do so; ...”

I must also mention the fact that in his lead judgment in the Meera Investment case (Supra) Kanyeihamba J.S.C based his decision on the judgment of the Court of Appeal and specifically on the lead judgment of Okello J.A in M/S Rabo Enterprises (U) Ltd v Commissioner General, Uganda Revenue Authority No. 55 of 2003, the very case which is before us on appeal. The learned Justice stated thus:

The Constitutionality of the original and unlimited jurisdiction of the High Court was emphatically pronounced by the Court of Appeal in M/S Rabo Enterprises (U) Ltd v Commissioner General, Uganda Revenue Authority, C.A No. 51 (sic) of 2003 where in the lead judgment (Okello, JA.) declared that: “An Act of Parliament cannot oust the original jurisdiction of the High Court, except by an amendment of the Constitution. ... The conferment of the appellate jurisdiction on the High Court by Section 27 of the Tax Appeal Tribunal has no effect on the original jurisdiction of the High Court conferred by Article 13 (1) of the Constitution. That means that a party who is aggrieved by the decision

of the tax authorities on tax matters may choose either to apply to the Tax Appeals Tribunal for review or file a suit in the High Court to redress the dispute. The choice is his/hers. Once he/she goes direct to the High Court, that court cannot chase him/her away on the ground that it lacks original jurisdiction in the matter". In my opinion, the learned Justice of Appeal is correct on this interpretation of the constitutional provisions vis-a-vis Acts of Parliament.

1 It is critical that I point out that the case referred to with approval by Justice Kanyeihamba in his
0 2008 judgment and which the respondent sought to rely on in this appeal is the very case which is before us on appeal. Although the present appeal was filed in this Court in 2007, the judgment of Kanyeihamba was delivered in 2008.

Another authority relied upon by the respondents is that of **David Kayondo vs. The Co-operative Bank (U) Ltd SCCA NO. 1091 of 1992**. The relevant facts of the case are that the appellant, a former employee of the respondent Bank, sued the respondent bank in the High Court for terminating his contract of service. The respondent bank was at the time registered under the Cooperative Societies Act No. 30 of 1970. Section 73 of the Act was to the effect that any dispute arising between the Society (in this case the bank) and any of its officers shall be referred to the Registrar of the Society for decision.

One of the issues for determination was whether Section 73 of the Co-operative Societies Act ousted the unlimited jurisdiction of the High Court.

The trial Judge held that the use of the word "shall" in the Section clearly and unequivocally ousted the jurisdiction of the High Court in such disputes. The Court of Appeal on the other hand overturned the trial Judge's decision. It found that Section 73 did not oust the jurisdiction of the High Court in disputes between co-operative societies and their officers. That under the Constitution and the Judicature Act, the High Court had unlimited original jurisdiction and that for a statute to oust the jurisdiction of the High Court, it must say so expressly.

The above authority is distinguishable from the present facts;

Whereas in the David Kayondo case the jurisdiction of the Registrar to handle disputes was derived **solely** from the statute- The Cooperative Societies Act- in the present case, the jurisdiction of the Tax Appeals Tribunal to handle tax disputes is premised first in the Constitution [**Article 152 (3)**] and then the Statute- the Tax Appeals Tribunal Act.

In light of the foregoing, I opine that the two authorities relied upon by the respondent are not

useful for the resolution of the issues raised in the appeal before this Court.

Having found in issue 1 above that the seizure of goods arose from a tax assessment of customs duty and qualifies as a tax dispute, it follows that it is the Tax Appeals Tribunal that had jurisdiction¹ to handle the matter.

Therefore ground 2 of the appeal succeeds.

Orders of Court

Arising from the foregoing, I would allow the appeal and set aside the judgment of the Court of Appeal. Consequently, the judgment of the trial judge is hereby reinstated.

Although it is a trite principle of Law that costs normally follow the event, in the matter before us, the appellant who has succeeded on all the grounds of the appeal did not pray for costs. Consequently, I would make no order as to costs.

Dated at Kampala this ...10th of July..... 2017.

PROFESSOR DR. LILLIAN TIBATEMWA-EKIRIKUBINZA

JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: TUMWESIGYE; NSHIMYE; MWANGUSYA; MWONDHA, TIBATEMWA, JJ.SC)

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RESPONDENTS

2. MT. ELGON HARDWARES LTD

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JUDGMENT OF TUMWESIGYE, JSC

I have had the benefit of reading in draft the judgment of my learned sister, Hon. Justice Professor Lillian Tibatemwa-Ekirikubinza, JSC and I agree with her reasoning and conclusion that the appeal should be allowed and the High Court judgment should be reinstated.

As the other members of the court also agree, the appeal is allowed and the judgment of the Court of Appeal is set aside. The judgment of the High Court is accordingly reinstated.

There will be no order as to costs.

Dated at Kampala this 10 TH DAY OF JULY 2017

JOTHAM TUMWESIGYE

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: TUMWESIGYE, NSHIMYE, MWANGUSYA,

MWONDHA & TIBATEMWA -EKIRIKUBINZA, JJ.S.C.)

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2. MT ELGON HARDWARES LTDj:.....:RESPONDENTS

JUDGMENT OF A .S. NSHIMYE, JSC.

I have had the benefit of reading the lead judgment of Hon Lady Justice Prof L. Tibatemwa Ekirikubinza JSC. I agree with it and the orders proposed by her.

Dated at Kampala this 10th day of July 2017

AS NSHIMYE

JUSTICE OF SUPREME COURT

