

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. TAT 18/2010**

**ANERI MADETE WANGOLO.....APPLICANT**

**VS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

This ruling is in respect of an application challenging the respondent's decision to tax the applicant's gratuity and benefits in respect of use of an employment vehicle.

The brief facts of the case are that: The applicant was employed in the public service of the Government of Uganda from September 1969 up to his retirement on 1.8.1998. At the time of his retirement he had risen to the rank of Permanent Secretary. But two years before his retirement, in 1996, he was transferred to the Uganda Human Rights Commission as its Secretary. After he retired from Public Service, he was on 1.7.1999 appointed Secretary to the Uganda Human Rights Commission on a five year contract. The contract among others, provided for: a chauffeur driven car and gratuity at the rate of 30% of the consolidated salary payable to him for the duration of the contract.

At the expiry of the contract, the applicant was paid gratuity of Shs. 47,315,230/= which the respondent subjected to tax as follows: Pay As You Earn (PAYE) at 30% amounting to Shs 14,119,458/=, tax in respect of the use of vehicle amounting to Shs. 5,554,400/=. The total tax payable was Shs 19,673,898/=. The applicant was aggrieved by the taxation decision of the respondent; hence this application.

During scheduling the following issues were agreed by the parties.

1. Whether the applicant's gratuity was taxable?
2. Whether the use of the motor vehicle by the applicant as a benefit was taxable?

### 3. What remedies are available to the parties?

The parties agreed not to call witnesses but to rely on written submissions

Counsel for the applicant argued that the applicant's gratuity was not taxable on the ground that the applicant was in public service. Article 175(b) of the Constitution of Uganda and Section 1(f) (1) of the Pensions Act Cap 286 define 'Public Service'. Since the applicant had served five years in the Uganda Human Rights Commission which is provided in Articles 51 - 58 of the Constitution he had, no doubt, served in the Public Service all through. Accordingly, his gratuity should not have been subjected to tax in accordance with Section 8 of the Pensions Act.

Secondly, S.10 of the Uganda Human Rights Commission Act Cap 24 provides for a Secretary to be appointed in consultation with the Public Service Commission. This is done to ensure that the terms and conditions of service of a Secretary should not be less favourable than those of a Permanent Secretary. The person so appointed should be qualified to be a Permanent Secretary in the Public Service Commission. In this respect, Counsel submitted that this clearly means that any term in the contract of service of the applicant to serve as Secretary to the Commission that is less favourable than those contained in the letter of appointment dated May, 1993 is inconsistent with the provisions of the Uganda Constitution as well as the Uganda Human Rights Commission Act.

Lastly counsel relied on a communication of 9.11. 2009, by the Commissioner General to all accounting officers, on the treatment of salaries and allowances under the Income Tax Act. The Commissioner General stated that contract gratuity is taxable subject to the limitation under section 19(4), if one has been in the same employment for 10 years or more. Counsel concluded that since the applicant had only served for five years, he was not liable to taxation of his contract gratuity.

On the second issue, counsel for the applicant submitted that the applicant was entitled to a chauffeur driven car. The applicant was given a motor vehicle for one year. However the tax levied on the said vehicle was calculated for two years. He argued that since the applicant was entitled to the said motor vehicle free it was not subject to vehicle tax. Without prejudice the applicant was entitled to a refund for the tax overpaid.

Counsel for the respondent, on the other hand, contended that the applicant's gratuity was taxable in accordance with Article 152(1) of the Uganda Constitution. S. 17(1) of the Income Tax Act provides that the gross income of a person for a year of income is the total amount of business Income, employment Income and property income derived during the year by a person, other than income exempt from tax. Section 19(1) of the Act defines employment income to include gratuity among others.

Counsel agreed that the applicant had served in the public service. He disputed the applicant's claim that when he was appointed Secretary by the Uganda Human Rights Commission in 1999 he continued to be in public service so that the gratuity, paid to him at the end of the contract, may qualify for exemption for purposes of section 21(1) of the Income Tax Act. He submitted that the gratuity the applicant got was not the gratuity envisaged in the Pensions Act. He further submitted that while S. 10 of the Uganda Human Rights Commission Act provides for consultation with the Public Service Commission when appointing a Secretary and that his terms and conditions of service should not be less favourable than those of a Permanent Secretary, this is only as far as salary scales are concerned.

Referring to the Commissioner General's communication of 9.11.2009, Counsel for the respondent explained that the communication does not provide for exemption per se. According to section 19(4) of the Income Tax Act only an employee who has been in

employment for ten or more years is eligible for an exemption to the extent of 25%, but the rest is taxable. Counsel therefore concluded that under section 19(1) (d) the gratuity received by the applicant was taxable as employment income.

As regards the second issue the respondent has no objection to refunding the money withheld as benefit in kind for the year the applicant did not use the vehicle.

Having read the submissions of both parties the Tribunal rules as follows.

The applicant had been employed as a Permanent Secretary before he retired from the government service in September 1998. On 1.7.1999 the applicant was appointed under a contract of 5 years to serve as Secretary to the Uganda Human Rights Commission. On the expiration of the term of 5 years the applicant was given gratuity of Ushs. 47,315,230/=. The respondent taxed the said gratuity.

S. 4 of the Income Tax Act imposes a tax to be known as income tax for each year on income of every person who has chargeable income for the said year. S. 15 of the Income Tax Act provides for chargeable income. It provides that subject to S.16, the chargeable income of a person is the gross income of the person for the year less total deductions allowed under this Act for the year. S. 17 of the Income Tax deals with gross income of an individual. Section 17(1) of the Income Tax Act provides

“(1) Subject to this Act, the gross income of a person for a year of income is the total amount of—

- (a) business income;
- (b) employment income; and
- (c) property income,

derived during the year by the person, other than income exempt from tax.”

Employment income includes gratuity. Section 19 of the Act defines employment income as

“(1) Subject to this section, employment income means any income derived by an employee from any employment and includes the following amounts whether of a revenue or capital nature.

(a) any wages, salary, leave pay, payment in lieu of leave, commission, gratuity, bonus or the amount of any travelling, entertainment, utilities, cost of living, housing, medical, or other allowance.”

Gratuity is taxable under the above section.

S. 21 of the Income Tax Act provides for exempt income. S. 21(1) (n) provides that pension income is exempt. The Income Tax Act does not define what pension income is. However Section 8 of the Pensions Act provides that “notwithstanding any provision in any written law to the contrary, no income tax shall be charged upon any pension, gratuity or other allowance under the Act.” The issue is whether the applicant’s gratuity was pension, or if not, did it fall as gratuity under the Pension Act in order to qualify for exemption?

The applicant contended that as a public servant, his gratuity is not taxable. The applicant uses words “public servant” and “civil servant” interchangeably. Black’s Law Dictionary 8<sup>th</sup> Edition page 1268 defines “public service” as a service provided or facilitated by the government for the general public’s convenience and benefit. It also defines it as government employment; work performed for or on behalf of the government. Article 175 of the Constitution states that

In this chapter, unless the context otherwise requires –

- (a) “public office” means any person holding or acting in an office in the public service;
- (b) “public service” means service in any civil capacity of the Government the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.

The Interpretation Act S.2 states that “public office”. “public officer” and “public service” have the same meanings as in the Constitution. Under S. 1 of the Public Service Act a public officer has the meaning ascribed to it in Article 175 of the Constitution but does not include teachers. S. 12(1) of the Uganda Human Rights Commission Act states that Parliament shall ensure that adequate resources and facilities are provided to the commission to enable it to perform its function effectively. S.12 (2) of the Act provides further that the administrative

expenses of the commission shall be charged on the Consolidated Fund. According to the above definitions and since the Uganda Human Rights Commission is funded by government, when applicant was appointed as Secretary to the Uganda Human Rights Commission he qualified to be a public servant under the Constitution.

The terms “civil servant” are neither defined in the Uganda Constitution nor the Interpretation Act. Black’s Law Dictionary 8<sup>th</sup> Edition page 263 defines civil service as the administrative branches of a government. It states further that the group of people employed by these branches are civil servants. The definition restricts a civil servant to the mainstream government public service. When the applicant was a Permanent Secretary he was a civil servant. This does not seem to be the case when he was appointed to the Uganda Human Rights Commission as it is not an administrative branch of government.

The issue is whether public servants are entitled to pension and or gratuity which are exempt from income tax. Pension is defined by Black’s Law Dictionary 8<sup>th</sup> Edition page 1170 as a fixed sum paid regularly to a person (or to the person’s beneficiaries), especially by an employer as a retirement benefit. The object of the Pension Act Cap 286, as stated in the preamble, was to provide for the grant and regulating of pensions, gratuities and other allowances in respect of the “public service of officers under the Government of Uganda”. S.9 (1) of the Act provides that “every officer employed in the public service who has qualified for a pension shall be entitled to it. S. 1(j) of the Pension Act provides “public service” means inter alia-

- (i) service in a civil capacity under the Government of Uganda or any other country or any other country or territory in the Commonwealth or the Republic of Southern Yemen
- (ii) .....

Under S. 1(g) “pensionable office” means in respect of public service by a person under the Government, an office

(A) to which he or she has been appointed, on probation or otherwise, by the authority having power for the time being to make appointments to the public service of Uganda on terms which include eligibility for the grant of a pension under this Act or under any Ordinance repealed by this Act;

.....

The Act is limited to the public service of officers under the Government of Uganda. Under S1 (l) of the Act “service of the Government “or service under the Government” means public service in a civil capacity under the Government. Public service in a “civil capacity under the Government” is synonymous with civil service. The public service that is pensionable under the Pensions Act does not encompass all public servants as defined in the Constitution. One, inter alia, has to serve in a civil capacity under the Government of Uganda to qualify for pension under the Pensions Act. Like most civil servants, when the applicant was employed as a permanent secretary he was on a permanent and pensionable contract. He was a public officer and qualified to pension under S. 1(j) and (g) of the Pensions Act. The said pension was exempt to tax.

The applicant’s appointment as a secretary to the Human Rights Commission was a fixed term contract of 5 years. The contract, Exhibit A1, did not provide for pension. It provided for gratuity. Black’s Law Dictionary 8<sup>th</sup> Edition p.721 gives gratuity the same meaning as bounty that is a premium or benefit offered or given, especially by a government, to induce someone to take action or perform a service. It further defines it as a gift. Gratuity and premium are not the same. Pension is given when a party retires, as a retirement benefit. Gratuity is an extra payment in appreciation of services rendered by an employee.

The Pension Act provides for gratuities and other allowances. For one to be entitled to gratuity under the Pensions Act his appointment should have to fall under the public service provided for in the Act. The applicant’s appointment as Secretary to the Human Rights Commission did not fall under the public service provided for under S. 1(j) of the Pensions

Act nor was it “pensionable” under S. 1(g) of the Act. The applicant’s appointment as Secretary of the Uganda Human Rights Commission cannot be deemed to be public service in a civil capacity under the Government of Uganda. The applicant’s contract did not qualify him to receive pension and gratuity provided under the Pensions Act. His appointment as Secretary to the Uganda Human Rights Commission was not pensionable, nor permanent like most civil servants. It was contractual with an entitlement to gratuity.

The Tribunal also notes that when the applicant finally retired from government employment in 1998 he became a pensioner. But when he took up a new appointment of Secretary to the Uganda Human Rights Commission, under an Employment Contract of 1.7.1999, he was given different terms and conditions of service. The applicant contended that as Secretary to the Uganda Human Rights Commission he was entitled to the same benefits and treatment as a Permanent Secretary. Counsel for the applicant contended that when S.10 of the Uganda Human Rights Commission provided for consultation with the Public Service Commission when appointing a Secretary it meant his terms and conditions should not be less favourable than those of a Permanent Secretary. S.10 of the Uganda Human Rights Commission Act reads

- (1) The Commission shall also have such other officers and employees as may be necessary for the discharge of its functions.
- (2) The officers and employees referred to in subsection (1) shall be appointed by the commission in consultation with the Public Service Commission and shall hold office upon such terms and conditions as may be determined by the commission in consultation with the Public Service Commission.
- (3) Public officers may at the request of the commission be seconded to the service of the commission.
- (4) The commission may, in consultation with the Public Service Commission, engage the services of consultants, experts and advisers to assist it in the discharge of its functions and may pay them remuneration at such rates as may be determined by the commission after similar consultation.

It is not stated anywhere in the Section that terms and conditions of service of a Secretary to the Human Rights Commission shall be similar to those of a Permanent Secretary. This is not stated in the contract of the applicant, exhibit A, nor in the letter dated 22.11.1996, the applicant relies on. The issue of whether the applicant is entitled to the same benefits as a permanent secretary is a labour matter which he may address to the relevant appointing authority. The job of the respondent is to collect taxes and not to concern itself with rectifying labour matters.

The applicant relies on the Commissioner General's circular URA/IG/810 of 9.11. 2009 addressed to accounting officers. The Tribunal's reading of the circular is different from that of counsel of the applicant. The Commissioner General wrote:

“Contract Gratuity; this is taxable subject to the limitation under section 19(4) if he has been in the same employment for ten or more years.”

Section 19(4) of the Income Tax Act reads

“(4) Where the amount to which subsection 1(d) applies is paid by an employer to an employee who has been in the employment of the employer for ten or more years, the amount included in employment income is calculated according to the following formula:

AX 75%

The applicant urged that he had only served 5 years and thus was not eligible to taxation of his contract as seen above. The understanding of the Tribunal is that S. 19(4) of the Income Tax Act grants a partial exemption of 25% to an employee who has been in employment for ten or more years. Since the applicant had worked for less than 10 years with the Uganda Human Rights Commission he could not therefore qualify for the partial exemption.

The Tribunal agrees with the respondent that the gratuity the applicant got is neither pensionable nor is it gratuity under the Pensions Act. It is not among the category of exempt income under section 21(1) of the Income Tax Act. The Tribunal therefore finds that the respondent properly taxed the gratuity of the Applicant. The Tribunal therefore rules on issue one in the affirmative.

The second issue is in respect of the applicant's use of a vehicle as a benefit. S. 19 (1) (b) of the Income Tax Act provides that the value of any benefit is taxable. The benefit provided by an employer consists of use or making available for use a motor vehicle for the private purposes of the employee. Section 19 (3) of the Income Tax Act states.

“(3) For purposes of this Section, the value of any benefit is determined in accordance with the Fifth Schedule to this Act”.

The Fifth Schedule, titled “Valuation of Benefits”, in paragraph (3) thereof, gives the formula for calculation of the benefits. The Tribunal agrees with the respondent that the use of a motor vehicle is a benefit, and this benefit is taxable. The applicant does not deny that he used the vehicle for only one year. He also does not deny that he was entitled to pay tax for the said year. However he objects to being erroneously taxed for the second year he did not use the vehicle. The respondent conceded that in the event that the applicant was erroneously taxed for the second year, a refund should be effected. Since the respondent has conceded the Tribunal orders that the applicant be refunded for the excess tax in respect of the vehicle for the second year.

The Tribunal partially allows this application. The portion of the application in respect of taxation of gratuity is dismissed. The portion in respect to taxation of the use of the vehicle as a benefit is partially allowed. The applicant was correctly taxed for the use of the vehicle for the first year. Since the respondent has conceded to the second year the tribunal therefore rules that the tax on applicant of Shs. 2,777,220/= for the period he enjoyed the benefit of using the vehicle was correct and that the excess tax for the second year of Shs. 2,777,220/= be refunded.

Counsel for the applicant prayed for payment of interest on overpaid tax. The Tribunal agrees and orders payment of interest on the overpaid tax as required in Section 113(4) (1)

of the Income Tax Act. That is 2 per cent from the date the tax payer paid the tax till when he is paid.

As regards costs, the Tribunal notes that the respondent was successful on a substantial portion of the application as regards gratuity. The Tribunal also agreed with the respondent that the applicant has to pay taxes for the use of his vehicle as a benefit for the first year. The respondent conceded to the second portion and did not waste the Tribunal's time. It is also noted that the issue of refund for the excess tax was brought for the first time to the Tribunal. The applicant ought to have raised the said issue with the respondent before coming to the tribunal. It was not part of the applicant's objection to the respondent. The Tribunal will award three quarters of the costs to the respondent. We so order.

Dated at Kampala this                      day of                      2011.

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**Asa Mugenyi**  
**Chairman**

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**George Mugerwa**  
**Member**

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**Martin Fetaa**  
**Member**