

REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA REGISTRY
APPLICATION NO. 20 OF 2017

REGISTERED TRUSTEES OF FREEMASONS HALL APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT

RULING

This ruling is in respect of an application challenging the decisions of the respondent not to grant a tax exemption to the respondent on the ground that it is not a religious institution of public character.

The facts of the dispute are: The applicant is located at Plot 18 Nakasero Road. The applicant is registered with Ministry of Land as a Trust as the registered trustees of Freemasons Hall. The applicant applied for a tax exemption on the basis that it is a religious entity, which ground was rejected by the respondent.

The following issues were set down for resolution:

1. Whether the applicant is an exempt institution under S. 2(bb) of the Income Tax Act?
2. Whether the applicant's income from the hire of the hall is taxable?
3. What remedies are available to the parties?

The applicant was represented by Mr. Cephas Birungi and Mr. Festo Assimwe Tindyebwa while the respondent was represented by Ms. Gloria Twinomugisha and Mr. Alex Ssali Alideki.

The applicant's first witness was Mr. Roger Allen who is a freemason. He testified that the freemasons do not discuss religion for purposes of maintaining harmony. He said the applicant own the Freemason's Hall. It manages its affairs. It has

rooms for meetings and other facilities. The applicant receives rent. He also talked about the lodges, bricklayers committee and free masons. He said the freemasons believe in a supreme being.

The applicant's second witness was Mr. Naur A. H. Thakkar who is the chairman of the applicant. He explained what freemasonry was about. He said the applicant applied for an exemption which was rejected by the respondent. He said the applicant does charitable activities like donation of wheel chairs to Mulago hospital. He said the applicant does not have any income. It does not make any profit. In cross examination, he testified that the lodges are comprised of members of different religions. They do not conduct marriages. He also testified that religion and politics are not part of their discussions. He testified that women and children cannot be members of the freemasons.

The respondent called one witness Mr. Patrick Amparirwe. He testified that the applicant is not registered for tax purposes. It does not file tax returns. He also testified that lodges of freemasons pay fees to the applicant. He admitted that the lodges do charitable activities like providing wheelchairs to the Mengo School of disabled. He stated that the applicant applied for an exemption as a religious institution and it was rejected by the respondent.

In its submission, the applicant submitted that it is a religious institution. The applicant was registered with Ministry of Lands under the Trustees Incorporation Act which provides that a trust may be established for any religious, educational, literary, scientific, social or charitable purposes. The applicant submitted that it was established for religious and charitable purposes. The applicant cited the meaning of religion in the *Oxford learner's Dictionary* 6th Edition to include a particular system of faith. It also cited Wikipedia definition of religion as a cultural system of designated behavior and practices.

The applicant submitted that each mason belongs to a lodge. The masons practice rituals and are taught designated behaviours and practices. The applicant further submitted that it is an institution that believes in worship of a supreme being who is addressed as the architect of the universe. Before one joins the free masons he has to believe in a supreme being.

As regards the applicant being a charitable institution, the applicant submitted that though it had not been addressed in the objection decision the Tribunal can still listen and determine the said matter. The applicant cited *Sinba (K) Ltd and 4 others v UBC and others* SCCA 3 of 2014 where the Supreme Court held that a court can decide an un-pleaded matter if the parties have led evidence and addressed court on the matter in order to arrive at a correct decision.

The applicant referred to Clause 3(d) of its Trust Deed which provides that the trust is not one for profit. The applicant submitted that it is a representative of masonic lodges which are charitable bodies. The evidence on record shows that the masonic lodges provide charitable activities. The applicant submitted that the respondent previously granted an exemption to the former on the basis that it was a charitable institution.

The applicant submitted that the income from the Hall is not taxable. Under Clause 2 of the Trust Deed the objects of the applicant include to take over control of all moveable and immovable property. It also includes acquiring any other plots so that any building erected on shall as far as possible meet the masonic needs of the various bodies. The applicant submitted that the lodges pay for the use of the Hall. The said money is used in the management of the Hall. The Hall is not rented to the public or any person who is not a freemason. The applicant submitted it qualifies to be an exempt institution under S. 2(bb) of the Income Tax Act.

In its reply, the respondent submitted that from the applicant's website freemasonry is one of the world's oldest and largest non-religious, non-political, fraternal and

charitable organisations. All freemasons are expected to have a religious belief but freemasonry does not seek to replace a mason's belief or provide a substitute for it. The respondent submitted that the applicant's witness AW1 Mr. Allen admitted that they are not allowed to discuss religion for purposes of maintaining harmony, AW2, Mr. Naur, admitted that freemasonry is a gathering of members of different faiths. The respondent further submitted that the applicant cannot conduct marriages.

The respondent cited *R v Registrar General, Ex parte Sargal and another* [1970] 3 ALL ER 886 where Lord Denning stated that religion connotes to his mind " a place of which the principle use is as where people come together as congregation or assembly to do reverence to God. It need not be the God which the Christians worship. The respondent also cited *Church of New Faith v Commissioner of Pay – roll Tax (Victoria)* [1983] HCA 40 where the court stated that the criteria of religion are two fold; first is the belief in a supernatural being, thing or principle; and second the acceptance of canons of conduct in order to give effect to that belief.

The respondent further submitted that the applicant is not an institution of public character. The applicant does not have female members and people below 21 years. Membership is by invitation. Free masonry is not accessible to the public. The respondent submitted that the applicant is privately owned and managed by the Freemasons trustees.

In respect of the charitable nature of the applicant, the respondent submitted the applicant applied for an exemption on the ground that it is a religious and not charitable institution. Therefore the applicant should restrict itself to a religious institution. The respondent submitted that the issue of charitable institution was not a fact in issue. The respondent cited S. 2 of the Evidence Act. It also cited S. 16(4) of the Tax Appeals Tribunal Act which restricts the Tribunal to grounds stated in the objection decision unless the Tribunal orders otherwise. In the alternative but without prejudice, the respondent submitted that the applicant does not qualify to

be a charitable institution. There is evidence that women and children do not qualify to join free masonry which is non-discriminative and offends public policy.

The respondent further submitted that the applicant is an independent institution that is distinct from the lodges. It is the individual lodges that do charitable works and the Trust is there to look after property. The Bricklayers Arms are registered as a business name. The District Grand Charity Uganda is another entity independent of the applicant. The respondent submitted that there is no evidence to show that the applicant was engaged in charitable activities.

As regards taxing the masonic hall, the respondent submitted that the applicant hires the hall. The financial statement for 'the Light of Africa' Lodge shows that it hires the hall as an operating expense. The said income should be taxed.

In its rejoinder, the applicant submitted that it is an irrevocable trust. It owes a fiduciary duty to various freemason lodges to manage the freemasons hall. Whereas the applicant holds legal title to the Hall the fiduciary obligation is to the congregation of freemasons who use the temple through the various lodges. An irrevocable trust cannot be modified or terminated without the consent of the beneficiaries. The Hall is not a business asset or an avenue to generate income.

As regards charitable trust, the applicant cited *Black's Law Dictionary* as one created to benefit a specific charity or charities or the general public rather than a specific individual. The applicant submitted that its trust does not benefit any individual. The applicant cited S. 2 of the income Tax Act which provides which categories of services that should benefit the public. The applicant cited the charitable activities it provides which are at p. 124 of the trial bundle. It submitted that there is overwhelming evidence that it carries out charitable activities.

The applicant also submitted that it was previously granted a tax exemption on its charitable activities which were confirmed by its witnesses. Since the activities of

the applicant have not changed this is sufficient to grant it an exemption. The applicant reiterated the arguments it made in its first submission which the Tribunal will not repeat. It also referred to the Bahai faith which accepts persons from other religions and does not seek for people to abandon their faith. The applicant submitted that the respondent is using a restrictive and narrow definition of its understanding or religion to deny it an exemption.

In respect of public character, the applicant submitted that it is not defined in the Income Tax Act. The applicant submitted the Hall is open to the public. The applicant submitted that in religions like Catholicism and Christian as well as Islam there are restrictions on women such as in leadership positions and other rituals. This does not stop them from being public in character. The applicant therefore prayed that its application be allowed.

Having listened to the evidence and read the submissions of the parties this is the ruling of the Tribunal.

The applicant applied to be granted a tax exemption on the grounds that it was an institution of a public character. When the respondent rejected the application the applicant objected. The objection was dismissed. The applicant then filed a matter before the Tax Appeals Tribunal. In the application the applicant challenged the refusal to grant the tax exemption on the ground that it was not a religious entity. During the trial the applicant introduced a new issue that the applicant was a charitable institution. The respondent has objected to the introduction of the issue of the applicant being considered a charitable institution as it was not raised during the objection.

The applicant cited *Sinba (K) Ltd and 4 others v UBC and others* SCCA 3 of 2014 where the Supreme Court held that a court can decide un-pleaded matters if the parties have led evidence and addressed court on the matters in order to arrive at a correct decision. It is not in dispute that the parties have led evidence and

addressed the court on the issue of the applicant being a charitable institution. The mandate of the Tribunal in respect of the above issue is set out in S. 16(4) of the Tax Appeals Tribunal Act which reads:

“Where an application for review relates to a taxation decision that is an objection decision, the applicant is, unless the tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates.”

A court decision cannot override a statutory provision which is clear. S. 16 limits the Tribunal to the grounds stated in the taxation objection unless the Tribunal orders otherwise. The applicant did not apply to the Tribunal to include a ground not stated in the taxation objection. There is no order by the Tribunal to that effect. Article 126 of the Constitution requires substantive justice to be meted out without due regard to technicalities. Rules of procedure are hand maidens of justice. An abuse of the rules may create an injustice. It is a rule of natural justice that a party cannot be put on defence without adequate notice. Courts cannot operate where parties seek to ambush each other. During the trial the applicant did not seek to introduce the new matter. The Tribunal notes that both parties have addressed it on the issue of the applicant being considered a charitable institution. The respondent is not prejudiced. The Tribunal exercising its mandate shall listen to and address the issue of the applicant being a charitable institution. However any decision on the said issue shall not carry any weight on the final decision the Tribunal will make.

This application is grounded on the fact that the respondent refused to grant a tax exemption to the applicant on the grounds that it was not a religious institution of a public character. Later the applicant included charitable institution of a public character. S. 2(bb)(B) of the Income Tax Act reads that an exempt organisation means any company, institution or irrevocable trust which is a religious, charitable or educational institution of public character. The Income Tax Act does not define ‘religion’ and neither ‘charitable’ nor what constitutes public character.

The applicant contends that it is a religious and charitable institution of a public character. In order to ascertain the objectives of an institution or an organization or a company one has to look at its charter of incorporation or its constitution or its Memorandum of Association. In the case of the applicants who are registered trustees, the applicant's objectives can only be ascertained by looking at the trust deed that set it up that is exhibits AE8 and AE9. A perusal of the trust deeds does not show that the applicant is a religious and charitable institution. The objectives of the applicant stated in exhibit AE 8 clause 1, include acquiring and holding such property vested in it. In exhibit AE9 clause (f) the objectives of the applicant include to use and permit to use the freemason's hall and let or hire it out. If the applicant is doing any religious and or charitable activities it is being done outside the scope of its mandate as set out in its trust deed. When a company does charitable activities as part of its corporate social responsibility campaign it does not become a charitable institution unless it is provided for in the memorandum of association. In *Ashbury Rly Carriage and Iron Company v Richie* (1875) LR 7 HL 653 it was held that the contract was beyond the objects as defined in the objects clause of memorandum and therefore it was void. Likewise if the applicant was doing charitable activities they can be considered as part of its corporate social campaign strategy. In order to qualify to be a charitable institution, the charitable activities or programs to benefit the poor should be more than the *mere de minimis* or token or social corporate responsibility. On this alone, this application should be dismissed.

The applicant contended that its trust deed shows that it is not a profit making institution. 'Not making profits' is not synonymous with being 'charitable'. *Black's Law Dictionary* 10th Edition p. 283 defines charitable as "dedicated to a general public purpose, usually, for the benefit of needy people who cannot pay for the benefits received." The Tribunal feels that charitable should not only be limited to benefiting needy people but also providing social services to disadvantaged persons and other activities that are intended to promote the well-doing and well-being of social man. If one donates computers to a school whether public or private that would still be charitable. If profit was considered in deciding whether one is a

charitable institution then all loss making organizations and others that are subsidized would apply to be considered as charitable institutions.

The Tribunal notes further that the applicant is a different legal entity from the lodges of the free masons; the bricklayer's arms committee which has its own certificate of registration and partnership deed and the District Grand Charity Uganda. The District Grand Charity Uganda was set up by a trust deed dated 20th August 2007, exhibit AE12. Unlike the trust deed of the applicant the one of the District Grand Charity Uganda clearly spell out that it was established for charitable purposes. Clause 3 of the said trust deed reads:

“The Trustees shall hold the capital and income of the Charity upon trust to apply the whole or any part of such capital and income in furthering the purposes of the Charity as the Trustees in their discretion may think fit...”

The District Grand Charity Uganda is different from the applicant as each is set up by a different trust deed. The charitable acts of the freemasons and the District Grand Charity Uganda cannot be inferred on the applicant. Each was set up differently. In any case if the applicant is a charitable institution it would begin by not hiring out its hall to the freemasons who it considers as its members. Charity begins at home.

Furthermore the Tribunal notes that the applicant is not an institution of public character. The word “public’ is defined by *Black’s Law Dictionary* (supra) p. 1422 as an adjective as “of relating to, or involving an entire community, state or country...” as a noun “the people of a country or community as a whole”. The membership of the applicant is not open to women and persons below the age of 21 years. Membership is on invitation.

Having found that the applicant’s objectives are not religious or charitable in nature, the Tribunal does not need to delve into what amounts to religion or what is charitable. However the Tribunal will make a few comments on the application before it in order to avoid future disputes of such a nature. The Tribunal does not

believe that a belief by various people in a supreme being is sufficient for them to be considered a religion. It could be one of the requirements but on its own does not create a religion. As Lord Denning said in *R v Registrar General, Ex parte Sargal and another* [1970] 3 ALL ER 886 that religion connotes to his mind “a place of which the principle use is as where people come together as congregation or assembly to do reverence to God. It need not be the God which the Christians worship”. In the *Jehovah’s Witness Case* [1943] ALR 193 Latham C.J said:

“The scope of religion has varied very greatly during human history. Probably most Europeans would regard religion as necessarily involving some ideas or doctrines affecting the relation of man to a Supreme Being. But Buddhism, one of the great religions of the world, is considered by many authorities to involve no conception of a God.”

Therefore one can still have a religion without necessarily having a supreme being. Some of the African traditional religions do not have a concept of a supreme being.

Black’s Law Dictionary (supra) 1482 defines religion as:

“ A system of faith and worship usually, involving a belief in a supreme being and usually containing a moral or ethical code; especially such a system recognized and practiced by a particular church, sect, or denomination.”

There has to be a system recognized and practiced by the said church or sect. This involves canons of conduct, creeds moral and ethical codes. It includes rituals and initiations. But mostly importantly that system needs to be recognized. In the *Jehovah’s Witness* (supra) McTernann J. said the “word religion extends to faith and worship, to the teaching and propagation of religion, and to the practices and observances of religion.” Crockett J held that: “religion is essentially a dynamic relation between man and a non-human or superhuman being”. He found that the doctrines of Scientology were not sufficiently concerned with such “a divine superhuman, all powerful and controlling entity”

In the *Jehovah’s Witness* case (supra) Latham CJ at p.123 said “it would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the

world". In Uganda the state through the legislature would be the most ideal person to recognize religions as there are different cultures, traditions and 'religions'. While Article 29 (1) (c) of the Constitution of Uganda provides that "every person shall have the right to freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with the constitution". The Constitution is silent on what religion is and what amount to practicing it in a manner consistent with the Constitution. For a religion to exist it must consistent with other provisions of the Constitution. In the absence of any statute or Act of Parliament on religion the Tribunal cannot decisively state which creed or beliefs of an institution amount to a religion. After all the members of the Tribunal are not priests. We can only rely on court decisions and available law which is scanty and not clear. In *Regina v Registrar General, Ex parte Sergerdal* [1970] 3 ALL ER 866 the Court said 'Turning to the creed of the Church of Scientology, I must say that it seems to be more a philosophy of the existence of man or of life, rather than a religion.' The Tribunal has not delved into the creed of the applicant to determine whether it is more of a philosophy rather than a religion because its objectives do not include religion.

The applicant has many people believing in various supreme beings. It is a collection of all faiths. This does not make it any different from any football club, Rotary club, scout movement or school. Some of these clubs have initiations, insignia and rituals. If the Tribunal were to use the criteria of a belief in a supreme being in ascertaining religion that would make the beliefs of all those associations eligible to be considered as religions. The applicant clearly stated that religion and politics are not discussed in its meetings in order to create harmony. One cannot have religion where religion is not being discussed.

The applicant does not deny that it receives income from the lodges of the freemasons. The tribunal notes that the Freemans Hall is not an exempt item under the Income Tax Act. The applicant by hiring it obtained rental income. Under S. 5

of the Income Tax Act a tax shall be charged on every person who has rental income. The income received by the applicant in hiring the hall is liable to taxes under the Income Tax Act.

This application is dismissed with costs to the respondent.

Dated at Kampala this _____ day of _____ 2018.

DR. ASA MUGENYI MR. GEORGE W. MUGERWA MS. CHRISTINE KATWE