THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 69 OF 2018

BRITAM INSURANCE COMPANY UGANDA LTD :::::::::::::::::::::::: APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY :: RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. SIRAJI ALI

RULING

The applicant filed this application challenging Value Added Tax (VAT) assessments for the period 2014 to 2016 of Shs. 250,023,977 in respect of imposition of VAT on fronting and facultative fees received from other insurance companies. The total revised assessments were VAT of Shs. 1,993,617,612 and Withholding Tax (WHT) of Shs. 2,939,188,311 of which the applicant challenged the VAT assessments of Shs 250,023,977.

The applicant is private limited company which is registered in Uganda and regulated by Insurance Regulatory Authority of Uganda (IRA) to provide insurance services. The applicant receives fronting and facultative fees from other insurance companies for purportedly reinsurance services. The respondent issued assessments of Shs. 250,023,977 being VAT for which 206,727,735 was for fronting fees and 43,301,242 for facultative fees which the applicant objected to.

The following issues were set down for determination.

1. Whether fronting and facultative fees are VAT exempt?
2. What remedies are available to the parties?

The applicant was represented by Mr. Sim Katende, Mr. Patrick Mugalula and Ms. Sophia Nampijja while the respondent by Ms. Nakku Mwajuma Mubiru and Ms. Tracy Basiima.

The applicant brought this application challenging the respondent's decision not to treat fronting and facultative fees as VAT exempt. This application does not only affect the applicant but also other insurance companies that receive the same fees. The Tribunal advised the applicant not to add other insurance companies as parties as it would delay the trial and involve repetitions in evidence and multiple witnesses. However this decision will affect all insurance companies that received fronting and facultative fees as far as the Tribunal is concerned.

The applicant called six witnesses to prove its case. The first witness was Mr. Ronald Musoke, the Chief Executive Officer of Uganda Re-Insurance Company Ltd, who testified that insurance is about the transfer of risks from a consumer of a service to an insurance company. He also testified that reinsurance is the transfer of risk from one insurance or reinsurance company to another. Insurance operates on principles of risk sharing. A company may not take on the risk beyond its underwriting capacity; it keeps only that portion of risk it can manage within its capacity and passes on the rest of the risk to other insurers or reinsurers. He stated that reinsurance takes many forms; it could be treaty pre-arranged or facultative depending on a need basis. He testified that facultative reinsurance involves a cession of part of the risk of an insurer's underwriting capacity. According to him, a facultative commission is a portion of the ceded premium which the ceding company will retain to cater for administrative costs and other expenses related to the transaction. He contended that this is not a commission but rather a transactional cost. Fronting reinsurance involves cession of a risk 100% either due to lack of underwriting capacity or appetite for the risk. Fronting fees is a charge to reinsurer to cater for administrative costs incurred by the ceding company. According to him, without reinsurance, there would be no fronting and facultative fees. He testified that this is an industry practice practiced globally by insurances companies. He also

testified that his company has dealt with the applicant in facultative reinsurance arrangements.

The applicant's second witness, Mr. Solomon Rubondo, an insurance consultant testified that facultative reinsurance is where an underwriting company seeks reinsurance support where an insured value or liability exceeds its total capacity available. Reinsurance is important because no insurance company can set an amount of capital equivalent to meet the liabilities from all policies written by a company. Reinsurance therefore cushions the insurance business. He testified that facultative commission is a charge by an underwriting company collected from the reinsurer to offset acquisition and administrative costs incurred to secure the business, process documents and prepare settlement of accounts. He further testified that this charge is not really a commission as it is largely intended for recovery of costs and does not translate into extra benefit for the insurer. He testified that fronting reinsurance is a total offloading of the entire risk to another insurer or reinsurer. The fronting insurance company undertakes the risk wholly on the terms determined by the other party including policy wordings. He further testified that fronting reinsurance is common in high capital intensive arrangements like oil and gas, mining, aviation and among others. He testified that parties to fronting transaction are an insurer and a reinsurer. A broker may be involved as an advisor to the client and to ensure compliance with the laws. He further stated that fronting reinsurance helps to create capacity for special risks and it is born out of the fact that insurance companies in Uganda are still growing. They do not have sufficient capital to accommodate huge reinsurance risks. As such local companies have to rely on the external support either by way of fronting or facultative to meet the client's requirements. He stated that any attempt to impose VAT on fronting and facultative reinsurance will go against the universal reinsurance practices, isolate Uganda insurance and is not supportive of the doctrine of risk transfer.

The applicant's third witness, Mr. Francis Kamulegeya, a partner and director at PricewaterhouseCoopers contended that reinsurance services have been exempt from VAT since the introduction of the VAT in 1996. He argued that the nature of the industry

is such that reinsurance is mandatory and inevitable. He further testified that the VAT Act does not define reinsurance services and as such where such technical words are not defined under the law, we have to rely on common law or case law and best practices in other countries. He contended that in a highly regulated industry like insurance it is important to pay attention to guidance and guidelines on operation of the sector. He contended that fronting and facultative fees are incidental to reinsurance services which are exempt from VAT. He stated that reinsurance cannot exist without the services that give rise to fronting and facultative. Therefore, the fees which arise from reinsurance transactions are incidental. For accounting purposes, fronting and facultative commission is treated as a receivable –commission income. He said that fronting and a facultative fee is not a stand -alone service. It is incidental to main reinsurance service.

The applicant's fourth witness, Mr. Bernard Obel, an accountant with Insurance Regulatory Authority (IRA) of Uganda stated that there are three major forms of reinsurance permitted in Uganda. They include treaty reinsurance, facultative and fronting reinsurance. As a regulator, reinsurance is a key component of insurance business because of sharing the burden of risk. Reinsurance enables the insurer to obtain extra capacity to manage a huge financial burden. He testified that it is proper for insurance companies to have a proper reinsurance policy. He further testified that the applicant by law is permitted to engage in treaty, fronting and facultative reinsurance. He testified that fronting fees are paid to the insurer by the reinsurer when business is fronted. He contended that these fees do not attract VAT because it is paid as part of the reinsurance service which is VAT exempt which was introduced by the VAT (Amendment) Act in 2014. The Amendment was introduced because Uganda did not have local reinsurance capacity. He testified that the applicant is licensed by the IRA to carry on general insurance which is short term insurance not exceeding one year.

The fifth witness, Mr. Tadeo Nsubuga Ziggwa, an underwriting Manager with the applicant, testified that the applicant secures reinsurances services through treaty, fronting and facultative reinsurance. He further testified that the applicant engages in

the above three reinsurance services to protect shareholders funds on losses that may exceed the applicant's free reserve. The applicant obtains customers risks and shares the portion of the risk exceeding its capacity. The applicant receives a fee for the work it does. He testified that a facultative fee is a portion of premium retained by the applicant on reinsurance business ceded on facultative reinsurance, and fronting commission is the portion of premium retained by the applicant on fronting reinsurance. These fees are usually computed as a percentage of the premium due to the reinsurer. The commission is deducted at source and the balance paid to the reinsurer. The commission covers acquisition costs like risky survey costs, underwriting costs. The fees and commission do not constitute profit to the applicant.

The applicant's last witness, Mr. Paul Kavuma, the Chief Executive Officer of Uganda Insurance Association testified that it has 34 registered members. Most of its members practice reinsurance business. He testified that facultative insurance is where the principal insurer shares risk with another insurer for a premium. It is provided for under the Insurance Act. The ceding company receives facultative reinsurance commission to cover administrative costs. He contended that there is no VAT on reinsurance services, underwriting and business acquisition expenses. Fronting fees are paid where an insurer passes the entire risk to a reinsurer. The fee is paid to enable the insurer to cover administrative expenses incurred in providing the fronting work.

The respondent called one witness, Mr. Hamdan Habombo, its Supervisor Compliance in its Large Taxpayers' Office who testified that the applicant deals in general insurance and is a registered taxpayer. He testified an audit was conducted on the applicant for financial year 2017 to 2018. The audit established variances in its VAT and income tax returns. He argued that the applicant earns commission on reinsurance yet the applicant is an insurer and not in re-insurance. It is income declared but is not in the VAT returns. He testified that applicant considered the facultative and fronting fees as exempt. He contended that the applicant acts as a broker. This is because they source for business which it transfers to another insurer who pays them a commission. He testified that life insurance, micro insurance and re-insurance are exempt from VAT.

The applicant earned income on fronting fees and facultative fees. It is these two items the respondent considered to be income and issued assessment on the applicant of Shs. 250,023,977 being VAT, for which Shs. 206,727,735 was fronting fees and Shs. 43,301,242 facultative fees.

In its submission, the applicant contended that the fees and commission earned on fronting and facultative reinsurance are VAT exempt under the VAT Act. It cited S. 19(1) of the VAT Act and the Second Schedule to the Act Paragraph 1(d)(iv) and 2(f). Under the Second Schedule the supply of re-insurance service is an exempt supply. The applicant cited S. 2 Insurance Act 2017, which defines "*reinsurance business"* as the business of undertaking liability as a reinsurer under reinsurance contracts. An "reinsurance contract" is defined as an insurance contract under which one insurer, called the reinsurer, indemnifies, or otherwise compensates, another insurer, called the cedant, against losses on one or more contracts of insurance entered into by the cedant. The applicant cited **British Dominions General Insurance Co Ltd v Duder** *[1915] 2 KB 400* where a contract of reinsurance in relation to property is a contract under which a reinsurer insures property that is subject of the primary insurance

The applicant submitted that a facultative reinsurance transaction involve a ceding insurer remitting a portion of insurance fee received from an insured to the reinsurer. This portion depends on the risk taken by the reinsurer. One who reinsures an entire risk receives the entire premium. Fronting insurance is where the primary insurer cedes all of the insurance risk. Before premium is remitted to the insurer, a small portion of premium is deducted and retained by the insurer to cater for business acquisition costs such as staff hours devoted to preparing the transaction.

The applicant submitted that re-insurance service is not defined in the VAT Act. The applicant argued that the service provided by applicant for reinsurance companies is part of reinsurance services. It cited **AON v URA** *Originating Summons 4/2008* where the court held that since a broker is a go-between through whom an insurance service is

provided by an insurance company, the service they provide can only be described as an insurance service,

The applicant argued that the services provided by the applicant are incidental or ancillary to reinsurance services. The applicant cited **Card Protections Plan Ltd v Commissioners Customs and Excise** *[200] UKHL 4*, **Diamond Shipping Company v URA** *TAT No.28/2008,* **Uganda Revenue Authority v Total Uganda Ltd** *Civil Appeal No.11/2012 and* ***Uganda Revenue Authority v Uganda Taxi Operators & Drivers Association*** *Civil Appeal No. 13/2015* and argued that the services the applicant provided were ancillary or incidental to reinsurance services and therefore should be exempt from VAT. It argued that facultative commission and fronting fees paid by the applicant are in respect of services that are incidental to the provision of reinsurance services. Counsel further argued that there is only one transaction which is the provision of reinsurance services. The commission collected by the applicant wholly depends on the provision of reinsurance services and cannot be treated as a separate supply.

In reply, the respondent submitted that the applicant is liable to pay VAT of Shs. 250,023,977.8 on fronting and facultative commissions. The respondent objected to the applicant's claim that fronting fees and facultative commission are obtained by the applicant in the provision of reinsurance services and therefore it should be exempt from paying VAT. The respondent cited **AON Uganda Ltd v Uganda Revenue Authority** (supra) where court held that where there is a lacuna in the definition of insurance services one has to derive the definition from how insurance and insurance contracts operate. The respondent argued that a contract of supply of reinsurance services has the following elements; there must be transfer of the risk to a reinsurer from an insurer; the reinsurer must accept all or part of the risk in exchange of a premium and the reinsurer compensates the insurance company. The respondent argued that fronting fees and facultative commission constitute a commission for sourcing the business which falls under the ambit of general insurance and not reinsurance. It argued that the applicant plays the role of an agent and fronts policies whose terms are dictated by other insurance companies who pay for its role in the

acquisition of insurance business. The respondent further submitted that fronting and facultative fees take the character of the principal supply of insurance. S. 61 of the Income Tax Act, provides that a compensation payment derived by a person takes the character of the item that is compensated and that fronting fees is paid to the applicant in its role as a broker. The applicant cedes 100% of the business together with the entire premium to another insurer in compensation of a fee called fronting. The respondent submitted that the applicant has not adduced evidence to demonstrate that fronting fees are paid as indemnification for the losses incurred in the contract of insurance by the reinsurer. The respondent contended that the fees or commission applicant earned is taxable. The respondent cited **William Diamonds Shipping Company v Commissioner General** *[2008] 4 TLR 167* and argued that the applicant has not proved to this court that the assessment is excessive. The applicant should pay taxes assessed by the respondent.

The respondent submitted that the applicant did not formally object to the whole VAT of Shs. 1,743,696,350 and withholding tax of Shs. 2,939,188,311 before the Tax Appeals Tribunal. The respondent argued that the applicant under the law is supposed to apply for review of all the taxation decision which it did not in this case. The respondent contended that the applicant was satisfied with remaining part of the respondent's objection decision and prayed that the tribunal orders that the remaining assessment of VAT and Withholding tax are due and payable. The respondent noted that in respect of the above two assessments, the applicant is out of time within which to file an application for review before TAT. Counsel cited **Cable Corporation (U) Ltd v Uganda Revenue Authority** *TAT No.6/2010* where TAT held that a time frame within which to file an application for review of taxation decision is 30 days from the day of receipt of the taxation decision/ objection decision.

In rejoinder, the applicant submitted that the tribunal should reconcile the VAT of Shs. 1,743,696,350 and Withholding tax of Shs. 2,939,188,311. The applicant cited Article 152(3) of The Constitution of the Republic of Uganda 1995 and S. 22 of Tax Appeals Tribunal Act and submitted that the tribunal was established to be flexible and free from

technicalities so as to facilitate timely dispute resolution. The applicant contended that it is in the interest of justice that the tribunal orders the parties to reconcile the disputed figures relating to fronting fees and facilitative commission so as to conclusively determine the dispute between the parties.

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

The applicant is private limited company regulated by the Insurance Regulatory Authority of Uganda (IRA) to provide insurance services. The applicant receives fronting and facultative fees from other insurance companies for purportedly reinsurance services. The respondent issued an assessment Shs. 250,023,977 being VAT for which Shs. 206,727,735 was for fronting fees and Shs. 43,301,242 for facultative fees. The dispute between the applicant and the respondent hinges on whether fronting and facultative fees are exempt under the VAT Act.

S. 19(1) of the VAT Act provides that “A supply of goods or services is an exempt supply if it is specified in the Second Schedule.” Paragraph 2(vi) of the second schedule provides that a supply of re-insurance service is specified as an exempt supply for the purposes of S. 19.

The VAT Act does not define both insurance and reinsurance services. The Insurance Act S. 2 defines “insurance business” to mean the business of undertaking liability as an insurer or a reinsurer under an insurance contract. Reinsurance business is defined to mean the business of undertaking liability as a reinsurer under reinsurance contracts. S.2 of Insurance Act 2017 defines “reinsurance contract" to mean an insurance contract under which one insurer, called the reinsurer, indemnifies, or otherwise compensates, another insurer, called the cedant, against losses on one or more contracts of insurance entered into by the cedant”.

Black's Law Dictionary 10th Edition p. 920 defines insurance as "A contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage or liability arising from the occurrence of some specified contingency." It states that "An insured party usually pays a premium to the insured in exchange for the insured's risk". At p. 1477 it defines re-insurance as "insurance of all or part of one's insurer's risk by a second insurer, who accepts the risk in exchange for a percentage of the original premium." From the evidence adduced it is not difficult to discern that the applicant is an insurance company. It is not a reinsurance company. However the applicant receives business which it remits to reinsurance companies. It charges a fee or commission. The said words are used interchangeably. A facultative commission is a portion of the ceded premium the applicants retain to cater for administrative costs/ expenses related to a transaction where the applicant cedes part of the risk of an insurer's underwriting capacity to the reinsurance company. A fronting commission is one where the applicant retains when it cedes all the risk to a reinsurance company. This practice is done by other insurance companies. This enables them to cover and share risk with other companies where they do not have the capacity to do so. The applicant choice of the word "commission" gives the impression that the insurance companies act as brokers. However the insurance companies contend that the said commission or fee, or whatever it is called, is used to cater for administrative costs and expenses it incurs.

This brings us to the question as to whether the said fees charged by the applicant or other insurance companies in a similar situation is exempt from VAT. S. 1 of the VAT Act provides that a taxable supply has the meaning in S. 18. S.18 of the VAT Act provides that:

> "(1) A taxable supply is a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his or her business activities.
>
> (2) A supply is made as part of a person's business activities if the supply is made by him or her as part of, or incidental to, any independent economic activity he or she conducts, whatever the purposes or results of that activity."

S. 11 of the VAT Act further provides that:

"(1) Except as otherwise provided under this Act, a supply of services means a supply which is not a supply of goods or money, including

(a) the performance of services for another person:

(b) the making available of any facility or advantage;"

S. 13 of the VAT Act reads

"(1) A supply of goods or services made by a person as agent for another person being the principal is a supply by the principal.

(2) Subsection (1) does not apply to an agent's supply of services as agent to the principal."

So the Tribunal has to ask itself as to when the applicant is charging the facultative and fronting commission or fees, is it providing services incidental to the provision or reinsurance services. Or is the applicant providing service for reinsurance companies or making available the provision of reinsurance services?

What determines incidental services vis-a-vis the principal services? The VAT Act does not define incidental. According to *Black's Law Dictionary* 8th Edition p. 777 defines incidental services to mean "subordinate to something of greater importance, have a minor role". In **Uganda Revenue Authority v Total Uganda Limited** *HCCA No. 11 of 2012* the Court defined 'incidental' to mean "happening in connection with something greater in importance." In **Commissioner Customs and Excise v Madgett and Baldwin** *[1998] STC 1189* it was held that "A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself but a means of better enjoying the service supplied."

One has to ask whether the services provided by the insurance company are part of the provision of reinsurance business. In **UTODA Entebbe Branch Ltd v Uganda Revenue Authority** *No TAT 8 of 2009* the Tribunal observed:

"…. that can the provision of the services by the tax payer be independent of the exempted supply? In other words can taxi parks operate independently of the provisions of passenger transport services? No they cannot. There is need for the provision of transport services in order to have a taxi park. The operation of taxi parks is incidental and ancillary to the provision of passenger transport services…."

In **Suprasesh General Insurance Services & Brokers Pvt. Ltd v The Commissioner of Service Tax** *C.M.A.Nos.1058 and 1459 of 2009;*

> "The services of reinsurance brokers are usually required for placing and properly spreading high exposure cat covers (e.g. natural perils such as windstorm and earthquake), taking advantage of their contact networks with reinsurance markets worldwide. The reinsurer pays the reinsurance broker a commission, called brokerage, which remunerates the broker for his services in placing and handling reinsurance contracts."

In **AON Uganda Limited v Uganda Revenue Authority** (supra) the applicant claimed that the insurance brokerage services it provided were within the meaning of insurance services under the VAT Act. His Lordship Kiryabwire at p. 23 stated:

> "It is my finding that looking at the language of the S.19(1) of the VAT Act and Para 1 (d) of its second schedule, it would be fair to say that insurance services inter alia includes services provided by both insurance and brokerage companies."

Therefore at times a supply by one may not be so independent from a principal supply that it is considered as one supply.

The essential features of a transaction must be ascertained in order to determine whether the taxable person is supplying the customer being a typical consumer with several distinct principal services or with a single service. It takes two companies to be involved in reinsurance business, the insurance company and the reinsurance company. In **Card Protection Plan Ltd v Commissioners Customs and Excise** *[2001] UKHL 4* Lord Slynn of Hadley held that:

> "..... every supply of a service must normally be regarded as distinct and independent and secondly that a supply which comprises a single service from an economic point of view should not be artificially split so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical customer with several distinct principal services or with a single service. .... a service must be regarded as ancillary to a principal service it does not constitute for customers an aim in itself but a means of better enjoying the principal service supplied."

In **Lexington Insurance Company v AGF Insurance limited** *[2009] UKHL 40*, Lord Collins noted:

> "…..The reinsurer takes a proportional share of the premium and bears the risk of the same share of any losses. Consequently, the starting point is that normally reinsurance of that kind is *back-to-back with the insurance*, and that the reinsurer and the original insurer enter into a bargain that if the insurer is liable under the insurance contract, the reinsurer will be liable to pay the proportion which it has agreed to reinsure… It is not necessary to characterize the reinsurance policy as liability insurance to achieve this result, which is essentially a question of commercial intentions and expectations….."

One cannot have reinsurance business without an insurance company. An insurance company has to cede a portion or all the risk for reinsurance to take place. A contract of reinsurance in relation to property is a contract under which the reinsurer insures the property that is the subject of the primary insurance; it is not simply a contract under which the reinsurer agrees to indemnify the insurer in relation to any liability that it may incur under the primary insurance.

In conclusion, the Tribunal holds as follows. The applicant is engaged in the general insurance business. It arranges for the reinsurance of a portion or all the risks it undertakes with various reinsurance companies and in return for the above service, it is paid a certain fee or a commission. Fronting and facultative commissions emanate from transactions in which a primary insurer acts as the insurer by issuing a policy, then passes the risk to a reinsurer. Reinsurances services cannot exist without fronting and facultative arrangements. They are incidental to reinsurance services which are VAT exempt. The tribunal notes that the applicant is an insurance intermediary performing ancillary services which are VAT exempt. The services performed by the applicant can be termed as secondary services which are used by the primary service provider. The secondary service (insurance service) ultimately gets consumed/merged with the primary service (reinsurance). Meaning that for this purposes, both primary and secondary service providers keep records deemed fit to be able to identify the secondary services. The consumer or insurer may never meet the reinsurer. The services of reinsurance intermediary are to spread the risk of high exposure cover.

The respondent prayed that the Tribunal should make orders in respect of the whole VAT assessment of Shs. 1,993,617,612 and Withholding tax of Shs. 2,939,188,311.

The applicant on the other hand submitted that the tribunal is flexible and free from technicalities and prayed that in the interest of justice, it should order for the reconciliation of the VAT and Withholding tax figures so as to make a final determination and to avoid multiplicity of suits.

At the onset of the trial, the applicant, like the other insurance companies who had wished to join the application, was interested in challenging the decision of the respondent in respect of facultative and fronting fees and not the whole assessment. The pleadings filed before the tribunal including the statements of reasons show that the application before the tribunal is in respect of the fronting and facilitative commissions which attracted VAT of Shs. 250,023,976. Order 6 Rule 1 of the Civil Procedure Rules provides that every pleading shall contain, and contain only, a statement on a precise form of the material facts on which the party pleading relies for claim or defence as the case may be, but not evidence by which they are to be proved. Rule 2 provides that in all cases in which particulars are necessary such particulars shall be given. According to *Bullen & Leake and Jacob's Precedents of Pleading* 12th Edition, page 3.

> "The system of pleadings is necessary in litigation. It operates to define and deliver it with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the double purposes of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial"

In **Interfreight Forwarders (U) Limited v East African Development Bank** *Civil Appeal No.33 of 1992* it was held that pleadings are necessary to define matters in controversy to enable parties prepare their case. In **Attorney General v Paul K. Ssemogerere and Ors** *Constitutional Application No.2 of 2004* Justice Mulenga stated as follows;

> "It is a cardinal principle in our judicial process that in adjudicating a suit, the trial court must base its decisions on orders and the pleadings and the issues contested before it. Founding a court decision or relief on unleaded matter or issue not properly placed before it for determination is an error of law"

In **Fang Min v Belex Tours & Travel Ltd** *Civil Appeal No. 06 of 2013 & Civil Appeal No. 01 of 2014* the court stated that;

> "This court has on several emphasized the need for pleadings in civil proceedings to describe the respective cases for the parties and to define dispute for the resolution by the court"

The applicant sued the respondent in this application challenging the VAT liability of Shs. 250,023,976. During the scheduling, the reconciliation of VAT and Withholding figures were not raised by the applicant. There was no issue regarding reconciliation of VAT and Withholding tax. A party is expected and is bound to prove the case as alleged by it and as covered in the issues framed. It will not be allowed to succeed on a case not so set up by it and also will not be allowed at the trial to change its case or set up a case inconsistent with what it alleged in his pleadings except by way of amendment of the pleadings.

Rule 22 of the Tax Appeals Tribunal Procedure Rules provides that a party may at any time before the closure of the case, apply to amend its pleadings and the Tribunal may at its discretion allow such application provided the amendments do not raise new issues In **Tororo Cement Co. Ltd V Frokina International Ltd.** *Civil Appeal No. 2 of 2001* Karokora, J.S.C held that "…….if there were any defects or omission in the pleadings by respondent these could be cured by amendments at any stage during the proceeding of the case…." There was no formal application to amend the pleadings to include the VAT and Withholding tax of the amounts that needed reconciliation. However the said application would still have been out of time.

The tribunal notes that none of the applicant's six witnesses testified on the amount due for reconciliation. The dispute on VAT and withholding tax that needed reconciliation was never brought for determination before the Tribunal. The prayers to make orders on the remaining amounts of VAT and withholding tax came up in submissions, which we believe is too late. The tribunal can only make a determination in respect of the amount the applicant filed for review of Shs. 250,023,977.8.

In conclusion, the tribunal holds that fronting fees and facultative commission earned in respect of reinsurance services is VAT exempt. The application in respect of Shs. 250,023,977 is allowed with costs.

Dated at Kampala this 26 day of march 2020.

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DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MR. SIRAJI ALI**
CHAIRMAN	**MEMBER**	**MEMBER**