

FUELEX V UGANDA REVENUE AUTHORITY (URA) CONSTITUTIONAL PETITION NO. 3 OF 2009

This Petition challenged the constitutionality of Section 15 of the Tax Tribunals Act, which requires a taxpayer challenging an assessment by URA to pay a portion of a tax debt (30% of the assessed amount) before filing an appeal against the assessment before the Tax Appeals Tribunal (TAT).

The Petitioners argued that section 15 contravenes Article 28 and 44 of the Constitution of Uganda which accords every citizen the right to a fair hearing in so far as it denies one access to TAT if they do not have the 30% (however good their case may be) and discriminates against those with a poor economic background who may not afford the 30%.

The Constitutional Court was of the view that the Supreme Court decision in Uganda Projects Implementation and Management Center V Uganda Revenue Authority, SC Constitutional Appeal No. 2 of 2009, wherein the Supreme Court upheld a similar provision in the Value Added Tax Act was wrongly decided. In a majority decision the Court ruled in favour of Fuelex with the following views:

- 1) The application of the 30% requirement to a taxpayer whose objection is based on the belief that he/she/it is not liable to pay the tax assessed and does not challenge the amount of the tax payable, is inconsistent with Article 44 of the Constitution. However, where the dispute before the TAT is one arising from the amount of tax assessed and not challenging the basis of the assessment, Section 15 would apply.

Therefore, where the issue before TAT is purely legal and/or technical the applicability of Section 15 would be unconstitutional.

- 2) Secondly, if the dispute arises from the basis of the assessment, TAT must first resolve the issue and then apply Section 15 if the issue is resolved in favour of URA.



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Relevance



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This decision eliminates the “pay now, argue later” principle when it comes to disputes as to the validity of the assessment.

The decision presents significantly varying implications for the tax collector and the taxpayer. On the part of the tax collector, this decision is bound to impede URA’s capacity and duty to ensure that taxes are paid promptly. This fear is heightened by the recent *Airtel v URA* decision wherein the Court of Appeal held that a party who is challenging a tax assessment is not required to pay interest even though they lose the case as the interest requirement only attaches to persons evading taxes. The absence of the section 15 requirement coupled with the fact that taxpayers are not required to pay interest on amounts they object to, could affect URA’s tax collection capacity as taxpayers employ frivolous objections to defer taxes thereby impeding the capacity of URA to meet its financial targets as it has to await the final decision of court before collecting any taxes.

On the other hand, this is a big win for the tax payers that have genuine objections, as it ensures that the gates of justice are open to them without attaching any financial obligations to them that may hinder their access to court. The decision will also have the unintended benefit of enabling a taxpayer, who has no legitimate objection but is unable to pay the assessed amount at the time of the assessment to defer the payment through objecting to the tax through the ever slowly moving legal machinery of the Courts of law.

