

# Legal aspect

Business



Introduction Initially the London based arbitration tribunal was to decide whether the UK listed Heritage Oil would have to pay US \$ 435 million in capital gains tax to the Ugandan Government. This is a sum, which is corresponding to about 10% of Ugandan's yearly Government expenditure.

Under the tribunal rules, the proceedings were to take place in camera, meaning that there was no public access and that the documents, proceedings and outcomes were not to be disclosed. According to the global witness, this arbitration compounded things by robbing the Ugandans the access to vital information on how their resources were being managed (Global Witness Organisation, 2012). The tax dispute can be traced back to Heritage Oil sale of rights of two oil blocks in Uganda. This was in Lake Albert area to the UK listed Tullow Oil back in July 2010. The Revenue Authority of Uganda claimed that Heritage Oil owes a large amount of money in capital gains tax from the US \$ 1.

45 billion sale. Heritage Oil disputed this assessment. Tax Appeals Tribunal had accessed the case, and a ruling made in favor of the Ugandan Government. The writer further argues that the Ugandans do not comprehend why their Government is being arm twisted to spend millions of money on a tax disagreement away in London when the Ugandan courts had already decided on the issue. Either they understand less as to why the dispute would take place behind closed doors and this secrecy makes them deeply mistrustful (Global Witness Org, 2012). As Uganda embarks on the process of passing new crucial oil laws, and later it will embark on allocation of the remaining oil fields.

Civil society organizations have called for the proposed laws changes to ensure that the future deals indicate that arbitration is made openly in the public. They also aim to see that oil contracts and associated documents be made open to the public. Moreover, a campaigner at Global witness stated that if Heritage Oil succeeded in its case thus avoiding paying tax, it would be a massive injustice to Ugandans for a couple of years to come (Global Witness Org, 2012). Grounds for Appeal Prior to this arbitration heritage, Oil & Gas Ltd. had made an appeal in the high court of Uganda at Commercial Court Division at Kampala. To the point that had contributed to his request was that Heritage Oil had signed a contract known as ‘ Production Sharing Agreement’, that was for petroleum investigation, development, creation and growth with the Ugandan Government on the 1 of July, i.

e. the year 2004. Again, the agreement signed contained an arbitration paragraph effect where any disagreement in the accord that could not be amicably settled in duration of sixty days will be arbitrated, as stipulated in the ‘ United Nations Commission on International Trade Law’, Arbitration Rules and is normally abbreviated as “ UNCITRAL”. Heritage Oil & Gas Ltd., which is the appellant in this case, had sold their benefit to Uganda Tullow Limited. This was because of over an auction and acquisition conformity coupled with a supplemental agreement.

Consequent to this sale URA, which is the respondent, issued tax assessments for ‘ Capital Gains Tax’, which the appellant disagreed.

Nevertheless, it filed the claim in the Tribunal on year 2010 (Uganda Legal Information Institute, 2012). During this appeal, the appellant had the following grounds of appeal: That the Tribunal had erred in rule by moribund <https://assignbuster.com/legal-aspect/>

to endowment the request to have the officially permitted proceedings in Tax Appeals hearing Applications Nos. 26 and 28 of 2010 stayed and referred back to adjudication (Uganda Legal Information Institute, 2012). Secondly, the Tribunal had erred in rule by holding that Arbitration and Conciliation Act (Cap.

4) is permanent as the Respondent and not a party to the Production Sharing Agreements (Uganda Legal Information Institute, 2012). Finally, they argued that the Tribunal had erred in law by holding that the Tax Appeals Tribunal mandate cannot be bonded by a contractual provision in an agreement (Uganda Legal Information Institute, 2012). On the first ground of appeal the appellant had submitted that the wording of section 5 of the Arbitration and Conciliatory (ACA) Act is mandatory, and it is only in instances, which the court shall not refer, the subjects to arbitration are defined in section 5(1) and (b) of the ACA. They further contended that the two arbitration agreements, as restricted in the PSAs, are unacceptable and annulled, out of order or powerless of being performed. On this ground, the appellant had further submitted that two detached arbitration proceedings have been started in London against the Government. They argued that Ugandan government had acknowledged and engaged in the arbitrations through the appointments of their legal representatives.

These representatives ere to deal with proceedings simultaneously with appointing its party appointed by arbitrator in agreement with the UNCITRAL Rules. Therefore, they argued that there was clear dispute between the two parties, which incorporated the issue whether the tax assessed pursuant to the assessment was lawfully imposed. They further argued that alternatively <https://assignbuster.com/legal-aspect/>

it was a subject for the Arbitral Tribunal to consider and make a decision whether it has the mandate or not as indicated in one of the Articles of the UNCITRAL Rules, which provides that for an arbitration tribunal it shall have the authority to rule on protests that it has no jurisdiction. The appellant on ground 2 had argued that section 2 of the ACA Act gives a clear definition of a party to an adjudication accord as any person who claims through a party. Further they presented that the agreement is also defined, an accord by the parties to such union to present to adjudication the entire or certain parts of disputes which may arise or arise among them in esteem of a clear legal affiliation, be it contractual or not.

Either they argued, under section twenty-one of the Tax Appeals Tribunal Act (TAT), the Tribunal is vested with authority of the High Court. Nevertheless, it stated that where the set of laws did not make available solution to a subject, the set of laws and modus operand of the Supreme Court should come into force. They further contended that the Tribunal is accordingly authorized by part five of the ACA in order to pass on issues to arbitration. Through further submission, they argued that part two of the Uganda Revenue Authority Act presents that the Authority ("URA") shall only be a representative of the government. It also stated that it would be under the universal control of the Finance ministry.

On this account, they argued that it was a universally accepted standard that a representative cannot do anything, which the assigning principal is unable of per taking or contracting. Additionally, they presented that in the accord a representative is inhibited by the equal constraints upon the principal. The appellant contended that in this issue the principal is restricted by its

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contractual responsibilities. Nevertheless, they contended that the government did not enter into the PSA. Therefore, it is bound by its contractual responsibilities.

The same must apply to its agent. Further, they argued that even though URA is a corporate body, it is a representative of the government and thus is bound by the adjudication article in the PSA between the appellant and the government. They differed on the tribunal ruling that agency part of URA for the Government arose only with respect to remitting and collecting revenue to the end and implementing the laws. They contended that there is no power within the URA Act. It also considered somewhere else in the Ugandan laws that support this argument. They argued that although this position was right, the dispute at hand was clear, which regarded the compilation of returns, and in this case, URA is a representative of the government.

Further disagreement arose due to the Tribunal's observation that the minister of finance, acting on the position of Ugandan Government, did not access the PSA. They suggested that it was the fact to embrace that the agreement they entered with the government binds only the line of the officers that signed it. Again, any such disagreements might be in undeviating breach of some sections of the Income Tax Act (ITA). Relying on the submission of Part IXA of ITA, they disagreed with the Tribunal verdict that the contract was not a Tax Collection Agreement but a Production Sharing Agreement; thus, it was beyond the URA Act. Additionally they said that this was wrong interpretation of the law and was entirely inconsistent with requirements of the ITA.

With regard to ground 3, Heritage Oil & Gas Ltd. argued that the Tribunal had mistakenly found that to offer an order for stay of proceedings would be to lock up its mandate. Further, they argued that the option of adjudication was through an arbitration agreement, which is considered in Ugandan laws. It is enforceable under the ACA Act and allows for either a court or a tribunal to refer a dispute to a different forum through the choice of the parties. They further argued that such conformity on the ground that it is acknowledged by statute could not be considered to hamper the mandate of the court.

According to this, they requested that this verdict be overturned and that the court would give the reference to arbitration, which would not be an impediment to the permission of the Tribunal. Alternatively, if it is clearly stated that there would be an intrinsic dispute between the ACA and the TAT Act then the court ought to find an adjustment to address this vice.

Evaluation of These Grounds The ACA act is inoperable since URA was not a state party to the PSA. Moreover, the trials to be achieved under the section five of the ACA Act are that there has to be an issue, which is the subject matter to the arbitration accord facing a magistrate. A political party should also apply to magistrate for the subject to be returned to adjudication.

Finally, the political party submitting an application should complete this after filing of a tribute of defense in which case only the defendant or respondent can submit the application for referral to arbitration.

The PSA was involving the Ugandan government and Heritage Oil & Gas Ltd. and not the URA. The URA is a communal body with long-lasting progression and capabilities of suing. The rationale behind having tax matters statutory and not contractual is to make it possible for the Government to achieve the <https://assignbuster.com/legal-aspect/>

objectives of taxation, which are to collect revenue to realize economic stability and growth, and to convey about income allotment. Taxation is an instrument by which sovereign states take out finances or funds from their citizens and property to supply public revenue in order to sustain Government expenditures and public expenses.

This is the most reliable source of funds for most developing economies, consequently subjecting it to the mercies and compromises of contractors and Government Officials will only create uncertainty and unfairness on the amounts payable and can either cause economic instability. In this case, it could not have been the purpose of management to consent that a tax row be referred to arbitration. Such an attempt will be contrary to the Ugandan laws. In allowing the tax disagreement to move through adjudication procedure in London, the timely payment of the taxes as agreed would not be achieved. This implies that tax by inference was accepted from the extent of the arbitration concurrence, and in that manner it was not among the considered arbitral disputes under the PSA. On grounds one and two of this appeal that fails because of the reasons that section five of the ACA Act is inoperable and that tax matters are statutory and not contractual.

It can only succeed in an extremely small aspect, which is to the point that the Tribunal had misguided itself and arrived at a wrong ending that URA is not held by the PSA. Otherwise, I believe that the Tribunal exercised its prudence judiciously by refusing to continue the proceedings and submit the matter for arbitration for the reason that it was not in custody of that jurisdiction. Concerning ground 3 of this appeal, the Ugandan Constitution provides that Parliament will make laws that will establish tax tribunals for <https://assignbuster.com/legal-aspect/>



intentions of resolving tax conflicts. The Tax Arbitration Tribunal (TAT) Act is one of the statutes enacted in accordance with this provision. It establishes the Tribunal, the key function of which is to review taxation resolutions upon application being made to it by any aggrieved parties. Success Factors Heritage Oil & Gas Ltd.

had offered to pay the government of Uganda some money in what it called as ex gratia and they kept on raising this amount. However, the Ugandan government did not budge to their offers and stuck on proceeding with the case. This is because Heritage's main argument was that contrary to selling an asset, the sale of its rights and interest did not contribute to an interest of immovable property as defined in the Income Tax Act, and consequently tax should not be lodged on its deal with Tullow Oil. They had also insinuated that the Income Tax (Amendment) Bill 2011 introduces a description of immovable property. From these offers, the tribunal noted that Heritage Oil had recognized that it has tax obligations to the revenue Authority from the sale; otherwise they would not have offered to pay the ex gratia (Mbanga, 2011). The size of the deal played a deal in winning of the case.

The deal was worth \$ 1. 45 billion. Therefore, the applicant had sold more than just an interest. The tribunal noted that the applicant had sold its “ participatory interest” and thus the corresponding entitlements joined to it. Consequently, it was deemed that the applicants' rights and interests' sale constituted a sale of property since they earned an income from that sale (Mbanga, 2011). Conclusion The tax dispute between Ugandan Revenue Authority and Heritage Oil & Gas Ltd.

arises from the sale of the latter's sale of its interest to Tullow Oil Company. The authority is claiming to tax the income generated from the sale. However, Heritage Oil is not willing to pay the assessed tax to the authority, thus bringing about the legal tussle. In many developing countries tax is the leading source of revenue to their governments. Therefore, any tax obligation to the government must be met. Thus, it is not good for Heritage to ask for an arbitration process that will not be accessible to the Ugandans as they have the highest interest on the subject matter.

Ugandans own the property in question through their government. The London tribunal should put up to hold the ruling of the tax appeal tribunal of Uganda.