

MTN SAID FOR PAYMENT TO APPLY, THERE MUST BE A VALID ASSESSMENT

By Edward Anyoli

The tax tribunal has halted Uganda Revenue Authority's (URA) tax assessment of sh169.9b that had been slapped on MTN Uganda Limited following a complaint by the telecommunication company.

The telecom company challenged the audit process, arguing that the assessment procedure was flawed. The tribunal members agreed with MTN's lawyers and ordered a stop to the ongoing tax assessment.

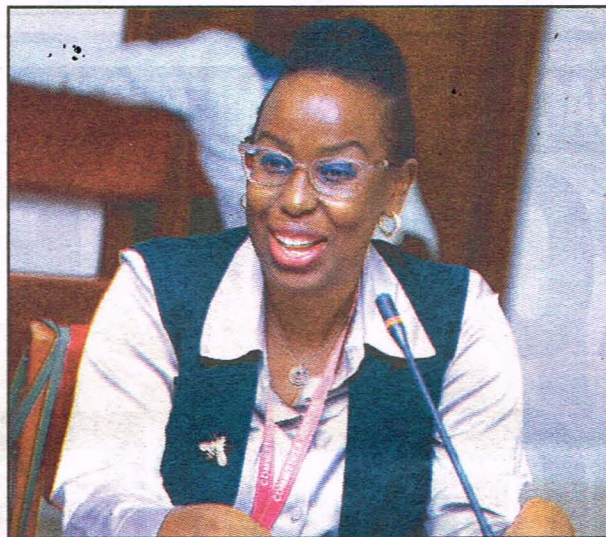
In addition, the tribunal issued a temporary injunction restraining URA and its agents from enforcing or collecting the disputed tax of sh169.9b from MTN Telecom.

"We find that the obligation to pay 30% of the assessed tax under section 15(1) of the Tax Appeal Tribunal Act does not arise in the circumstances of this case. A temporary injunction is hereby granted restraining the respondent (URA) or its agents from enforcing or collecting the disputed tax amounting to sh169,936,299472 pending the final determination of the tax tribunal," the tribunal ruled.

The Tribunal, presided over by its three members Crystal Kabajwara, Stella Nyapendi Chombo and Proscovia Rebecca Nambi, agreed with MTN's lawyers, Bruce Musinguzi, Thomas Kato and Joseph Luswata of Kampala Associated Advocates, that the obligation to pay 30% of the sh169.9b tax assessed does not arise.

On December 30, last year, URA had issued an objection decision raising the tax liability of sh169.9b in relation to MTN's Mobile Money (MoMo)

TAX TRIBUNAL BLOCKS URA'S SH170B ASSESSMENT ON MTN



Kabajwara, the chairperson of the Tax Appeals Tribunal

operations and demanded payment of 30% of the assessed amount. MTN argued that the amended and additional assessments required the company to first file an objection, making the 30% demand premature and procedurally flawed.

MTN contended that for the 30%

payment to apply, there must first be a valid assessment followed by a formal objection. The company further argued that the assessment and objection processes are governed by Sections 25 and 26 of the Tax Tribunal Act, which set-out the requirements for filing an objection, including specifying the

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amount of tax payable, the relevant tax period and the due date for payment.

The telecom company argued that enforcing the disputed tax liability would significantly impact its financial operations. It further contended that prematurely demanding such a substantial amount, before the legality of the assessment has been determined, could materially disrupt MTN's operations.

On its part, URA, through its legal officers Gloria Twinomugisha, Diana Prida Praff, Sam Kwerit, Brian

Muwonge, and Desire Mulindwa, argued that there were no grounds to grant the relief sought.

They contended that the telecom company was obligated to pay 30% of the disputed tax. According to URA, it is a settled principle that the obligation to pay 30% of a disputed tax arises once an application has been made before the tribunal. The tax body further submitted that an assessment had been issued and subsequently, an objection was raised regarding the documentation presented.

During the submissions, URA lawyers argued that MTN would not suffer any irreparable harm, as any loss arising from the assessed tax could be compensated if the assessment is later found to be erroneous.

The Tribunal sided with MTN, effectively stopping URA from enforcing the 30% of sh169.9b (sh50.9b) payment while the objection process is being addressed.

The tribunal further noted that URA has a statutory duty and obligation to collect taxes on behalf of the Government.

However, it stated that where there is a dispute, the status quo must be maintained to ensure fairness and prevent undue harm to either party.

"We recognise that the respondent has a statutory duty to collect taxes on behalf of government. However, where there is a serious dispute regarding the legality of the administrative process itself, the balance of convenience favours preserving the status quo, until the tribunal determines the matter conclusively," the tribunal ruled.