

An Evaluation of the Revenue Appeals Tribunal

By

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SCHOOL OF LAW

I recommend that the directed research prepared under my supervision by Kelvin Mpembamoto, entitled:

An Evaluation of the Revenue Appeals Tribunal

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to format as laid down in the regulations governing directed research.



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DECLARATION

I, **KELVIN MPEMBAMOTO**, do hereby declare that this research paper represents my own work, and where other people's work has been used, due acknowledgements have been made. This paper has not been submitted for any academic awards to the best of my knowledge.



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Abstract

An efficient mechanism for dispute resolution is an indispensable tool for political, social and economic growth. It is against this background that government in its quest to enhance economic development legislated for the creation of the Revenue Appeals tribunal as a specialized institution that could speedily facilitate the settlement of tax disputes. The creation of the Tribunal was also seen as a way of decongesting the mainstream court process.

The study therefore is an evaluation of the effectiveness of the Tribunal as a tool for enhancing speedy delivery of justice through efficient adjudication of tax disputes by examining among others the adequacy of both the legal and institutional framework of the Revenue Appeals Tribunal, identifying factors, legal and non-legal, that tend to hinder the efficient operation of the Tribunal and to make appropriate recommendations that could help strengthen the institution so that it can be able to fulfill its statutory mandate.

The study focused on the evaluating the performance of the Tribunal through interviews conducted with selected stakeholders including the Tribunal members, staff at the Tribunal and other major stakeholders such as the Zambia Revenue Authority and private businesses. In addition a review of relevant literature and the Internet was done and this provided a lot of useful insight in enriching the study.

The study is arranged in five chapters. Chapter one introduces the problem to be evaluated. Chapter two discusses the historical development including the legal and institutional framework of the Revenue Appeals Tribunal. The chapter also outlines the main administrative procedures of the Tribunal. Chapter three identifies and evaluates the Tribunal against the various legal factors that have impeded on the efficient dispensation of justice by the Tribunal while chapter four identifies and evaluates the Tribunal against some non-legal factors that have impeded on the efficient dispensation of justice by the Tribunal. These two chapters also state the case for reforming the Tribunal. Tribunal. Finally chapter five sets out the conclusions and the recommendations of the study.

DEDICATION

To my wife Rhodah and our children Musonda, Mwape and Chola.

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Special thanks go to my employers, Zambia Revenue Authority, for availing me the resources to pursue my studies and also to staff of the Revenue Appeals Tribunal for providing me with research materials.

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LIST OF ABBREVIATIONS

JSC	Judicial Service Commission
RAT	Revenue Appeals Tribunal
URA	Uganda Revenue Authority
VAT	Value Added Tax
ZRA	Zambia Revenue Authority

TABLE OF DOMESTIC LEGISLATION

1. The Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia
2. The Commission for Investigations Act, Chapter 39 of the Laws of Zambia
3. The Customs and Excise Act, Chapter 322 of the Laws of Zambia
4. The Income Tax Act, Chapter 323 of the Laws of Zambia
5. The Lands Act, Chapter 184 of the Laws of Zambia
6. The Parliamentary and Ministerial Code of Conduct Act No. 35 of 1994
7. The Revenue Appeals Tribunal Act No. 11 of 1998
8. The Value Added Tax Act, Chapter 331 of the Laws of Zambia
9. The Zambia Revenue Authority Act, Chapter 321 of the Laws of Zambia

TABLE OF INTERNATIONAL LEGISLATION

1. Halsbury's Laws of England, 3rd Edition, Volume 36
2. New York City Charter 1961
3. The Tax Appeals Act Chapter 345 of the Laws of Uganda
4. The Taxes Management Act 1970 of England

TABLE OF CASES

1. Jayesh Shah and Shaleetha Mahabeer v Zambia Revenue Authority 1999RAT/14
2. Muhammed Hussein v Zambia Revenue Authority 1999RAT/13
3. Sablehand (Zambia) Limited v Zambia Revenue Authority, SCZ Judgment No. 20 of 2005

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CHAPTER ONE

1.0 Introduction

This chapter gives the background on which the evaluation of the effectiveness of the Revenue Appeals Tribunal (RAT), hereinafter called the Tribunal, is premised. The author in this chapter gives a brief history of the rationale leading to the establishment of the Tribunal as well as the stakeholders' expectations following the establishment of the same. It is against these expectations and the *raison d'être* of Tribunals that this paper will focus its analysis so as to establish to what extent the Tribunal in its current form has been able to fulfil its mandate. The desire by the government to accelerate economic growth through speedy resolution of disputes between individuals or individual and the state has received considerable attention in that the government has over the years not only relied on the formal court system, but has through legislation established administrative tribunals, which are quasi-judicial in nature, and given them sufficient legal framework, to adjudicate over disputes.

The Revenue Appeals Tribunal is one such institution established through such initiative as a tool for enhancing justice delivery through efficient adjudication of tax disputes. The Tribunal was established by the Revenue Appeals Tribunal Act¹ to hear appeals under the Customs and Excise Act², the Income Tax Act³ and the Value Added Tax Act⁴ of the Laws of Zambia. The creation of the Tribunal was therefore borne out of the need to

¹ The Revenue Appeals Tribunal Act No. 11 of 1998

² Chapter 323 of the Laws of Zambia

³ Chapter 331 of the Laws of Zambia

⁴ Chapter 322 of the Laws of Zambia

speed up the settlement of tax disputes between the Zambia Revenue Authority⁵ and aggrieved taxpayers. It was hoped that by creating a separate and dedicated institution to deal with tax matters, it would greatly reduce the cost of litigation and also the cost of doing business in general. This initiative was borne out of the realisation that an efficient mechanism for dispute resolution is an indispensable tool for political, social and economic growth.

Indeed, the significance of the Tribunal in the economic development of our country cannot be underestimated. As the Minister of Finance and National Planning observed in his 2008 Budget Address⁶ that about seventy-one percent of the national budget is financed from domestic resources with over sixty-six percent of that coming from domestic taxes, it becomes inevitable that tax disputes be promptly and fairly determined in order to allow the disputed tax to be quickly paid into state coffers with minimal delay so that government can be able to finance its social, health, education and infrastructure development programmes. Therefore if the government is able to marshal adequate resources it can be in a position to provide basic goods and services to its citizenry. This also reduces government borrowing and hence helps maintain a macroeconomic environment conducive for overall economic development and at the same time enable the taxpayer to expeditiously determine their tax liability and carry on with their business.

Prior to the creation of the Tribunal, there existed three separate and distinct tax tribunals dealing with income tax, value added tax and customs and excise tax separately. The

⁵ Chapter 321 of the Laws of Zambia

⁶ Budget Address (2008), Government Printer, Lusaka Pg 12

present Tribunal is a consolidation of all these three tax courts. The Tribunal is a grant-aided institution under the Ministry of Finance and National Planning. Similar institutions called the VAT and Duties Tribunals in the United Kingdom that are charged with the responsibility of hearing appeals by taxpayers regarding decisions of Her Majesty's Revenue and Customs (HMRC) are run by the Tribunal Service, an executive agency under the Ministry of Justice and they work under the supervision of the Administrative Justice and Tribunals Council.⁷

At this stage it is may be important to recall the *raison d'etre* of tribunals. Tribunals are usually preferred to ordinary courts because;

- its members may have specialized knowledge of the subject matter;
- it may be better at finding facts, applying flexible standards, and exercising discretionary power;
- they are usually cheaper; and
- they are more accessible and more expeditious than the courts of law⁸.

One may further add that another attractive feature of tribunals is that their proceedings are usually informal in comparison to judicial proceedings as the tribunals are not bound by the rules of evidence applicable in civil proceedings and any party to the proceedings can appear in person or through counsel.

⁷ Tribunal Service Explanatory Leaflet, London 2007, Pg 4

⁸ Matibini P. Revisit the Jurisdiction of the Lands Tribunal, (1998), Pg 3, unpublished

Armed with this hindsight, stakeholders have formed expectations regarding the functioning of the Tribunal. For example, one of the major outputs expected from the creation of the Tribunal is the delivery of rulings within reasonable time.

2.0 Statement of the Problem

The pace at which the Tribunal has been delivering its rulings has in the recent past been a source of concern to stakeholders⁹. While acknowledging the fact that dispensing justice is a complex matter, it is nonetheless rational to expect delivery of rulings within reasonable time by those charged with this responsibility. In order to establish whether the Tribunal has lived up to its statutory mandate, the study examined the legal framework in order to determine whether it is too broad or inadequate to enable the Tribunal carry out its mandate effectively.

It is important to state that the performance of the Tribunal has not been affected by the legal factors only. There are other non-legal factors such as the institutional and administrative set up and financing that have played a significant impact on the effective functioning of the Tribunal. The availability of adequate financial resources is critical to the efficient and effective functioning of the Tribunal. In this regard an analysis of the appropriated budgets by Parliament to the Tribunal overtime and actual releases to it by the Ministry of Finance and National Planning will be shown in order to evaluate government commitment to the work of the Tribunal.

⁹ Submission on Upgrading the Status of the Revenue Appeals Tribunal, Revenue Appeals Tribunal, Pg 3.

While it is appreciated that the tribunal members are part time, it is nonetheless important that these meet regularly to resolve tax disputes as this allows prompt payment of taxes due and at the same time allows businesses to establish their liability and prudently move on with the conduct of their business. This study will therefore show whether the frequency of sittings of the tribunal is sufficient to ensure timely disposal of tax appeals. Related to this is the issue costs. Whilst it is not in dispute that it is cost effective to have the matter brought before the Tribunal rather than the High Court, it is also an undeniable fact that for some businesses, due to the nature of the dispute, they may be required to hire the services of a legal practitioner. It is against this background that a comparative analysis has been done with similar Tribunals in countries such as the United Kingdom and Uganda to establish whether the cost of litigation before the Tribunal is reasonable or not and in addition whether the administrative fees payable add to the cost of paying taxes.

As stated above, one of the major outputs expected from the creation of the Tribunal was delivery of rulings within reasonable time. A comparative analysis with the Tax Appeals Tribunal in Uganda shows that the time it takes to dispose of cases in Zambia is unnecessarily long. An investigation of the number of cases that the Tribunal has handled since inception has been done. Like any other institution charged with the responsibility of dispensing justice, its perception in the eyes of the public is of paramount importance. When people lose confidence in an institution such as the Tribunal, it erodes the very essence for which it was created. Therefore one way in which the Tribunal can inspire public confidence is in its ability to deliver well-articulated rulings comparable to those

passed in the conventional courts of law. This is important because a lack of clarity of rulings could lead to prolonged judicial processes through appeals. In order to buttress this point, the study has endeavoured to show the number of appeals from the Tribunal that have not been upheld by the High Court and/or the Supreme Court in order to establish its credibility.

Another concern with respect to the effectiveness of the tribunal is the enforceability of the Tribunal rulings. For the Tribunal to be respected it is important that its ruling are enforceable otherwise the institution becomes “toothless”. If a party to a ruling does not comply with the ruling and there are no sanctions, then stakeholders will have no recourse but to pursue their cases in the ordinary courts of law since the orders of the courts have the force of law and whoever disobeys the court orders does so at their own peril. Furthermore, the fact that the rulings are effective against the parties only means that precedence in respect of similar-fact appeals is not observed and the tribunal sitting to consider a case is not bound by its previous decision. These issues have negatively affected the credentials of the Tribunal.

The Tribunal like most other tribunals remains unknown to most legal practitioners and the general public. For many therefore, the traditional court system still remains the only viable option for resolving disputes between the administration and stakeholders who have been affected by the decisions and actions of the administrative agencies and their officers.

One serious constraint of the Tribunal seems to be the extent of its jurisdiction, which is very limited as the grounds of appeal are narrowly defined. Thus were as the issue raised by the public may not necessarily be with the assessment of tax, the public cannot challenge the exercise of power by various officers of the ZRA in the course of performing their duties.¹⁰

Another constraint identified is the centralisation of the Tribunal, which has resulted in limited access to the Tribunal by taxpayers. Furthermore, the RAT sees the lack of adequate funding to the institution as a potential threat to its quest for efficient, fair and swift delivery of justice.¹¹

The Tribunal currently relies heavily on United Kingdom and South African tax case law although there are some variations in legislation of the two jurisdictions in comparison to Zambia. Zambia does not have its' own body of tax case law or jurisprudence. This position no doubt tends to affect the quality and pace of rulings as the tribunal require time to keep pace with rulings in other jurisdictions as opposed to having its own jurisprudence.¹²

A review of the Tribunal's Strategic Plan shows that a number of changes to the way the tribunal operates have been proposed. One such change is allowing of appeals from the tribunal to go straight to the Supreme Court of Zambia. This is meant to minimise the time it takes to hear tax appeals. The current pace at which tax appeals are disposed of in

¹⁰ Sangwa J. P. Administrative Law in Zambia, Pg 36 unpublished

¹¹ Strategic Plan Review (2003-2007), Revenue Appeals Tribunal, Pg 16

¹² Submissions on Upgrading the Revenue Appeals Tribunal, Revenue Appeals Tribunal, Pg 7

the High Court for Zambia have a counter effect on some appeals in the Tribunal¹³. This point only goes to reinforce the earlier argument that the Tribunal is due for reform.

3.0 Research Question

This study seeks to evaluate the effectiveness of the Tribunal as a tool for enhancing speedy delivery of justice through efficient adjudication of tax disputes. In order to answer this broad question, the objectives were threefold:

- to examine the adequacy of both the legal and institutional framework of the Revenue Appeals Tribunal;
- to identify factors both legal and non-legal that impede the efficient dispensation of justice by the Tribunal; and
- to make appropriate recommendations that would help in the efficient dispensation of justice by the tribunal.

4.0 Rationale

As already pointed out, the philosophy underlying the creation of the Tribunal was to provide a specialised and speedy forum for resolving disputes between taxpayers and the Zambia Revenue Authority. This study therefore, sought to determine to what extent the Tribunal has been able to meet the stakeholders' expectations as aforementioned. The studies initiated by the Tribunal in the recent past aimed at enabling the it meet its statutory mandate are a clear manifestation that there is need to re-look at the performance of the Tribunal *vis-à-vis* the changing economic environment¹⁴. It is hoped

¹³ Strategic Plan (2008-2012), Revenue Appeals Tribunal, Pg7

¹⁴ Revenue Appeals Tribunal 2003-2007 Strategic Plan Review Pg 4

that recommendations arising out of this study will help strengthen the institution so that the Tribunal can be able to fulfil its statutory mandate.

5.0 Methodology

The study focused on evaluating the performance of the Tribunal as an efficient and effective institution for justice delivery system in Zambia. Interviews were conducted with selected stakeholders such as the tribunal members, the Registrar of the Tribunal, ZRA Legal Counsel and other legal personnel at the ZRA department and the business community. A review of relevant literature and the Internet were also useful in informing the study.

Finally as we discuss the paper in detail in the preceding chapters, it is important to remember that the gist of this paper is that the Tribunal in its current form has not been an efficient administrative institution for speedy disposal of tax disputes and hence there is need to strengthen the institution by reviewing the current legal framework with a view to strengthening it as well as addressing other non-legal matters raised in the study.

CHAPTER TWO

HISTORICAL DEVELOPMENT AND THE LEGAL AND INSTITUTIONAL FRAMEWORK OF THE REVENUE APPEALS TRIBUNAL

2.0 Introduction

In this chapter an analysis of the factors leading to the creation of the Revenue Appeals Tribunal are discussed. However, before delving into that, a historical background leading to the creation of the Tribunal shall be given. In addition the current legal, institutional set up and the procedures of the Tribunal are also discussed here.

2.1 Historical Background

The Revenue Appeals Tribunal was established in 1998 under the provisions of the Revenue Appeals Tribunal Act No. 11 of 1998¹⁵. The Act is further supplemented by Statutory Instrument No. 143 of 1998¹⁶, which spells out the functions and procedures of the Tribunal.

Following the liberalisation of the economy and the subsequent tax reforms that the government embarked on, the level of tax appeals increased and this called for a major reform in the tax appeal process. These reforms culminated in the creation of the RAT. Thus the Tribunal in its current form is a consolidation of three tax Tribunals which prior to 1998 existed separately and were administered independently under the Customs and

¹⁵ The Revenue Appeals Tribunal Act No. 11 of 1998

¹⁶ The Revenue Appeals Tribunal Regulations 1998, Statutory Instrument No. 143 of 1998

Excise Act¹⁷, Income Tax Act¹⁸, and the Value Added Tax Act¹⁹. These Tribunals were respectively called the Tariff Appeals Court, the Income Tax Appeals Court and the Value Added Tax Appeals Tribunal.

From the foregoing, it can be seen that the Tribunal was created to provide for one specialised and speedy forum to resolve disputes between Taxpayers and the Zambia Revenue Authority as at the time of the consolidation most of the Tribunals had become moribund. These disputes relate to decisions and tax assessments imposed by the Commissioner General relating to Customs and Excise Act, Income Tax Act, Value Added Tax Act and the Property Transfer Tax. The underlying principle on which the Tribunal was created was to provide speedy, impartial and equitable judicial decisions to both the aggrieved taxpayer and the ZRA.

2.2 Legal Framework

As already stated, the Revenue Appeals Tribunal Act No. 11 of 1998 hereinafter called the Act governs the Tribunal. Specifically, the jurisdiction of the Tribunal is set out in section 3 of this Act and is supplemented by the Customs and Excise Amendment Act No. 2 of 2001.

Section 3 of the Act provides that there is hereby established the Revenue Appeals Tribunal whose function shall be:

(a) to hear and determine appeals under the Customs and Excise Act in the following circumstances;

¹⁷ Chapter 323 of the Laws of Zambia

¹⁸ Chapter 331 of the Laws of Zambia

¹⁹ Chapter 322 of the Laws of Zambia

- (i) *where an importer of any goods is of the opinion that the goods are incorrectly classified by the Commissioner-General under any item of the Customs tariff and the importer, pays the amount demanded by the Commissioner-General or furnishes security to the satisfaction of the Commissioner-General for the payment of that amount, and the importer appeals to the Tribunal against such classification within three months after the payment of such amount or furnishing of such security;*
- (ii) *Where a person who intends to import goods or manufacture goods within Zambia and is of the opinion that the goods of the class or kind that person intends to import or manufacture, as the case may be, are incorrectly classified by the Commissioner-General under any item of the Customs tariff and that person appeals to the Tribunal against such classification; or*
- (iii) *Where the Commissioner-General has determined the value of any goods intended for importation into Zambia or manufactured within Zambia and any person aggrieved by such determination appeals to the Tribunal;*

(b) to hear appeals under the Value Added Tax Act in respect of any of the following matters:

- (i) the registration, or the cancellation, or registration of a supplier;*
- (ii) the refusal to register a supplier;*
- (iii) the tax assessed to be payable on any supply of goods or services or on the importation of any goods;*
- (iv) the amount of any input tax that may be credited to any taxable supplier;*
- (v) the application of any administrative rule providing for the apportionment or disallowance of input tax;*
- (vi) any notice under section twenty-five of the Value Added Tax Act;*

(c) to hear appeals against assessment of tax under the Income Tax Act; and

(d) to hear and determine any matter prescribed by the Minister, by regulation, to be a matter against which an appeal may be made under this Act.

Section 190 of the Customs and Excise Act provides that;

(1) Any person who is aggrieved by a decision or determination by the Commissioner-General under this Act or under any regulation or rules made under this Act, may in respect of the matters set out in subsection (2) appeal to the Tribunal in such manner and within such time as the Minister may by regulation prescribe.

(2) The Tribunal shall hear and determine appeals under this Act in respect of any of the following matters;

- (a) in the circumstances set out in paragraph (a) of section three of the Revenue Appeals tribunal Act;*

- (b) *the refusal to grant, renew or the cancellation of a licence for the manufacture of excisable goods*
- (c) *the refusal to grant, renew or the cancellation of a licence for a bonded warehouse;*
- (d) *the refusal to grant, renew or the decision to suspend or cancel a Customs Agent's licence*
- (e) *the application of any administrative decision on a matter arising from a seizure of goods under this act; or*
- (f) *any other matter against which an appeal shall lie under this Act*

In addition section 10 of the Property Transfer Tax Act provides that;

(10) Any determination or assessment made under this Act may be objected to or appealed against by the person affected thereby; and without prejudice to the other provisions of this Act, the provisions of Part XI of the Income Tax Act relating to objections and appeals shall apply, mutatis mutandis, in relation to objections and appeals under this Act as they apply in relation to objections and appeals under the Income Tax Act.

From the above provisions it can be seen that the core functions of the Tribunal, as a specialised tax court charged with the duty to dispense justice, is to hear and determine tax disputes as a court of first instance.

Further, sections 4(1) and 4(3) of the Act provide that;

4(1) the Tribunal shall consist of the following members appointed by the Minister;

- (a) three legal practitioners of not less than seven years standing recommended by the Judicial Service Commission and who, in the opinion of the Judicial Service Commission, have sufficient knowledge of, and experience in, tax matters;*
- (b) two qualified accountants certified as such by the Zambia Institute of Certified Accountants;*
- (c) two persons from the business community;*

4(3) A member of the Tribunal shall, subject to subsection (4), hold office for a period of four years from the date of appointment but may be eligible for re-appointment for one further term.

The Act therefore provides the basic legal framework under which the Tribunal can perform its functions as well as its composition and what matters the Tribunal can exercise jurisdiction over. However, it is interesting to note that whereas the other categories of Tribunal members are appointed based on recommendations of their professional bodies i.e. ZICA and the business community, unlike the lawyers, the Law Association of Zambia who ought to know the competences of its membership, does not seem to have a role in the appointment of these lawyers.

In Uganda, the members of the Tax Appeals Tribunal are appointed by the Minister of Finance by powers conferred on him by section 4(1) of the Tax Appeals Tribunal Act for a period of 3 years. The names for members of the Tribunal are forwarded to the Judicial Service Commission (JSC) for consultation²⁰. Tribunal members have a responsibility of hearing and settling disputes between taxpayers and Uganda Revenue Authority (URA). However, URA by law is not entitled to bring cases before the Tribunal against taxpayers but it can use its powers either to attach properties of tax defaulters or take the matter to the Commercial Court.

In South Africa, the Special Income Tax Courts sit within divisions of the High Court and consists of a Judge of the High Court assisted by an accountant of not less than 10 years' standing, and a representative of the business community. This court deals with any disputes between a taxpayer and the South African Revenue Service where the dispute

²⁰ <http://allafrica.com/stories/200808280043.html> accessed on 11/07/2008

involves an income tax assessment of more than R100 000. Appeals against its decisions are made directly to the Supreme Court of Appeal. Tax disputes involving an assessment of less than R100 000 go to the Tax Board, which is chaired by an Attorney, an Advocate or an Accountant who works in the private sector and is specifically appointed by the President to assist as chairman of the Board²¹.

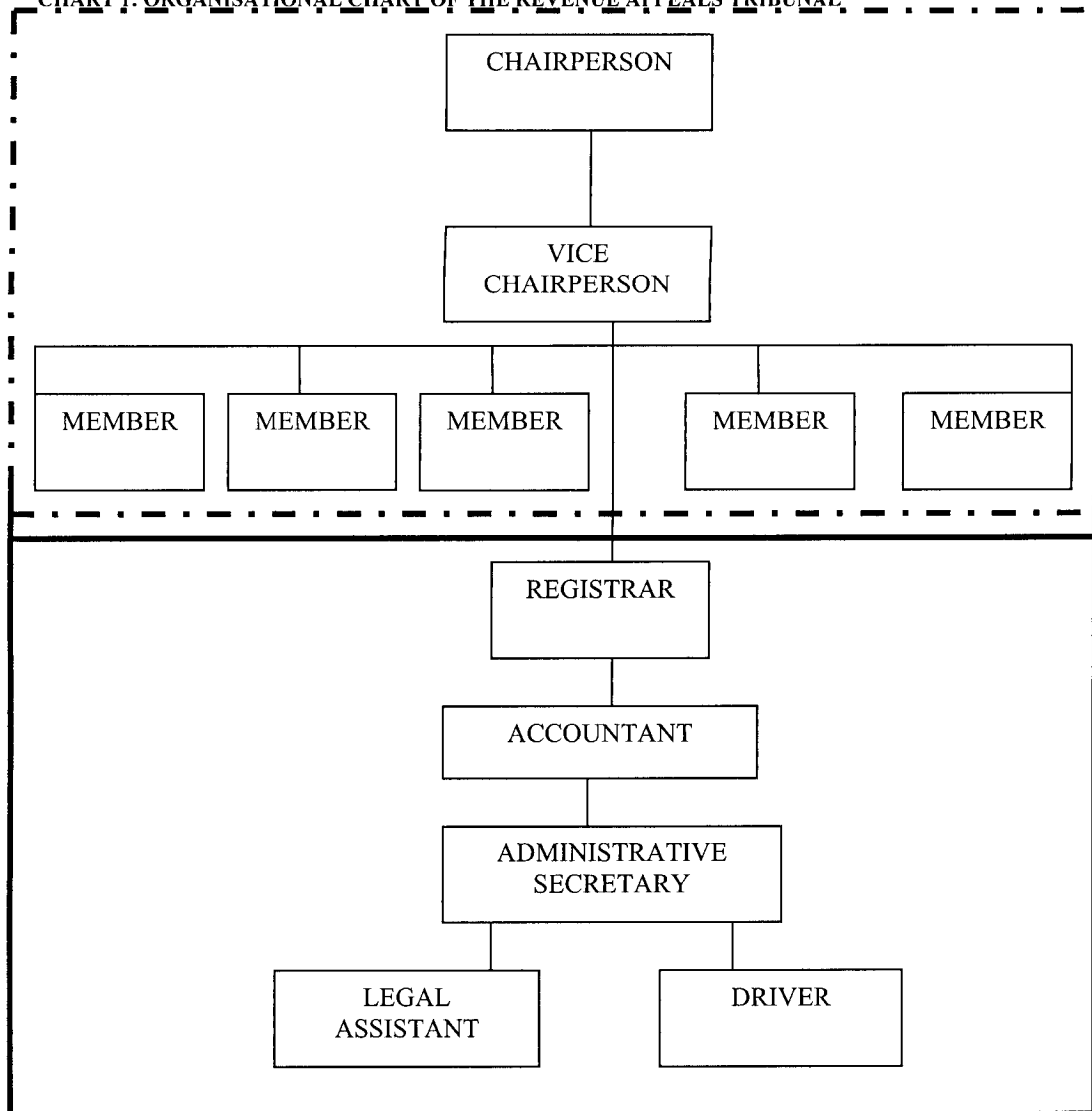
2.3 Institutional Framework

The Tribunal is a two-tier structured institution. At the top are the Tribunal members appointed by the Minister and are part-time members of the Tribunal. At the bottom is the administrative staff headed by the Registrar. These are the full-time members of the Tribunal.

Statutory Instrument No. 143 of 1998 provides for the institutional set up as shown below. Section 3(1) provides that the Registrar shall be the Chief Administrative Officer and shall be responsible, under the direction of the Chairperson, for effective and efficient provision of such administrative support as may be necessary to enable the Tribunal carry out its functions.

²¹ http://www.capegateway.gov.za/afr/pubs/public_info/C/32303/E accessed on 11/07/2008

CHART 1: ORGANISATIONAL CHART OF THE REVENUE APPEALS TRIBUNAL.



--- Part Time Members
==== Full Time Staff

Thus, the Registrar is *inter alia* responsible for ensuring that notices, summons, or other documents are served not less than seven days before the date of hearing and receiving relevant documents on behalf of the Tribunal from appellants.

The Tribunal is a grant-aided institution under the Ministry of Finance and National Planning and hence receives a subvention from the Ministry²². Its budget and work plans are therefore subject to scrutiny by the Ministry and often adjusted to suit the government priorities and availability of resources.

2.4 Procedures of the Tribunal

Any taxpayer who receives a decision, whether under Section 3 of the Revenue Appeals Tribunal Act No. 11 of 1998, Section 10 of the Property Transfer Tax or Section 190 of the Customs and Excise Act and is dissatisfied with it can appeal to the Tribunal. The appeals to the Tribunal are by way of filling out Notice of Appeal forms, which should include the name of appellant, assessment, reference and name of dealing officer at ZRA who made the decision and the reason for challenging the decision.

The appeal must reach the Tribunal no later than 30 days from the date of the notice of decision. However, an appeal may be made beyond the 30-day limit in exceptional circumstances and were this is granted the appellant is granted an Order to Appeal out of Time also called an “*application to file notice of appeal out of time*” and should be made before the Registrar. The ZRA is given 30 days in which to respond to an appeal after which a date for a formal hearing is set. The Tribunal however, does encourage *ex-curia* or “out-of court settlement.”

²²Estimates of Revenue and Expenditure, (2007) Government Printer, Lusaka, Pg 405

A fee of K200, 000 is charged for making an appeal and an additional K50, 000 is charged for applications seeking interim relief such as *Stays of Execution* of ZRA Demand Notices.

An appellant may withdraw the appeal after filing a Notice of Withdrawal although ZRA reserves the right to demand for costs. The Registrar of the Tribunal is expected to communicate the date; time and place, at least 14 days before the hearing, suffice to say that all the hearings are held in Lusaka.

A minimum of three individuals consisting of a Legal Practitioner, an Accountant and any other member of the Tribunal sit to hear an appeal. An appellant can appear in person before the Tribunal or choose to be represented provided that representative is a qualified lawyer, accountant or tax consultant. If an appellant fails to attend without good reason and are not represented, the Tribunal may hear the appeal in absentia.

It is important to state that where an appellant requires services such as those of an interpreter, signer or reader, the Registrar will endeavour to make these available. Every appellant is expected to prepare a compendium of the documents they wish to rely on as evidence in what is called a "*bundle of documents*" which must have an "*index*" and should be paginated. In addition an appellant is expected to file submissions or heads of arguments, which must outline legal arguments including citations of legal authorities, relied upon.

Appeal hearings before the Tribunal are normally open to the public but may be held in camera on request by any party to the proceedings having regard to public order, national security or prejudice to interests of justice. Once the Tribunal has heard the matter it is supposed to make a decision within fourteen days and a summary of the reasons for their decision and a written copy of the decision, known as a *Ruling*, made available to both the appellant and ZRA. The *Rulings* are also supposed to be published in the *Government Gazette*.

If either party to the proceedings is dissatisfied with the decision of the Tribunal, by section 6 of the Act, they can appeal against the decision to the High Court and such appeal must be either on point of law or indeed law based facts. No appeal shall lie to the High court based on a point of fact only. The Registrar prepares a *Record of Appeal*, at a fee, which an appellant can send to the High Court.

The Tribunal also has power to award costs and in case of dispute on quantum of the costs, the Registrar is the Taxing Master and should any party be aggrieved, they can appeal to the Chairperson or Vice-Chairman sitting alone or with one Member.

Having laid down the basic framework under which the Tribunal operates, we shall now in the next chapter, examine to what extent the Tribunal has been able to fulfil its mandate and discuss any shortcomings arising from this set up.

CHAPTER THREE
LEGAL FACTORS AFFECTING THE EFFICIENT OPERATION OF
THE REVENUE APPEALS TRIBUNAL

3.0 Introduction

Having laid down the legal and institutional framework of the Revenue Appeals Tribunal in the preceding chapter, we now turn to examine to what extent the Tribunal has been able to fulfil its mandate. In doing so, we shall in this chapter focus on legal factors that impede on the efficient dispensation of justice and also establish whether the tribunal under the current set up meets the demands of its stakeholders. The possible shortcomings arising from this set up will be discussed and possible solutions proposed.

From a legal point of view a number of factors can be sighted that may have a bearing on the efficient functioning of the Tribunal and these are now discussed below.

3.1. Composition of the Tribunal

The first legal impediment that can be identified as affecting the efficient functioning of the Tribunal is section 4(1) of the Act itself. Section 4(1) of the Act gives the Minister responsible for Finance power to appoint the members of the Tribunal. Unlike Accountants who are supposed to be appointed from amongst those certified as such by the Zambia Institute of Certified Accountants as provided for under section 4(1) (b) of the Act, the lawyers on the other hand who are appointed to the Tribunal need only be legal practitioners of not less than seven years standing recommended by the Judicial Service

Commission (JSC), hereinafter called the commission. It is difficult to see the relevance of the commission in the appointment of the three legal members. The Commission has nothing to do with the legal practitioners in so far as their day-to-day engagements are concerned. The body that is better placed to recommend such members would be the Law Association of Zambia (LAZ), which has direct dealings with the legal practitioners. It can easily determine who among its members has sufficient knowledge and expertise in tax matters, and therefore who can best serve the interest of justice.

The study established after discussions with the Registrar²³ that in practice when there is a vacancy in the membership of the Tribunal, the Registrar informs the Minister of Finance of a vacancy and requests him to appoint a new member. Simultaneously, the Registrar sends a notice to LAZ requesting for names of nominees to fill the vacancy. Once the Registrar receives the names of the nominees, the names are then sent to the JSC for consideration. The JSC after scrutinising the names has the discretion to accept and recommend to the Minister the nominees or reject them if in its opinion the nominees are not of good standing. In addition the Minister can also accept or reject the nominees and he appoints the chairperson. This seriously compromises the work of the tribunal as even the renewal of membership is at the discretion of the Minister who may withhold the renewal without cause. It is important to state here that the involvement of LAZ in this process is not backed by the Act unlike that exercised by ZICA. Therefore LAZ may or may not be consulted and this lapse seriously puts the credibility of Tribunal in question. The role of LAZ in this process therefore deserves to be legislated.

²³ Chola S. Mutambo, Registrar since September 2008

It is also interesting to note that the Tribunal members in Uganda are sworn in by the Chief Justice and also take and subscribe the oath of allegiance and the judicial oath²⁵. Given that members are part time this solemn practice makes them take the work of the Tribunal more seriously and their rulings are held in high esteem. Another feature that has strengthened the Ugandan model is the security of tenure that members of the tribunal have. The Minister in Uganda can only remove a member if the question of removal of a member has been referred to a committee consisting of three persons, who are or have held offices as Judges or who are advocates of at least 10 years standing, have inquired into the matter and recommend to the Minister that such a member ought to be removed from the office.

3.2 Limited Jurisdiction

Another legal impediment is to be found in the jurisdiction of the Tribunal itself. The authority of the Tribunal is limited. For instance, in relation to matters arising under the provisions of the Customs and Excise Act, the Tribunal can hear and determine an appeal only in three situations. The first situation is where an importer of goods feels that the Commissioner under the Customs Tariff has incorrectly classified the goods he has imported. The second situation arises where a person intends to import or manufacture an item, which he is of the opinion that the Commissioner-General has wrongly classified. The third situation applies where the Commissioner-General has determined the value of the goods intended for importation into Zambia or manufactured within Zambia for purposes of taxation and the party involved is aggrieved by the value affixed by the Commissioner General.

²⁵ Section 8 of the Tax Appeals Act Chapter 345 of the Laws of Uganda

In relation to the provisions of the VAT Act the Tribunal has authority to hear appeals stemming from the decision of the Commissioner-General on the registration, or cancellation of registration of a supplier. The Tribunal has authority to hear and determine an appeal on the tax assessed on the supply of goods and services or on the importation of any goods.

In relation to the Income Tax Act, the Tribunal has authority to hear any appeal against an assessment of tax. The Tribunal has authority to hear and determine any matter, which the Minister has prescribed by regulation as a subject of appeal under the Act. The study revealed that the only matter that the Minister has prescribed by regulation as a subject matter of appeal under the Act is the tax assessments under the Property Transfer Tax Act.

It is evident from the grounds of appeal stated above that one can only appeal to the Tribunal on disputes relating to tax assessments and not the exercise of the power by the officers involved. This limitation on the jurisdiction of the Tribunal is a very serious constraint on the effective functioning of the Tribunal. The Tribunal like other tribunals has very defined grounds on which one can appeal his case. However, today, the real problems facing interested parties is not so much on the assessments made by the Commissioner-General or his classification of various items in the Customs Tariff. The real issue seems to lie in the exercise of power by various officers of the Zambia Revenue Authority as was evidenced in *Sablehand Zambia Limited v Zambia Revenue Authority*

*SCZ Judgement No. 20 of 2005*²⁶ where the appellant sought damages for misfeasance in public office and or breach of a statutory duty and a declaration that the decision of the respondent to seal the applicant's bonded warehouse was illegal and ultra-vires the respondent's authority.

Again, for instance section 37 of the VAT Act places an obligation on any person who is involved in the supply of goods in the course of a business to furnish the Commissioner-General or any other authorised person information which he has access to in relation to goods or their supply. The Commissioner-General must specify the time and manner in which the information should be made available failure to which it is a crime under section 39 of the VAT Act.

Very often officers of ZRA do not conduct themselves according to law. They have been known to enter premises and forcefully take any such documents or books, which in their opinion are necessary²⁷. They do not have such authority to forcefully enter premises and seize various records of the business without a warrant. Section 38(2) of the ZRA Act empowers officers of the Authority to obtain search warrants.

The unfortunate part of this practice is that a person aggrieved by the conduct of the officers cannot lay a complaint before the Tribunal as this is beyond its jurisdiction. The cases of abuse of authority are much more than cases of dissatisfaction with the classification of an item by the Commissioner in the Customs Tariff. The Tribunal cannot

²⁶ *Sablehand Zambia Limited v Zambia Revenue Authority SCZ Judgement No. 20 of 2005*

²⁷ *Sablehand Zambia Limited v Zambia Revenue Authority SCZ Judgement No. 20 of 2005*

entertain such a complaint. The only forum where such a case of abuse of power can be determined is in the High Court. Given this limitation, it means that aggrieved taxpayers will still have to resort to the traditional court process, which takes long to dispose of cases, thereby defeating the whole logic of creating the Tribunal. The inadequacy of the Tribunal in this respect was laid bare in *Muhammed Hussein v Zambia Revenue Authority*²⁸ in which the appellant had to seek enforcement orders for a ruling obtained against ZRA in the High court.

It is therefore important that the jurisdiction of the Tribunal is revisited with a view of broadening it in order for it handle all matters relating to the conduct of tax officials. That way the Tribunal will go a long way in taking up matters that would otherwise have been a preserve of the High court and thereby help to decongest the court system since the Tribunal is supposed to provide speedy resolution of grievances as opposed to the courts.

3.3 Enforceability of Tribunal Orders

For the Tribunal to have any meaningful impact on the affairs it adjudicates upon, it is important that its decisions are binding on the parties concerned. The Tribunal has power to make order. However, such orders do not have the same force as orders made by the courts of law. Again, unlike other administrative tribunal such as the Commission for Investigations that have power to make orders with the same force as those made by the courts, the orders of the Tribunal are effective against the parties only. Section 12 of the Commission for Investigations Act provides that where it appears to the Commission that any inquiry under that Act is likely to be frustrated or prejudiced by an action taken or

²⁸ Muhammed Hussein v Zambia Revenue Authority 1999 RAT/13

about to be taken by any person to whom the Act applies, the Commission may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of conducting any investigation, and any such order, writ or direction shall have the same force as an order, writ or direction of the Court²⁹.

A comparative study at the jurisdiction of the Special and General Commissioners under the Taxes Management Act 1970 of England which are the equivalent of the Revenue Appeals Tribunal in Zambia, also revealed that there is no power of enforcement in that statute. In the USA, a similar tribunal called the New York City Tax Appeals Tribunal is an independent agency created by the New York City Charter. The Tribunal is a fair, efficient and knowledgeable forum in which tax disputes between taxpayers and the New York City Department of Finance are resolved.³⁰The New York Tax Appeals Tribunal consists of two divisions namely the administrative Law Judge Division and an Appeals division. A determination issued by an Administrative Law Judge is binding on both parties unless one of the parties requests a review of the determination by filing an Exception with the Appeals Division of the Tribunal within 30 days after the issuance of the determination. Decisions rendered by the Commissioners of Tribunal are final and binding on the Department of Finance. Taxpayers, however, may appeal decisions rendered by the Commissioners of the Tribunal by instituting a proceeding pursuant to Article 78 of the Civil Practice Law and rules with the Appellate division, First department of the New York state Supreme Court.³¹

²⁹ Section 12, Commission for Investigations Act Chapter 39 of the Laws of Zambia

³⁰ <http://www.nyc.gov/html/tat/html/about/about.shtml> accessed on 23/08/2008

³¹ <http://www.nyc.gov/html/tat/html/about/about.shtml> accessed on 23/08/2008

In the case of Muhammed Hussein v Zambia Revenue Authority³² the Tribunal held that it had no jurisdiction to issue *Writs of Fieri Facias* by way of enforcing its orders. A *Writ of Fieri Facias* as a means of execution and enforcement in the High Court Act is provided for in the High Court Act itself. Section 44 of the High Court Act provides that the High Court headed by the Chief Justice may make rules of court. It is pursuant to those rules that the *Writ of Fieri Facias* is to be found including the standard form to be used. Similarly the power to execute by *Fieri Facias* and standard form are found in the subordinate court and rules.

In the Hussein case, the court quoting Halsbury's Laws of England stated that where a statute creates a public body and creates no special remedy for its enforcement, the High Court may grant an order of "mandamus" to the end that justice may be done³³. Therefore if the Commissioner-General refuses to comply with the Tribunal order, taxpayers have the right to seek judicial review by way of "mandamus".

This lacuna in the Act only exacerbates costs for the appellants although it can be argued that successful litigants would recover their costs. So until the law is amended, the Tribunal cannot issue a *Writ of Fieri Facias* or indeed commit any one for contempt. It is this author's view that as a matter of agency amendments must be introduced in the Act so as to put in place measures that would ensure that the respondents promptly comply with Tribunal orders without imposing additional burden on the appellant.

³² Muhammed Hussein v Zambia Revenue Authority 1999RAT/13

³³ Halsbury's Laws of England, 3rd Edition, Volume 36, Pg 448.

3.4 Quality and Number of Tribunal Rulings

The Tribunal has not done well when it comes to disposing of cases. Since inception the Tribunal has received over 502 cases of which only 99 rulings have been delivered in its 10 years of existence. This represents a disposal rate of 19.7 percent. By all standards this is not what was envisaged of a Tribunal created to dispose of cases speedily.

Table 1 below shows the number of cases received by the Tribunal and how they have been handled.

Table 1: Appeals handled by the Tribunal 1999-2008

Year	Number of Appeals	Number of Rulings	Appeals to High Court	Backlog
1999	131	23	-	108
2000	78	8	-	70
2001	49	8	2	41
2002	69	8	2	61
2003	62	10	1	52
2004	44	2	3	42
2005	32	13	4	19
2006	18	10	4	8
2007	14	7	4	7
2008	5	10		(5)
Total	502	99	20	403

Source: Performance Report of the Revenue Appeals Tribunal (2008)

In order for stakeholders to have confidence in the judicatory process it is important that the rulings made by the court of first instance are upheld by superior courts in cases where there has been an appeal. From the ninety-nine rulings thus far delivered by the tribunal, a total of 20 rulings, with an estimated tax amount of K77.2 billion³⁴, have been appealed to the High Court for Zambia as at September 2008. This represents an appeal rate of

³⁴ Submissions on Upgrading the Revenue Appeals Tribunal, (2008) Revenue Appeals Tribunal, Pg 3

20.2 percent. Of these, 11 cases are still awaiting hearing in the High court while five cases are still awaiting judgment³⁵. It is important to note that some of these cases have been pending from as far back as 2004. Only one case³⁶ has been sent back to the Tribunal for re-hearing. However, so far no matter has reached the Supreme Court. Given this state of affairs it becomes very difficult to establish the quality of rulings by the Tribunal, as very few rulings of the Tribunal have been determined on appeal in both the High court and Supreme Court.

Comparatively, the Tax Appeals Tribunal of Uganda (TAT), which is the equivalent of our Tribunal, has received a total of 250 appeals since inception of which 190 appeals have been disposed of. It is interesting to note that the two institutions were set up almost at the same time in 1998 following the setting up of Revenue Authorities in both countries. The Tax Appeals Tribunal of Uganda has a backlog of 60 cases awaiting disposal³⁷. This represents a disposal rate of 66.0 percent compared to the Zambian Tribunal's 19.7 percent. This dismally low disposal rate flies in the face of the whole purpose of an institution created to expeditiously resolve tax disputes.

However, the low rate of appeals to the High court could be an indication that both the taxpayer and the Zambia Revenue Authority are generally satisfied with the decisions of the Tribunal, thus expressing confidence in the tribunal. Given this kind of performance, this scenario does to some extent affect positively the Tribunals' credibility or standing. It is worth noting that although the Tribunal does produce clear rulings that are beneficial to

³⁵ Submissions on Upgrading the Revenue Appeals Tribunal, (2008) Revenue Appeals Tribunal, Pgs 15-16

³⁶ Jayesh Shah and Shaleetha Mahabeer v Zambia Revenue Authority 1999/RAT13

³⁷ Report on the study tour of the Tax Appeals Tribunal of Uganda (2008) unpublished Pg 3

both parties, most of these rulings are made beyond the statutory timeframe of 60 days and thus this delay does lead to a lengthened adjudicatory process

It would appear from the study that there is no systematic coordination and handing over of matters from the former tribunal members to the successive members and this has tended to be a challenge to the timely delivery of rulings. The study established that there were about 16 appeals still awaiting rulings from the previous Tribunal members from as far back as 2005. The Registrar cited a lack of incentives for a member who writes down a ruling as a possible draw back for the lack of enthusiasm by the members when it comes to writing the rulings. The current practice is that when a panel of usually three members hears a matter, the panel then deliberates on the matter and one member, who must be a lawyer, is required to write down the ruling. It was thus the Registrar view that an incentive scheme be created for writing of rulings pointing out that writing of a ruling is a complex exercise that involves evaluation of the evidence and applying the law. This proposal has been submitted to the Ministry of Finance for possible inclusion in the Tribunal's 2009 budget. It is hoped that once this is adopted it can motivate the members and improve the rate at which rulings have been delivered.

3.5 Cost of Litigation

A fee of K200, 000 is charged for making an appeal and an additional K50, 000 is charged for applications seeking interim relief such as *Stays of Execution* of ZRA Demand Notices. However, before the Tribunal can be moved, the importer must pay the duty as demanded by the Commissioner or furnish security to cover the amount of the

duty due and payable. The importer must appeal within three months from the date of the payment of the duty otherwise the payment will be regarded as having been paid in satisfaction of the duty due and payable as demanded by the Commissioner. The essence of the appeal is to allow the Tribunal to review the decision of the Commissioner to classify the item in issue in the manner it has been classified. If the Tribunal finds that the classification was wrong, it will make such a declaration and at that point the Commissioner will be obliged to make the refund but without interest. This requirement is really a cost to businesses, taking into account the time value of money or the locking up of business finances, especially where the decision goes in favour of the appellant. It is therefore the opinion of this author that where a tax dispute has arisen and the aggrieved party has indicated its intention to appeal to the Tribunal, the tax in dispute should be deposited with the Tribunal until a determination is made by it. It is this author's view that should the appellant win the appeal, they should be paid back their money with interest. This can be achieved by ensuring that the Tribunal opens an interest bearing account where such monies can be deposited and the interest so earned be paid to the appellant in the event of them winning the appeal

Notwithstanding the proposal to pay interest on refunds, the requirement that an appellant first pays the tax in dispute to ZRA before it can be heard is a cost to a litigant, especially to one that is successful in their appeal but after a long wait. Because of this delay an aggrieved taxpayer may not see the benefit of appealing to the Tribunal as opposed to pursuing ordinary court process especially if the length of the period of adjudication is the same.

In Uganda, unlike here, by section 15 of the Tax Appeals Tribunal Act Cap 345 of the Laws of Uganda, a tax payer who has lodged a notice of objection to an assessment is only required to pay 30 percent of the tax assessed or that portion of the tax assessed not in dispute, whichever is greater. This looks to be a more reasonable approach, as it is less punitive, especially to a taxpayer who has a cause worth investigating.

In the United Kingdom the VAT and Duties Tribunal which are charged with the responsibility of hearing appeals by taxpayers regarding decisions of Her Majesty's Revenue and Customs (HMRC) are run by the Tribunal Service, an executive agency under the Ministry of Justice and they work under the supervision of the Administrative Justice and Tribunals Council. According to the Tribunal Service leaflet, the Tribunals do not charge any fee for dealing with appeals in the UK³⁸.

³⁸ Tribunal Service Explanatory Leaflet, London 2007 Pg 4

CHAPTER FOUR

NON- LEGAL FACTORS AFFECTING THE EFFICIENT OPERATION OF THE REVENUE APPEALS TRIBUNAL

4.0 Introduction

In the preceding chapter an outline of the major legal factors affecting the efficient operation of the Tribunal were discussed. However, as stated earlier the efficient operation of the Tribunal is affected by both legal and non-legal factors. It is against this back in this chapter we discuss some major non- legal factors identified as having a bearing on the efficient operation of the Tribunal.

4.1 Financial Resources

As stated earlier the dispensation of justice is not a cheap venture. It requires an investment of financial resources. Since inception, the Tribunal has operated as a grant-aided institution under the Ministry of Finance and National Planning. Given this arrangement, the Tribunal has had to operate within the budget as dictated by its principals.

Table 2: Funding to the Tribunal

Year	Budget Request	Approved Budget	Budget Releases	Operational Variance
2005	2,943,844	646,000	646,000	2,297,844
2006	1,425,787	735,000	735,000	690,787
2007	1,532,717	1,235,000	1,235,000	297,717
2008		1,000,000	1,000,000	
Total	5,902,348	2,846,000	2,846,000	3,021,348

Source: Revenue Appeals Tribunal 2005/2006 Budget Presentation – Estimates of Expenditure

In terms of expenditure, the Tribunal has a very ambitious agenda that it wishes to undertake but this has not been possible due to the unmatched resource envelope that is availed to it by the Ministry of Finance. The grant to the Tribunal is meant to cater for staff's emoluments, sitting allowances for the members, rentals, office running expenses and capital expenditure. It is important to state that whereas the Tribunal would like to increase the frequency of sittings to clear the backlog of cases stated above, this is not possible due to a lack of resources to pay the members sitting allowances.

The inadequacy of resources has also meant that the Tribunal has been unable to secure proper and adequate office accommodation. The current office space is inappropriate for purposes of hearing and determining tax cases. The lack of office space is so bad that even the Tribunal members do not have an office at the secretariat where they could work from whilst attending to tax appeals. In Uganda, the Appeals Tribunal has allocated an office and a secretary to assist members do their work at the secretariat. With these resources the members are able to write their rulings much faster than their counterparts here in Zambia. The lack of adequate office space has also meant that the Tribunal members are expected to do their work outside the secretariat possibly using their own resources to attend to matters of the tribunal. Furthermore the lack of office space has resulted in an inability to create a National Tax Law Resource Centre from where literature on tax and the Tribunal rulings can easily be accessed.

There is need to secure proper accommodation which can easily be configured into a courtroom set-up and acquire state of the art Information Technology equipment so that

proceedings are recorded for proper transcription at a later date. The current set up leaves much to be desired as there is no waiting room for witnesses and neither is there a public gallery from where the public can sit and listen to the proceedings. After all, these sessions are open to the public.

In the same vain, the lack of resources has meant that the Tribunal has not been able to publish its rulings. So far it has only produced only one volume of its rulings since inception. Even this remains largely unpublished. The Ugandan Tribunal on the other hand has produced 4 volumes³⁹ thus far and the fifth volume is due to be released before the end of the year. A report on the recently undertaken tour of the Tax Appeals Tribunal in Uganda revealed that on average the Appeals Tribunal receives a funding of *Ugandan Shilling* 868 million⁴⁰ or equivalent to K2.0 billion per annum. This figure far exceeds the allocation to the *Zambian Tribunal*.

4.2 Centralisation of Operations of the Tribunal

Related to the issue of financial inadequacy is the centralisation of the operations of the Tribunal. Currently the Tribunal is only located in Lusaka. A discussion with the Registrar revealed that over fifty percent of the appeals handled by the Tribunal are from the Copperbelt province and the appellants have to travel to Lusaka. In the alternative, the appellant must appoint a legal practitioner to represent them in the event that they are unable to travel themselves. This practice only leads to increased cost of litigation and deny justice to the very people the institution was created to serve.

³⁹ The Uganda Tax Appeals Tribunal Report, September 2008 Pg 15

⁴⁰ Report on the study tour of the tax Appeals Tribunal of Uganda (2008) unpublished, Pg 3

In Uganda, the Appeals Tribunal is located in Kampala, the Ugandan capital. However, on 3rd October 2008, the Appeals Tribunal opened another office in Mbale with the sole aim of decentralising its operations throughout the country⁴¹. Mbale was identified for its centrality and easy accessibility from other towns and to the business community in general. This move is welcome indeed in that the tribunal will be able to take legal services to the doorsteps of those who seek justice. In the same vein, it would be prudent for the Zambian Tribunal to think of decentralising to other town especially the Copperbelt province where evidence already shows that the demand for the services of the tribunal are high. In our case, Kitwe would be a more appropriate location for the decentralised office given the centrality and the volume of economic activities around that area. Alternatively, the Tribunal may try to enhance its coverage by introducing a court circuit system whereby the Tribunal members travel around the country on appointed dates similar to the way the provincial High court sessions are done. This would greatly enhance the accessibility to the Tribunal by the public.

4.3 Human Resource

In terms of personnel the current establishment of five permanent staff is too inadequate given the prominence that the Tribunal is gaining. The study revealed that no formal review of the organisational structure has been undertaken since the tribunal's creation. It is evident that this lack of structural review of the tribunal has resulted in a failure to align the growing needs of the Tribunal with appropriate staff levels. The most critical being the lack of a fully-fledged legal directorate that is supposed to offer support to the

⁴¹ Report on the Study Tour of the Tax Appeals Tribunal of Uganda (2008) unpublished, Pg 8.

members of the Tribunal in terms of legal research and preparation of rulings. With this limitation the Registrar is called upon to assist the members but is also pre-occupied with the overall administration of the tribunal and may thus not provide quality support to the members because of these competing needs. It is therefore important that a legal directorate is put in place so that it can assist the members in delivering well-researched rulings in determining tax disputes.

In Uganda, the Tax Appeals Tribunal has a total establishment of 16 employees employed on a full time basis. The secretariat is divided into two major divisions namely the technical division and the Finance and Administration division. A Deputy Registrar who reports to the Registrar heads each division. The Finance and Administration with a staff establishment of 12 employees deals with the day-to-day running of the Tribunal including human resource matters. The technical division on the hand other with a dedicated staff of 4 lawyers deals with matters relating to handling of appeals applications i.e. the court and related issues. The creation of a legal division has no doubt enhanced the quality and pace of rulings by the Appeals Tribunal.

Related to the issue of human resource development is the lack of capacity building at the institution. The Tribunal does not have a permanent transcriber. It relies on the transcriber from the High court who performs this function as and when they are free at the High court. As a result tribunal proceeding are sometimes held without a transcriber who has to come and rely on the recording when producing proceeding of the Tribunal. This is not acceptable and a transcriber should be employed on a permanent basis to

facilitate the smooth operation of the Tribunal. In addition the Tribunal needs to expand its' structure by at least employing an Information Technology person, a librarian and a researcher who can help with the development of data management systems and do research on behalf of the members.

Clearly from this experience the Tribunal may do well to learn from Uganda in this aspect so that justice delivery can be accelerated.

4.4 Public Awareness

Public awareness of the existence of the tribunal remains dismally low. A survey conducted by the author revealed that a lot of people, including staff at ZRA and the Ministry of Finance, are not aware of its existence and later on its mandate. By its own admission, the Tribunal has not done much publicity to sensitise the public on their rights and obligations vis-à-vis the Tribunal. A scrutiny of the Tribunal's past three years budgets revealed that no single resources were committed to publicity and taxpayer education in general. The Registrar while admitting this flaw attributed the sad state of affairs to budgetary constraints stating that it was the Tribunals wish to go public once funding improved.

This Zambian experience is a complete opposite of what has been happening in Uganda. The Appeals Tribunal in Uganda has gone full throttle in educating the public on their rights and obligations in relation to their contact with the Uganda Revenue Authority. The awareness and education has been done through workshops, seminars, publication of

brochures and posters, as well as airing of radio and television programmes. An exciting feature of the Ugandan approach is that the Appeals Tribunal has gone further to publish and produce programmes in vernacular language⁴² (Baganda) in order to reach even the lower levels of society. The Appeals Tribunal also attends local shows and is often invited to discuss tax matters at different fora. The Appeals tribunal gets its funding for these programmes from the Justice Ministry.

It is hoped that the Tribunal can get a leaf from this effort of their Ugandan counterparts and vigorously make its presence appreciated by both the taxpayers and the Revenue Authority. A strong Tribunal has a potential to put on inquiry both the taxpayers and the tax authority and ensure that the right thing is done in terms of tax administration.

It was however, pleasing to hear from the Registrar that a budget for this exercise has been included in the Estimates of Revenue and Expenditure for 2009 to kick start the publicity campaign exercise and participate in the Trade Fair on the Copperbelt and Agricultural and Commercial show in Lusaka. The Tribunal should also consider partnering with and take advantage of the ZRA network to publicise itself.

⁴² Okumanyisibwa Ahari Kooti Ey'okujurizamu Abw'emishango Y'omushoro (2006) Edition, Kampala, Uganda

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

By enacting the Revenue Appeals Tribunal Act, Parliament took an important step in the quest for enhancing the justice delivery system in Zambia. However, as this study has shown the Tribunal has had a limitation on the extent to which it has enhanced the justice delivery system in the country. The study has highlighted the factors leading to this state of affairs and also highlighted the limitations of the Tribunal to operate as an efficient tool of justice delivery.

5.1 Conclusion

It is evident that the Tribunal has struggled to run over the past 10 years and no tenable reasons have been advanced for this state of affairs.

However, this study has discovered that the failure to efficiently run the Tribunal cannot be entirely blamed on the Tribunal itself, but on other stakeholders as well. It is interesting to discover that a questionnaire sent to the office of the Registrar was one of the few written requests inquiring on the operations of the Tribunal. In fact during the course of this study the Registrar informed this author that the Tribunals was planning to hold a number of workshops with various stakeholders to explain its mandate. This just goes to show that stakeholders like the Law Association of Zambia have not taken keen interest in the operations of the Tribunal over the last 10 years in trying to have the

Tribunal strengthened. This study failed to locate any single paper, academic or otherwise, that has attempted to revisit the mandate of the Tribunal, except the internal reports at the Tribunal itself.

It is evident from what has been discussed in this paper that the Tribunal is a necessary institution in Zambia. It is also clear from the preceding chapters that the Tribunal can act as a practical solution to the problem of congestion in our justice delivery system. Analysis of the Tribunal reveals that the main objective of establishing the Tribunal is to deliver substantial justice between ZRA and those taxpayers dissatisfied with its' assessments and classifications. In essence this objective translates into enabling as many stakeholders as possible to have access to a fair and efficient justice system. The present arrangement leaves a lot of room for improvement in order to attain the intended rationale of establishing the Tribunal. As discussed in the preceding chapters, the current justice system is tilted in favour of those around Lusaka and the line of rail due to its centralization and to the enlightened few who can afford to hire a lawyer to represent them at some cost. It is trite that legal fees in this country are high and very few people can afford to hire legal practitioners.

While the Tribunal offers a less cumbersome and informal fora for dispute resolution than the traditional court process, most potential appellants have no choice but to sit on their rights due to the fact that they are not aware of the existence of the tribunal and/or in the alternative resort to taking the matters to the High court. Once more people are made aware of the existence of the Tribunal and they begin to take up cases to it, it is likely that

ZRA may be forced to re-look at the way it conducts its business and also have an effect on future tax policy formulation.

For the Tribunal to fulfil its mandate properly, it requires adequate funding. The level of funding that this study has revealed cannot enable the Tribunal to function effectively. For the Tribunal to have struggled for over ten years to publicise itself is an indication of serious funding problems it faces. With the envisaged huge public demand for its services due to economic liberalization and increased investment in the country, the Tribunal should ideally increase its number of sittings. However, for the Tribunal to sit frequently it would require huge injection of funds to meet operational expenses, as well as remuneration for members of the Tribunal. With hindsight of what has happened over the past 10 years this seems not feasible and the Tribunal may have to continue operations at the current levels.

5.2 Recommendations

It is clear from the discussion in the preceding chapters that the Tribunal remains an important institution in the dispensation of justice within the Zambian legal set up. The Tribunal presents a potential practical means of decongesting our justice delivery system especially at the commercial court section of the High Court for Zambia. Its efficient operation and quick disposal of tax cases brought before it can go a long way in restoring public confidence in the judicial process. With particular reference to the various issues discussed in the preceding chapters, the following are the recommendations arising out of this study.

1. The jurisdiction of the tribunal should immediately be widened to go beyond the current limitation of appeals to disputes relating to tax assessments and classifications of goods only. This will ensure that all aspects relating to tax administration such as the conduct of ZRA officers in the course of administering the various tax laws are made a subject of appeal before the Tribunal. This will certainly decongest the High court, which at the moment remains the only court with competent jurisdiction to hear cases beyond the dispute of tax assessment and classification of goods.
2. The Minister of Finance and National Planning should appoint the three lawyers on the Tribunal in consultation with LAZ as this is the body that is better placed to know the competences of its members just like ZICA does for the accountants. These may then be sent to the JSC for ratification only.
3. The chairperson and the vice-chairperson of the Tribunal must be qualified to be appointed as Judges of the High court for Zambia. This arrangement will enhance the tribunal's standing as a quasi-judicial institution as opposed to it been seen as a purely administrative institution.
4. The members of the Tribunal should be sworn-in by the Chief Justice in order to show both the members and the general public the seriousness of the mandate of the Tribunal.
5. Appeals from the Tribunal should lie straight to the Supreme Court. This will not only enhance the status of the Tribunal but can also be a way of decongesting the High court and serve on the time that case are held up in

the High court. The current arrangement equates the status of the Tribunal to that of a subordinate court. This may be undermining to the status of the legal members who sit on the Tribunal, especially that most of these are senior legal practitioners.

6. The government must show its commitment to ensuring justice is availed to all at minimum cost by providing the necessary funding to the Tribunal. The Tribunal is of strategic importance in national resource mobilization and economic development in general. The current funding levels though made in full is still too low to enable it operate optimally. The funding should enable the Tribunal to publish annual law reports of its rulings as this can help with the development of jurisprudence in this area for both the courts of law, scholars and businesses in general. Such jurisprudence can also be of great input to the government in the formulation of future tax policy.
7. The Tribunal should consider decentralising or operating on a circuit system. This will enable it serve as many people as possible as opposed to the current arrangement where all the Tribunal hearings are held in Lusaka even if the dispute between the taxpayer and ZRA occurred in a far-flung area such as Nakonde. This way the Tribunal will greatly reduce the cost of justice to the taxpayers who have to travel to Lusaka and often have to bring witnesses at their expense. In the alternative and financial resources permitting, the Tribunal can be decentralised to all provincial centres in order to reduce the cost of justice.

8. The Tribunal should be given power to enforce its orders similar to those exercised by institutions such as the Commission for Investigations or indeed the ordinary courts of law. This is so because the Tribunals' inability to enforce its orders means that an appellant, despite obtaining a Ruling in his favour would still be required to go to the High court to obtain such remedies as the *Writ of Fieri Facias* or an order of "mandamus" to compel the Commissioner General to abide by rulings of the Tribunal should he decide to ignore it. This arrangement certainly places additional costs on the litigant who might as well resort to the conventional court process law for a remedy.
9. The conditions of service as well as remuneration packages for the Tribunal staff should be raised to levels obtaining in the legal profession in order to attract highly qualified and experienced people at the Tribunal. It is interesting to note that whilst this author was conducting research at the Tribunal, the then Registrar⁴³ of the Tribunal was appointed Legal Advisor to the current Republican President. This signifies the potential of the Tribunal to attract high calibre legal professionals.
10. The Tribunal should partner with institutions such as the ZRA and other interest groups like the Law Association of Zambia in taking an active role in publicising the existence of the Tribunal for it to be known to the members of the public who are supposed to benefit from its existence. This can help divert traffic from the High court to this quasi-judicial body.

⁴³ Mr. J. Jalasi Registrar 2001 to June 2008

11. The payment of the tax in dispute that is required to be made by an appellant before their appeal can be heard should be kept in an interest-earning account administered by the Tribunal, so that in the event that the appeal is upheld by the tribunal, the appellant is reimbursed the full payment with interest in order to compensate for the opportunity cost of not having had the opportunity to use the money. In the alternative, the ZRA should be compelled to pay interest to such an appellant. This will ensure that ZRA officers are reasonable in exercising their discretion in the application of the tax laws.

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