

Privy Council Appeal No. 33 of 1964

The Kabaka's Government – – – – – *Appellants*
v.
Attorney General of Uganda – – – – – *Respondent*

FROM

THE HIGH COURT OF UGANDA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 5TH OCTOBER 1965

Present at the Hearing

LORD REID

LORD MORRIS OF BORTH-Y-GEST

LORD HODSON

LORD PEARCE

LORD WILBERFORCE

(Delivered by LORD REID)

In this case the Attorney General of Uganda sues on behalf of the Government of Uganda for a declaration as to the meaning and effect of the Ninth Schedule to the Constitution of Uganda (contained in the Uganda (Independence) Order in Council 1962). The defendants are the Kabaka's Government—the Government of the Kingdom of Buganda. The High Court of Uganda by decree of 4th May 1964 decided in favour of the Uganda Government. By virtue of section 96 of the Constitution the Kabaka's Government now appeals to Her Majesty in Council.

Section 107 of the Constitution provides that "The Government of Uganda shall make payments to the Kabaka's Government in accordance with the provisions of the Agreement set out in Schedule 9 to this Constitution". The Constitution came into effect on 9th October 1962 but paragraph 3 of the Order in Council provided that section 107 of the Constitution should come into effect on 1st July 1963, which was the first day of the next financial year. Paragraph 19 of the Order in Council made provision for the payments to be made in respect of the period between 1st October 1962 and 30th June 1963.

Schedule 9 is in the following terms:

"Schedule 9 to the Constitution of Uganda. Agreement between the Uganda and Buganda Government Delegations on the Financial Relationships between the Government of Uganda and the Kabaka's Government.

1. The Delegations of the Central and Kabaka's Governments have agreed that Buganda's financial requirements, in addition to her independent sources of revenue (including graduated tax), and calculated on lines similar to the figures for local authorities block grants, should be provided as follows:—

- (a) fifty per cent. by assignment of certain revenues raised in Buganda (with minimum yield guaranteed)—it is intended that these should be from petrol and diesel duty and the items mentioned in paragraph 3 below; and
- (b) fifty per cent. by an annual statutory contribution from general revenue (not to be reduced without consultation with the Kabaka's Government).

2. At intervals of from three to five years there will be a review of these arrangements, not only to consider the rate of annual statutory contribution, but also to consider—in the light of actual yields—whether there should be any change in the revenues selected for assignment.

3. Revenue from stamp duty on mailo transfers and from licences on powered two-wheeled vehicles will be included in the assignments above. As to the other recommendations in paragraph 67 of the Fiscal Commission's Report, it is now agreed that the Kabaka's Government should be able to levy entertainment tax on entertainments for which it is the licensing authority. The Buganda Delegation, however, reject the proposal that Buganda should raise revenue from the licensing of unpowered bicycles or unmanufactured "black" tobacco.

4. Additional sums which may be required in respect of further services for which the Kabaka's Government assumes financial responsibility will be made available by increasing the amount of the statutory contribution.

5. As, in accordance with its own wishes, the Kabaka's Government is excluded from the local authorities grant structure, it will not be eligible for deficiency or "catching up" grants, nor for grants to assist with the cost of salary increments."

The delegations there referred to were the delegations which attended the Uganda Independence Conference 1962, and it appears that the agreement now contained in this Schedule was made and drafted in its present form before 21st June 1962, on which date it was submitted to the Fiscal Committee of the Conference and accepted in principle.

Admittedly this agreement is ambiguous in several respects and it is therefore necessary to decide to what extent it is proper to have regard to extrinsic evidence in construing it. It is an agreement between the parties to the present litigation to which statutory effect has been given, and in their Lordships' judgment it must be construed in light of the ordinary principles which govern the construction of contracts. So it is proper to receive and consider evidence as to all relevant facts and surrounding circumstances known to both parties when the agreement was made, but it is not proper to receive evidence as to what the parties or either of them or their advisers may have intended or may have thought to be the meaning of any of its provisions.

Before 1961 the position was that ultimate authority rested with Her Majesty's Government in the United Kingdom and that there were certain agreements from 1894 onwards between Her Majesty's Government and the Kabaka's Government. As regards finance the Kabaka's Government had certain independent sources of income and levied certain taxes in Buganda: the rest of their revenue was provided by various grants from the Central Government of Uganda calculated in various ways. The Central Government levied certain taxes in Buganda and retained the proceeds.

The first document which their Lordships were invited to examine was the Report of the Uganda Constitutional Conference of 1961. It was there agreed that the Kingdom of Buganda should be united in federal relationship with the rest of Uganda in accordance with the Constitutions of Uganda and Buganda. There was to be a division of legislative powers whereunder the legislature of Buganda would have exclusive power to make laws for Buganda with respect to *inter alia* "6. Such taxation and matters relating thereto as may be agreed between the Buganda Government and the Uganda Government". Paragraph 147 dealing with Financial Relationships is as follows:

"It is probable that, in the light of the recommendations of the World Bank Economic Mission, a Fiscal Commission will be established to advise on future fiscal policy for the Uganda Government. Such a Commission would be directed in its terms of reference to pay attention particularly to the problem of fiscal relationships between the Central Government and other authorities within Uganda and to take into account Buganda's special position with regard to internal taxation. Meanwhile, however, it is considered that the arrangements set out in a

Memorandum by the Governor of Uganda (at Appendix G) should provide a financial basis upon which Uganda will be able to proceed to the stage of internal self-government without prejudice to any future fiscal arrangements that may be considered desirable in the light of the report of the proposed Fiscal Commission. It is recognised that the paragraphs in the above-mentioned Memorandum dealing with grants, overdrafts, capital finance and new services will require further detailed examination in Uganda in consultation with the authorities."

Appendix G provided for a new system of taxation and grants to local authorities, which by paragraph 22 was to come into effect on 1st July 1962. There was no specific reference to Buganda, but it appears to have been agreed that grants to the Kabaka's Government for the year beginning on 1st July 1962 should be calculated in accordance with the provisions of this Appendix and there is in the record a letter addressed by the Central Government to the Kabaka's Government on 13th March 1962 which sets out the method of calculation adopted by the Central Government. But in October 1962 any such agreement was superseded by the provisions of paragraph 19 of the Uganda (Independence) Order in Council to which their Lordships have already referred. This provided for "payment of such amount as the Government of Uganda, after consultation with the Kabaka's Government, may determine, which amount shall not be less than £75,000 in respect of each month". In fact the payments were made down to 30th June 1963 which appear to have exceeded £75,000 per month but neither party to this case relied on that.

There is no controversy about the meaning and effect of Appendix G in its application to local authorities generally. The controversy is as to the extent to which Schedule 9 adopts or modifies or alters the scheme of Appendix G. In order to understand this it is necessary to state in somewhat greater detail the position as regards taxation by the Central Government on the one hand and the local authorities on the other.

Before Appendix G came into operation, the Central Government received (i) a poll tax on Africans which was collected by the local authorities and paid over by them to the Central Government, (ii) certain taxes on non-Africans, which included a poll tax and an education tax. The local authorities levied (i) a graduated tax on Africans, (ii) an education tax on Africans and (iii) certain other taxes, mainly for administration, which, taken together, could be described as their independent sources of revenue.

Appendix G provided that graduated tax should be payable by Africans and non-Africans alike and levied by local authorities, and that the poll tax and education tax levied by the Central Government should be abolished. The effect of this would be that the amount of money collected by the Central Government became much less, and the amount levied and collected by the local authorities was much increased, since they were to levy graduation taxes on non-Africans and were to be relieved of the obligation to pay over to the Central Government the poll tax on Africans.

But in order to restore the balance, it was provided in paragraph 2 that "the extra revenue accruing therefrom to local authorities would be taken into account in computing government grants".

Paragraphs 3-6 dealt with transfers to local authorities of certain non-tax revenues belonging to the Central Government—a matter which was taken up in paragraph 10 as shown below.

Then as regards grants there was provision for a new grants structure one of the objects of which was stated to be to serve as an instrument of control. The new grants structure was to consist of an initial block grant, expansion grants and deficiency grants, and there is also a reference to special grants. Subject to a rather obscure reference in paragraph 12 to a cut in grant, it appears that the amount of the initial block grant was to be calculated from data available when the new scheme came into operation and that this amount was not to be varied for three years. Any approved expansion in any service of the local authority was to attract expansion grant so that in any later

year the block grant would consist of the initial block grant plus any expansion grants made in or before that year. As much of the argument before their Lordships turned on the method of calculation of initial block grant it is desirable to set out in full the paragraph which deals with that matter:

“10. In these circumstances it is, therefore, recommended that each authority should receive an initial block grant calculated broadly on the following lines:—

- (a) Starting point—present recurrent grants.
- (b) Add 100 per cent. of the net cost, in the year prior to transfer, of any services newly transferred.
- (c) Deduct additional revenue to local authorities resulting from proposals in paragraphs 2 to 6 above.”

Their Lordships understand that it is agreed that, by reason of Appendix G coming into effect at the beginning of the financial year 1962/63, the block grant payable to any local authority for that year was calculated by adding together (a) the sum of all recurrent grants received by that local authority in respect of the year 1961/62 and (b) the net cost to the Central Government during the previous year of all services transferred to that local authority during the year 1961/62, and deducting from the sum of (a) and (b) the sum of any revenues transferred to that local authority under paragraphs 3 to 6 and of the extra revenues which would be received by that local authority by reason of the changes in the methods of taxation set out in paragraph 2.

Before the scheme set out in Appendix G came into effect the Buganda Government was not treated as a local authority but the only substantial differences relevant to this case appear to have been that the Kabaka's Government were not subject to the same degree of control as the local authorities and that graduated tax on Africans in Buganda was imposed by and levied under Buganda law. It is not in dispute that one of the reasons for the making of the agreement set out in Schedule 9 was that the Kabaka's Government were not prepared to accept the same kind of control as that which the Central Government was to exercise over other authorities under the new grant structure. The difference of the position of Buganda from the position elsewhere in Uganda is shown by the difference between the terms of section 107 of the Constitution which applies to Buganda and the terms of section 108 which applies to other Federal States.

The Attorney General of Uganda submitted to their Lordships that certain documents which the High Court had held to be inadmissible should now be received in evidence. Their Lordships decided that these documents should be put before them but on examining the documents their Lordships have found that they add little or nothing to the facts and surrounding circumstances which can be of assistance in interpreting Schedule 9.

The points at issue in this case depend on the proper interpretation of the first part of paragraph 1 of Schedule 9, and before dealing with that part it is only necessary to note that paragraph 5 provides that the Kabaka's Government is excluded from the local authorities grants structure. The first matter to be decided is the meaning of the phrase “Buganda's financial requirements”. That phrase immediately suggests the question—requirements for what purpose? The appellants argue that the true meaning is the sums required to enable them to pay the full cost, measured in a certain way, of all the services which they are bound to maintain and in respect of which grants were previously paid. They found on the later words “calculated on lines similar to the figures for local authorities block grants”: as has already been said local authorities block grants include initial block grants, and in calculating initial block grants all the recurrent grants for the year 1961/62 are included. The appellants maintain that the first step in calculating any of those grants was to determine what was the full cost of the service measured by objective tests, and that then a proportion of that cost, varying according to the service between one-third and five-sixths, was paid as grant. They say that the “figure for” each particular grant was not the amount of the grant but the total cost of the service so measured. Their

Lordships are by no means satisfied that every grant was in fact calculated in that way. But even assuming that it was, their Lordships cannot accept this argument.

Schedule 9 is in substance an agreement for payments to be made in lieu of the payments which would have been made if the Kabaka's Government had not been excluded from the local authorities grant structure. Such payments are required because local authorities do not have sufficient revenue from other sources to meet the cost of the services which they have to administer. They are in no sense payment of the cost of the services. In their Lordships' opinion the words which follow "Buganda's financial requirements"—"in addition to her independent sources of revenue"—make it clear that these independent sources cannot be left out of account, and that the payments under Schedule 9 are only intended to supplement those sources of revenue in paying for the services which the appellants have to administer. And the next words—"calculated on lines similar to the figures for local authorities block grants"—point to the same conclusion. The similarity is between the payments under Schedule 9 and the block grants and there would be no similarity if the payments under Schedule 9 were related to total cost whereas the block grants are related to only a proportion of total cost. No doubt in an appropriate context "the figures for" local authorities block grants could mean the basic figures used in calculation, but they can equally well mean the figures brought out by the calculation. Their Lordships can find no substantial support for the appellants' argument on this point.

The second point is much more difficult. Unfortunately it does not appear to have played any large part in the argument before the High Court, and so that Court did not find it necessary to deal separately with the point and their Lordships are deprived of the assistance which otherwise they would have had. This point depends on the true meaning and effect of the words "(including graduated tax)" which follow the words "in addition to her independent sources of revenue". It seems clear that Buganda is to have both her independent sources of revenue, including graduated tax, and an additional sum in supplement payable by the Government of Uganda. But what is meant by graduated tax? As has already been explained, before the change recommended by Appendix G a graduated tax on Africans had been levied by the Kabaka's Government and it was part of Buganda's independent sources of revenue. After that change the Kabaka's Government still levied under Buganda law a tax called graduated tax but it was a tax on a wider basis in that it affected non-Africans as well as Africans. In their Lordships' view the purpose of the words in parenthesis was to make clear that, for the purpose of applying, or adapting, Appendix G to the case of Buganda, graduated tax (in the wider sense) was to be treated as a part of Buganda's independent sources of revenue. What Schedule 9 required was a calculation of the additional sum to be paid by the Government of Uganda for the year beginning on 1st July 1963—the day on which Schedule 9 came into effect. But before that date the new expanded graduated tax was to become, and did become, part of Buganda's independent sources of revenue and that it would be so was already contemplated in October 1962—the date of Schedule 9. So the natural meaning of this part of paragraph 1 of the Schedule would seem to be that the sum to be paid by the Government of Uganda must be additional to the pre-existing independent revenues of the Kabaka's Government plus the new graduated tax for that year. This, of course, still left Buganda liable to suffer a deduction in respect of the other matters referred to in paragraphs 2-6 of Appendix G namely the African poll tax and the non-tax revenues transferred to Buganda.

But it is argued for the Government of Uganda that that is not so: part of that graduated tax must be deducted in determining the sum payable under the schedule. The respondent founds on the words which follow: "calculated on lines similar to the figures for local authorities block grants". It is the fact that in calculating local authorities block grants for the years in question a deduction had to be made under head (c) of paragraph 10 of Appendix G. As a result of the change to the new graduated tax it has

already been shown that local authorities received more money from the tax collected by them and that that extra revenue had to be deducted (in effect surrendered) in calculating the grant payable. If Schedule 9 had said "calculated in the same way as local authority block grants" there would have been a conflict between this and the earlier provision that the grant is to be additional to Buganda's independent sources of revenue including graduated tax, because, if part of that tax is deducted in arriving at the amount of the grant, in effect Buganda will not retain the whole of the graduated tax in addition to the grant but will only retain that part of the tax which is not so deducted.

But Schedule 9 does not say calculated in the same way: it says calculated on lines similar to the figure for local authorities block grants. In their Lordships' view the difference is significant. The Schedule provides that the Kabaka's Government is to be excluded from the local authorities grant structure and two changes are expressly made—there are to be no deficiency grants to Buganda and no grants to assist with the cost of salary increments. In their Lordships' view "on lines similar" must mean that the method of calculating Buganda's financial requirements is to follow the lines for calculating local authority block grants except in so far as the provisions of the Schedule otherwise require. There are several other provisions in Appendix G which are excluded by section 107 and Schedule 9. For example there could be no cuts in Buganda's grant under paragraph 12 and certain provisions relating to control over local authorities could not be applied. In their Lordships' judgment the other provisions of the Schedule require that paragraph 10(c) shall not be applied in so far as it provides for deduction of the additional revenue which resulted from the change to the new form of graduated tax. Their Lordships would add that even if they had taken the view that extrinsic evidence was admissible on a wider basis they would not have found anything to contradict this interpretation.

There was argument as to whether the initial determination of Buganda's financial requirements and the initial assignment of revenues could be altered otherwise than by agreement or by amendment of the Constitution. Their Lordships have found nothing in the provisions for review or elsewhere which would authorise this.

Finally there was some argument about Buganda's position with regard to expansion grants and special grants under Appendix G. This question is not raised by the pleadings and was not the subject of any decision by the High Court. But the parties were agreed that nothing has been or should be decided which would preclude the Kabaka's Government from making requests or applications for such grants.

Accordingly their Lordships will humbly advise Her Majesty that the decree of the High Court of Uganda of 4th May 1964 should be varied by adding to paragraph 1(a) thereof, after the final words thereof (namely "Cmnd. 1523") the words following "provided that there shall be no deduction in respect of the estimated additional revenue accruing to the Kabaka's Government from graduated tax levied on non-Africans". There will be no order as to the costs of this appeal.

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In the Privy Council

THE KABAKA'S GOVERNMENT

v.

ATTORNEY GENERAL OF UGANDA

DELIVERED BY

LORD REID

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