THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

Civil Appeal No. 98 of 2013

(Appeal against the Judgment of the High Court, Kampala, in Civil Suit No. 82 of 2010 before Hon. Mr. Justice J.W. Kwesiga dated 25th February, 2013)

Edward Turyarugayo :: Appellant

Versus

Uganda Revenue Authority :::::::::::::::::::::::::::::::: Respondent

Coram: Hon. Justice Elizabeth Musoke, JA
Hon. Justice Stephen Musota, JA
Hon. Justice Remmy Kasule, Ag. JA

Judgment of Justice Remmy Kasule, Ag. JA

Introduction:

This is an appeal against the Judgment of the High Court in Civil Suit No. 82 of 2010.

Background:

The facts of this case, as accepted by the trial Judge, are that, the appellant got to know that the Ministry of Works (herein to be referred to as "the Ministry") and the 23rd Metallurgical Construction Company of Non Ferrous Metal Industry (U) Ltd (herein to be referred to as "the Company") were not paying the due taxes. The appellant reported the non payment of taxes to the respondent, a Government parastatal with the duty to collect taxes. The respondent caused an audit of the books of accounts of the Company and discovered that UGX. 6,731,311,311= in taxes was owing. An audit of the Ministry also showed that the Ministry owed UGX. 384,425,561= in taxes to the respondent.

Thereafter appropriate steps were taken by the respondent and the due taxes were recovered.

The appellant claiming to have been the informer and one who reported the Ministry and the Company for non payment of the taxes demanded of the respondent 10% of the amount recovered as taxes as his commission. The respondent refused to pay. The appellant instituted HCCS No. 82 of 2010 at High Court, Kampala, seeking to recover the said commission under Section 7 of the Finance Act No. 1 Cap. 187.

A full trial was held by the High Court (Kwesiga, J.) and on 20.03.2013 Judgment was delivered dismissing the suit with costs.

Being dissatisfied, the appellant appealed to this Court.

Grounds of Appeal:

1. ***That the learned trial Judge erred in law and fact when he relied on non-existent evidence to find that the TIF (Tax Evaders Information Form) had been forged.***
2. ***That the learned trial Judge erred in law and fact when he found that the appellant had not proved that tax had been recovered by the respondent after the appellant provided it with information.***
3. ***The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record.***
4. ***The learned trial Judge erred in fact when he found that by the time the appellant provided the information upon which his claim was premised, there were already on-going audit by the respondent.***
5. ***The learned trial Judge erred in law and fact when he dismissed the appellant's case basing on evidence full of contradictions and inconsistencies.***

Legal Representations:

At the hearing, learned Counsel Kyamanywa Edward Cooper represented the appellant while, the respondent was represented by learned Counsel Gloria Twinomugisha, Supervisor Litigation, Uganda Revenue Authority, (URA).

Submissions of Counsel:

Both Counsel with the consent of Court submitted written submissions.

Submissions for the Appellant:

Appellant's Counsel submitted on grounds 5, then 2 and 3 together, and then 1 and 4 also together.

Ground 5:

Counsel submitted that the learned trial Judge ought to have found that the evidence for the defence was full of grave contradictions and inconsistencies which were never satisfactorily explained and by reason thereof the whole defence case ought to have been rejected. After rejecting the defence evidence as unreliable, the learned trial Judge ought to have found that the appellant had proved his case that it was his information to the respondent that caused the audit of the two tax payers thus leading to the recovery of the taxes, learned Counsel so submitted.

Learned Counsel referred to the cross examination of Dw1, David Mugenyi, the sole defence witness (page 125 of record) admitting that:

> *"I am not testifying anything about the Ministry of Works. I am not the one who received information on TIF 000171. I do not know when the audit was done".*

Yet the same witness had stated in paragraph 4 of his witness statement (page 108 of the record):

> *"That on 20th September, 2005 the plaintiff was given tax evaders information form (TIF) No. 000171 wherein he filled the taxes evaded to be VAT and Income Tax in relation to the earlier supplied firms".*

This same witness also stated on page 125 of the record as relate to the informer that:

"He gives information; before he leaves he gets acknowledgement (TIF) he cannot leave without the TIF".

Appellant's Counsel also submitted that, despite having denied knowledge about the TIF 000171, the same witness stated in his witness statement (page 108 of the record) that":

"3. On the 24th August, 2005 the plaintiff supplied information.....

4. That on the 20th September, 2005 the plaintiff was given tax evaders information form TIF No. 000171 wherein he filed the taxes to be ....."

The above showed that there was almost a lapse of a whole month between the informer supplying the information and being provided with the Tax Evaders Information Form (TIF) by the recipient of the information.

However Dw1 in paragraph 5 of the same witness statement stated:

"5. That Nyaika Shadrack was the officer responsible for issuing TIFs to the informers and has since ceased to be an employee of he defendant organization. No information could be received without a TIF as this was well known to all informers".

The above contradicted the testimony of this witness under cross-examination on page 126 of the record where he admitted the documents that provided the respondent with information of the tax defaulters.

Counsel for the appellant also referred to page 126 line 21 of the record, where Dw1 under cross-examination stated that,

"I doubt pages from 2 to 4 because they are not stamped".

Learned Counsel contended that Dw1 had earlier admitted the existence of exhibit P1 on page 126 line 15 of the record when he stated that:

"I am aware of this document".

Exhibit P1, was a letter forwarding the list of tax defaulters contained in Exhibit P2 while Exhibit P3 was a supplement to the list of companies contained in Exhibit P2 from which the Ministry had neglected to recover withholding tax.

Learned Counsel submitted that all the above were all grave contradictions and inconsistencies on the part of Dw1. Therefore the trial Judge ought to have found Dw1's evidence as being unreliable and thus dismissed the defence case. Counsel prayed for ground 5 of the appeal to be allowed.

Grounds 2 and 3:

That the learned trial Judge erred in law and fact when he found that the appellant had not proved that tax had been recovered by the respondent after the appellant provided it with information.

And

The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record.

Learned Counsel for the appellant referred to the holding of the learned trial Judge in his Judgment (page 164 lines 2-5 of the record) that:

"the plaintiff must specifically prove the allegation that his information caused the audit of the tax payers and led to recovery of tax which in my view of evidence as a whole has not been proved on the balance of probabilities", which was in error. He relied on **Section 103 of the Evidence Act Cap. 6** which provides that:

"the burden of proof as to any particular fact lies on that person who wished the Court to believe in its existence, unless it is provided by any law that proof of that fact shall lie on any particular person" and Section 106 of the Evidence Act which provides that:

"In civil proceedings when any fact is specifically within the knowledge of any person, the burden of proving that fact is upon that person".

Counsel argued that the appellant's claim was clearly stated in paragraph 4(1) of the plaint that as an informer, he claimed recovery of 10% of the tax arrears recovered by the respondent from the Company and the Ministry.

However, the respondent had in the written statement of defence paragraph 6(a) and (b) denied that no tax arrears had been received basing on the appellant's information. The Respondent maintained that, if any audit was carried out, the same was done in the normal course of duty of a tax administration body and not prompted by the appellant.

Therefore under **Sections 103 and 106 of the Evidence Act**, the respondent had the burden to prove that the tax arrears collected from tax payers in issue, was collected not with the help or information supplied by the appellant but through the normal course of tax collection routine work. This was a fact especially within the respondent's knowledge only.

The respondent had not at all discharged this burden, learned Counsel so contended. He relied on the Supreme Court decision of **Bank of Baroda (U) Ltd vs Wilson Buyonjo Kamugunda: No. 10 of 14 [2006] KARL 87 page 95,** where it was held that if the facts of the matter are within the knowledge of the defendant, the plaintiff does not have the burden to prove them.

Learned Counsel for the appellant emphasized the testimony of the appellant, that he supplied information of how the Ministry was evading payment of withholding tax and VAT for the suppliers and contractors. Therefore, as a result of this information, the respondent was able to recover UGX. 384,442,556= from the Ministry. He sought to recover 10% of that sum.

Counsel for the appellant referred to the Judgment of the learned trial Judge holding that:

"this tax was not recovered based on the information earlier supplied under TIF 000171 before alteration and therefore the plaintiff is not entitled to the reward of 10% of the collected tax. The evidential value of the TIF 000171 was perverted by fraudulent alterations observed by this Court..... for Court to let the litigant take benefit of this illegality .... Basing on what is clearly fraudulent",

And

submitted that it was an error for the learned trial Judge to hold as above. This is because the assertion of fraudulent alteration of the TIF was never raised in the respondent's written statement of defence.

Order 6 Rule 3 of the Civil Procedure Rules requires that:

".....In all cases in which the party pleading relies on any misrepresentation, fraud breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings".

The respondent had thus not complied with the above Rule.

Learned Counsel also referred to **Supreme Court Civil Appeal No. 13 of 1992: J.W.R. Kazzora v M.L.S. Rukuba: [1992] KALR 377** at page 384, as further authority that the party relying on fraud must specifically plead it and that particulars of the alleged fraud must be stated on the face of the pleadings. Fraud must be distinctly proved and it is not allowed to leave fraud to be inferred from the facts.

Learned Counsel also faulted the learned trial Judge's finding in his Judgment that:

"the fraudulent particulars were set out and understood by this Court to have been alterations of the dates ..."

The learned trial Judge was in error to find as above because no particulars of fraud were pleaded in the respondent's written statement of defence and at any rate, the appellant as Pw1 at trial

had explained in his witness statement over which he was cross-examined that:

"6. Mr. Nyaika registered my case and handed me the tax evaders information Form (TIF) which I duly filled stating the particulars of the tax payers and the information I provided.

7. After about three weeks, I realized that I had not included specific details of information I had provided (withholding tax and VAT for the suppliers and contractors) and I went to URA and brought this to Mr. Nyaika's attention. He told me that the information should be added on the TIF since it arose from the same organization and I complied".

Counsel for the appellant thus reasoned that the TIF No. 000171, itself allowed the addition of any information as shown by the last words at its bottom that: *"use additional space below if needed".*

Counsel thus contended that the respondent denied knowing anything to do with the TIF No. 000171 while under cross examination. However it was only Mr. Nyaika who could have challenged the testimony of the appellant, since the two dealt with each other in the transaction. But Mr. Nyaika was never produced by the respondent to testify. No reason was given why he was not produced.

The learned trial Judge himself wondered at the trial about the respondent's failure to tender in Court the original TIF and to call Mr. Nyaika who originally handled the appellant's information as a witness.

Therefore the trial Judge ought to have drawn an adverse inference from these two aspects of the case that the respondent's case was not credible. Counsel relied **J.K. Patel vs Spear Motors Ltd: Supreme Court Civil Appeal No. 4 of 91 [1993] KARL 145 at page 155,** for this submission.

The learned trial Judge was also faulted by Counsel for relying in arriving at his decision on the photocopy of the TIF which had been tendered merely for identification: (page 159 line 8 of the record. Counsel relied on **Des Raj Shema vs Reginan [1953] EACA 310** and **Okwonga Stephen vs Uganda [2002] KALR 24** as authorities that a document which is tendered in Court for mere identification remains hearsay since its authenticity will not have been tested.

Counsel further submitted that the appellant's case was credible because the appellant was not to derive any benefit by postdating the TIF. It would also be illogical for the appellant to alter the date on the TIF but leave the date on the URA receiving stamp unchanged. There was no rationale for the alleged alterations attributed to the appellant as his acts of fraud.

Counsel for the appellant also invited this Court to appreciate the fact that the TIF clearly stated that the informer retains the duplicate while the respondent retains the original. Counsel thus invited this Court to note the fact that the respondent did not tender in Court as evidence the original copy of the TIF. No explanation was availed to Court for such a failure.

Learned Counsel further submitted that the learned trial Judge had no proper grounds for holding in his Judgment that:

".....the fact that the plaintiff had communicated with the defendant [now respondent] earlier than the letter of the defendant to the tax payer does not per se prove the audit in question was prompted by the plaintiff's information"

Counsel referred to paragraph 4(d)(e)(f) and (g) of the plaint wherein the appellant pleaded how in 2005 and 2006 he supplied information that the Company was evading payment of VAT. Premised on this information the respondent carried out an audit and recovered UGS. 6,731,311,311=.

Counsel further contended that though the respondent in the written statement of defence, denied recovering any tax premised on the information availed by the appellant, and asserted that if any tax was recovered, it was in the course of normal duty, this was not supported by Dw1's evidence. In paragraphs 6, 7 and 8 of Dw1's witness statement, Dw1 admitted that the appellant supplied that information to the respondent way back in 2006. Dw1 then went on with the unreliable explanation that respondent wrote to the appellant, two years later in August, 2008, informing him how the appellant's supplied information was already within their knowledge.

Therefore the respondent had the burden to prove at the trial, the fact that by the time, the appellant supplied it with information in 2006, it already had the same information. The respondent purported to discharge this burden under **Sections 103 and 106 of the Evidence Act** by merely asserting that it had had this information before the appellant supplied his, without further proof.

That the respondent had the audit report dated 13th August, 2008 (Exhibit P9), which was two years from the time the appellant had provided the information to the respondent, could not prove in any way that the respondent had had this information by the time the appellant supplied it, two years earlier. The report did not show when the audit had commenced or when the auditors had received the instructions to audit. All that the report showed was the period and the date, the audit had been concluded, two years away from when the appellant claimed to have supplied the information to the respondent.

Counsel thus prayed that grounds 2 and 3 be allowed.

Grounds 4 and 1:

These grounds are that:

The learned trial Judge erred in fact when he found that by the time the appellant provided the information upon which his claim was premised, there were already an on-going audit by the respondent.

and

The learned trial Judge erred in law and fact when he relied on non-existent evidence to find that TIF Form had been forged.

Counsel for the appellant, referred this Court to the holding by the learned trial Judge that:

"my view is that the fact that the plaintiff had communicated with the defendant earlier than the letter of the defendant to the tax payer

does not prove that the audit in question was prompted by the plaintiff".

Learned Counsel submitted that, with respect to the learned trial Judge this holding was in error. The respondent had the burden to prove there was an ongoing audit by the time the appellant supplied the information. The respondent failed to do so. Instead, Counsel maintained, the appellant proved his case on the basis of his information that prompted the audit and the recovery of the tax arrears from the Company.

This evidence was to be found in Exhibit P4, a letter dated and received by the respondent on the 10.09.2006, which showed that the Company was one of the companies whose contracts had been partly paid, but the said company had not paid withholding tax and VAT.

Counsel contended that since the respondent received from the appellant, a letter on 19.01.2007 disclosing more tax defaulters and also inquiring about the progress on the auditing of the Company this went to prove that by the 19.01.2007, there had not been any audit of the Company. Counsel buttressed this submission by referring to the respondent's defence witness statement under cross-examination at page 125 line 16 of the record where that witness stated that: **"audit was after September, 2007".**

Learned appellant's Counsel thus maintained that it was the appellant's information that had been used by the respondent to recover the tax arrears from this company.

Counsel prayed for grounds 4 and 1 to be allowed, and all the grounds having been successful, for the whole appeal to also be allowed.

Submissions for the Respondent:

Learned Counsel for the respondent argued the grounds in the same order as that adopted by Counsel for the appellant.

Ground 5:

Learned Counsel submitted that there was no merit in this ground. He supported the holding of the learned trial Judge that:

"The plaintiff must specifically prove the allegation that his information caused the audit of the taxpayer and led to recovery of tax which, in my view of the evidence as a whole, has not been proved on the balance of probabilities".

Learned Counsel further found the learned trial Judge to have been correct in finding that Exhibits P1 and P2 never stated that the Ministry was a tax culprit, that the said Ministry was entered as an afterthought on the TIF, and that there was circumstantial evidence of alteration of the original report of the tax evader which was a fraudulent act.

Respondent's Counsel maintained that the trial Judge was right to draw an adverse inference against the appellant's conduct of violently grabbing the TIF, Exhibit P18, from Dw1 and going away with the same when Dw1 tried to photocopy the same after finding that the same had been altered. Such a conduct of the appellant was not consistent with conduct of a genuine informer who had a genuine claim to pursue.

Learned Counsel further contended, that the learned trial Judge was justified to conclude and hold that Dw1, David Mugenyi, the respondent's witness was a truthful witness.

Learned Counsel for the respondent urged this Court to find and conclude as the learned trial Judge did, that the appellant failed to prove on the balance of probability that he supplied information on tax evasion to the respondent; and that as a result of that supplied information, the respondent recovered the taxes that had been allegedly evaded.

Relying on **Section 21 of the Finance Act** and **Supreme Court Civil Appeal No. 08 of 2009 Rwakasaija Azorious v URA**, learned Counsel contended that the documents relied upon by the appellant were riddled with inconsistencies leading to an inference of deception and fraud on the part of the appellant. Yet the burden was on the appellant to prove to Court that the nature and quality of the information he allegedly supplied to the respondent was credible. The appellant failed to discharge this burden.

Learned Counsel, invited this Court to scrutinize and analyse the TIF Exhibit P18 and the TIF produced by URA and labelled "Identification Document, Exhibit 1". From such analysis, it was clear that some details had been added on to the appellant's copy, yet both TIFs were Photostat copies of the original TIF issued on 20.09.2005.

Exhibit P 18 had been altered by adding thereon Ministry of Works (M.O.W.) as the tax evader and also in its parts C and H where additional particulars were inserted.

The added words were visible as they were in darker print than the other words which were originally filled in by the appellant and were absent from the photocopy of the original TIF as had been provided to the Appellant.

Learned Counsel reasoned that by acting as he did, the appellant was trying to bring himself dishonestly within the nature of information that occasioned an audit and further assessment of the withholding tax. This information was not reflected in the original TIF which is proof that the same was not within his knowledge. The conduct of the appellant in altering the TIF was proof of dishonesty and malafides which excluded the appellant from the benefit of the doctrine of legitimate expectation.

Counsel relied on **Regina v I.R.C. ex parte MFK Underwriting Agents Ltd and Others [1990] 1 W.L.R. 1545, [1990] 1 ALLER 90**, where it was held that the doctrine of legitimate expectation is rooted in fairness. But fairness is not a one-way street. It imports the notion of equitableness, of fair and open dealing to which the parties to the transaction are entitled. Fairness requires that its exercise should be on a basis of full disclosure.

Counsel also relied on the **Halsbury's Laws of England (Volume 12(1), Re-Issue 3 paragraph 835** for the principle that:

"The Courts will not lend their aid to a litigant so as to enable him, his representative or beneficiary, to obtain a benefit from his own crime or reparation for the consequences of his own culpable criminal act. Damages, or other moneys, are not usually recoverable where the breach of duty in respect of which an action is brought arises out of an illegal transaction or other lawful act or activity. The

reason for this principle traditionally expressed by the maxim: ***"exturpi causa non oritur action, is public policy...."***

Learned Counsel prayed this Court to uphold the trial Judge's holding that:

".....The Tax Evaders Information Form (TIF) is very clear and in its absence this Court, in the circumstances of this particular case, is unable to find that based on the plaintiff's submitted letters, was the informer whose information led recovery of the tax in question...",

by disallowing ground 5.

Grounds 2 and 3:

Learned Counsel for the respondent disagreed with the submission of appellant's Counsel as to the burden of proof. He contended that since it was the appellant who alleged to have provided information from which he claimed to be entitled for reward, the burden was upon him, as rightly held by the trial Judge, to specifically prove that his information caused the audit of the tax payer and led to the recovery of tax. This burden had not been discharged by the appellant.

Counsel for the respondent referred to page 162 lines 9-11 of the record and supported the learned trial Judge's holding that;

"this tax was not recovered based on the information earlier supplied under TIF 000171 before alteration and therefore the plaintiff is not entitled to the reward of 10% of the collected tax. The evidential value of the TIF 000171 was perverted by fraudulent alterations observed by this Court..... for Court to let the litigant

take benefit of this illegality .... Basing on what is clearly fraudulent".

Learned Counsel for the respondent maintained that the learned trial Judge carried out the duty to evaluate all evidence adduced, made the appropriate inferences and decisions and granted appropriate remedies. The learned trial Judge also rightly applied the holding in **JW Kazzora vs Rukuba Martin Civil Appeal 13 of 1992 (SCU)** that allegations of fraud must be specifically pleaded and proved. The degree of proof of fraud required is one of strict proof, but not amounting to one of proof beyond reasonable doubt. The proof must, however, be more than a mere balance of probabilities.

The appellant had failed to discharge this burden of proof, and as such, Counsel for the respondent prayed for the dismissal of grounds 2 and 3.

Grounds 4 and 1:

Counsel for the respondent supported the learned trial Judge's finding that:

"In my view, once there is an ongoing Audit by Uganda Revenue Authority (Defendant) regarding a non-compliant taxpayer, information supplied over the same case by an informer, does not qualify to be information leading to recovery of tax to merit reward by the Uganda Revenue Authority. To hold to the contrary would be creating room for insiders of URA to collude with the informers to unfairly be paid public funds. The Tax Evader's Information Form (TIF) is very clear and in its absence this Court, in the circumstances of this particular case, is unable to find that based on the plaintiff's

submitted letters, was the informer whose information led to recovery of the tax in question. Exhibits P. 17, P.12 and P. 9 indicate that the defendant carried out a comprehensive tax audit covering 23rd Metallurgical Construction Company for the period of 2004 to 2008 for various taxes".

Learned Counsel for the respondent emphasized that the appellant was not issued a TIF in respect to the Company. The procedure was that upon receipt of information from third parties, the information had to be quality assured by the Tax Investigation Office, then recorded on the Uganda Revenue Authority TIF which form was serialized and was issued in quadruplicate. A copy was given to the informer while the other three were kept on the file maintained by the Monitoring and Liaison Unit. The informer was required to present their copy as evidence when claiming for their reward upon completion of investigations and recovery of the taxes evaded.

Counsel for the respondent therefore contended that in the case of the appellant, the appellant's letter of 04.06.2008, Exhibit P.7 addressed to the Commissioner General, where appellant asserted that he surrendered the same information on 03.08.2006, was in contradiction of the appellant's own witness statement. In paragraph 2, of that witness statement the statement, appellant asserted to have tendered in information regarding both the taxpayers in question on 24.08.2005 as per Exhibit P.1. Yet, Exhibit P4 of the appellant showed that the appellant first wrote to the Assistant Commissioner Tax Investigations URA regarding the Company on 10.09.2006. Thereafter upon perusal of the

documentary evidence and acceptance, the appellant was issued with a TIF No. 00071 in the case of the Ministry. He was requested to wait until further investigation and the audit process had been completed in regard to the Company. The appellant never explained the contradictions and inconsistencies as to date and other matter in the above stated evidence.

Counsel for the respondent reasoned in her submissions, that the only valid evidence of reporting or furnishing information was production by the informer of a valid TIF granted by the URA. This was lacking in the appellant's case.

Learned Counsel thus contended that as to whether any information was supplied by the appellant was not in doubt. Exhibit P. 8 (page 83 of the record) where the Ag. Assistant Commissioner Public and Corporate Affairs, Paul Kyeyune wrote to the Appellant notifying him that information regarding the Company had been received but he was not to be rewarded as it was already within URA domain, was proof as to the supply of the information.

Counsel for the respondent further submitted in regard to the Company that the appellant at no time ever obtained a TIF from the respondent. Merely because the information had been provided before the audit, there is no proof that it is that very same and particular information that occasioned the audit. Learned Counsel referred to the witness statement of David Mugenyi (Dw1)'s to the effect that no informer had ever been rewarded on information without a TIF, since it is the basis of the claim. Likewise no informer would just give away such information from

which s/he expects to benefit from. Counsel thus submitted that grounds 4 and 1 be disallowed. Since all the grounds had no merit, Counsel prayed for the whole appeal to be dismissed.

Resolution of the Grounds of Appeal:

The duty of this Court pursuant to Rule 30(1) of the Court of Appeal Rules is:

To re-evaluate the evidence before it and come up with its own decision and draw its own inferences where it is necessary, bearing in mind that as the first appellate Court, it did not have the opportunity to see the witnesses testify, like the trial Court did, and as such did not have the opportunity and advantage of making any Judgment on the demeanor of those witnesses who testified before trial Court. See also: **Areet Sam vs Uganda: Supreme Court Criminal Appeal No. 20 of 2005**.

Following the order the grounds were submitted upon, I too will resolve the grounds in the order of ground 5, then 2 and 3, together and 4 and 1 also together.

Ground 5:

This ground is too general. It does not state which evidence was contradictory and inconsistent as claimed by Counsel for the appellant. The ground offends **Rule 86(1)** of the Rules of this Court.

See also: **Katumba Byaruhanga vs Edward Kyewalabye Musoke, Court of Appeal Civil Appeal 2 of 1998 reported in (1999) KALR P. 621.**

However, even if this ground is proceeded with, the main contradiction sought to be relied upon by Counsel for the appellant is that Mr. David Mugenyi stated while being cross-examined on his witness statement that:

"I am not testifying on anything about the Ministry of Works. I am not the one who received the information on the TIF No. 000171. I do not know when the audit was done".

Yet in his witness statement said that on 20th September, 2005, the Plaintiff was given tax evaders information form (TIF) No. 000171 wherein he filled the taxes evaded to be VAT and Income Tax in relation to the earlier supplied firms.

I find that there was a plausible explanation for the apparent contradiction. Mr. David Mugenyi, Dw1 was not the one who issued the appellant with the TIF No. 000171 dated 20.09.2005. He was also not the auditor. He was a Tax Educator in Public And Corporate Affairs Division of URA. The evidence on record showed that Mr. Nyaika Shadrack issued the appellant with the form. The said acknowledgement of the TIF in DW1's statement, stating that the appellant was given the Tax Evader Information (TIF) No. 000171 on 20.09.2005 can be logically accounted for because that is the date of the URA stamp indicated on the said TIF document.

I have carefully read and scrutinized the pleadings and submissions in the appeal, the proceedings Court, and the Judgement of the learned trial Judge. I have found nothing to remotely suggest that the learned trial Judge misdirected himself on any issue of law or fact, or that he failed to evaluate the evidence.

On the contrary I find that His Lordship properly evaluated the evidence on record and I see no basis for interfering with the decision he arrived at. I find ground 5 to be wrong in law and to have no merit.

Ground 2 and 3:

Specifically with regard to Ground 3, I find that the ground is also not in compliance with Rule 86(1) of the Rules of this Court. It is vague and not specific. However ground 2 is a proper ground in compliance with the said Rule. From the nature of submissions by respective Counsel for the appellant and the respondent, I find that all the submissions under ground 3 can be resolved underground 2 of the appeal. I accordingly strike out ground 3 for being contrary to law and proceed to resolve all the issues raised in the submissions of respective Counsel under ground 2.

Section 7 of the then Finance Act 1999 provided:

"The Commissioner General shall reward any person who provides information leading to recovery of tax or who seizes any goods or by whose aid goods are seized under any law in relation to tax or duty, with a reward of 10 percent of the tax recovered".

Currently Section 8 of Finance Act 2014 provides that:

"The Commissioner General shall pay to a person who provides information leading to the recovery of a tax or duty, the equivalent of ten percent (10%) of the principal tax or duty recovered".

The evidence adduced at trial established, without dispute, that there was some information the appellant provided to the respondent regarding evasion of payment of taxes by some entities.

The question to be resolved by this Court is whether the nature and quality of the information supplied by the appellant to the respondent is the one that led to the recovery of the said taxes. It is from the determination of this question, that this Court can resolve whether or not the appellant is entitled to the 10% of the taxes that were recovered.

It is a settled position of law that in all civil matters, the burden of proof lies with the plaintiff pursuant to Sections 101, 102 and 103 of Evidence Act. To decide in his favour, the Court has to be satisfied that the plaintiff has furnished evidence to support his case on a balance of probabilities. See: **Jovelyn Brugahare v Attorney General Civil Appeal No. 28 of 1993 (SCU).**

In the instant case, the appellant in his own witness statement and testimony, claimed to have supplied the respondent with the information through a number of letters Exhibits P.4. P5, P.6 and P.7 whose dates range from 10.09.2006 to 14.08.2008 addressed to different employees/agents of the respondent, that led to the recovery of tax UGX. 711,573,687= from the Ministry and Company. The appellant thus claimed to be entitled to be paid 10% of that sum of recovered tax.

The appellant as the claimant, had to discharge the burden to have supplied the information and as a result of that supply of information the taxes that had been evaded, were recovered by the respondent.

The learned trial Judge held, after a full, trial, that the appellant had failed to discharge that burden.

Having subjected the evidence on record to a fresh scrutiny, it appears to me that the only conclusive evidence of proof that binds URA with the informants is the TIF, being the official document issued by URA in acknowledgment of the information supplied. Any information given without first filling the TIF is deemed whistle-blower's information with which URA is under no duty to pay a 10% for the tax recovered. It is important to note that it is not only a matter of just giving information, the same information has to be of such a significance that it must have led to the recovery of the said tax. See: **URA V Rwakashaija and 2 Others: Civil Appeal No. 07 of 2007 (SCU).** The TIF, prescribes the kind of specific information which must be supplied including, Name of alleged tax evader, Type of tax evaded, Period of evasion, place of evasion and estimated amount of evasion.

This information in the case of the appellant was provided on TIF 00017, Exhibit P.3. There is on this TIF 00017 information that was provided by the appellant on the unaltered Form. The appellant also provided no credible evidence that it was the information he supplied that prompted the said audit of the tax evaders. Counsel for the appellant in his written submission considered the testimony of the appellant as proof of evidence that prompted the respondent to audit the tax evaders.

I am unable to conclude from the mere assertion of the appellant, without more, that the audit of the tax evaders was prompted by the information supplied by the appellant. There were

contradictions in dates as to when the information was given by the appellant, there were also subsequent changes in the information, the changes being made under suspicious circumstances and by and/or at the prompting of the appellant.

I therefore concur with Counsel for the respondent that the entire evidence on record does not support the assertion by the appellant that, if it was not for the information provided by him, URA would not have recovered the said taxes from the Ministry and/or from the Company or both.

I uphold the learned trial Judge when he held that:

"The Plaintiff must specifically prove allegation that the information caused the audit of tax payer and led to recovery of tax which in my view of evidence as while has not been proved on the balance of probabilities".

And also that:

"This tax was not recovered based on the information earlier supplied under TIF 000171 before alteration and therefore the Plaintiff is not entitled to the reward of 10% of the collected tax. The evidential value of the TIF 000171 was perverted by the fraudulent alterations observed by this Court... for Court to the litigant take benefit from this illegality.... Basing on what clearly fraudulent".

I find the contention for the appellant that the said alteration of the TIF 000171 was not raised in the respondent's written statement of defence to be without merit.

I find that the pleading in paragraph 5(a) of the written statement of defence, though broad, covered the aspects of the claim by the appellant as to the supply and how he supplied the information, including the alterations in such information. I am unable to uphold the appellant's case just on the mere basis of this aspect of the case alone.

At any rate, it is the duty of this Court under **Rule 30(1)** of the Rules of this Court when analysing, scrutinizing and reviewing the evidence that was adduced, to made its own findings based on that evidence on record.

In that regard I too, having analysed and reviewed the whole evidence, accept the learned trial Judge reasoning and conclusion in his Judgment that:

"My view is that where the witness written statement (see Dw1), the testimony under-crossed-examination and the documental evidence such as P.18 portray alteration or additional entries to favour the plaintiff to the detriment of the defendant this Courts hands are not tied because no conviction exists and take the contents of the questioned exhibit as gospel truth. This Court has a duty to evaluate all evidence adduced to prove a fact and make the appropriate inference whether the fraud has been investigated and conviction done or not" (SIC).

There were inconsistencies in the dates of the TIF 000171 showing 28.05.2005 instead of 20.09.2005 and the TIF also showed that there was added information which was not there originally. This raised questions on whether this document should be relied upon

or not. In order to resolve this question the learned trial Judge had to examine the document in detail and found that:

"TIF No. 000171 dated 28th August, 2005, this document (photocopy) clearly shows features that render it suspect. In the space requiring the name of the tax evader, consistent with above (i) (ii) documents entry show "various suppliers (18) to Ministry of Works of high value materials and equipment, tyre and stationary" on the evaded there is in same handwriting as above quoted entry the following word:

VAT & INCOME TAXES Between 2001-2005, and estimated output VAT 619,786,235.2. Further examination of the document show that a line was drawn to indicate that the information below the line in the exhibit was not originally there. This inference is further supported by the fact that the addition of "& WHT on payment to contractors and suppliers attached" is in a different handwriting and clearer ink which supports the defendant's argument that Ministry of Works as a tax culprit for not remitting withholding tax was originally not part of the information supplied by the plaintiff".

The above observations of the learned trial Judge were collaborated by the evidence of Dw1, David Mugenyi who testified that the TIF 000171 originally was dated 20th September, 2005 and was stamped 20th September, 2005 as when information was received, but when the plaintiff showed him TIF, Exhibit P.18, he noticed added information. When Dw1 attempted to photocopy this document, the appellant violently grabbed the document and ran

away with the same. The trial Judged concluded rightly in my considered view, that the conduct of the appellant was not consistent with the conduct of a genuine informer who had a genuine claim to pursue.

Learned trial Judge found Dw1's testimony was truthful and believable. Dw1 had not been shaken under cross examination.

I find that the learned trial Judge properly evaluated the evidence to reach the conclusions that he reached. I accordingly disallows grounds 2 and 3 for the reasons already elaborately set out.

Grounds 4 and 1:

The reasons considered in resolving ground 2 on its own apply with equal force in resolving grounds 4 and 1.

A scrutiny of the evidence on record clearly brings it out that the date of commencement of the audit of the tax evader was not clear.

But a letter Exhibit P12 dated 13.08.2008 showed that a comprehensive audit period was between September, 2004 to February, 2008, indicating that the audit had started much earlier before the appellant came into the picture with supply of his information. This was also shown by the date of 20.09.2005 on the TIF filled by the appellant himself and stamped by the respondent.

That fact notwithstanding, having found that the TIF 000171 which was the primary document binding the appellant, as informer, and URA as the recipient of the information, is a document that was the subject of some suspect alterations, the implications are that even if the appellant had proved that indeed

the evidence he supplied prompted the audit and as a result taxes were recovered, the said information supplied would have been deemed corrupted by the dishonest alterations. It therefore, follows that no proper honest information was provided by the appellant upon which his claim was premised. The evidence also showed that there was already an ongoing audit by the respondent, by the time the appellant supplied the information he claims to have supplied. Accordingly grounds 4 and 1 also fail.

In the result all the grounds of appal having failed this appeal stands dismissed.

The Respondent is awarded the costs of this appeal and those in the Court below.

Dated at Kampala this ....22nd.... day of ....July..... **2021**.

.....

Remmy Kasule
Ag. Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 98 OF 2013

(Appeal against the Judgment of the High Court, Kampala, in Civil Suit No. 82 of 2010 before Hon. Mr. Justice J.W. Kwesiga dated 25th February, 2013)

EDWARD TURYARUGAYO :: APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::::: RESPONDENT

CORAM: HON. JUSTICE ELIZABETH MUSOKE, JA
HON. JUSTICE STEPHEN MUSOTA, JA
HON. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment by my brother Hon. Mr. Justice Remmy Kasule, Ag. JA.

I agree with his analysis, conclusions and orders he has proposed. This appeal ought to be dismissed with costs to the respondent both in this court and in the court below.

Dated this 22nd day of July 2021

Hon. Stephen Musota
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 98 OF 2013

EDWARD TURYARUGAYO::APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY::::::::::::::::::::::::::::RESPONDENT

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE STEPHEN MUSOTA, JA
HON. MR. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF ELIZABETH MUSOKE, JA

I have had the advantage of reading in draft the judgment of my learned brother Kasule, Ag. JA. I agree with it, and for the reasons given by my learned brother, I too would dismiss the appeal with costs of the appeal and those in the Court below, to the respondent.

As Musota, JA also agrees, by unanimous decision of the Court, the appeal is dismissed with the order on costs stated earlier.

Dated at Kampala this 22nd day of July 2021.

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Elizabeth Musoke

Justice of Appeal