THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HTC—00—CC—CS—0072—2005

JOHN MUSISI alias
Joseph Musiitwa Kabuusu PLAINTIFF

VERSUS

COMMISSIONER GENERAL
UGANDA REVENUE AUTHORITY DEFENDANT NO.1

ATTORNEY GENERAL DEFENDANT NO.2

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. That facts of this case are substantially not in dispute, and were all agreed to by the parties. What is in dispute is the application of the law to those facts. The plaintiff provided information to defendant no.1 that Makerere University had been evading collection and payment of income tax on off-pay roll allowances from its staff for the period, 1966 to 2000. As a result of this information, defendant no.1 carried out an audit of Makerere University, and arrived at a figure of tax arrears of Shs4,757,404,500.00 owing from Makerere University.
2. Defendant No.1 opted to recover the said tax arrears by filing an agency notice with the bankers of Makerere University but subsequently lifted the same after reaching an agreement with Makerere University. As a result of the said agreement Makerere University paid to defendant no.1 tax arrears of Shs1,118,566,919.00. The balance of tax

arrears of Shs3,866,249,665.00, after a successful appeal by Makerere University was waived by the Minister of Finance.

3. The plaintiff was paid Shs111,855,690.00 by defendant no.1 as the statutory 10% reward on the tax recovered from Makerere University. He now seeks, Shs386, 629,960.00, being 10% of the tax arrears remitted or waived by the Minister of Finance. The basic question before this court is whether the plaintiff is entitled to a reward of 10% of the tax arrears ascertained as due or 10% of the tax arrears recovered, following the provision of information that leads either to the ascertainment or recovery of tax arrears, as the case may be.
4. In the written submissions on behalf of the plaintiff, the plaintiff's advocates argue that the plaintiff enjoyed a statutory duty, under Section 7 of the Finance Act, 1999, which obliged the defendant no.1 to pay the plaintiff 10% of the tax arrears recovered following the provision of information that the plaintiff provided. The plaintiff's advocates further assert that the defendant no.1 collected the tax arrears of shs4,757,404,500.00 when they issued Agency Notice on the bankers of Makerere University on 23/4/01. It is contended for the plaintiff that issuance of the Agency Notice amounted to recovery of the tax arrears. The subsequent lifting of the notice was *ultra vires*.
5. Secondly, it is argued for the petitioner that the Commissioner General of URA failed to strike a balance between the interests of Makerere University and the interests of the informant who provided the information leading to the discovery of the outstanding tax arrears. In so doing the Commissioner General thwarted the intention of the legislature to reward informants, block tax avoidance, and encourage the provision of useful information to URA.

6. In forwarding the appeal of Makerere University to the Minister, defendant no.1 did not notify the minister of the plaintiff's interest in the matter. By failing to do so, the Minister made his decision without taking into account the plaintiff's interest, leading to the current financial loss suffered by the plaintiff, for which the plaintiff holds the defendant no.1 liable. It is further contended for the plaintiff that the appeal by Makerere University was incompetent in law as it was not made under Section 163 of the Income Tax Act.
7. Defendant no.1 contends that the plaintiff is only entitled to 10% of the tax arrears recovered, rather than discovered, given the wording of the Section 7 of the Finance Act. An agency notice is only a demand for payment and cannot amount to recovery of tax arrears. Defendant no.2 submitted that the Minister was entitled to act as he did, in waiving the tax arrears, under Section 163 of the Income Tax Act, after due recommendation from the Commissioner General under Section 162 of the Income Tax Act. As no recovery was made the plaintiff was not entitled to any payment. Further that the plaint did not disclose a cause of action against the defendant no.1.
8. In considering the issue before this court I will, at the outset, set out Section 7 of the Finance Act, that authorises the payment of rewards. It states,

> '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 relating to tax or duty, with a reward of 10 percent of the tax recovered.'

9. As was contended for defendant no.1, these provisions in their plain and ordinary meaning, grant to the person providing information, 10% of the tax recovered, and not tax discovered as due. There is no suggestion that this plain and ordinary meaning is so convoluted as not to have been the clear intent of the legislature in this regard. I am unable to likewise accept the contention of the plaintiff that an agency notice by itself

amounts to recovery of the amounts stated on the agency notice. It is plainly a demand for payment of monies, and may result either in the payment of the monies demand or part thereof, or none payment of the monies demanded.

10. The plaintiff contended that withdrawal of the agency notice by defendant no.1 against the bankers of Makerere University was *ultra vires* but did not mention which law barred withdrawal of agency notices or prohibited conduct of this nature. I am unable to see in what manner was the withdrawal of the agency notice *ultra vires*.

11. As to the issue of impropriety of the appeal to the Minister, this is not a matter that can be properly considered in these proceedings, where the appellant, Makerere University, is not a party. All I can say that the Commissioner had the duty and discretion in this matter, which he or she exercised in making the recommendations that he/she, did to the Minister. The Minister, after due consideration, made his decision in accordance with Section 163, (now Section 162(2)) of the Income Tax Act. The Minister had the authority, and the discretion, to make the decision that he did, taking into account the considerations he did. The fact that he was not aware that the plaintiff had an interest in the recovery of tax arrears is not necessarily one of the considerations he had to take into account in arriving at his decision.

12. The considerations that a Minister had to take into account are set out in Section 162(1) of the Income Tax Act. These are considerations of hardship and impossibility, undue difficulty or the excessive cost of recovery. The letter conveying Makerere University's appeal, mentions these considerations. On the face of the decision, I am unable to say it was made on improper or incomplete considerations.

13. As no recovery was made of the sum of Shs3,866,249,665.00 from Makerere University, the plaintiff, is not entitled, in my view, to the claim of 10% of the same, as put forth in this action. Accordingly I dismiss this suit with costs to the defendants.

Dated, signed, and delivered this 27th day of December 2005

FMS Egonda-Ntende
Judge