THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT-00-CC-CS-0014-2003

J.K. PATEL :::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::: DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

J U D G M E NT:

THE case for the plaintiff which the defendant disputes is that he paid his tax liability to the defendant for the period 1982 – 1991 in which there was an overpayment of Shs.55,517,870-.

These were the points of agreement at the scheduling conference:

1. URA issued an agency notice to M/S Spear Motors Ltd to recover taxes payable by the plaintiff for the period 1982 – 1991.
2. M/S Spear Motors Ltd made payments on behalf of the plaintiff in the sum of Shs.192,539,314- to the defendant, URA.

3. The plaintiff made direct payments to the defendant on account of his tax liability in the sum of Shs.37,280,286-.

4. The High Court of Uganda paid directly to URA a sum of Shs.17,503,574.

When the sums above are put together, you get a total of Shs.247,323,174-. It has taken the parties over ten years to reconcile the figures.

There are three issues for determination:

1. Whether the plaintiff's claim is barred by limitation.
2. Whether the plaintiff is entitled to refund of Shs.55,517,870-.
3. Whether the plaintiff is entitled to the other reliefs sought.

Counsel:

Mr. Richard Okalany for the plaintiff.

Mr. Habib Arike and Ms Stella Nyapendi for the defendant.

A brief background to the case is necessary if the context in which the decision in the matter is to be understood.

The defendant is a statutory body responsible for collection of taxes. The plaintiff is a tax payer. Between 1982 and 1986, he did some construction work for M/S Spear Motors Ltd. The said company defaulted in payments

and the plaintiff took them to Court vide **HCCS No. 103/88 J.K. Patel –Vs-Spear Motors Ltd.**

The award in that case attracted the attention of URA which empowered the judgment debtor, Spear Motors Ltd, to act as its agent in collecting taxes payable by the plaintiff then estimated at Shs.315,064,338-. On 18/11/92, R. Rajasingham J, made the following order:

> *"I do therefore, in exercise of the inherent jurisdiction of the Court in the interests of justice order that all future sums due on the instalments shall be deposited in Court to the credit of the case and that no sums shall be withdrawn from the monies so deposited, without notice to the Revenue Authority."*

On the strength of this order several installments were deposited into Court until the issue of the excess payment arose after Spear Motors had made yet another direct payment to URA in an apparent violation of the Court order.

I will not go into the details of the acrimonious correspondence between the plaintiff and URA, URA and Court. That story is too long for our purposes herein. The long and short of it is that when the parties failed to agree on the way forward, the plaintiff filed this suit on 21/1/2003.

From the points of agreement, both parties now accept that the plaintiff's tax obligation for the period in question was Shs.191,805,304- and that the total amount paid by the plaintiff through Spear Motors Ltd, Court and directly by the plaintiff to URA was Shs.247,323,174-. The difference between the two figures is Shs.55,517,870-, the amount claimed by the plaintiff herein.

The plaintiff had another claim of Shs.41,712,148- but the parties opted for a settlement out of Court in respect of it. A consent order is on record as P. Exh. XV. The claim of Shs.55,517,870- has to-date remained a thorn in the flesh of the defendant.

As to whether the plaintiff's claim is barred by limitation, it must be appreciated that this is a matter that has been in the corridors of High Court for close to 20 years now. The thrust of the defendant's case is that the plaintiff's cause of action arose over six years before 21/1/2003 when this suit was filed. Hence the argument that it is time barred.

Money which is paid to one person which rightfully belongs to another, as where money is paid by A to B on a consideration which has wholly failed or by mistake is said to be money had and received by B to the use of A. It is recoverable by A. The paying of A to B, according to the learned author of A CONCISE LAW DICTIONARY by P.G. Osborn, 5th Edition at p. 212, becomes a quasi-contract, an obligation not created by, but similar to that created by

contract, and is independent of the consent of the person bound. The author gives the basis of the action for money had and received as being rooted in quasi-contract on the footing of an implied promise to repay. The other view is that in an action for money had and received, liability is based on unjust enrichment, that is, the action is applicable whenever the defendant has received money which, in justice and equity, belongs to the plaintiff under circumstances which render the receipt of it by the defendant a receipt to the use of the plaintiff. Whichever way it is looked at, there must be evidence of the payment sought to be recovered. If an overpayment similar to the one in dispute cannot be looked at in similar light, then I have misunderstood the dispute between the parties. I believe I have understood it.

In the instant case, payments were made to the defendant by the plaintiff or on his behalf. Originally, the defendant denied most alleged payments. In view of the admitted facts, I don't intend to re-open debate on it. The debate that should henceforth pre-occupy the parties and the Courts should be whether or not the plaintiff's claim of Shs.55,517,870- was time barred by the time the suit was filed in 2003. At the face of it, the suit would be time barred but for a letter dated 4/8/1997 from the defendant to the Registrar of the High Court. Counsel for the plaintiff argues that it amounted to an acknowledgment of a debt in terms of S.22 (4) of the Limitation Act. Learned defence counsel does not agree.

The section reads:

> *"Where any right of action has accrued to recover any debt or any other liquidated pecuniary claim ..... and the person liable or accountable therefore acknowledges the claim, the right shall be deemed to have accrued on and not before the date on the acknowledgment ....."*

Whether or not the section applies to suits against the Government or government bodies such as the URA has been a subject of determination in a number of cases including **National Pharmacy Ltd –Vs- K.C.C. [1979] HCB 256 and Sour Fap Famous RZ Promet Belgrade Fransuska 61-65 & Anor -Vs- A.G. HCCS No. 18/2001 reported [1997-2001] UCLR 396.**

In the two particular cases above, Courts held that the section applies to the government and its statutory bodies. The effect of acknowledgment or part payment of a debt or other liquidated sum is that time which had started to run against the creditor may be stopped and made to start a fresh by an acknowledgment of liability or by a part payment made by the debtor. I am inclined to adopt the view of the learned editors of Halsbury's Laws of England, 3rd Edn; para 594 at p.300 that if a debt is acknowledged, it is immaterial that the amount of debt claimed is disputed in the acknowledgment. The amount of the debt can always be proved at the

hearing. I must decide therefore whether the defendant's letter to the Registrar of the High Court amounted to an acknowledgment of the plaintiff's claim to the plaintiff. It reads:

"04 August 1997

The Registrar of the High Court

P.O. Box 785 (sic)

Kampala

Dear Sir,

Re: ***JADVA KARSAN PATEL: TAX AFFAIRS 1982 – 1991 YEARS OF INCOME***

I have reviewed the tax position of Mr. Jadva Karsan Patel for the years 1982 – 1991.

The records available with my office indicate the following:

(a). Total tax payable per assessments for 1982 – 1991:

Shs.208,645,912-

Less amnesty (1989) Shs.16,840,608-

Balance payable Shs.191,805,304-

(b). Tax paid: 1982 – 1991 under the Agency Notice:

(i). By Spear Motors directly to URA Shs.192,539,314-

(ii). By the High Court to URA Shs.17,503,574-

(iii). By J.K. Patel to URA Shs.37,280,286-

Total payments per file *Shs.247,323,174-*

(c). According to Spear Motors Limited, total tax withheld and remitted through the High Court was Shs.122,525,018- made in seven equal installments.

(d). Of Shs.122,525,018- records indicate the High Court having passed over to URA Shs.17,503,574-. There is no evidence on file that the balance of Shs.105,021,444- was ever passed on to URA by the High Court.

This is therefore to ask you to clarify on this position, and where payment was made by the High Court, please provide evidence. Your quick response will be most appreciated to enable me finalise this case.

Yours faithfully,
Sgd:
C.K. Kaweesa
SENIOR PRINCIPAL REVENUE OFFICER – NAKAWA"

The letter was copied to all parties concerned, including the plaintiff. It is not clear from the records whether the Registrar offered a prompt response or at

all. I should state that for quite some time, the reconciliation of records to determine the amount payable and what the plaintiff had already paid remained quite a problem to the parties. It is not clear why this was so since URA had records indicating as per Mr. Kaweesa's letter. It would appear that what was confusing the defendant was the original estimated tax value of Shs.315,064,338-. So up to 1997, there was no agreed position between the parties. I cannot blame it on any of the parties. Matters of money are like matters of the heart.

From the pleadings, Court is able to tell that there were negotiations between the parties on the way forward. In the end, the negotiations bore no fruit. It is trite that negotiations between parties to a dispute have no effect on Limitation. A party seeing no end to such negotiations files a suit while negotiations continue to avoid the claim being caught up by the law of Limitation: See: **Allen Nsibirwa –Vs- NW & SC HCCS No. 811/1992** reproduced **[1995] VI KARL 41.**

I have read P. Exh. X again and again. In my view it provided a vital break through to the parties in as far as the impasse over the plaintiff's alleged over payment was concerned. For the first time, the defendant stated in clear terms what according to their assessment and records the plaintiff should have paid to URA and what he had actually paid. The other bit about Spear Motors Ltd and payments by High Court to URA were beside the point.

In fact when information was provided, the defendant had to relinquish part of the claim it had over the whole amount and hence the payment of Shs.41,712,148- to the plaintiff by consent of the parties vide the order of this Court dated 27/5/2003, P. Exh. XV. Since this was a settlement out of Court and the parties have opted to have the dispute resolved on arguments only, I have not understood the basis for the concession when it too should have been part of the alleged time barred claim.

Be that as it may, to the extent that the plaintiff's claim had all along been that he had made an overpayment in the sum of Shs.55,517,870-; and to the extent that the defendant's stand this time (as at 4/8/97) was that the difference between what had been paid and what should have been paid was Shs.55,517,870- implying that they were agreeing with the plaintiff's claim; and to the extent that this was according to records available with URA and therefore undisputed, this was an implied acknowledgment of the plaintiff's claim. As stated above, I have read the letter over and over again. I cannot come to any different conclusion. The only issue as I see it is whether since this was a letter addressed to a person other than the plaintiff the same was an acknowledgment within the meaning and context of S.22 (4) of the Limitation Act.

I have devoted considerable time to this point as well.

The general principle is that an acknowledgement must be made to the creditor by the debtor. What then happens when it is not made to the creditor but only copied to him?

There is very little literature on the matter. What has been provided by counsel is not altogether helpful on that point. However, the Singapore Court of Appeal had an opportunity in **CHUAN & COMPANY PTE LTD –VS-ONG SOON HUAT [2003] 3 SGCA 15** to explore the meaning of 'acknowledgment of debt' under the Limitation Act in pari materia with ours. I applied the same principle in **MADHVANI INTERNATIONAL S.A –VS-ATTORNEY GENERAL HCCS NO. 787/2002** (Civil Division). The case is unreported and it would appear there has not been any attempt to have that decision over-turned on appeal as yet. [I accessed it on Internet, Yahoo Search, ACKNOWLEDMENT OF DEBTS]. To understand its relevancy to this case, I will set out the facts as they appear in that write-up.

CHUAN & CO. Pte Ltd (CHUAN) was a family company formed by Ong Toh. Ong Toh had passed away. During his life time, Ong Toh dealt with the assets of CHUAN as if they were his own. Even after he ceased to be a shareholder and director of CHUAN, he continued to withdraw money from the company. Ong Toh acknowledged the moneys taken by him from CHUAN by signing yearly confirmation of debts statements sent to him by the company

auditors. The last statement was signed by him on 10th March 1994, where by he acknowledged owing CHUAN a sum of about S $7 million (the Debt).

On 9 December 1995, the executor of Ong Toh's estate filed an estate duty affidavit (the Affidavit) with the Estate Duty Department (EDD) in which the date was included as a debt owed by the estate to CHUAN. The EDD required the executor to furnish documents to support the claim that the estate owed the Debt to CHUAN. The executors solicitors wrote a letter to CHUA's Auditors (the Letter) on 17th January 2001 explaining the EDD's requirement. The letter further explained that without such documents, the EDD would refuse to *"make a deduction for the alleged debts*."
The letter concluded by asking CHUAN's auditors to let the executor have *"Copies of all the documents substantiating the alleged debts."*

CHUAN went into voluntary liquidation. The liquidator of CHUAN commenced the present action to recover the Debt from Ong Toh's estate.

Ong Toh's estate pleaded, as in the instant case, that the liquidator's action was time barred on 10th March 2000 (i.e. six years from March 10, 1994). S.6 (1) (a) of the Limitation Act of Singapore provides that an action founded on a contract must be brought within 6 years from the date on which the cause of action accrued.

In response, the liquidator of Chuan argued that Ong Toh's estate had acknowledged the Debt. The liquidator claimed that the Affidavit or the letter constituted an acknowledgment of the Debt by Ong Toh's estate. Hence, the date of accrual of the cause of action was postponed to the date of the Affidavit or the Letter. S. 26 (2) of their Limitation Act provides that where a person liable for any debt "acknowledges the claim or makes any payment in respect thereof", the right of action to recover the debt shall be deemed to have accrued on the date of the acknowledgment.

The judge at the first instance held against the liquidator. The liquidator appealed to the Court of Appeal. The issue on appeal was whether the Affidavit or the Letter was an acknowledgment of a debt within the meaning of S.27 of the Limitation Act. Section 27 defines "acknowledgment of debt". Under section 27 (1) an acknowledgment of debt *"shall be in writing and signed by the person making the acknowledgment*." S.27 (2) further provides that "any such acknowledgment may be made by the agent of the person by whom it is required to be made and made to the person, or to an agent of the person, whose title or claim is being acknowledged."

As to whether the Affidavit was acknowledgement of debt "made to CHUAN or to an agent of CHUAN within the meaning of S.27 (2) of the Act, the Court of Appeal held that the Affidavit was not "made to" CHUAN or its Solicitors. It was addressed to the EDD. CHUAN only secured a copy by virtue of an

order of Court. Such a delivery, by compulsion of an order of Court, would not suffice to constitute an acknowledgment. The Court held, and this is very crucial for purposes of the instant case, that **an acknowledgment involved some intention to convey the contents of the document to the creditor or his agents either deliberately or impliedly.** The emphasis is mine.

As to whether the Letter was an acknowledgment of debt, the rule governing the construction of a document was applied to determine whether it constituted an acknowledgment of debt. The letter constituted an acknowledgment if the maker intended it to be. Where a word in a document is clear, the Court will take its clear meaning. It is only if the word is ambiguous that the Court may refer to extrinsic material and give the word a meaning which is different from its plain meaning.

The Court concluded that the Letter that referred to CHUAN's "allegation" of a debt and asked CHUAN for documents "*substantiating the alleged debts*" did not amount to an acknowledgment of a debt. The Court said that it came to this conclusion by reading the plain words of the letter.

The Court of Appeal dismissed the liquidator's appeal and confirmed that their claim was time barred.

In the instant case, the plaintiff was not the addressee of P. Exh. X. He was the subject matter. But besides being the subject matter of that letter, the defendant considered it necessary to copy it to him. This distinguishes the facts in this case from those in CHUAN where the creditor got it through an order of Court. Indeed in the Madhvani case, supra, Court refused to accept as an acknowledgment of a debt a letter that had not been copied to him. In the instant case, if the author had intended that the content be not conveyed to the plaintiff, or had intended that the contents be not acted upon, I do not see why he should not have written a confidential letter to the Registrar or just *a "without Prejudice"* Letter. He freely copied it to a number of people, including the plaintiff. He put in black and white, in (a) and (b), what the records available with his office indicated at the material time. What they indicated is what the plaintiff had been saying all along. In my view the letter involved some intention to convey the contents of it to the plaintiff, deliberately or impliedly. It carried a very clear message, whether the author intended it that way or not, that the plaintiff had made an over payment to the tune of Shs.55,517,870-. It was not saying that this was "an alleged payment" but that the plaintiff had paid Shs.247,323,174- according to their records when he should have paid Shs.191,805,304-. It's only the subject matter of (c) and (d) that required verification by the Registrar since the Registrar could not have been expected to know how much had been paid directly to URA by Spear Motors Ltd and the plaintiff. When all is said and done, Court is satisfied that the Letter constituted an acknowledgment of the

fact that an over payment had been made by the plaintiff to URA. It is immaterial that Mr. Kaweesa chose to address the letter to the Registrar of the Court rather than the plaintiff for as long as through it he could kill many birds with one stone. For as long as it was copied to him, it was as good a message to him as it was to the Registrar and vice versa.

Accordingly, I accept the submission of learned counsel for the plaintiff that the Letter was a solid and sufficient acknowledgment of a debt to the plaintiff. It rekindled the plaintiff's claim such that by the time he filed the suit on 27/1/2003, the cause of action was still within the six years period.

I would answer the first issue in the negative and is do so.

As to whether or not he is entitled to the claim of Shs.55,517,870-, the answer is in my view quite obvious from my assessment in the first issue. Having stated that he made an over payment, which is conceded in P. Exh. X by the defendant, I hold that he is entitled to a refund of that much.

As to whether he is entitled to the other relief's sought that is, interest and costs, it has been submitted that this was business income; that the defendant has utilized it for a long time and deprived him of its use; and that he should be compensated for that non-use by way of interest. I agree.

The principle that emerges from decided cases, notably **Sietco –Vs- Noble Builders (U) Ltd, SCCA No. 31 of 1995,** is that where a person is entitled to a liquidated amount and has been deprived of it through the wrongful act of another person, he should be awarded interest from the date of filing the suit. The circumstances of this case warrant that the plaintiff be awarded interest on the decretal amount. It shall be at the current commercial rate of 25% per annum from the date of filing till payment in full.

Finally, my interpretation of the Letter, P. Exh. X, could of course be wrong. Even then there is irrefutable evidence that the plaintiff was supposed to pay Shs.191,805,304- and that he paid Shs.247,323,174-. That much is stated in the letter, whether or not it amounts to an acknowledgment of a debt. My understanding of the law is that a Statute barred debt is still payable despite the fact that its payment cannot be enforced by an action: Cheshire, Fifoot & Furmston's LAW OF CONTRACT, 14th Edn, at p.713. Save for the psychological satisfaction derived from the pendantic application of laws, some of which may be unrealistic; and given that the defendant has already made part settlement of the debt through a consent order, I'm unable to discern any moral justification the defendant can advance to deprive the plaintiff of Shs.55,517, 870- that clearly belongs to him; and this after levying from him another Shs.191,805,304-.

This would appear to me to be the sort of mischief, the unsatisfactory state of affairs which the wise framers of our constitution meant to remedy in Article 126 (2) (e) thereof. It would appear to me that on equitable considerations as well; given the many years the plaintiff has spent seeking recovery of a fairly obvious claim; and considering that even if the statutory period expires before an action is brought the plaintiff's rights are not necessarily extinguished, this would be a fit and proper case to be considered for a remedy under S.98 of the Civil Procedure Act if only that would bring litigation in this particular case to an end. I would allow the plaintiff's claim under this head as well in accordance with S.98 of the Civil Procedure Act and 17 (2) (c) of the Judicature Act, cap 13 (as amended by Act 3 of 2002, S.4 thereof) and I do so.

For reasons stated above, the plaintiff's claim is allowed on terms set out herein above, with costs to him against the defendant. I so order.

Yorokamu Bamwine

J U D G E

05/06/2006

5/6/2006

Habib Arike

Stella Nyaperadi for defendant

Richard Okalany for plaintiff.

Court: Judgment delivered.

Yorokamu Bamwine

J U D G E

5/6/2006