THE REPUBLIC OF UGANDA

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

HCT-00-CC-CS-0602-2006

BAKWANYE TRADING CO. LTD :::::::::::::::::::::::::: PLAINTIFF

VERSUS

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

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

R U L I N G:

The plaintiff's claim against the defendant is for a declaration that the assessment of Shs.83, 848,380= levied on the plaintiff as under declared Value Added Tax (VAT) and penalties is illegal, an order that the defendant pays the plaintiff the sum of Shs.116, 234,855= being VAT refunds claimed and due to the plaintiff, interest thereon at a rate of 2% per month compounded, general damages for inconvenience and costs of the suit.

From the records, the plaintiff is a trading entity, trading in fuel and lubricants, export of coffee, cocoa and other lines of trade. It is registered for Value Added Tax. It is not disputed that for the period March 2000 to June 2005, the plaintiff submitted a VAT refund claim of Shs.116,234,856= and as a result the defendant commissioned an audit to ascertain the basis of the claim. At the end of the audit exercise, an assessment for Shs.83, 848,380= was raised. This comprised Shs.49, 250,164= as VAT payable and Shs.34, 598,216= as interest as at 12/12/2005.

In the said audit exercise, a number of invoices submitted by the plaintiff to support its refund claim were rejected by the defendant. They included invoices on foreign transport, sale of

groceries and those submitted to support a claim for refund of in put tax on the fuel/lubricants business. The plaintiff filed the instant suit for Shs.116, 234,855=.

When the parties appeared before me on 24/4/2007, they intimated to Court that they were in agreement that:

1. International Transport payments are not subject to VAT. As such, the Transami invoices totaling to Shs.83, 972,842= were excludable.
2. Computation of Shs.11, 013,434= on grocery sales by the plaintiff was correct and accurate.
3. Effect of inclusion of Caltex (U) Ltd's invoices adding up to Shs.76,142,732= would be to reduce the plaintiff's claim against the defendant to Shs.26,892,768=.

The parties accordingly agreed that the plaintiff's claim would be Shs.26, 892,568= if the invoices relating to the fuel/lubricants business were admitted by the defendant. By implication and agreement, all other claims are unsustainable.

The parties agreed that it was not necessary to lead oral evidence on the matter. I accepted that position. The defendant's denial of the invoices is based on three grounds:

1. That the known registered VAT tax payer and hence rightful claimant for tax refund is the plaintiff herein, Bakwanye Trading Company Limited.
2. That the invoices submitted to support the VAT refund claim in respect of the fuel/lubricants business were issued to Caltex Rwenzori SS A/C Bwambale and Star Service Station – Kasese which entities are not known to the defendant.
3. That the invoices as described in (i) and (ii) above do not therefore conform to the VAT Act and regulation and since they are not in any way related to the plaintiff, no cause of action based on them is disclosed.

From the pleadings and submissions, therefore, the only issue for determination is whether the plaintiff's suit for a refund of Shs.26, 892,568= discloses any cause of action against the defendant.

The plaintiff contends that it does. The defendant denies it.

Representations:

Mr. Wabwire Anthony for the plaintiff.
Mr. Moses Kazibwe for the defendant.

The phrase 'Cause of action' is defined by Osborn's Concise Law Dictionary, 9th Edn, p. 73 as:

> ***"The fact or combination of facts which gives rise to a right of action."***

Halsbury's Laws of England, 4th Edn (Re-issue), vol. 37 at p. 24 explains it thus:

> ***"Cause of action. 'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from the earliest time to include every fact which is material to be proved to entitle the claimant to succeed, and every fact which the defendant would have a right to traverse. 'Cause of action' has also been taken to mean the particular act on the part of the defendant which gives the claimant his cause of complaint, or the subject matter or grievance founding the claim, not merely the technical cause of action."***

It is such an important aspect of our law that 0.6 r. 1 (a) requires all pleadings, generally, to contain a brief statement of the material facts on which the party pleading relies for claim or defence. Under 0.7 r. 1 (e), the plaint must contain the facts constituting the cause of action and when it arose. The consequences of non-compliance are grave. They are set out in 0.7 r. 11. Under 0.7 r. 11 (a), a plaint that discloses no cause of action must be rejected by the Court.

It is, in my view, settled law that the question whether or not a plaint discloses a cause of action must be determined upon perusal of the plaint alone, together with anything attached as to form part of it.
See: **Jeraj Shariff & Co. –Vs- Chotai Fancy Stores [1960] EA 374 at 375.**

I have studied the plaint. In para 4 thereof, the plaintiff states that sometime in early 2000, the plaintiff through its Managing Director one Costa Bwambale, entered into a dealership agreement with M/S Caltex (U) Ltd wherein the latter would supply lubricants to Caltex Rwenzori Service Station under the plaintiff's management. The plaintiff states further that the dealer supplied the plaintiff with lubricants for the period March 2000 until June 2005 for which the plaintiff duly

paid Value Added Tax. The invoices for the said period are attached. There is no mention of Star Station Kasese in the plaint.

In **Auto Garage & Others –Vs- Motokov (No. 3) [1971] EA 514,** Spry, V.P. summarized the test to be applied in determining whether or not a plaint has disclosed a cause of action. He said:

> ***"I would summarise the position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right, that the right has been violated and the defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment. If on the other hand, any of those essentials is missing, no cause of action has been shown …….."***

Now the contents of para 4 of the plaint purport to show, in my opinion, that the plaintiff enjoyed a right. And what was that right? The right disclosed is, in my view, that of managing Caltex Rwenzori Service Station. There is no evidence of this right being violated, let alone by the defendant. The plaint states in para 4 (b) that the dealer supplied the plaintiff with lubricants for which the plaintiff duly paid VAT. This is where the problem lies.

The defendant submits that the tax invoices submitted by the plaintiff were for recipients of taxable supplies who are not known to the defendant. This is correct. The invoices attached to the plaint which the plaintiff indeed relies on were issued to M/S Caltex Rwenzori Service Station A/C Bwambale and M/S Star Station Kasese. These are two distinct bodies, separate from the plaintiff, notwithstanding that the plaintiff was the one managing them.

The thrust of the defendant's submission is that the plaintiff and the two other companies are totally different and distinct persons and that Bwambale as an individual is a distinct person separate from the company. I accept that argument. It is sound and in line with settled law that a company is a distinct legal entity, separate from such persons as may be members of it, and having legal rights and duties and perpetual succession. It may enter into contracts, own property, pay taxes, employ people and be liable for torts and crimes. These are fundamental attributes long ago recognized in **Salomon –Vs- Salomon & Co. Ltd [1897] A.C 22.**

The VAT law is clear that if, for any tax period, a taxable person's in put tax exceeds his/her liability for tax for that period, the excess tax is refundable: S. 42 (1) of the Act. The refund is

subject to the Commissioner General being satisfied with the accounts/records submitted by the taxable person to substantiate his/her claim.

The Commissioner refused to make the refund because the documents the plaintiff submitted did not conform to the VAT Act and the Regulations.

I have considered the law as contained in the VAT Act, particularly S. 29 (1) thereof. Under the said law, a taxable person making a taxable supply has to provide the person receiving the supplies with a tax invoice. It is very clear to me that the tax invoice is indeed the basic document evidencing the receipt of the taxable supply and on which a tax refund can validly be based. In the instant case, the tax invoice was issued to companies very distinct from the plaintiff. The plaintiff cannot take advantage of them. The plaintiff is simply not sufficiently linked to those invoices to support its VAT refund claim. Upon examination of the same, I do not find anything in them that would cause me to fault the Commissioner General on the matter. I would uphold the defence contention on this matter that the plaint discloses no cause of action against the defendant.

Even if I were to take a rather generous view that taxes were indeed paid and ought to be refunded, it would appear to me that the plaintiff is remotely related to those invoices. True, M/S Caltex Rwenzori Service Station and M/S Star Station Kasese are, within the meaning of S. 6 of the VAT Act taxable persons. True also that they were being managed by the plaintiff through its Managing Director. Under Sections 7 and 8 of the Act, they were obliged to register for VAT. They did not for reasons best known to them. They appear to be in clear breach of the law, deliberately or otherwise. There is no evidence of any assignment of their tax obligations to the plaintiff to raise inference that the plaintiff has a sustainable claim against the defendant. If there was any assignment of rights, it is not pleaded in the plaint. Even if Court were to clear the plaintiff to take advantage of invoices not in its names, the claim would in my view be **ex turpi causa**. In law an action does not arise from a base cause. The policy was well summarized by Lord Mansfield C.J. in the 18th Century when he declared:

No Court will lend aid to a man who founds his cause of action upon an immoral or illegal act. If the cause of action appears to arise ***ex turpi causa*** *…….. the Court says he has no right to be assisted: SUCCESS IN LAW by RICHARD BRUCE, 4TH EDN, p. 260.*

The deliberate non-compliance with the law would, in my view, render the claim base.

I would, therefore, agree with learned counsel for the defendant that allowing the tax invoices as submitted to benefit the plaintiff or even the two taxable companies would tantamount to sanctioning an illegality. It is trite that a Court of law cannot sanction an illegality once brought to its attention.

In the result, I find that the plaint discloses no cause of action against the defendant. It is rejected in accordance with 0.7 r. 11 (a) of the Civil Procedure Rules. The plaint is accordingly struck out.

As regards costs, the usual result is that the loser pays the winner's costs. This practice is subject to the Court's discretion so that a winning party may not necessarily be awarded his costs. Considering the benefit derived by the defendant from the suit taxable supplies and the peculiarity of the issue at hand, I'm inclined to the view that an order that each party bears its own costs would be just in the circumstances of this case. I so order.

Yorokamu Bamwine
J U D G E
15/06/2007

Order: This ruling shall be delivered on my behalf by the Registrar of the Court on the due date.

Yorokamu Bamwine
J U D G E
15/06/2007