

**IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION**

HCT-00-CC-CS-0487-2007

AHAMYA SAM Plaintiff

VERSUS

UGANDA REVENUE AUTHORITY Defendant

BEFORE: HON MR. JUSTICE LAMECK N. MUKASA

Representation:

Mr. Jeff Bogere of Counsel for the Plaintiff

Mr. Moses Kazibwe Counsel for the Defendant

Court Clerk:

Mr. Mahoka Ojambo

JUDGEMENT

The plaintiff, Ahamy Sam, filed this suit against the Uganda Revenue Authority claiming that on the 18th October 2004 he gave information and a report to the defendant concerning tax evasion by Tight Security Services Ltd of the amount of shs319,181,503 and it was coded by the defendant as TSS/78/10/04. That acting on the report and information provided by the plaintiff the defendant carried out an audit on the tax defaulter M/s Tight Security Services Ltd and established an additional amount of un-remitted tax. On the 28th April 2006 Tight Security Ltd

paid and the defendant received the sum of Shs150,000,000/=. On the 30th June 2006 Tight Security Services Ltd paid and the defendant received the sum of Shs520,514,753/= being the full and final settlement of their tax liability.

The plaintiff states that on 7th July 2006 the defendant paid him a part of the reward of Shs15,000,000/= leaving a balance of Shs52,000,000/=. On 10th August 2006 the defendant made another further part payment of shs28,000,000/= towards the reward. The plaintiff claims a balance of Shs24,000,000/=. The plaintiff contends that the defendant is mandated under the law to pay 10% of the monies recovered by it to the plaintiff hence this suit.

In its written statement of defence the defendant contend that:

- (a) The plaintiff supplied information to the defendant about non payment of taxes by Tight Security Services for the period 2002-2004, amounting to Ushs319,181,503/=
- (b) An audit was commissioned which established arrears of shs437,621,414 for the same period.
- (c) On demanding the amount the taxpayer volunteered further liability of Ushs232,953,339/= making the total tax payable shs670,574,735/=
- (d) The defendant paid the plaintiff Ushs43, 762,141 being the statutory reward on the collections made on the basis of his information.

The defendant further contends that the Ushs232,953,339/= was volunteered by the tax payer and was for 2005, a period the plaintiff did not supply information on and not covered by the audit. That the established additional for the period 2002 – 2004 is Ushs118,439,911/= over and above the information for Shs319/181/503/- supplied by the plaintiff.

The issues for court's decision were:-

1. Whether the additional taxes paid were an independent act of declaration in light of Section 7 of the Finance Act Cap 187.
2. Whether the plaintiff is entitled to the sum claimed.
3. Remedies available.

Both parties did not call any witness evidence. They opted to rely on the documents exhibited respectively and prayed to file written submissions.

Issue No:1 Whether the additional taxes paid were an independent act of declaration in light of section 7 of the Finance Act, 1999 Cap 187.

Section 7 provides:-

“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.” (*emphasis added*)

The plaintiff’s claim is premised on the interpretation of the above section. The section shows that the 10% reward is paid by the Commissioner General on the tax recovered as a result of the information provided by the informer. The reward is given to the informer on payment of the tax recovered and not on receipt of information or discovery of the tax leakage.

The documents before me show that the plaintiff in October , 2004 rendered information to the defendant on M/s Tight Security Ltd’s failure to remit and pay VAT taxes for the years 2002 – 2004 to the tune of Shs319,181,503/= . To verify the plaintiff’s information the defendant carried out an audit of the company for the period July 2002 to March 2005. The audit established the company’s unpaid taxes for the period at Ushs437,621,414/= This was revelation of an additional sum of Ushs118,439,911/= as unpaid taxes over and above the initial information of Shs319,181,503 provided to the defendant by the plaintiff. The defendant communicated to the company its tax liability. In response the company in its letter Ref 549768MD to the defendant states:-

“We thank you for your letter of 7th April 2005, formally communicating to us your findings of VAT liability of Ushs437,621,414/= which we accept. However, we had also

volunteered to extend the period to date so that the entire liability can be the subject matter of discussions for settlement. Accordingly to our records, which can be audited by you any time, we have a further liability of Ushs232,953,339/= making a total of Ushs670,574,753/= for a period extended to 2005.
-----:"

The company has since paid to the defendant the total sum of Shs670,574,735/=. 10% thereof would be Shs67,057,475/=. The plaintiff contends that he is entitled to an award of shs67,057,475/= being the 10% on the total sum recovered from the company following the information he provided to the defendant. The defendant has paid the plaintiff Shs43,000,000/= representing 10% of the sum of Shs437,621,414/= the company's unpaid tax discovered by the audit carried out by the defendant following the plaintiff's information.

The defendant contends that the sum of Shs232,953,339/= paid by the company in addition to the sum of Ushs437,621,414 was neither recovered as a result of the plaintiff's information nor as a result of the audit conducted by the defendant following the plaintiff's information.

The plaintiff offered information to the defendant who acting on the basis of that information commissioned an audit for the period 2002 – 2004 which established the company tax liability at Shs437,621,414/=. The plaintiff argued that after communication of the discovery to the tax payer the tax payer in a pre emptive measure voluntarily revealed that Ushs232,953,339/= though had been collected and was due, it had never been paid or remitted to the defendant for the period 2005. Counsel submitted that the declaration by the tax payer should not be treated in isolation of the audit and the initial information availed to the defendant by the plaintiff. That these activities should be treated as a series of acts and conducts initiated by the plaintiff's disclosure to the defendant about the tax payers non remittances. He contends that had it not been for the information rendered by the plaintiff the defendant would not have discovered the tax that had not been paid or declared by the tax payer since 2002 and as a result of the information and the audit the defendant recovered the said tax.

On the other hand Mr. Arike, counsel for the defendant , submitted that the recovery of shs437,621,414 was based on the plaintiff's information and hence the defendant paid the Ughs43,000,000/= for the reason that the same audit trail led to this recovery. He argued that the Ughs232,953,339/= was purely volunteered by the tax payer and was for a period extended to 2005. Neither the plaintiff's information nor the defendant's audit discovered this tax liability. Counsel submitted that the recovery of this additional sum was not based on information provided by the plaintiff.

I have carefully considered the able submissions of both counsel and the provisions of section 7 of the Finance Act 1999. The section mandatorily require the Commissioner General to "reward any person who provides information leading to recovery of tax ----- under any law relating to tax or duty, with a reward of 10 percent of the tax recovered"

The audit carried out by the defendant flowed from the information provided by the plaintiff and it established a tax liability of Shs437,621,414/= for the period covered by the plaintiff's information. The liability so established in this transaction was communicated to the tax payer for the settlement and once recovered it entitled the plaintiff to 10% thereof which translates into shs43,762,141/=. These were activities within the same transaction. Mr. Rutiba seem to suggest, in his submission, that the audit of the company's accounts triggered off by the plaintiff's information was to be a continuous process. The evidence before this court does not point to that. The audit conducted on the information provided by the plaintiff was concluded and the resultant liability, communicated to the taxpayer for settlement. The resultant effect of the plaintiff's information and audit conducted as a result thereof is that the tax payer decided thereafter to become more tax compliant. As a result the company volunteered information regarding its liability for a period beyond the audit period. That is for the period extended to 2005. The taxpayer's intention for the disclosure is clearly shown in its statement:-

"It is our wish that the whole amount be considered in order to propose a settlement and payment schedule."

The tax in the additional sum of Shs232,953,339/= was recovered by the defendant not as a result of the plaintiff's information but as the information volunteered by the company in its letter, exhibit D3.

To accept Mr. Rutiba's argument that the voluntary declaration of taxes by the tax payer after the information supplied by the plaintiff to the defendant must be treated as a series of acts and conducts initiated by the plaintiff's disclosure to the defendant about the tax payer's non-remittances, would be extending the meaning of the section too far. It would mean that the plaintiff would, with effect from receipt of his information, be entitled to a reward on all taxes recovered from the company post the plaintiff's information. To hold so the intention of the Act would be abused and lead to unjustified enrichment of the informers. I am not ready to so hold. I find that the additional taxes paid were an independent act of declaration in light of section 7 of the Finance Act.

In view of my holding above the second and third issues are also resolved in the negative. In the premises the plaintiff's suit is dismissed with costs.

Hon. Mr. Justice Lameck N. Mukasa

Judge

Date: 19th July 2010