THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
HCT - 00 - CC - MC - 66 - 2009

AON (U) LTD …….…….....….APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY…….…….....……..RESPONDENT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

R U L I N G

This application is brought by Notice of Motion under Rules 3, 6 and 8 of the Judicature (Judicial Review) Rules 2009, for orders that a declaration that the applicant is entitled to interest on monies refunded to it in Originating Summons No. 4 of 2008 be made, an order that the respondent pays interest on the amounts at the rate of 2% per month compounded from 19th November 2008 until payment in full and costs.

The application is supported by the affidavit of Maurice Amagola. The main ground of this application is that the applicant is by law entitled to immediate interest on the sum refunded by the respondent at the rate of 2% per month compounded.

The brief background to this application is that the respondent made an assessment of Value Added Tax (VAT) vide Assessment No. KC/VAT/272/06/08 for the sum of Ushs 4,339,272,566/=. On 14th November 2008, the respondent served an agency notice on the applicant's bankers Barclays Bank (U) Ltd which was honoured on 19th November 2008, by remitting to the respondent a sum of Ushs 1,824,594,349/=. The applicant, by way of judicial review successfully challenged the respondent's tax assessment of VAT vide HCCS No. 4 of 2008 (**AON UGANDA LTD V UGANDA REVENUE AUTHORITY**). The in that case I found that insurance brokerage services are exempt supplies under the Value Added Tax Act Cap 349 (hereinafter referred to as VAT Act) and made an order of certiorari quashing the respondent's assessment of VAT in so far as it related to insurance services. Following the decision in that suit, the applicant sought a refund of Ushs 1,824,594,349/= which the respondent duly refunded. The applicant claimed for interest on the sum refunded, but the responded rejected the applicant's claim hence this application.

The case for the applicant as stated in the affidavit of Mr. Maurice Amogola is that the applicant is by law entitled to interest on the sum refunded by the respondent at the rate of 2% per month compounded, and the applicant made the

claim for interest but the respondent made a decision to the effect that the applicant is not entitled to interest.

In reply, Matthew Mugabi a Supervisor Litigation of the respondent deponed that the respondent did not pay interest on the sum refunded to the applicant because interest had not been claimed in CS No.4 of 2008 and therefore, the disbursement of the said amount with interest had no basis in law.

At the hearing of this application, the applicant was represented by Mr. Barata while the respondent was represented by Mr. Sekatawa.

The issue for determination by the court in this application is whether the applicant is entitled to claim interest on the sum of Ushs 1,824,594,339/= refunded by the respondent.

Counsel for the applicant submitted that the applicant's claim for interest is based on the provisions of S.44 (1) of the Vat Act, and that the applicant is statutorily entitled to interest on the sum refunded by the respondent as a result of the decision in HCCS No 4 of 2008. Counsel relied on the case of UGANDA **REVENUE AUTHORITY V CHINA JIEFANG LTD**. (HCCA No. 57 of 1999). Counsel for the applicant further submitted that the intention of Parliament in enacting S.44 of the VAT Act is to provide adequate compensation to persons who have been deprived of their money for the period of that deprivation, and that where the legislation is clear and unambiguous, the court will enforce the intention of Parliament. Counsel relied on the case of **PEPPER (INSPECTOR OF TAXES) V HART** [1993] 1 ALL ER 42 for this submission.

Counsel for the applicant further submitted that where the law is ambiguous, it should be interpreted in favour of the taxpayer, but in this case there is no ambiguity. Counsel referred to the Canadian cases of **CANADIAN NORTHERN RAILWAY CO**. v **THE KING** (1922) 64 SCR 264 AT 275 and **NICHOLLS AND ROBINSON V CUMMING** (1877) 1 SCR 395 for this submission. Counsel for the applicant submitted that the right to property is a constitutionally entrenched right and Art. 26 of the Constitution which provides that one's property shall not be taken away unless adequate compensation is provided. Counsel for the applicant submitted that in this case, the interest is adequate compensation and this is the spirit of S.44 (1) of the VAT Act. Counsel for the applicant also submitted that the principle for payment of interest is that interest is payable as compensation to the applicant for the time it was kept out of the use of its money and therefore, on the basis of this principle the applicant was entitled to interest. Counsel cited the cases of **LWANGA V CENTENARY RURAL DEVELOPMENT BANK** [1999] 1 EA 175 and **RICHES V WESTMINSTER BANK** (1947) AC 390.

In reply, counsel for the respondent submitted that the applicant did not claim interest in HCCS No. 4 of 2008 and cannot therefore claim the same in this application. Furthermore, that the respondent refunded the sum of Ushs 1,824,594,349/= forthwith after the decision of the court in that suit. Counsel for the respondent submitted that the prerogative to order for interest and to specify the date of commencement of interest is for the court but there was no such order made. Counsel for the respondent further submitted that a notice of assessment is conclusive evidence that the amounts stated therein are correct under S.33 (1) of the VAT Act and that where an objection or a notice of appeal against an assessment has been lodged, the tax assessed is payable and may be recovered notwithstanding that objection or appeal under the provisions of S. 33(3) of the VAT Act. Counsel for the respondent submitted that on the basis of these provisions, the respondent's recovery of the tax by way of the agency notice was justified and legal since the court at the time had not yet vacated the assessment. Furthermore, that when the court eventually vacated the said assessment on 24th September 2009, it made no order as to interest and since the money was refunded soon after the decision of the court, a retrospective order for interest would therefore be a nullity since the court is now functus officio.

In the alternative, counsel for the respondent submitted that the heading of S. 44 of the VAT Act provides for interest on overpayments and late payments and the matter for which interest is claimed in this application is neither an overpayment nor a late payment. Counsel for the respondent submitted that S.44 of the VAT Act should be read as a whole and given its intended meaning and that the court should consider that interest under S. 44 (1) is provided on late payments and overpayments. Counsel for the respondent referred to several authorities; **CHILCOTT V INLAND REVENUE COMMISSIONERS** (1982) **STC 1, DIRECTOR OF PUBLIC PROSECUTIONS V SCHILDKAMP**[1969] 3 ALL ER 1640 **INLAND REVENUE COMMISSIONER & ORS V ROSS MINISTER & ORS** [1980] 1 ALL ER 80 and **ATTORNEY GENERAL V CARLTON BANK** [1989] 1 KB 64. Counsel for the respondent further submitted that the section does not provide for the time when interest begins to run and therefore, on the basis of these reasons, the applicant is not entitled to interest.

Counsel for the respondent further submitted that the case of **UGANDA REVENUE AUTHORITY V CHINA JIEFANG LTD**. (HCCA No. 57 of 1999) which was relied on by counsel for the plaintiff is distinguishable because in that case, the claim for interest was on the basis of overpaid taxes which are not the case in this application. Furthermore, that the applicant was not wrongfully deprived of its money to justify an award of interest, but it was on the basis of an assessment of tax on insurance brokerage services, which the respondent believed to be taxable, but the assessment was later quashed by the court.

In rejoinder, counsel for the applicant submitted that the head note or side note is not a basis of construction of statutes. Counsel referred to the cases of **DIRECTOR OF PUBLIC PROSECUTIONS V SCHILDKAMP**[1969] 3 ALL ER 1640, **INLAND REVENUE COMMISSIONER & ORS V ROSS MINISTER & ORS** [1980] 1 ALL ER 80 and **ATTORNEY GENERAL V CARLTON BANK** [1989] 1 KB 64. Counsel for the applicant further submitted that there is no ambiguity in S.44 (1) of the VAT Act that requires reference to the head note. Furthermore, that any amount collected as tax by the respondent which became due for refund is necessarily an overpayment and therefore interest is payable. Counsel for the applicant further submitted that the collection of the monies from the applicant by the respondent was wrongful and this was the basis of HCCS No. 4 of 2008, and therefore it is not a defence for the respondent to submit that its acts were proper at the time of collection of the taxes.

I have carefully considered the submissions of both counsels and the authorities referred to for which I am grateful.

The case for the applicant is that interest is statutory, by virtue of the provisions of S.44 (1) of the VAT Act. On the other hand, the respondent contends that on the basis of the interpretation of S. 44(1), the applicant is not entitled to interest. Furthermore, that there is no order for the award of interest in HCCS No. 4 of 2007 and therefore, the applicant has no basis to claim interest in this matter as well.

Section 44 (1) of the VAT Act provides as follows,

"Interest on Overpayments and Late Refunds

(1) Where the Commissioner General is required to refund an amount of tax to a person as a result of-

(a) a decision under section 33B;

(b) a decision of the Tax Appeals Tribunal; or

(c) a decision of the High Court, the Court of Appeal or the Supreme Court,

he or she shall pay interest at the rate of two percent per month compounded on the tax to be refunded."

It is trite law that where the language of a statute is plain and unambiguous, the words of the statute should be given should be given their ordinary meaning. This position of the law is stated in the case of the SUSSEX PEERAGE (1844) 8 ER 1034 at 1057,

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the

intention of the law giver but if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the grounds and cause of enacting the statute and to have recourse to the preamble which according to Dire CJ is 'a key to open the minds of the makers of the Act and the mischiefs they intend to redress."

The words used in S. 44 (1) of the VAT Act (above) are clear. It provides interalia that where a person is entitled to a refund as a result of a decision of the High Court, then the Commissioner shall pay interest at the rate of two percent per month compounded on the tax to be refunded. The provision does not require the court to make an order awarding interest on the refund. Furthermore, it appears to me that the use the word *"shall"* implies that the payment of interest is mandatory.

Counsel for the defendant submitted that the heading of S.44 provides for interest on overpayments and late payments and therefore, the applicant cannot claim interest on the refund by virtue of this section.

It is now an established principle of statutory interpretation that headings are no more than a mere guide to the contents of the part of the sections that follow (see **DT Dobie & Co Ug LTD V Customs & Excise** [1970] 504 at 507 and Halisbury's Laws of England 4th Edition Vol. 44 (1) at Para 1411) . From the authorities above, they cannot override the clear and unambiguous words of the statute. I therefore find that the words in S. 44 (1) of the VAT Act are clear. They provide that where one is entitled to a refund on the basis of a decision of the court, the Commissioner shall pay interest at the rate of two percent per month compounded. It follows that the applicant is statutorily entitled to interest at the rate of two percent per month compounded on the refund.

With regard to the period for which interest is payable, the act is silent. The question for determination by the court therefore is when does the interest under S. 44(1) of the VAT Act become payable. According to Lord Denning in the case of **SEAFORD COURT ESTATES LTD V ASHER** [1949] 2 KB 481, he held that

> ***"Whenever a statute comes up for consideration, it must be remembered that its not within human powers to foresee the manifold set of facts which may arise, and even if it were, its not possible to provide for them, free from ambiguity…A Judge believing himself to be fettered by the supposed rule that he must look at the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It will certainly save the judges trouble if Acts of Parliament were drafted with divine pre-science and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply***

fold his hands and blame the drafts man. He must set to work on the constructive task of finding the intention of Parliament and he must do this, not only on the language of the statute, but also from a consideration of the social considerations which give rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give force and light to the intention of the legislature. That was clearly laid down by the resolution of the Judges in Heydon's case and is the safest guide today…we do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. We sit here to find out the intention of Parliament and of ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive criticism."

Clearly, S. 44 (1) of the VAT Act has a gap in so far as it does not provide for the period for which the interest is payable. However, the intention of Parliament in providing for the award of interest is clear. Interest is payable, as compensation to a party, who has been deprived of the use of his/her money for the use or retention by one person of a sum of money belonging to or owed to another. HALSBURY'S LAWS OF ENGLAND 4TH ED VOL.32 par 106 defines interest as the return or compensation.

In the interpretation of statutes, it is a principle of interpretation that other statutes in pari materia may be used as an aid to interpretation. (See HALSBURY'S LAWS OF ENGLAND 4th Ed. Vol. 44(1) paragraph 1220)

I find that S. 113 (4) of the Income Tax Act Cap 340 is a section that is in pari materia with S. 44(1) of the VAT Act. According to S. 113(4) of the Income Tax Act,

"Where the commissioner is required to refund an amount of tax to a person as a result of—
(a) an application made to him or her under this Act;
(b) a decision under section 99;
(c) a decision of the High Court or a tax tribunal under section 100; or
(d) a decision of the Court of Appeal under section 101, the commissioner shall pay simple interest at a rate of 2 percent per month for the period commencing on the date the person paid the tax refunded and ending on the last day of the month in which the refund is made."

Clearly the intention of Parliament in providing for interest in both taxing statues is to compensate one for the use of money that had been deprived of him or her and has to be refunded by the tax authority. It therefore makes sense and would amount to adequate compensation for the Commissioner to pay interest on a

refund for the period commencing on the date the taxpayer paid the tax refunded and ending on the last day of the month in which the refund is made.

In the premises, I make a declaration and order that the respondent authority pay interest to the applicant at the rate of 2%p.a. compounded from the date the sum of Ushs 1,824,594349/= was collected from the applicant's bank account (i.e. 19th November 2008) until the last day of the month on which the Commissioner URA makes the refund.

In the premises, the application succeeds and the costs are awarded to the applicant.

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Justice Geoffrey Kiryabwire
JUDGE

Date: 28/06/2012

28/06/12

10: 11

Ruling read and signed in open court in the presence of;

- E. Barata for Applicant
- G. Okello h/b for Ssekatawa forRespondents

In Court

- None of the parties
- Rose Emeru – Court Clerk

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Geoffrey Kiryabwire

JUDGE

Date: 28/06/2012