THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

CIVIL SUIT NO. 274 OF 2008

MATAGALA VINCENT::PLAINTIFF

VERSUS

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

BEFORE: HON. LADY JUSTICE HELLEN OBURA

JUDGMENT

The plaintiff brought this claim against the defendant for recovery of Shs. 58,460,449/=, general damages for breach of contract and interest. It is the plaintiff's case that he worked as an informer for the defendant and was assigned to different officials of the defendant as his direct contacts. He claims to have reported various companies that were evading tax and recoveries were made. He also claims to have been entitled to 10% of the amount recovered but was only paid Shs.107,679/= being the 10% of taxes recovered for MEDECOS-SACCO Ltd. He now seeks the balance of his alleged entitlement.

In its defence, the defendant denies knowledge of the plaintiff nor any contractual relations with him and contends that there is no cause of action; the suit is bad in law and is purely speculative. It is also the defendant's contention that the plaintiff was never given a Tax Information Form nor issued with unique identifiers like all those persons that gave information which was used to recover tax. The defendant avers that no taxes were ever collected on the basis of any information supplied by the plaintiff. The defendant also claims that the plaintiff never received the statutory 10% reward in respect of taxes recovered from MEDECOS-SACCO Ltd as alleged.

The facts of this case as ascertained from the pleadings are that the defendant through its Commissioner General (CG) of Uganda Revenue Authority (URA) issued a public notice informing the public at large that the URA would reward

individuals who would provide information to it that would lead to the recovery of any taxes. It was stated that the reward would be equivalent to 10% of the tax recovered and the individual's identity would be kept confidential. It is the plaintiff's claim that between 1991 to 2000, he gave information from time to time to the various officers of the defendant concerning tax evasion by the companies listed below:-

1. Wobulenzi Agric Farm Coffee Processor Ltd – USD 90,776
2. Moses Male & Brothers Ltd - Shs. 11, 132,819/=
3. Leman Holdings Ltd - Shs 77,933,408/=
4. Tororo Steel Works Ltd - Shs 254, 588,299/=
5. MEDECOS SACCO Ltd - Shs 1,076,795/=

According to the plaintiff, he demanded for a reward of 10% in respect of the taxes recovered but never got it, except only in the case of MEDECOS SACCO Ltd where he received the reward of Shs. 107,679/=. He contends that in 2005 and 2006, having made several attempts to get the remaining reward in vain, he registered a complaint with the Inspector General of Government (IGG). After investigations the IGG, formed the opinion that the plaintiff's claim appeared genuine and that he should be paid whereupon she exchanged various letters with the CG over the matter. The CG promised to arrange for a tripartite meeting, but the meeting never took place. It was as a result of this failure that the plaintiff filed this suit against the defendant in 2008.

At the scheduling conference, there were no agreed facts but five agreed issues were framed for the determination. The plaintiff called two witnesses in support of his case while the defendant called only one witness. At the closure of hearing evidence the parties filed written submissions based on the five agreed issues which I have considered in this judgment.

The agreed issues were;

1. Whether the suit was time barred?
2. Whether the plaintiff was an informer of the Defendant?
3. Whether the plaintiff provided any information on tax evasion to the Defendant?

4. Whether the alleged taxes were recovered by the Defendant?
5. What remedies were available to the parties?

Issue 1: Whether the suit was time barred?

It was submitted by counsel for the plaintiff that from the evidence adduced in court, taxes where recovered on various dates in 1994, 1995 and 1996 and that on the face of it this appears to be the time when the cause of action arose. It was however submitted that during this time the plaintiff kept reminding the defendant for his reward but in vain. Counsel for the plaintiff singled out the period between 2005 and 2006 in which the plaintiff complained to the IGG who exchanged correspondences with the CG. He pointed out that the CG wrote Exhibit P7 (ii) dated 11th April 2006 in which she promised to sort out the matter through a tripartite meeting attended by the plaintiff who waited in vain to be invited for the meeting.

It was submitted further for the plaintiff that even if the claim appears to be time barred the CG's letter dated 11th April 2006 revived the claim and it was much alive when the suit was filed in 2008. For that contention, counsel cited the case of ***Uganda Consolidated Properties Ltd v. Uganda Revenue Authority HCCA NO 75 OF 1999*** where it was held that in the law of limitation writing letters, even those with negative content may have the undesired effect of reviving an otherwise stale cause.

For the defendant, it was submitted that in the totality of the plaintiff's evidence before this court, the plaintiff claimed that taxes were recovered by the defendant from the various companies between 1994 and 1996 and that in matters of contract, time begins to run from the date of the breach. The defendant contends that a breach of contract occurs when one of the parties fails to perform its/ his obligations imposed by the terms. He supported his argument with the authority of ***Nakawa Trading Company Ltd v. Coffee Marketing Board C.S No. 137 of 1991*** **(unreported)** and ***Eridadi Otabong Waimo vs. Attorney General SCCA No. 6 of 1990 [1992] KALR 1,*** where Court held that the period of limitation, where imposed, begins to run from the date on which the cause of action accrues.

In that regard, it was submitted that in contracts, time begins to run from the date of the breach.

The argument of the defendant's counsel was that had a valid contract been entered into by the parties in this matter, then the right of the plaintiff to sue would have accrued in 1995 and 1996, being the years he alleged the taxes were recovered and the 10 % thereof were consequently not paid to him. According to counsel, the six years right of action expired in 2001 and 2002, respectively, depending on the relevant period the taxes were allegedly recovered.

It was further submitted for the defendant that a suit can only survive the limitation period, if an exemption created by the statute of limitation is pleaded as was held in ***Iga v. Makerere University [1972] E.A 65.***

Counsel for the defendant argued in the alternative but without prejudice to the earlier arguments that the plaintiff's action would still be untenable and would not be saved reasoning that section 7 of the Finance Act (No.1 of 1999 has since been repealed. According to the defendant this action falls within the provision of section 3 (1) (d) of the Limitation Act Cap. 80 which provide for actions to recover any sum recoverable by virtue of any enactment and the claim predates that law and would only apply to informers that provided information from 1999 onwards.

Finally on this issue the defendant's counsel challenged the submission of the plaintiff that the limitation period was enlarged because of the letter of the CG (Exh. P7 (ii)), arguing that it was legally misconceived since the said letter did not admit liability. In counsel's opinion there is nothing to show that the plaintiff and the defendant had been communicating or that the only outstanding issue was the quantum to be paid.

In addition to that it was argued that the High Court authority of ***Uganda Consolidated Properties Ltd v. Uganda Revenue Authority (supra)*** relied upon by the plaintiff is distinguishable and there was no exemption to the time limit as was pleaded and none was proved. According to the defendant, any exemption must have come within the provision of the Limitation Act. This submission was based on the case of ***Uganda Revenue Authority v. Uganda Consolidated Properties Ltd Civil Appeal No.31 of 2000),*** which was contended to have

substantially overturned the case of ***Uganda Consolidated Properties Ltd v. Uganda Revenue Authority (supra)***

In rejoinder, counsel for the plaintiff argued that it is inconceivable for the defendant's counsel to argue that Exhibit P7 (ii) is legally misconceived because the defendant does not admit liability. It was submitted that it is misleading to argue that the Court of Appeal decision in ***Uganda Revenue Authority vs. Uganda Consolidated Properties Ltd (Supra)*** substantially overturned the High Court decision in ***Uganda Consolidated Properties Ltd vs. Uganda Revenue Authority (supra)*** adding that the Court of Appeal agreed with the finding of the Judge to the effect that a subsequent meeting and notice issued by the appellant thereafter revived the assessment updating it to a later date from which time limitation would start to run.

I have analyzed the contents of Exhibit P 7 (ii) which was written to the IGG by the CG. The letter states as follows:

> *"Allegations of non payment of a reward to Mr. Vicent Matagala (CPL No. 31/08/2004)*
> *We are in receipt of your follow up communication Ref: IG/221/224/1 received on 20th February 2006, regarding the above captioned subject. We have made further consultations from which the following issues are observable:-*
>
> 1. *It is a factual matter in relation to the Informant Handling System that the maintenance of almost all records was lacking in some aspects until a time when a formal record "TIF 001" was put in place.*
>
> 2. *On the other hand, possession of copies of Uganda Revenue Authority (URA) receipts on which a taxpayer paid cash may not offer indisputable proof that this person owned or brought information to Uganda Revenue Authority.*

3. *It may call for an Independent review to which we would be willing to release all information at our disposal, while at the same time it would require submission in form of written documentary evidence from the complainant and any other Officer in Uganda Revenue Authority to which information was provided.*

4. *Based on the findings, a tripartite meeting shall be organized to consider the issue in the best interest."*

While the CG in the above letter did not deny liability, she did point out in paragraph two of the letter that possession of copies of URA receipts on which a taxpayer paid cash may not offer indisputable proof that this person owned or brought information to URA. She then suggested a tripartite meeting which according to the plaintiff was never convened.

As to whether the above letter revived the cause of action, this court is inclined to agree with the plaintiff's submission that the cause of action for recoveries made between 1994 and 1996 was revived by the CG's letter dated 11th April 2006 and was not time barred when the suit was filed in 2008. This position is premised on the decision in the case of ***Uganda Consolidated Properties Ltd v. Uganda Revenue Authority (Supra)*** which was upheld by the Court of Appeal. It is clear that the plaintiff's claim which otherwise had been time barred was brought to the attention of the defendant by the IGG and a suggestion made by the CG to verify the claim although it was never finalized. That process revived the cause of action and it was only when it failed to yield any fruits that the right to bring an action for breach of contract accrued to the plaintiff. It is therefore the finding of this court that Exhibit P 7(ii) in effect revived the plaintiff's case which would otherwise have been barred by limitation.

I have considered the alternative argument of counsel for the defendant that the Finance Act No. 1 of 1999 upon which the plaintiff based his claim was repealed by the Finance Act 2009 and so the claim cannot subsist. If that argument were to be upheld by this court it would set a very bad precedent that would deny legally accrued rights. It is my firm view that a right that has already accrued under a law

cannot be affected by the repeal of that law. I would therefore reject that unfair and unjust argument and answer the first issue in the negative.

Issue 2: Whether the plaintiff was an informer of the defendant

Counsel for the plaintiff submitted that the Public Notice of the defendant's CG invited "any individual" to become an informer of URA and that any individual meant any real person such as the plaintiff. He also argued that the plaintiff rightly offered to become one and that is how he got in his privileged position of URA informer.

Additionally, the plaintiff's counsel referred to the evidence of Mr. Robert Bagota, for the plaintiff, and Mr. Protazio Begumisa who testified that the plaintiff was an informer of URA. It was also contended for the plaintiff that Mr. Protazio Begumisa admitted that he was instructed by Mr. Justine Zake to prepare a reward for the plaintiff as an informer and the plaintiff was paid Shs. 107,679/= in respect of MEDECOS SACCO Ltd, one of the companies under reference.

For the defendant, it was submitted that the Public Notice, Exhibit P5, relied upon by the plaintiff to prove that he was an informer of the defendant is worthless as its authenticity was put in issue. Counsel for the defendant argued that PW2 admitted that the notice was neither signed nor dated nor certified yet official documents from the defendant's office always bear those attributes. Moreover, it does not mention the plaintiff as an informer.

Counsel for the defendant also submitted that the plaintiff 's evidence that he was an informer of the defendant between 1991 to 2008 and that he used to report, among others, to Peter Magoola, an investigating officer is worthless because the alleged Peter Magoola was not summoned to testify in support of this claim. He contended that since the defendant denies knowledge of the plaintiff all the people to whom the plaintiff allegedly reported should have been called to testify in proof of the plaintiff's claim.

The other argument raised for the defendant was that the plaintiff's evidence that he used to report to Bagoota Robert, PW2 as an 'investigating officer' who was

handling Coffee Stabilization taxes was false because PW2 testified in court that between April 1992 to August 1995 he (PW2) was a Personal Assistant to the then CG and not an investigating officer.

In addition, it was submitted for the defendant that PW2 during cross examination testified to have given all informers a code and title; and that he would take the informer's origin, would record the subject matter of the information, and assess the department where the information was supposed to go. However, PW2 then claimed that he did not remember the code he gave to the plaintiff. In this regard, it was argued that if at all PW2 ever interacted with the plaintiff in 1995, then he did not do so on behalf of the defendant otherwise, he would have prepared a report about the plaintiff's alleged information to his boss, the CG then.

Furthermore, it was submitted that if at all the plaintiff was one of the defendant's informers, at least he should have furnished a copy of the written information that PW2 claimed the plaintiff supplied and the plaintiff ought to have known his code/identification number since PW2 testified that he gave it to him. Counsel for the defendant cautioned that the plaintiff's claim that he was an informer without any cogent proof must be treated with a pinch of salt.

In addition, counsel for the defendant relied on the evidence of Mr. Protazio Begumisa, DW1 and submitted that the payment of Shs.107,680/= to the Plaintiff was directed by Mr. Justin Zaake, the then Deputy CG of the Defendant which is not proof that he was an informer of the defendant because DW1 explained the circumstances under which the payment was made. According to counsel for the defendant, since DW1 did not know the plaintiff as an informer, Mr. Zaake should have been summoned by the plaintiff to testify on the claim, if any. It is the defendant's contention that Mr. Justin Zaake, if at all he made the witness statement attributed to him, ought to have given evidence in this matter to clarify the circumstances under which the plaintiff came to be entitled to the reward in respect of MEDECOS SACCO Ltd and to shade light on whether that reward was devoid of any impropriety and abuse.

Having addressed my mind to the facts of this matter, I find that Exhibit P5 was simply an invitation that called upon the general public to provide information

that would lead to recovery of tax at a reward equivalent to 10% of the recovered amount. I believe that after expressing interest in providing this information some internal procedures had to be undertaken by the defendant in order to qualify a party as an informer.

The plaintiff testified in cross examination that he did not have any document to show that he was working with URA as an informer apart from the Business Card of Mr. Robert Bagota (PW2) to whom he was reporting. From the testimony of PW2 and the defendant's only witness who carried out the audit on MEDECOS SACCO Ltd and authorized payment to the plaintiff it can be concluded that the plaintiff was indeed an informer of the defendant. As for the issue of code/identity I would excuse the plaintiff's failure to produce any due to passage of time. In any event, it was stated by the CG in paragraph one of Exhibit P7 (ii) that as a factual matter in relation to the Informant Handling System the maintenance of almost all records was lacking in some aspects until a time when a formal record "TIF 001" was put in place. The plaintiff could have been affected by that same poor system and so to insist on documentary proof when he has been adequately identified by the defendant's former staff to whom he provided information would just serve to deny him justice.

For the above reasons, I find that the plaintiff was an informer of the defendant thereby answering issue 2 in the affirmative.

Issue Three: Whether the plaintiff provided any information on tax evasion to the defendant

For the plaintiff it was argued that Mr. Robert Bagota, PW2 stated at page 5 of the Record of Proceedings in the last paragraph that: *"I left the Commissioner General's Office in September 1996. I had received the information from the plaintiff in 1995 but I cannot remember the month*". It was argued that even the plaintiff himself asserted in his testimony that he gave information and reported to various officers of the defendant and the evidence was not controverted by the defendant's counsel.

It was submitted also that the evidence on record is sufficient to support the case of the plaintiff and that whether the information supplied by the plaintiff was

used to recover the taxes is a matter within the full knowledge of the defendant and it was its fiduciary duty to inform the plaintiff in good time that the information was not used but not after he filed the suit.

On the other hand counsel for the defendant submitted that the plaintiff had a duty to lead evidence to prove the claims in the plaint but the whole of the plaintiff's evidence remain at variance with what he averred in the plaint. It was also argued that on many occasions, the plaintiff either retracted his testimony or requested court to take what he averred in the plaint and ignore the testimony or to take both.

Additionally, counsel for the defendant pointed out that in his evidence, the plaintiff did not know exactly when he gave the alleged information and the persons he claimed to have given the information to, namely, Peter Magoola and Justin Zake did not testify in support of the claims while Protazio Begumisa testified that the plaintiff never gave any information of tax evasion to him and he did not know him as an informer of tax evasion but a police informer who even caused DW1 to be coned of UGX 100,000/=.

The defendant's counsel also challenged the testimony of Robert Bagota, PW2 arguing that he neither had a copy of the alleged information nor could he remember the plaintiff's alleged informer code. Further to that, it was argued that the plaintiff denied that he was ever given a code/ identity but only a business card and so PW2's attempt to salvage an otherwise bad case was futile as his story could not simply add up.

I have carefully evaluated the evidence on record. PW 2 testified that the plaintiff gave him information on stabilization tax evasion by Wobulenzi Agric. Farm & Coffee Processors Ltd which he forwarded to the defendant's relevant department for action. He did not know whether an audit was done and the taxes recovered. DW also stated in paragraphs 6 & 7 of his witness statement that he paid 10% of the taxes recovered in respect of MEDECOS SACCO Ltd to the plaintiff on the directive of Mr. Zaake who said the plaintiff had given him the information that led to the recovery of that tax. Based on the above evidence and that of the plaintiff as well as Exhibit D1 (ii) which shows that the plaintiff was paid Shs.

107,680/= the only conclusion this court can make is that the plaintiff provided tax evasion information at least in respect of Wobulenzi Agric. Farm & Coffee Processors Ltd and MEDECOS SACCO Ltd and I so find since no explanation has been given as to why he was being paid 10% of the taxes recovered from MEDECOS SACCO Ltd.

Issue Four: Whether the alleged taxes were recovered by the defendant.

Counsel for the plaintiff argued that photocopies of public documents some of which were official receipts of URA were tendered in and admitted by court and the defendant did not deny or object to them. According to counsel, the contention of the plaintiff is that these documents were given to him by the officers of the defendant he dealt with as an informer, for example Mr. Adrian Kyamugina, Mr. Etiang and Mr. Peter Magoola. In support of his submission counsel for the plaintiff relied on the case of ***Ben Byabashaija v. Attorney General [1992] KALR 140*** where it was held that evidence by a photocopy would be admitted where the original was in possession of the defendant.

The plaintiff's counsel also submitted very strongly that where the plaintiff alleged recovery of taxes and the defendant denied receiving them, the onus was on the defendant to prove to court that he did not receive the taxes. It was argued that this burden of proof has not been discharged by the defendant. In support of this contention the plaintiff's counsel cited the case of ***J.K Patel v. Spear Motors SCCA No. 4 OF 1991 which was cited in the Election Petition Appeals No. 14 and 16 of 2011*** regarding the burden of proof in the sense of establishing a case on the pleadings.

On the other hand, counsel for the defendant submitted that the plaintiff failed to prove that taxes allegedly evaded were recovered by the defendant from the various companies and cited the case of ***John Musisi alias Joseph Musiitwa Kabusu v. the Commissioner General of Uganda Revenue Authority Civil Appeal No. 17 of 2006,*** where the Court of Appeal interpreted the then section 7 of the Finance Act Cap. 187 to refer to taxes recovered and not discovered as due. He also referred to the case of ***Rwakasaija Azorious v. Uganda Revenue Authority SCCA No. 08 of 2009*** which considered a case wherein the appellant

had claimed to have provided information to the defendant which allegedly led to recovery of tax evaded but the claim was dismissed.

I have struggled to read the documents tendered by the plaintiff to show that taxes were recovered by the defendant and found most of them not legible. As regards the claim in respect of Wobulenzi Agric. Farm & Coffee Processors Ltd, I have not found any payment receipt or document showing that money was actually recovered by the defendant from that company apart from Exhibit P2 (i) where that company was asking for tax holiday and Exhibit P3 where receipt of bank payment advice from URA was acknowledged. I therefore do not have any evidence that would lead to the conclusion that the taxes were recovered by the defendant.

Even if such evidence was there it would still be subjected to a further scrutiny for reasons that I will state shortly and especially in view of Exhibit D1where the plaintiff was informed by the respondent that the cases he had listed included those where he was not the rightful informer.

As regards the claim in respect of MEDECOS SACCO Ltd, upon evaluating the evidence on record, I am satisfied with the evidence of DW on the amount recovered and what was paid to the plaintiff. I therefore find that he is not entitled to any additional payment as there is no basis for it.

I wish to make a general observation on this issue based on my considered opinion that it is not enough to merely show that an informer gave information and produce receipts to show that taxes were recovered. There should be a direct evidence to show that the information given led to recovery of the taxes. This is because the defendant as a revenue collector receives payments from tax payers on a regular basis and so if the evidence is not properly evaluated there is a danger of awarding the 10% reward on regular tax or taxes recovered based on information given by another informer or even tax recovered on the basis of routine audit by the defendant.

In the instant case that critical evidence lacking and it is the finding of this court that the plaintiff has failed to prove on a balance of probabilities that the taxes recovered was as a result of the information he provided.

In the result, the plaintiff's action fails and it is dismissed. I have considered the circumstances that led the plaintiff to come to court and I am of the view that if the proposal to convene a tripartite meeting to sort out the issues had been implemented the matter would have been finalized and this suit would have been avoided. For that reason, I decline to award costs to the defendant as the successful party and instead order that each party bears its own costs.

I so order.

Dated this 31st day of May 2013.

Hellen Obura.

JUDGE

Judgment delivered in chambers at 4.00 pm in the presence of Mr. Perry Antone Namugowa for the plaintiff who was also present and Mr. Haruna Mbeeta who was holding brief for Mr. George Okello for the defendant.

JUDGE

31/05/13