

plaintiff avers that by a contract between himself and the defendant he was entitled to 10% of the Ug. Shs. 2,702,970,875/=. His other complaint is that he has been exposed as an informer yet his relationship was to be kept out of the public view. It is the plaintiff's case that out of his entitlement of Ug. Shs. 270,297,088/= he has only been paid Ug. Shs. 200,585,008/=. In the plaint he claimed for Ug. Shs. 80,667,428/=. However, during the pendency of this suit the defendant paid an additional Ug. Shs. 37,215,979/= thus reducing the plaintiff's claim to Ug. Shs. 43,451,449/=

The defendant denies the plaintiff's claim and contends that after auditing the tax payer for the period of January 2004 to May 2007, an assessment of Ug Shs. 5,117,409,788/= was raised. Out of that amount, the principal tax was Ug. Shs. 1,507,501,402/=: interest was Ug. Shs. 596,905,553/= and the penal tax was Ug. Shs. 3,015,002,803/=. It is also averred that the defendant asked the tax payer to pay Ug. Shs. 2,104,406,955/= comprising of the principal and interest while the tax payer's appeal for waiver of the penal tax was being considered by the Minister of Finance and Economic Planning. That for the period between June and October 2007 the tax payer filed normal tax returns which accumulated an additional Ug. Shs. 223,278,208/= as principal tax and interest of Ug. Shs 31,801,622/= thereby creating a total tax liability of Ug. Shs. 2,359,486,785/=.

On 6th March 2008 the tax payer entered into a MOU with the defendant for payment of a total liability of Ug. Shs. 2,702,970,875/=. According to the defendant, the sum of Ug. Shs 2,702,970,875/= comprised the audit tax liability of Ug. Shs. 2,104,406,955/=: the normal flow tax liability of Ug. Shs. 254,079,830/= as well as interest accumulated as a result of the Memorandum of Understanding totaling to Shs. 343,484,090/=. It is also the defendant's case that due to financial

constraints of the tax payer other subsequent payment agreements were made that rescinded the 6th March 2008 agreement.

The defendant claims that the plaintiff is only entitled to 10% of the income tax collected by virtue of the information he supplied. Further that the defendant did not breach the disclosure of the plaintiff's identity since it is the plaintiff who made the choice to sue and do so in his personal names. The defendant also denies compelling the plaintiff to travel to UK or to Uganda alleging that his travel expenses were incurred at his own volition.

The plaintiff was represented by Mr. Akile Sunday Igu Rocks of Akile, Olok & Co. Advocates while the defendant was represented by Mrs. Mary Kamuli Kuteesa an in-house counsel from the defendant's legal department. At the scheduling conference of this case the following facts were agreed upon:-

1. That plaintiff was an informer to the defendant and out of his information revenue was recovered from the tax payer.
2. A total of Ug. Shs. 200,582,008/= has been paid to the plaintiff as informer's reward.
3. The defendant admits that they are indebted to the plaintiff only to the figure that arises as a result of the interest on the MOU.

The following were the issues agreed upon for trial:

1. Whether the amount of money paid to the plaintiff upon recovery amounted to his 10% entitlement.
2. Whether the amounts paid were paid within the required period for payment.

3. Whether the 14 postdated Standard Chartered Bank cheques received by the defendant totaling to Ug. Shs. 2,702,970,875/= were duly presented for payment.
4. Whether there are any remedies available to the parties.

The plaintiff was the only witness presented to prove his case while the defendant called four witnesses in support of her case. Upon conclusion of hearing evidence, written submissions were filed based on the agreed issues. I will proceed to consider the issues in the same order in which they were framed as above.

Issue 1: Whether the amount of money paid to the plaintiff upon recovery amounted to his 10% entitlement.

Counsel for the plaintiff submitted that the payment received by the plaintiff did not amount to the 10% entitlement he should have been paid by the defendant. He referred to Exhibit P3 which certified that the plaintiff was entitled to a 10% reward for offering critical revenue information to the defendant which was restricted to only PAYE tax collections or recoveries (i.e. principal tax, interest and penal tax) for the period January 2004 to May 2007.

Counsel for the plaintiff referred to P1D9 (i) and (ii), Exhibit P1 as the collections and recoveries against which the 10 % entitlement should have been paid while P1D12 (ii) has a detailed calculation of interest that accrued and incorporated in the MOU dated 6th March 2008. The plaintiff's counsel also submitted that there is total confusion amongst the defendant's witness on the amount that was actually collected and should have been paid or was paid to the plaintiff as his 10% entitlement.

Counsel for the plaintiff also faulted DID5 and Exhibit D1 for bearing the same receipt number with different dates and different amounts. The plaintiff's counsel contends that the alleged collections or recoveries within the period January 2004 to May 2007 have no receipts presented to court that the tax payer actually paid. He further contends that the defendant's payment of Ug. Shs. 10,000,000/= to the plaintiff was in utter breach of the law as he was paid before any recovery was done as required.

It was further submitted for the plaintiff that the alleged tax arrears of Ug. Shs. 225,079,830/= in D1D1 that formed the basis for the alleged normal flow and also alleged as incorporated into the MOU of 6th March 2008 are just a fabrication designed to mislead this court. It was argued that the alleged voluntary tax return for the period June to October 2007 totals to Ug Shs. 160,597,597/= while D1D1 adds up to Ug Shs. 281,935,166/=. (It should however be noted that counsel did not include October 2007 in his table). It was further argued for the plaintiff that the alleged MOU found in D1D3 does not make any reference to the earlier MOU in Exhibit P1 and also the amounts do not flow from Exhibit P1 to D1D3.

According to counsel for the plaintiff, the defendant withheld the plaintiff's entitlement and chose to pay as and when she chose. Reference was made to the case of *SS Enterprises Ltd & Anor v Uganda Revenue Authority HCT – 00 – CC – CS – 708 – 2003* where the court noted that the defendant have a challenge with regard to record keeping.

In response, counsel for the defendant pointed out that both DW4 and DW1 were exact on the figure that ought to be due to the plaintiff as being Ug. Shs 237,797,986/= and thus it is false to submit that they contradicted each other on the amount owed to the plaintiff.

In relation to the plaintiff's claim of 10% of amounts collected on receipts 5477842 and 5544544, it was submitted that the receipt 5477842/BGX 3458231 received on 19th December 2007 for Ug. Shs. 58,656,958/= was for payment of arrears for the period of June 2007 and this payment was added to the MOU figure as normal flow for the months of June 2007. It was also submitted for the defendant that receipt 5544544/ BGX3592783 of 29th February 2008 was payment for the period of July 2007 and in that sense was made an arrear for that period.

The attention of this court was drawn to the fact that the period that was audited on the basis of the information provided by the plaintiff was from January 2004 up to May 2007 and therefore the months of June and July 2007 were outside the audited period to which the plaintiff's information related and as such he was not entitled to earn from it. Furthermore, it was the defendant's argument that the returns for the month of June 2007, July 2007 and August 2007 were voluntarily filed by the tax payer and received by URA on 10th July 2007, 15th August 2007 and 7th September 2007 respectively. The defendant contends that this was normal flow voluntarily returned by the tax payer as per the evidence of DW1 and Exhibits D2 (i) – (iii), Exhibits D3 (i) – (iii), exhibit D4 and Exhibit D5.

The defendant's counsel further argued that the plaintiff is not entitled to the entire amount in the MOU since it comprised the normal flow figure of Ug. Shs. 255,079,830/= and the resulting interest from the MOU of Ug. Shs. 33,160,378/= together totaling to Ug. Shs. 288,240,208/= which is a figure that was arrived at after the voluntary returns filed by the tax payer.

Finally on this issue, the defendant's counsel submitted that the total tax collectable from the tax payer was Ug. Shs. 2,666,220,067/= while the total payable and already paid was Ug. Shs.237,797,989/=. It was argued that if the total

paid is deducted from the total claimed of Ug. Shs. 281,249,358/= it leaves a balance of Ug. Shs. 43,451,370/= which was erroneously claimed by the plaintiff.

The plaintiff's counsel submitted in rejoinder that Exhibits D3 (i) to (iii) and D4 (i) to (xxviii) are just fabrications intended to deny the plaintiff his entitlement because they do not have details of the employer, filing status and a summary sheet. Secondly, the plaintiff's counsel contends that no evidence was adduced to show that there was ever any communication between the defendant and the tax payer to include the alleged normal flow. Furthermore, counsel for the plaintiff argued that there is no evidence presented to this court as to how the alleged total recovery of Ug. Shs 2,377,979,859/= against which 10% is alleged to have been paid was ever collected.

As I understand it, the plaintiff has several grievances. While he admits to having received a sum of Ug. Shs. 237,797,987/=, he complains that this was not paid against the collections as per law.

I wish to note that while the plaintiff's counsel argued that exhibits D3 (i) to (iii) D4 (i) to (xxiii) are just fabrications, he did not adduce evidence to support that assertion. In any event, I have not seen any Exhibit D4 (i) to (xxiii) on the court record. There is only exhibit D4 indicating the tax payer's expatriates P.A.Y.E for June 2007. On the face of it, I have no reason to believe that these documents were fabrications as no evidence has been led to challenge their credibility. For that reason, they are credible evidence which I will consider together with Exhibits D2 (i) – (iii) and D5.

Upon careful analysis of the relevant exhibits especially Exhibits P4, D2 (i) to (iii), D3 (i) to (iii), D4, D7, D8 and D10, I am more inclined to believe the defendant's case that the amount that was audited and recovered for the period in dispute plus

interest was Ug. Shs. 2,377,979,859/= and not Ug. Shs. 2,702,970,875/= as alleged by the plaintiff. On the basis of those exhibits I agree with the evidence of DW1 that a normal tax flow of Ug. Shs. 255,079,830/= was included in the memorandum of understanding together with additional interest of Ug. Shs. 33,160,378/= making a total of Ug. Shs. 281,249,358/= which was not related to the audit period and for which the plaintiff is not entitled to a 10% reward. I am also satisfied with the explanation of the defendant on the discrepancies in the figures the plaintiff capitalized on to try and discredit the defendant's evidence. All in all, I find that the plaintiff has obtained his due reward of Ug. Shs. 237,797,986/= arising from the information he availed leading to the recovery of Ug. Shs 2,377,979,859/=. This therefore answers the first issue in the affirmative.

Before I take leave of this issue, I wish to observe as I recently did in the case of *Matagala Vincent v URA H.C.C.S. No. 274 of 2008* that URA as a revenue collector receives payments from tax payers on a regular basis and so in a claim by an informer, if the evidence is not properly evaluated there is a danger of awarding a 10% reward on normal tax recovery 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, the defendant is relying on the figure in the MOU (Exhibit P1) to claim his entitlement of 10%. It is the firm view of this court that the defendant needed to show that the entire amount on that MOU was recovered as a result of the information he gave and restricted to the period in issue. It was incumbent upon him to adduce the audited report to show the amount that was found to have been evaded plus the accrued interest. He did not do that but only relied on the MOU in which the tax payer generally acknowledged indebtedness to the defendant without specifying how it accrued. The defendant on its part went at length to adduce

documents to show the audited amount plus the accrued interest as well as the subsequent interest. This is confirmed by Exhibit P4 which was an agreed document. The defendant also proved to the satisfaction of this court that part of the money on the MOU (Exhibit P1) was a normal tax flow hence the above finding on issue one.

Issue 2: Whether the amounts paid were paid within the required period for payment.

Counsel for the plaintiff argued that the amount paid to the plaintiff was not paid within the period of payment contrary to regulation 255 of the PPDA Regulations, 2003 to the effect that the period of payment shall be thirty days from the Certification of Invoices, except where this is varied in the special conditions of contract. Counsel for the plaintiff contended that URA is bound by the PPDA Regulations 2003 since regulation 2 thereof provides that the regulations shall apply to all public procurement and disposal activities.

It was the submission of the plaintiff's counsel that as required by regulation 38 of the PPDA Regulations which require a procuring and disposal entity to ensure that a procurement and disposal notice is published, the defendant published a tender invitation to provide valuable revenue information for a reward in accordance with section 21 of the Finance Act (No. 1 of 1999). According to the plaintiff this would ensure that the application would be fair, competitive, transparent, non discriminatory and value for money as per regulation 86 of the PPDA Regulations.

In addition to that the plaintiff's counsel contended that as per regulation 22 (3) and (4) of the PPDA Regulations, it was not mandatory for the plaintiff to register with the Public Procurement and Disposal of Public Assets Authority in order to participate. Relying on the plaintiff's witness statement, exhibit P2 and PID4

counsel for the plaintiff submitted that the defendant requested the plaintiff to produce documentary evidence of tax evasion to assess the allegation and its credibility before the contract for service was awarded. It was also submitted for the plaintiff that the defendant's agent in exhibit P3 officially issued a certificate addressed to all the stakeholders confirming the successful provision of services in compliance with regulation 253(2) of the PPDA regulations and confirming the plaintiff's pay.

Lastly, the case for the plaintiff is that the defendant erratically paid him the sum total of Ug. Shs. 237,797,986/= as gross informer reward under very unclear payment law or policy as shown by the table in PID12 and DID6.

On the other hand, counsel for the defendant submitted with due respect that counsel for the plaintiff erroneously argued under several sections of the PPDA Regulations that the money should have been paid to the plaintiff within 30 days as per regulation 255. The defendant's counsel argued that the plaintiff's submissions demonstrate a glaring misreading of the law relevant to the issues at hand and are calculated to mislead this court. Relying on regulation 2 of the PPDA Regulations which provides that the regulations shall apply to the public procurement and disposal activities, the defendant's counsel submitted that this impliedly excludes the informer awards created under the Finance Act of 2009. Counsel for the defendant submitted that the informer's award was not managed under the PPDA Rules and all arguments under this law should fail.

Nevertheless, counsel for the defendant submitted that the tax payer was still paying when the plaintiff filed this suit and the tax payer's last installment was made on the 27th of March 2012. While relying on Exhibit D2(i) it was also argued for the defendant that the period of payment therein is between 28th August 2008

and 27th March 2012 showing that the tax payer was still paying the Ug. Shs 2,379,226,651/= against which the plaintiff should have earned his 10%. Counsel for the defendant argued that eight of the payment installments received by DW3 as indicated under exhibit D8 were made after the plaintiff had already run to court.

Furthermore, counsel for the defendant submitted that both exhibits D8 and D2 agree on the number of installments that were not yet made by the time the plaintiff came to court on 29th July 2011. The defendant's counsel cited the case of ***John Musisi v Uganda Revenue Authority H.C.C.S No. 72 of 2005*** where it was held that the provisions in their plain and ordinary meaning grant to the person providing the information 10% reward of the tax recovered and not the tax discovered.

The other argument raised by the defendant was that the process leading up to payment of the 10% reward involves four different departments and so it would take some time between the time the money is received in the defendant's bank account and the time it would be eventually paid off to the plaintiff. It was submitted for the defendant that upon DW3 receiving the payments from the tax payer the Domestic Taxes Department would then confirm to the Investigations Department that a payment has been received that is related to the reward. The Investigations Department would then raise a voucher to the office of DW1 who would then process payment. It was the evidence of DW2 that before payments are made, the Departmental Liaison crosschecks with the electronic cash book to confirm that the tax payer has paid the tax due.

Upon confirmation, the department that handled the informer then initiates the reward process by compiling all the supporting data and filling out the informer

request form. The form is then forwarded to the Commissioner for subsequent recommendation to the Commissioner General for final approval for the reward payment. Once the cash payment is ready, the Public and Corporate Affairs Department notifies the informer to come with the original copy of TIF001 issued to him/her by the time of reporting. The signature in the original TIF001 presented by the informer is then verified against a copy attached to the informer reward document. Once confirmed, payment is made in cash to only the bona fide informer in the presence of the paying cashier and PCA Liaison Officer or Manager PCA.

I have had the chance of perusing the relevant provisions of the Public Procurement and Disposal of Assets Act, 2003 and the Regulations made there under. I am inclined to agree with the defendant's counsel that, the PPDA Act and the Regulations do not apply to informer reward as informers are appointed under a different arrangement altogether. The plaintiff's submissions based on the PPDA Regulations is therefore misguided.

That being the case there is no legal basis for the plaintiff to claim for payment within 30 days. I am further inclined to agree with the defendant's counsel that the process of payment could not be completed in the shortest time possible owing to the many departments involved. In any case, by the time the suit was instituted the tax payer was still making payments since there is evidence to show that some payments were received thereafter. There is also evidence on record that the tax payer had financial hardship as per its correspondence with a proposal to pay in installments (Exhibit D1).

In fact the tax payer's last installment was made on 27th March 2012 long after this action was filed. I do agree with the defendant's submission that the 10% reward cannot be paid against tax discovered but against tax recovered and this can only be done within a reasonable time taking into account the defendant's internal procedures as explained by DW2. For the above reasons, I find that there was no delay in paying the plaintiff's reward as all were made within reasonable time from the date the tax payer made payments. This therefore answers the second issue in the affirmative.

Issue 3: Whether the 14 postdated Standard Chartered Bank cheques received by the defendant totaling to Ug. Shs 2,702,970,875/= were duly presented for payment.

Counsel for the plaintiff cited section 44 of the Bills of Exchange Act to the effect that a bill must be duly presented for payment and if it be not so presented, the drawer and endorsers shall be discharged. The plaintiff's counsel referred to the evidence of DW3 who testified that all the 14 cheques were duly presented for payment but all of them bounced and were returned to the tax payer. It is the submission of the plaintiff that as per exhibit P1 the defendant agrees to have received from the tax payer fourteen post-dated cheques which were deposited to secure the outstanding balance of Ug. Shs 2,702,970,875/=. Counsel for the plaintiff however argued that the defendant did not present any credible evidence to this honorable court to show that the 14 postdated cheques bounced. In that regard the plaintiff's counsel argued that neither the alleged 14 bounced cheques were presented as proof nor a letter of notice of dishonor of cheques was adduced. The plaintiff's counsel also contended that even copies of the bank statements

where the cheques were banked to show that the 14 cheques were dishonored were not presented in court.

The plaintiff's counsel further cited section 72(1) of the Bills of Exchange Act for the definition that a bill of exchange drawn on a banker is payable on demand arguing that the implication of this is that a cheque by its very nature is unconditional.

The plaintiff's counsel referred to the case of *Maersk Uganda Ltd v First Merchant International Trading Ltd H.C.CS No. 143 of 2009* where Madrama J. relied on *Kotecha v Mohammad [2002] 1 EA 112* where the Court of Appeal of Uganda held that a bill of exchange is to be treated as cash and unless exceptional grounds are shown when it is dishonored, the holder thereof is entitled to judgment. The plaintiff's counsel therefore concluded that all the 14 cheques were paid and it was the defendant who chose to withhold the plaintiff's entitlement.

On the contrary counsel for the defendant submitted that DW3 gave details of the 14 cheques the tax payer issued to the defendant but none was honoured due to financial hardships faced by the tax payer and replacement cheques were made. It is the defendant's contention that the fact that the tax payer issued replacement cheques is sufficient evidence that the earlier cheques did not clear as stated by DW3. Furthermore, the defendant's counsel contended that it is the plaintiff who is alleging that the said cheques were paid and so the burden of proof is clearly on him. For that argument the case of *Sebuliba v Co-operative Bank Ltd H.C.C.S No. 368 of 1980* was relied on where it was held that the burden of proof in civil matters lies upon the person who asserts or alleges.

It is the defendant's arguments that the plaintiff should have furnished court with all the documents above mentioned or by court order would have accessed the statements of both the tax payer and the defendant for the period in issue. The defendant's counsel argued that the plaintiff did not do so because he knew the truth that the said cheques were dishonored.

I must start by observing that my findings on issue one and two have had a significant bearing on this issue. The purpose of framing this issue I believe was firstly, to show that the plaintiff was entitled to 10% of the total sum of those cheques which I have already determined under issue one. Secondly, the plaintiff wanted to show that the payments to him were delayed. This too I have already made a finding on under issue two.

I do not see any other purpose this issue was intended to serve that would benefit the parties other than the above major ones. Be that as it may, it suffices to say that the defendant has produced documents (Exhibit D2) as well as oral evidence to the satisfaction of this court to show that the recovery of tax was over a long period of time from 2008 to 2012. The dates on the cheques as indicated in Exhibit P1 are not in consonance with the dates in Exhibit D2 implying that payments were not effected by those cheques. The plaintiff has not assisted this court by producing proof that the cheques were actually banked and cleared. That burden lies with him who is alleging and has not been discharged by merely relying on Exhibit P1.

In view of the unchallenged evidence of DW3, this court is convinced the 14 post dated cheques were dishonored which is perhaps why they were replaced by the tax payer. It would be incredible for the tax payer to issue replacement cheques when the first ones had been honored upon presentation.

The answer of this court to the third issue is therefore that the 14 postdated Standard Chartered Bank cheques received by the defendant totaling to Shs. 2,702,970,875/= were duly presented for payment but were dishonored.

Issue 4: Remedies

The plaintiff sought special damages, general damages, interest on those damages as well as punitive and exemplary damages.

As regards the claim for the balance of Ug. Shs. 43,451,449/= on the 10% reward, in view of my finding on issue one I do not find the plaintiff entitled to that amount and it is accordingly denied.

As regards the claim for travel expenses, I have had the benefit of looking at the correspondences between the plaintiff and the defendant's officials on remittance of the plaintiff's reward. Although the e-mail correspondences marked PID 1(i)-(v) were not agreed documents and as such were not marked as exhibits, I do find that they give insight into the discussions the plaintiff had with the defendant's official on the payments. PID 1 (ii) indicates that on 17th December 2007 Mrs. Allen Kagina the Commissioner General inquired from Mr. Moses Kajubi whether the money could be wired to the plaintiff's account instead of him coming to Uganda. Mr. Kajubi's response was that this could be arranged. On 26th February 2008, the plaintiff sent his bank details to Mr. Kajubi as per PID1 (iii) who responded that he would keep the details and further informed the plaintiff that he had a meeting with the tax payer that day at 2.00 pm to discuss a way forward.

By PID1 (iv) written on 29th February 2008, the plaintiff inquired about the payment plans and Mr. Kajubi informed him that the MOU had not yet been signed. On 14th March 2008 the plaintiff again inquired whether there was any

good news and the response was that the first cheque would come in on 30th March 2008 (as per PID1 (iv)).

There were no other e-mail correspondences on record to explain what followed but according to the plaintiff's documents and submissions, he travelled to Kampala on 30th April 2008 to pick his entitlement of Ug. Shs. 5.8M, Shs. 5.1 M and Shs. 19M that had been collected and not wired to his UK account. The plaintiff has not led any evidence to show that that amount was actually recovered and not wired to his account and the effort he made to have the defendant do so before he was constrained to travel. It is this court's view that the plaintiff was quite impatient as seen from his constant inquiries about the payments. I believe it was in that impatient mode that he travelled before he could give the defendant time to receive the money, advise him accordingly, process and wire it to his account. Even if this court were to believe that the cheque that was said to be due to come in on 30th March 2008 did come in and was banked and cleared, the defendant still needed time to go through the elaborate internal procedures testified about by DW2 so as to process the plaintiff's 10% reward and remit it to his account in the UK.

In view of the above, this court is convinced that the plaintiff's journey was unwarranted because he travelled prematurely before he was advised that the recovery had been made. In any event, he did not even give the defendant reasonable time within which one could conclude that it had failed to wire the money as agreed.

I have also looked at all the other travels and for the same reason I find that they were not at all necessary. The plaintiff could have had other reasons for travelling to Uganda. This court is not at all convinced that the travels were for purposes of

following up the payments because they were not justified as it was not economically sensible. It is my firm view that if at all the plaintiff did travel to follow up the payments then he did not mitigate his loss and so the defendant cannot be held responsible for the expenses incurred. I would therefore decline to allow the claim for travel expenses.

Similarly, the claim for general damages as well as punitive and exemplary damages is not allowed in view of my findings on issues one and two.

In the result, this suit is dismissed with no order as to costs given that the balance of Ug. Shs. 43,451,449/= was still outstanding and was only paid during the pendency of the suit.

I so order.

Dated this 27th day of June 2012.

Hellen Obura

JUDGE

Judgment delivered in chambers at 4.00 pm in the presence of Mr. Akile Sunday Igu Rocks for the plaintiff who was present and Mrs. Mary Kamuli Kuteesa for the defendant.

JUDGE

27/07/13