

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.734 OF 2006
(Arising out of originating summons no.4 of 2006)

**CENTRE FOR ARBITRATION &]
DISPUTE RESOLUTION]..... APPLICANT**

VERSUS

UGANDA REVENUE AUTHORITY1st RESPONDENT
STANDARD CHARTERED BANK (U) LTD..... 2ndRESPONDENT

Ruling:

The applicant seeks by way of judicial review against the respondent's declarations, injunctions and general damages.

The application by Notice of Motion is brought under Article 42 of the Constitution, Section 38 of the Judicature Act Cap.13 , as amended by Act 3 of 2002 and order 46A rules 4 and 5 of the Civil procedure rules , as amended by the Civil procedure (Amendment) (Judicial Review) Rules: S.I.75 of 2003.

The applicant challenges the validity in law of the "Third Party Notice" here in after to be referred to as the "Notice" issued by the first Respondent on 27th November, 2006 to the second respondent as a banker of the applicant.

The Notice was issued to recover a sum of money which, according to first respondent, was tax due by and from the applicant from the taxable income of the employees of the applicant. The first respondent is statutorily charged with the duty and responsibility of Revenue collection and recovery in Uganda. The second respondent bank was by virtue of the Notice declared to be an agent of the applicant and thus mandatorily required to pay an ascertained sum of money as tax to the first respondent.

At the commencement of hearing the second respondent's counsel stated that the second respondent was ready and willing to abide by the decision of the court whichever way it went, and as such was not participating in the determination of the merits or demerits of the application. Court was invited to resolve the issue of costs as relates to the second respondent when giving a final decision in the application.

The application was thus argued as to merits between the applicant and first Respondent.

Section 106 of the Income Tax provides for recovery by first Respondent of tax from a person owing money to the tax payer. Where a tax payer fails to pay income tax on the date it becomes due and payable, and the tax payable is not the subject of a dispute, the commissioner may issue a Third party written Notice requiring a person holding money for, or on account of the taxpayer to pay the money up to the amount of the tax due to the commissioner on the date set out in the notice.

It is necessary for the court to ascertain the scope, intent and extent of this section, as far as it relates to the facts of this case. While a taxation Act is not to be construed differently from any other statute [see **Dewar v Inland Revenue Commissioners** [1935] **2KB351** at pg.360 I the general rule is that a Tax Act is to be interpreted as imposing no tax obligation without a plain declaration of the legislature to impose it: see **Dock co. at Kingston - Upon — Hull vs. Browne (1831)** 2B&Ad.43 at pg. 58 and also: **Assheton —Smith vs. Owen [1906] I Ch.179** at p. 205

Applying the above principle to the Income Tax Act, Cap. 340, in general and to section 106 thereof, in particular, Court notes that the section can only be resorted to when:

- i. There is failure by a tax payer to pay income tax on a date the said tax is due and payable.
- ii. The tax payable is not the subject of a dispute.
- iii. There must be notice in writing.
- iv. The addressee of the notice must be owing or holding or has authority to pay money belonging to the tax payer.

v. The notice must be issued by the commissioner.

vi. The notice must have in it the date when money is to be paid to the commissioner.

vii. The notice must be served simultaneously upon the addressee and the tax payer. It is the case of the applicant that the first respondent issued the Notice in contravention of the salient requirements of this section. The first respondent maintains there was compliance. Court will thus proceed to determine whether or not there was compliance with the requirements of the section.

The applicant contends that she is a creature of statute: sections 67 of the Arbitration and Conciliation Act, cap.4, and her employees have to be remunerated out of monies provided by Government through budget allocations. No such allocations had been made for the years the tax is supposed to have accrued, accumulated, become due and payable. There was thus no taxable income from the applicant's employees and to that extent the applicant could not be regarded as a withholding agent of the employees. The applicant's executive director had met face to face the appropriate officials of the first respondent and explained this position to them. To him, what transpired at these meetings negated the need for the applicant to file Tax Returns and objections to the tax assessments.

The first respondent, on her part, considered that the applicant had not filed any tax returns and had not formally objected to the tax assessments and therefore this meant that the tax was due and payable.

It is not denied by the first respondent that the Executive Director of the applicant called upon and held a series of meetings with the first respondent whereby he asserted that Government was not allocating any money towards the wages of the employees and as such there was no taxable income from the employees of the applicant.

To all intents and purposes the applicant, through these meetings, was objecting to the first Respondent against assessing and recovering income tax from the applicant's employees, by reason of the fact that Government was not providing any money to meet the employee's wages. Yet this was a statutory obligation of the Government.

Court appreciates that a body such as the applicant should have complied with filing Tax Returns and submitting objections to tax in a formal way. That the applicant did not do so in such a formal manner is unfortunate. However, the fact remains, and the first respondent has not disputed the same that the applicant through her executive director in a series of meetings at the material time, objected to the taxation of the applicant's employees. The objection was communicated before the Notice was issued.

This Court on the basis that the first respondent was aware of the applicant's objection as to her employees being liable to paying income tax, for the material period, holds that the first respondent was not right to resort to section 106 of Income Tax Act. This is because the facts did not establish that there was failure by a tax payer to pay Income Tax on a date the said tax was due and payable. The facts availed to Court show that, at the material time, there was no tax due and payable as the employees did not get any wages. At any rate the issue was one of disagreement between the applicant and the first respondent.

The section should also not have been resorted to because according to the facts, it could not be said that the tax payable was not the subject of a dispute. The meetings between the Executive Director and the first respondent concerned this dispute. The first respondent adduced no evidence to show that the dispute was no longer there by the time the notice was issued.

Court notes that while the section requires that the Notice must have in it the date when money is to be paid to the commissioner, the Notice issued in this particular case, required that payment be made immediately.

The word "Date" implies a specific numbered day of the month and year, usually given to show when something is to happen or happened. On the other hand the word "immediate" means " at once" , "without delay" , "directly"; see **OXFORD ADVANCED LEARNER'S DICTIONARY, 5TH Edition** pgs 294 , 295 and 593. If the legislature wished that the money recoverable under section 106 be paid immediately on receipt of the Notice it would have expressly stated so. By requiring a specific date to be stated in the Notice before payment is effected the legislature expects the Respondent to act reasonably depending on the facts of a particular case. By resorting to paying immediately in this particular case, some of those affected by the Notice are

denied any opportunity of doing anything about the Notice before its requirements are complied with. This cannot have been the intention of the legislature.

This court therefore holds that the first respondent acted in violation of the requirements numbers (i) (ii) and (iv) set out above in this Ruling. The none compliance was substantial and invalidates the Third Party Agency Notice B01 — 1007 — 6725 G dated 23 May 2006

As already observed, had the applicant duly filed Tax Returns and formally objected to the assessment of the tax, the whole of the situation giving rise to the issuance of the Third Party Agency Notice and these proceedings would possibly have been avoided. This court thus refrains from ordering any damages to be paid to applicant by the first Respondent by reason of this conduct of the Respondent. He should have done more than meeting the representatives of the St Respondent.

This application is allowed.

a) It is declared that the Third Party Agency Notice No. B01 — 1007 — 6725 —G dated 23 May 2006 issued by the Uganda Revenue Authority against all bank accounts held by the applicant with Standard Chartered Bank is illegal by reason of having been issued ultra vires and is therefore null and void.

b) It is ordered that the said Third Party Agency Notice be and is here by vacated and Standard Chartered Bank is hereby ordered to remove the same from applicant's Accounts and to let applicant operate those accounts without any hindrance by reason of the said Notice.

c) Standard Chartered Bank is hereby ordered not to pay any monies or at all to Uganda Revenue Authority by reason of the said Third Party Notice.

As to costs, for the reasons already given, the applicant and first Respondent shall each meet its own costs of this application and the application for leave to file this application.

With regard to second Respondent, he will have the costs of this application. Since the conduct of the applicant and that of the first Respondent resulted into these proceedings, each of the applicant and first Respondent shall pay half of the costs awarded to the Second Respondent.

Remy Kasule

Judge

10th March, 2008.