

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

**HCT-00-CV-CS-0209 OF 2008**

**INTERNATIONAL BIBLE STUDENTS ASSOCIATION:..... PLAINTIFF**

**VERSUS**

**UGANDA REVENUE AUTHORITY:.....DEFENDANT**

**BEFORE: THE HON. LADY JUSTICE ELIZABETH MUSOKE**

**JUDGEMENT**

**Background**

The plaintiff is the International Bible Students Association, a religious association incorporated as a company limited by guarantee and registered as a charity in the United Kingdom. It is also registered in Uganda under Part X of the Companies Act. The Plaintiff is a legal entity used by Jehovah's Witnesses to accomplish its religious activities in Uganda and is the legal structure for Jehovah's Witnesses in Uganda. The structure of the Plaintiff is premised on spiritual direction being provided by an ecclesiastical Governing Body, the Worldwide Order of Special Full time Servants of Jehovah's Witnesses, hereinafter referred to as 'the Order', an unincorporated international association of religious ministers who have made a vow of obedience and poverty, and a commitment to serve in a special full time capacity. The Order routinely provides the Plaintiff with members of the Order to assist the Plaintiff in accomplishing the religious activities of the Jehovah's Witnesses in Uganda. These members receive food, shelter, and modest support from the plaintiff to cater for personal necessities in the course of carrying out the plaintiff's charitable and religious activities in Uganda. The support provided to each of these members is USh. 170,000= per month and USh. 576,000= per year.

The Defendant is the Uganda Revenue Authority, a statutory body established under the Uganda Revenue Authority Act, Cap 196. It is principally charged with the collection of taxes in Uganda. In January 2008, the Defendant made an internal ruling that the monetary support given to members of the Order in Uganda for personal expenses is taxable as employment income, specifically under Pay As You Earn (PAYE) income tax, because it believes that members of the Order are “employees” within the meaning of the Income Tax Act. The plaintiff was dissatisfied with the above internal ruling, and the parties agreed to refer the matter to court for a declaration. Hence the present suit.

The Plaintiff seeks a declaration that members of the Order who serve in Uganda are not employees of the Plaintiff for purposes of the Income Tax Act, Cap 340, and therefore, are not liable to pay PAYE income tax, and that, consequently, the Plaintiff is not under obligation to deduct any such tax from the support provided to the said members of the Order.

A joint Scheduling Memorandum was filed whereby the parties agreed to the following issues:

- 1) Whether the plaintiff is a proper party to the suit.
- 2) Whether the members of the World wide Order of Special Full Time Servants of Jehovah’s Witnesses serving in Uganda are employees for purposes of the Income Tax Act, Cap 340 and therefore, liable to pay income tax.
- 3) Whether the plaintiff is obliged to compute and deduct income tax and specifically Pay As You Earn (PAYE) from the support it gives to the members of the Worldwide Order of Special Full Time Servants of Jehovah’s witnesses.
- 4) Remedies available.

Parties were represented by Mr. Ernest Kalibala for the Plaintiff and Mr. Edward Kitonsa for the defendant. The parties filed written submissions.

**Issue 1: Whether the Plaintiff is a proper party to the suit.**

At the defence stage, the above issue was abandoned by the Defendant. The plaintiff's locus is, therefore, no longer in issue.

**Issue 2: Whether the members of the Worldwide Order of Special Fulltime Servants of Jehovah's Witnesses serving in Uganda are employees for purposes of the Income Tax Act, Cap 340, and therefore liable to income tax.**

Section 19(i) of the Income Tax Act Cap 340 provides that:

*“Subject to this section, employment income means any income derived by an employee from any employment and includes the following amounts whether of a revenue or capital nature, any wages, salary, overtime pay, fees, commission, gratuity, bonus, or the amount of any travelling, entertainment, utilities, cost of living, housing, medical, or other allowance”.*

The definitions of “employee” and “employment” under the Act have to be examined before one can determine whether the sums listed above qualify as employment income.

Section 2 (x), (y) and (z) of the Act define “employee” “employer” and “employment” as follows:

*(x) “Employee” means an individual engaged in employment.*

*(y) “Employer” means a person who employs or remunerates an employee.*

*(z) “Employment” means:*

- i) The position of an individual in the employment of another person;*
- ii) A directorship of a company;*
- iii) A position entitling the holder to a fixed or ascertainable remuneration;*  
*or*
- iv) The holding or acting in any public office.*

It is common ground that sub-sections (ii) and (iv) do not apply to the case at hand, as the members of the Order have not been stated to hold any directorship status, or public office. The Plaintiff further submitted that sub-section (i) is circular and does not provide any guidance on how to determine the existence of an employer-employee relationship, and that the relationship between the Plaintiff and members of the Order does not fit under sub-section (iii). The Defendant submitted that legislative intent should be used to determine the meaning of sub-section (i) and that the relationship between the Plaintiff and members of the Order fits under both sub-sections (i) and (iii).

The Plaintiff contended that the court should disregard sub-section (i), because it uses the term “employment” in its own definition. The Defendant relied on Explanatory Notes to the Income Tax Bill of 1997, which Bill was later adopted by Parliament in the form of the Income Tax Act. The Explanatory Notes are the only indication of the intended meaning of “employment” in sub-section (i). To support the Defendant’s reliance on the Notes, the court was referred to *EA Driedger on “Construction of Statutes 2<sup>nd</sup> Edition (1983) at 87* for the proposition that:

***“to day there is only one principle of approach, the words of an Act are read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”.***

Accordingly, the Defendant submitted that the intention of Parliament for purposes of the Income Tax Act was clearly evidenced in the Explanatory Notes to the Bill.

I agree with the Plaintiff that the authenticity of these Notes has not been established. Be the above as it may, the Explanatory Notes state that the definition of “**employment**” provided in sub-section (i) is intended to refer to the “**ordinary meaning of employment**”. The Notes further outline factors used to determine this ordinary meaning of employment, which the Defendant asserts show that the members of the Order are employees. The Notes state inter alia, as follows:

*“Paragraph (a) of the definition of employment provides that the position of an individual in the employment of another person is an employment. This is intended to refer to the ordinary meaning of employment and, therefore, existing judicial authorities on whether there is an employment relationship continue to be relevant. An employment relationship as ordinarily understood does not exist where the individual is engaged on his or her own account as an independent contractor. The determination of whether an individual is an employee or independent contractor involves looking at a number of factors, including whether the hirer has the legal right to control the manner in which the work is performed and the degree of integration of the activities of the person hired within the hirer’s business. In determining the degree of integration, regard should be had to:*

- 1) Whether the person hired is engaged on a continuous basis;*
- 2) Where the services are performed particularly whether they are performed at the hirer’s place of business.*
- 3) Whether the hirer controls the timing and scheduling of the work; and*
- 4) Whether the hirer provides the working tools, plant and other relevant facilities for the person hired to perform his or her work”.*

When examined closely, the above factors are meant to be used to differentiate between an employee as ordinarily understood and an independent contractor. Therefore, the use of these factors is not appropriate for a determination of an employment relationship in this situation. Without any other indication of the intended meaning of sub-section (i), beyond the ordinary meaning of employment, sub-section (i) does not appear to have any application here, since volunteers, which the members of the Order are, are not ordinarily understood to be “employees” in the ordinary sense of employment.

This leaves court with the determination as to whether the members of the Order fit under the definition of “employment” under Section 2(z) (iii) of the Act which defines “**employment**” as “**a position entitling the holder to a fixed or ascertain remuneration**”. The parties chose to

distinctly analyse the elements constituting this definition: that is to say, “**position**”, “**entitlement**”, and “**fixed and ascertainable remuneration**”.

In his submissions, the Plaintiff relied on the definition of “position” from the Oxford English Dictionary, which defines “**position**” as “**rank or status; high social standing; paid employment**”. The Defense asserted that there was no such definition in the Oxford English Dictionary, and also asserted that “position” is synonymous with “arrangement” and that this is what was envisioned by the enactors of the Income Tax Act. This court’s reference to the definition of “**position**” in the Oxford English Dictionary shows that the definition includes “**high rank or social standing; a job**” as well as “**a way in which someone or something is arranged**”.

From this definition, the Plaintiff argued that there is no “position” as envisaged under the statute because in the Plaintiff’s relationship with the members of the Order, there is no employment. To support this, Plaintiff cited the following facts: members do not apply for or choose their assignments; their assignment may change at any time and holds no status; some members are assigned to serve the other members by providing housekeeping and other duties; preparing and serving meals, and caring for the elderly and infirm; and all members of the Order may be called upon to perform any of the tasks required to sustain the Order or to accomplish its objectives. The Plaintiff argued that there are no “positions” because, while members may have specific tasks to perform, there are no general descriptions of their work, as it varies depending on the needs of the Order.

The Defendant on the other hand, argued that the relationship between the members of the Order and the Plaintiff fits under the definition of “**position**” as an “arrangement” and thus, satisfies the “**position**” requirement of the statute.

The Defendant further relied on the application form (Page 9 thereof) which the intending members fill for consideration to become Bethel family members in the Order (See Exhibit 9) which provides that “ ..... ***if there is an opening for which we feel you are qualified, we will advise you. Otherwise please DO NOT expect an acknowledgement of this application***”.

Further, the same application form provides that the Branch Committee reserved the right to determine if and when one's membership should terminate.

From an ordinary reading of the application, particularly the clause cited above, it appears that one would be admitted to the Order if there is an opening (a position) which is terminable, which one is qualified to occupy when admitted to the Bethel family.

The court finds that although the duties the aspirants to membership of the Order are "appointed" to perform are of a volunteer nature, their secular work background and experience, apart from their spiritual qualifications, are relevant in determining where (positions) they are deemed fit to serve. In this sense, therefore, they will be filling positions. The position element is thereby fulfilled.

The other element in the definition under sub-section (iii) is "entitlement". *Black's Law Dictionary* defines "entitlement" to mean "an absolute right to a (usually monetary) benefit such as social security granted immediately upon meeting a legal requirement". Based on this definition, the Plaintiff submitted that there is no entitlement in the relationship between the plaintiff and the members of the order, the reason being that to become a member of the Order, one had to take a vow promising not to take part in any secular employment, and to accept the modest material support provided. And if the Plaintiff decides to decrease the monetary support given to members of the Order, the members have no right to make a lawful demand for an increased amount.

The Defense contended that to establish the true meaning of "entitlement" calls for a further definition of an "absolute right". According to *Black's Dictionary*, an "absolute right" is ***"a right that belongs to every human being such as the right of personal liberty; a natural right, an unqualified right; specifically a right that cannot be denied or curtailed except under specific conditions"***. The Defense contended that this is not the meaning of "entitlement" intended under the Income Tax Act. Instead, the Defense provided an alternative definition from the *Oxford Advanced Learner's Dictionary*, 6<sup>th</sup> Edition, which defines "entitlement" as ***"the official right to have or do something; something that you have an official right to do; the amount that you***

***have the right to receive***". Based on this definition, the Defense asserted that members of the Order are entitled to the monetary support provided by the Plaintiff.

The defendant further submitted that from facts in Exhibit P.10 and the plaint, the members of the Order are entitled upon becoming part of the Order, to monetary and other benefits which are ascertainable and accordingly should be accordingly fall to be taxed. The said modest support is Shs. 170,000= monthly for personal necessities and an annual amount of Shs. 576,000= for expenses such as clothing or emergencies. The defendant also relied on Clause 5(6) (c) of the plaintiff's Articles of Association which stated in reference to benefits of trustees of the order, that ***"(c) the accommodation, board, monetary and other benefits enjoyed by the Trustees shall be of the same or similar standard to that of the other volunteers working fulltime with the charity"***.

As far as "entitlement" to the said sums, the court finds that in order for a person to be entitled to remuneration, that person must be able to make a legal claim to that remuneration should it fail to be provided. In the case at hand, the disbursements made by the Plaintiff are not given in direct exchange for services provided. This is indicated by the fact that members receive the same support regardless of the tasks they perform. As noted by the Plaintiff, the statute states "fixed or ascertainable remuneration", which means payment for services, and not fixed or ascertainable disbursements, such as social security. The members of the Order are not in a contractual relationship with the plaintiff and therefore could not make a legal claim to the monetary support provided by the Plaintiff. This court finds that the members of the Order are not entitled to the support they receive from the Plaintiff and thus, do not fit under section 2(z) (iii) of the Income Tax Act.

Having found as I have that the members of the Order do not fit squarely within the four corners of sub-section (iii) of the definition of employment, the monetary support provided by the Plaintiff to the members of the Order does not qualify as taxable income.



**Issue 3: Whether the Plaintiff is obliged to compute and deduct income tax and specifically Pay As You Earn from the support it gives to the members of the Worldwide Order of Special Fulltime Servants of Jehovah's Witness.**

Income tax deductions, specifically PAYE, can only be deducted from taxable income. Because of the court's finding that the relationship between the plaintiff and the members of the Order is not an employment relationship and that the support provided is not taxable income, it is unnecessary to address the issue of whether the Plaintiff must deduct PAYE.

The plaintiffs have made an alternative prayer under issue (iii) that even if the court was to hold that there is employment income, Section 19(2) of the Income Tax Act exempts some of the income from being taxed as employment income. They singled out income spent on accommodation and travel expenses or meals and refreshment while undertaking travel in the course of performing the duties of membership in the Order.

The defence has submitted in response, and I entirely agree, that there is no evidence to justify or prove the claim that the amounts paid to the members of the Order fall under any of the exceptions under Section 19(2) of the Act. The court has no basis for considering this alternative prayer which in any case is now a moot point.

**Issue 4: Remedies**

The court hereby declares the following:

- 1) That the members of the Order assisting the Plaintiff in the conduct of its activities are not employees of the Plaintiff and therefore are not liable to pay As You Earn tax as calculated under the Income Tax Act, Cap 340.

- 2) That the Plaintiff is not under any obligation to deduct any income tax from the support provided to members of the Order as outlines in this judgement.

**Elizabeth Musoke**

**JUDGE**

**29/06/2009**

Judgement read in the presence of:

- 1) Mr. Earnest Kalibala for Plaintiff.
- 2) Mr. Habib Arike for Defendant
- 3) Imelda Naggayi, Court Clerk.

**Court**

Judgement read today 29/6/2009 at 4.15 p.m. in presence of all the above.

Deputy Registrar

For: **Elizabeth Musoke**

**JUDGE**

**29/06/2009**