THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 202 OF 2010

(Arising from Civil Suit No. 0579 of 2007)

INFORMER NO. TCI/002/07/05-06 ::::::::::::::::::::APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING

This application for an order that the Judgment/Decree made by this court in HCCS No. 0579 of 2007 be reviewed was brought under S.33 of the Judicature Act, Cap.13; Sections 82 and 98 of the Civil Procedure Act and O.46 rr.1 and 2 and O.52 rr. 1 and 3 of the Civil Procedure Rules.

From the pleadings, the applicant provided information to the respondent regarding under declaration of tax by Tororo Cement Industries Ltd. The respondent subsequently collected the under declared taxes from the said Tororo Cement Industries Ltd.

The applicant now claims that his claim was on the basis of Shs.5,422,453,800/= but at the trial the respondents averred that they received only Shs.4,072,453,800/= as undeclared taxes collected and judgment was entered on the basis of the latter sum. He avers that upon receipt of the judgment he has realized that it was an apparent error/mistake for court to have based its judgment on Shs.4,072,453,800/= as an agreed fact whereas it was not agreed. He contends that the apparent error/mistake constitutes sufficient cause for this court to review its judgment.

When the case came up for hearing, Mr. Ndyomugabe for the applicant intimated to court that he received a reply to the application late on Friday last week. I did indicate to him

that whether service was late or not, I had perused the pleadings on record and come to the conclusion that I was functus officio.

I did so in accordance with powers vested in this court under Section 98, disallowed the application with costs to the respondent and promised to make a more detailed ruling later. I now do so.

I have already set out the basis of the applicant's case. In opposition is an affidavit of Moses Kazibwe-Kawumi, the Assistant Commissioner in charge of Litigation. He states that this is not a case meriting review of the judgment of court since there is no error/mistake apparent on the face of the record. He has come to this conclusion because he personally handled the case on 25/06/09; at the conferencing the plaintiff's counsel stated that his client's claim was based on an amount of Shs.5,422,784,800/= allegedly collected by the respondent from Tororo Industries; the respondent informed court that the amount collected and on which the plaintiff's claim had to be based was Shs.4,072,453,800/=.

From the pleadings, HCCS No.0579-2007 under which this application arises came up for conferencing on 25/06/09. Mr. Barata appeared for the plaintiff, who was also present in person, and Mr. Kazibwe appeared for the defendant. From the proceedings of the day, Mr. Kazibwe informed court that the plaintiff had been paid Shs.199,910,000/=. At the conferencing, the parties made the following concessions.

1. The plaintiff gave the defendant information regarding under declaration of Tax Liability to URA by Tororo Cement Industries Ltd.
2. Defendants subsequently collected the under declared taxes from the said Tororo Cement Industries.
3. The plaintiff was paid Shs.199,910,000/= as informer's reward.
4. The defendant collected a sum of Shs.4,072,453,800/= only being the under declared withholding tax.
5. The recovered amount included interest of Shs.2,147,593,800/=.

On the basis of the above points of agreement, two issues were framed for determination.

1. Whether the plaintiff is entitled to 10% of the whole amount recovered.
2. Remedies.

In a Judgment which was delivered on 10/08/2009, I answered the 1st issue in the affirmative. Close to a year later, that is, on 17/05/2010, the plaintiff/applicant changed lawyers and filed this application.

My understanding of the law is that in an application for review the applicant must satisfy the conditions laid down by authorities. In ***Nakivubo Chemists (U) Ltd [1971] HCB 12***, it was held, inter alia, that the three cases in which a review of a judgment or order is allowed are those of:

a) discovery of a new and important matter of evidence previously overlooked by excusable misfortune;
b) some mistake or error apparent on the face of the record; and
c) for any other sufficient reason, but the expression 'sufficient' should be received as meaning sufficiency of a kind analogous to (a) and (b) above.

Applying the above principles to the case before me, ***HCCS No. 0579/2007*** was determined partly on the basis of the agreement between the parties on stated facts and the written submissions of Counsel on the law only. As regards the agreement of the parties on the facts, the plaintiff's case had been that his claim was based on an amount of Shs.5,422,784,800/= allegedly collected by the respondent from Tororo Cement Industries.

Later, the plaintiff in the presence of his counsel did agree with the position of the defendant that the amount collected was not Shs.5,422,784,800/= as claimed but Shs.4,072,453,800/=. Accordingly, court was advised that the amount to be litigated and on which the issue for determination would be based was Shs.4,072,453,800/=. On the

basis of that agreement the court made a determination of the issue and neither party has appealed against the decision.

In these circumstances, even if I were to take the generous view that the applicant be allowed an adjournment, from the pleadings on record, the applicant cannot be heard to say that he has realized upon receipt of Judgment that it was an apparent error/mistake for court to have based its judgment on Shs.4,072,453,800/= as an agreed fact whereas it was not agreed.

The assertion is wrong and contrary to what transpired in court that day according to the record of the proceedings. There is therefore no apparent error/mistake that would constitute cause for this court to review its Judgment. As far as court is concerned, the issue as to the amount collected and on which the plaintiff/applicant's claim had to be based, was determined by agreement of the parties to be Shs.4,072,453,800/=. And in so far as the court based the determination of the issue framed by the parties on that amount, it (the court) is now functus officio. The pleadings, whether an adjournment is granted or not, do not disclose any valid reason on which to base any review. Hence the dismissal of the application in a summary manner under Section 98 of the Civil Procedure Act as in my view it is an abuse of the process of the court. There must be an end to litigation. If the applicant is indeed affected by a position reached between himself, his counsel and the respondent's officer, Mr. Kazibwe, the best course of action would be an appeal in order to protect his interest, if any, or a suit against his former lawyer for the wrongful compromise, if any, and not an application for review.

It was for the reasons above that I ordered the application dismissed with costs to the respondent.

For the avoidance of the doubts, I reiterate that order.

Yorokamu Bamwine
JUDGE

06/09/2010

06/09/2010

Mr. Kazibwe for respondent

Mr. Ndyomugabe for applicant absent

Court:

Ruling delivered in the absence of the applicant and his lawyer who were aware of the fixture.

Yorokamu Bamwine

JUDGE

06/09/2010