

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO.107 OF 2010

1. KATUREEBE ERIDAD
2. WANZALA IVAN ::::::::::::::::::::::::::::::: PLAINTIFFS

VERSUS

UGANDA REVENUE AUTHORITY::::::::::::::::::::: DEFENDANTS

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

JUDGMENT

The Plaintiffs, KATUREEBE ERIDADI and WANZALA were employees of the British American Tobacco (Uganda) Ltd. whose services together with those of sixty seven other employees were terminated on 30th April 2006. At the termination of their services the Defendant recovered a total sum of Shs.291,887,311= as pay as you earn which the Plaintiffs now claim was unlawfully and illegally taxed off their terminal benefits. The two Plaintiffs on their own behalf and on behalf of the sixty seven others sued the Defendant for:-

- (a) A Declaration that the Taxation on Terminal Benefits was unlawful and illegal.
- (b) An order that the Defendant refunds all the money deducted as P.A.Y.E. totaling to Shs.291,887,311/=
- (c) Interest of 25% per annum from 30.04.2006 till payment in full.
- (d) Costs in the suit.
- (e) Any other relief this Honourable Court shall deem fit.

The Defendant filed a written statement of defence in which she defended her action to recover the P.A.Y.E. from the benefits that were paid to the Plaintiffs which included monthly salary, daily transport allowance, payment in lieu of earned leave and final transport. She contended that all the above payments attracted tax under Section 19 of the Income Tax Act.

The case was listed for a scheduling conference on 03.11.2011. Both Mr. Augustine Semakula, Counsel for the Plaintiffs and Mwajuma Nakku Counsel for the Defendant agreed that the only issue for determination of the court was as to whether or not the deduction of PAYE was lawful.

They agreed that there was no need to adduce any evidence and agreed to file written submissions in which the above issue was addressed.

In his final submissions Mr. Augustine Semakula classified terminal benefits/retrenchment packages and retirement benefits as gratuity which according to him is money given to an employees on cessation of his employment relationship with the employer as a 'thank you' for the period the employee has worked for the employer.

He relied on the dictionary meaning in **L.B. Curzon 4th Edition at page 171** to define gratuity as money given in recognition of services rendered and submitted that the terminal benefits could not be compensation on their contracts under Section 19(1) of the Income Tax Act. He likened retrenchment/retirement benefits to a pension which is exempt from taxation. He relied on **Blacks Law Dictionary** which defines pension as a fixed sum paid regularly to a person or to a person's benefit by an employer as a retirement benefit. He submitted further that the gratuity paid in the name of terminal benefit though

paid in a lump sum is a retirement benefit and therefore exempt from taxation of PAYE under the Income Tax Act.

He sought to rely on the solicitor General's letter to the Secretary National Housing Corporation where the affected employees had their PAYE refunded and S.8 of the Pensions Act which exempts the payment of pension gratuity or any other allowance under the Act from tax. He stressed that a gratuity paid in the name of terminal benefits though paid in a lump sum is a retirement benefit and therefore exempt from taxation.

Ms Mwajuma Nakku, Counsel for the Defendant was of a different view. She submitted that under S.19 (1) (a) of the Income Tax Act the payments to the Plaintiffs were properly taxed.

Section 19(1) (a) which she cited 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:-

(a) Any wages, salary, leave pay, payment in lieu of leave, overtime pay, fees, commission, gratuity or bonus or the amount of any traveling, entertainment, utilities, cost of living, housing, medical or other allowance.”

She submitted that the gratuity/terminal benefits received by the Plaintiffs were derived from employment and relied on the **Longman Dictionary of Contemporary English 3rd Edition** which defines the word derive as to develop or come from something else.

According to her, terminal benefits resulting from a contract of employment though terminated are taxable. This is the reason why types of income like wages and salary which are derived from a subsisting employment contract are grouped with 'gratuity' which is a post contract payment akin to terminal benefits which were received by the Plaintiffs some of whom might have qualified for pension while other did not depending on the period they had worked.

S.21 (1) of the Income Tax Act specifically exempts the taxation of pension. It is the only post contract payment that is exempt from taxation.

This court has had occasion to discuss this distinction in the case of **Nkote Charles vs. Uganda Revenue Authority HCCS 5 No.107 of 2009** where it was held.

“The consent decree already cited in the judgment recognized that two categories of emoluments accrue at the termination of somebody’s employment. The Income Tax Act cited by both Counsel also makes the distinction between gratuity which is included in the definition of 21(1)(n) of the same Act is exempt from tax. This distinction made under the Act and recognized by the consent Decree is the key to determining the issue as to whether the taxation by PAYE from the Plaintiffs was lawful. This distinction is a clear indication that while Terminal Benefits are taxable under the Act, Pension is not. So the answer to the issue is that the taxation by the PAYE from the Plaintiffs’ Terminal benefits was lawfully done. It is only their pension that is not taxable and the Defendant who was alive to this position rightly

taxed the gratuity and excluded the pension from taxation.” I still hold this view.

In his written submissions Mr. Augustine Semakula Counsel for the Plaintiffs made the following criticism of the above judgment.

“A similar issue was raised in the case of Nkote Charles and another vs. URA HCC 107 of 2009 and you failed to interpret the above sections of the Law. Your Lordship were misled by the consent judgment that was entered which categorized pension benefits and Terminal Benefits. Your Lordship you were further misled by the fact that pension was exempt from Tax under Section 21(1)(n). You noted that since the distinction was recognized in the consent judgment PAYE from the Plaintiffs was lawful. Your Lordship erroneously observed that the distinction under the consent judgment was a clear indication that while Terminal Benefits are taxable under the Act Pension is not.

This swayed Your Lordship and you failed to interpret the Act. Whether there were distinctions of the consent judgment of Pensions and Terminal Benefits does not mean that under the Pensions Act and the Income Tax Act Terminal Benefits which are also pension was Taxable.

Your Lordship by not interpreting whether Terminal benefits were taxable under both the Pension Act and the Income Tax Act you failed the objective of raising the issue for interpretation to the Chagrin of the Plaintiffs and that was the very reason why they appealed the decision.

A copy of the Judgment that failed to interpret the Pension Act and the Income Tax Act which has been appealed hereto attached.”

My observation about the above submission is that it is an argument that should be reserved and raised in the appellate court where the appeal is lying and until the appellate court pronounces itself on the matter I cannot say that I failed to interpret the Law that makes the distinction between Terminal benefits or gratuity which is taxable and Pension which is not because that is what I did. Secondly it is not correct to say that I was misled by the Consent Judgment which made the distinction between Terminal Benefits and Pensions because even without a Consent Judgment like in this case there is a clear distinction between the two emoluments which I made in my judgment. It only happened that there was a Consent Judgment before me which I used to illustrate that the parties recognized the distinction.

In this case the Plaintiffs also sought to rely on the advice of the Solicitor General to the General Manager National Housing and Construction Corporation in which he opined that under the provisions of Section 4A of the Pensions Act (Cap 281) as amended by Decree No.6/78 and Statute No.4/94 terminal benefits are exempted from tax and requested the Commissioner General, Uganda Revenue Authority to make a refund to the affected workers.

I wish to observe that the advice of the Solicitor General is not binding on this court because the issue was never tried. Secondly the long title to the Pensions Act which the Plaintiffs sought to rely on is only limited to Public Service Officers and the Government of Uganda. The Act also provides that one has to hold a pensionable office in order to benefit from the exemption stipulated in the Act. The Plaintiffs in this case

were not in service of the Government of the Republic of Uganda but BAT and the payments made to them which was gratuity does not fall under the ambit of the Pensions Act but the Income Tax Act and that is taxable under Section 19 thereto.

Therefore the issue as to whether the taxation of PAYE from the Plaintiffs was Lawful is resolved in favour of the Defendant who in my view correctly recovered the tax from the Plaintiffs. There are no remedies available to the Plaintiffs and the suit against the Defendant is dismissed with costs.

ELDAD MWANGUSYA
JUDGE
20.01.2012