

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO.294 OF 2015

KB SERIAL NO. 0561=====PLAINTIFF

VERSUS

THE COMMISSIONER GENERAL,

UGANDA REVENUE

AUTHORITY=====DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

BACKGROUND

The Plaintiff, KB Serial No. 0561 filed this suit against The Commissioner General Uganda Revenue Authority claiming that, on the 24th of November 2014, he provided information to the defendant via Serial Number 0561 and in accordance with section 8 of the Finance Act of 2014 and Section 19 of the Whistle Blowers Protection Act 2010; that Azure Group Uganda Limited, M/S Tomao (U) Ltd, M/S Made in Italy (U) Ltd and M/S Italiana Ltd had under declared their taxes. That the Plaintiff's information and documentary evidence was duly tendered and received by the Defendant and as a result, the defendants received periodic payments from Azure Group (U) Ltd and other companies based on the information provided by the Plaintiff. That as a result the plaintiff was entitled to 10% of the total tax recovered which is UGX

90,000,000/=. The Plaintiff made prayers for; An order that the defendant gives full disclosure of payments received since information was provided by the Plaintiff; an order that the defendant pays the Plaintiff a sum of UGX 90,000,000/=: interest on the sum; General damages and Costs of the suit.

The Defendant's case is that the Plaintiff has never provided the alleged information to the defendant and no tax has ever been recovered from Azure Group (U) Ltd on account of the Plaintiff's information and that the Plaintiff is not entitled to any reward from the defendant. The Defendant further contended that the Plaintiff being a clearing agent for Azure Group (U) Ltd was responsible for the under declaration of the imported goods and thus cannot benefit from his own fraud or illegality.

At the Parties' joint scheduling conference, the following issues were raised for determination by court.

- 1. Whether or not the Plaintiff availed information upon which the Defendant recovered taxes?*
- 2. Whether the Plaintiff's company Berteen Business Systems Ltd had Knowledge of and/or aided tax evasion by Azure Group (U) Ltd?*
- 3. Whether the Plaintiff is entitled to be paid 10% as informer reward by the defendant?*

ISSUE 1: Whether or not the Plaintiff availed information upon which the Defendant recovered taxes?

It was submitted by the Plaintiff that on the 24th November 2014, the Plaintiff filed a Tax Evaders Information Form (TIF) Serial Number 0561 providing information in accordance **Section 8 of the Finance Act of 2014 and Section 19**

of the Whistle Blowers Protection Act 2010 that Azure Group Uganda Limited had under declared its taxes. PW2, Odong Ronald stated in his witness statement that while employed as a director at Azure Group (U) Ltd (formerly Tomao Ltd, he discovered that the company was altering invoices to defraud the defendant of taxes. PW1 stated that he got in touch with the Plaintiff who “provided information URA with vital information in a Tax Evaders Information Form, Serial Number 0561 on 24th November 2014.”

PW1, Herbert Kabafunzaki, in his witness statement stated that upon getting a tip off from Odong Ronald, he on different occasions proceeded to the Defendant’s offices in Nakawa and reported the matter and was duly given a TIF. He further contended that after providing the aforesaid information, the defendant proceeded to carry out comprehensive audits on the companies and the taxes were recovered. PW1 further stated that as a result of his information, the defendant had collected the taxes to a tune of UGX 900,000,000/=.

The Plaintiff tendered in PE1, a TIF Form Serial No. 0561 dated 24th November 2014 which was issued to PW1 by the defendant, as proof of receipt of the alleged information.

The defendant in response argued that the plaintiff has never provided the alleged information to the defendant and no tax has ever been collected from the said Azure Group (U) Ltd. DW1, Abita Mathew whose role at URA includes valuation of customs goods for tax purposes stated in his witness statement that the tax the defendant recovered from Azure Group (U) Ltd during the period arose out of the normal tax audits carried out by the defendant and not on account of the Plaintiff’s information.

Section 101 (1) of The Evidence Act Cap 6 provides that *“whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she assents, he or she must prove that those facts exist.”*

The Plaintiff made his claim under **Section 8 of the Finance Act of 2014**. The provision states. *“The Commissioner General shall pay to a person who provides information leading to the recovery of a tax or duty, the equivalent of ten percent (10%) of the principal tax or duty recovered.”*

In the instant case the Plaintiff alleged that they provided information to the defendant and the defendant used that information to collect taxes from Azure Group (U) Ltd and other companies. They relied on PE1 which is the Tax Evaders Information Form to assert that the defendant indeed received this information. They further relied on a complaint against Azure Group (U) Ltd dated 24th November 2014 and addressed to the defendant. This complaint was ostensibly received by the defendant on the same day.

In the case of **Nsubuga v Kavuma (1978) HCB 307**, it was held that *“in civil cases, the burden of proof lies on the plaintiff to prove his case on the balance of probabilities.”* It therefore follows that it was the duty of the Plaintiff to prove to court on a balance of probabilities that they provided information which led to discovery of a tax or duty.

The defendant relied on the decision In **Matagala Vincent v Uganda Revenue Authority HCCS No. 274 of 2008**, where Her Lordship Justice Hellen Obura observed that;

“It is not enough to merely show that an informer gave information and produced receipts to show that the information gave led to recovery of

taxes. There should be a direct evidence to show that the information given led to recovery of the taxes. This is because the defendant as a revenue collector receives payments from tax payers on a regular basis and so if the evidence is not properly evaluated there is a danger of awarding the 10% reward on regular tax or taxes recovered based on information given by another informer or even tax recovered on the basis of routine audit by the defendant''

The plaintiff cited **Ahamya Sam v Uganda Revenue Authority HCCS 0487 of 2007, Hon. Justice Lameck Mukasa** where it was held that an audit which flows out of information provided by an informer is still part of the same transaction and once recovered, it entitles the Plaintiff to his fee.

During cross examination, the plaintiff acknowledged that he did not have proof of payment made by Azure Group (U) Ltd to URA and the Plaintiff maintained that URA collected UGX 900,000,000/= from the said companies and that he was aware of such information. The Plaintiff did not produce any evidence to prove that the defendant had actually relied on his information to recover from Azure Group (U) Ltd. From the reading of Section 8 of The Finance Act, the Plaintiff is only entitled to a reward of 10% of the collected tax only where the Commissioner General has used such information to recover a tax.

The Plaintiff failed to prove to court that the defendant indeed used their information to collect the tax from the said tax evading companies. The Plaintiff instead relied on the Tax Evaders Information Form (TIF) which cannot be considered as conclusive evidence of reliance by the defendant on the plaintiff's information. It is the observation of this court that TIF was a mere

acknowledgement of receipt of the Plaintiff's complaint. The Plaintiff is only entitled to the claimed whistle-blower's payment where they could adequately prove that their provided information indeed led to recovery of tax dues from the alleged offender.

Justice Egonda Ntende rightly held about this principle in **John Musisi alias Joseph Musiitwa Kabuusu v Commissioner General, Uganda Revenue Authority & Attorney General, HCCS 0072 of 2005** that;

“these provisions in their plain and ordinary meaning, grant to the person providing information, 10% of the tax recovered,...There is no suggestion that this plain and ordinary meaning is so convoluted as not to have the clear intent of the legislature in this regard”

It is indeed plainly and ordinarily clear that the learned Justice alluded to “10% of the tax recovered,” which in the instant case has not been adequately proved that the tax was recovered.

In consideration of the legal principle that proof should be beyond a balance of probabilities, I find that the plaintiff did not adequately prove their claim especially considering as the defendant as a tax collector occasionally receives payments from tax payers, which does not in itself prove that those monies are the alleged recovered dues as the plaintiff claims.

I therefore consider the issue in question resolved in the negative.

ISSUE 2: Whether the Plaintiff's company Berteen Business Systems Ltd had Knowledge of and/or aided tax evasion by Azure Group (U) Ltd?

As it is an agreed fact by both parties in the evidence that the plaintiff was indeed a clearing agent for Azure (U) Ltd, it is more pertinent to determine whether the plaintiff indeed had knowledge of or aided the aforementioned company's tax evasion.

The defendants, as the claimants of the illegality, aver in submissions and the witness statement of Abita Matthew, a supervisor Valuation and Customs Department of the Defendant that, **"the Plaintiff being a clearing agent for Azure (U) Ltd formerly Tomao (U) Ltd was responsible for under declaring the value of its imported goods."** Also, that the plaintiff filed false invoices and documents; and through their duty of liability imposed by Section 147 of the East African Community Customs Management Act, 2004, was liable for such dues on such goods transacted on behalf of the owner of goods.

However, the plaintiff avers that despite being Azure (U) Ltd's clearing agent and being in close proximity of the defaulting company's evasion of taxes by way of revelation from a former director of the company, a one Odong Ronald as evidenced through the statement of PW2, Herbert Kabafunzaki that, *"we were not aware of the insider unlawful schemes/dealings of the Tomao business until when one of their employees gave us a tip-off."*

The plaintiff further asserts that the obligation of knowledge of false invoices by their client, Azure (U) Ltd was beyond their scope of duties as they were only clearing agents who "receive documents from their client", and thus had no knowledge of the evasion by the company. The plaintiffs rely on PW1's cross examination testimony that *"I was only acting on the documents given to me by my client. I receive documents from the client and declare them."*

In special consideration of the defendant's submission that the plaintiff aided the illegality through breach of his duty under **Section 147** of the **East African Community Customs Management Act**, which provides that;

“A duly authorised agent who performs any act on behalf of the owner of any goods shall, for the purposes of this Act, be personally liable for payment of any duties to which the goods are liable and for the performance of all acts in respect of the goods which the owner is required to perform under this Act. Provided that nothing herein contained shall relieve the owner of such goods from such liability.”

Basically, liability on a clearing agent especially where the owner of the goods is not in position to shoulder such liability. Considering that the plaintiff could not have had knowledge of the unusual invoices and the fact that nothing in the abovementioned provision imposes an inference of fraudulent involvement but a mandatory liability, the plaintiff cannot therefore be seen to have had a hand or knowledge in the matter on the basis of the duty imposed by the quoted provision.

Additionally, the plaintiff's knowledge of constant name change of the tax defaulting company could not have automatically imputed a knowledge or intention to aid tax evasion from their client, especially for a party who went on to confront and advise the defaulting company to desist from their evasion; as evidenced in the plaintiff's complaint letter, **DE-2**, **“I took the initiative to advise the Company (TOMAO) to desist from the bad fraudulent practice of under declaring.”** Which a fact in itself relieves the plaintiff of having acted in aid of tax evasion.

The Defendant further submits on a claim of fraud, one that was not earlier pleaded by the party, by alleging that the plaintiff was an actual participant to the fraud. As set out in **Order 6 Rule 3 of the Civil Procedure Rules, S.I 71-1**, an allegation of fraud is a very serious matter that needs to be specifically pleaded with particulars given and strictly proven; which in the instant case was neither initially pleaded, no particulars availed and definitely not strictly proven.

Having in mind **Section 103 of the Evidence Act, Cap. 6**, which stipulates that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. An instructive case on this point is that of **Sheik Mayanja Hussein v Mubiru Christopher Kisiringi HCCS No. 129 of 2010** in which the learned **Hon. Mr. Justice Henry Kawesa** held;

“in this particular issue the Plaintiff has to prove that he obtained good title to this land. The burden to prove the alleged fraud however falls on he who alleged it.”

It is evident that there is apparent failure by the defendant to prove this burden to a balance of probabilities on the alleged fact of the plaintiff's aid in the tax evasion illegalities and sufficient evidence has been led to prove this fact.

I therefore find that the allegations that the Plaintiff's company Berteen Business Systems Ltd had knowledge of and/or aided tax evasion by Azure Group (U) Ltd has not been proved and I thus determine the issue in the negative.

ISSUE 3: Whether the Plaintiff is entitled to be paid 10% as informer reward by the defendant?

Section 8 of The Finance Act states that *“The Commissioner General shall pay to a person who provides information leading to the recovery of a tax or duty, the equivalent of ten percent (10%) of the principal tax or duty recovered.*

In light of the above provision and for the avoidance of unnecessary repetition especially having in mind that it has been resolved in the first issue that the plaintiff did not adequately prove that the provided information indeed led to a direct recovery of dues, I hold that the plaintiff for the reason is not entitled to paid 10% as an informer reward.

The plaintiff’s suit is accordingly dismissed with no order as to costs.

I so order.

SSEKAANA MUSA
JUDGE
20th December 2019