THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

MISC. APPLN. NO. 165 OF 2020

[ARISING FROM MISC. APPLN. NO. 007 OF 2020]

BETWEEN

NATIONAL CURRICULUM DEVELOPMENT CENTRE .....APPLICANT

VERSUS

CONSTANCE FLAVIA MBABAZI KATEEBA……RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Rwomushana Reuben Jack
2. Ms. Rose Gidongo
3. Mr. Beatrice Aciro

RULING

This ruling arises from an appeal against a ruling of the Registrar of this Court. The application was filed under **Section 33** of the **Judicature Act**, **Section 98** of the **Civil Procedure Act, Order 9 rule 12 and Order 50 rule 8 the Civil Procedure rules.**

The applicant was represented by Mr. Wante Elija of Wante & Co. Advocates while the respondent was represented by M/s. Dina Mukasa of Byenkya Kihika & Co. Advocates.

The background of the application is that the respondent having sued the applicant via LDR 285/2016 both parties entered a consent of 150,000,000 payable to the respondent. By the time of the consent Award only 54,000,000/- was owing. Later on the Respondent on a notice

to show cause pleaded before the Registrar that all the decretal amount had been paid inclusive of P.A.Y.E.

The Registrar after considering submissions for both counsel ruled that the Award of the court did not expressly state that it was for housing allowance and therefore subject to P.A.Y.E and that even if this was the case there was no evidence that the same had been remitted to U.R.A. Consequently, she ordered that the outstanding 40, 973,257/= be paid to the respondent with which the applicant was aggrieved hence this appeal.

The application was supported by an affidavit sworn by one Stephen Kwiri, Finance Secretary of the respondent who deposed that all the decretal sum inclusive P.A.Y.E was paid to the respondent and that the respondent's claim for payment of monies remitted to U.R.A was not only unlawful but would render the applicant liable to U.R.A.

An affidavit in opposition was deposed by the respondent that it was in the spirit of settlement out of court that she reduced the original claim of 222,377, 400/= to 150,000,000/= which was entered by court in her favor, by consent of the parties. She contended that the respondent had no right of appeal.

It was submitted for the applicant that the Award by court was taxable as it resulted from housing allowance of the past employment of the respondent and that the applicant as employer of the respondent had a statutory duty to deduct appropriate income tax from the respondent's Award/ housing allowance and remit it to U.R.A as per **Section 19(1) of the Income Tax Act Cap 340**. It was submitted that the applicant deducted the appropriate tax from the amount of housing allowance/ Award and remitted the same to URA. Counsel for the applicant contended that enforcing the ruling of the registrar in Miscellaneous application 007/ 2020 without the respondent paying income tax on housing allowance would be illegal. According to counsel if housing allowance was not specifically mentioned in the Award, it was implied under the law and therefore payment of tax under the income tax Act

In reply to the above submissions, counsel for the respondent contended that from the strict wording of the consent Award the parties agreed to an out of Court settlement amount payable by the applicant as housing allowance the total amount being 150,000,000/= out of which 54,100,000/= was outstanding by the time of the award. According to counsel the

consent order was binding on the parties until it was set aside by another order. Counsel argued strongly that the Consent Award could only be set aside under limited circumstances of fraud and collusion, and not by amending it indirectly at execution stage by seeking to change its strict wording. It was the contention of the respondent that the applicant had no right of Appeal against the consent Order as provided for under **Section 67(2)** of the **Civil Procedure Act** and therefore **Order 9 rule 12 and order 50 rule 8 of CPR** were not applicable.

In rejoinder the applicant cited the provisions of **Section 19(1)** of the **Income Tax Act** which according to him provides for taxation of housing allowance.

We have carefully perused and considered not only both affidavits in support and opposition of the notice of motion, but also submissions from both counsel.

In our understanding of the contention of the respondent, in coming to the decision of settling for a lesser amount than she had claimed, she was settling for the agreed figure excluding the tax deductions, the reason the Award did not include the fact of such tax deductions.

On the other hand, the contention of the applicant is that housing allowance being a taxable item under the **Income Tax Act** and the respondent as previous employer being obliged to deduct P.A.Y.E from the same, it would be illegal to pay the full amount of the allowance without the said deduction.

We have no doubt in our minds that the award of 150,000,000/= was in respect to a claim of Housing allowance by the respondent. The proceedings of 14/10/2019 in Labour Dispute Ref. 285/2016, the subject of the consent order show Mr. Wante for the respondent addressing court as follows: -

> **"We reached a settlement in this matter. The respondent agreed to pay 150, 000,000/- housing allowance, payable in 3 instalments. I am informed the respondent has substantively paid and 54, 100,000/= is the balance. The respondent will pay the balance as soon as they get the government release."**

M/s. Dina Mukasa for the claimant in the above claim is on record saying

"**True, instalments were to end by June 2019. We asked them to enter a formal settlement. We are not clear when to be paid."**

After the above submissions of both counsel, Court entered an Award in the following terms:

"**An Award is entered by consent of the parties of 150,000,000/=, the respondent having paid substantively and the balance owing at the time of the Award being 54,100,000/=".**

The submission of counsel for the respondent now is also in support of the fact that the Award was in respect of housing allowance. From the submission of the respondent and the affidavit in reply, we do not see a contestation of the fact that housing allowance is taxable. The contestation is that at the time of entering the consent the respondent did not comprehend that the 150,000,000/= agreed would be subjected to the P.A.Y.E tax otherwise she would have put her bargain higher.

Section 19(1) of the Income Tax Act provides

"Subject to this section, employment income means income derived by an employee for any employment and includes the following amounts, whether of a revenue or a capital nature: -

(a) Wages, salary, leave pay, payment in lieu of leave, overtime, pay fees, commission, gratuity, bonus or the amount of any travelling, utilities, cost of living, housing, medical or other allowance"

Whereas we agree that the order extracted from the proceedings and dated 14/10/2019 did not expressly include the taxation of the amounts in the Award, given that the above Section of the law provides for taxation of the same, it was incumbent upon the respondent during negotiations to settle the matter to exclude the agreed amounts from taxation and put the liability of tax on the applicant. Alternatively, she would have led evidence to show that previously entitled employees of the respondent would get net housing allowance leaving the respondent liable for the tax. In the absence of an express provision that taxation was to be a liability of the applicant, the applicant would be right under the law to deduct from the

Award and remit the tax to URA. No Award or judgement of any Court of law should be interpreted to evade, avoid or be contrary to taxation laws.

The question whether in fact the tax having been deducted was paid to URA would not be a subject of these proceedings although the respondent is at liberty to explore ways and means of forcing the applicant to comply.

Consequently, the mere fact that the Award did not indicate that it was a housing allowance Award did not by itself absolve the respondent from complying with the Income Tax Act to deduct and pay the tax. A deduction of P.A.Y.E from the Award did not in any way amount to a variation of the consent Order. We agree with the submission of the applicant that allowing payment of the decretal amount which constitutes housing allowance without deduction of P.A.Y.E would be contrary to the Income Tax Act.

We do not subscribe to the view of the respondent that the applicant had no right of Appeal. This was not an appeal against a decree but a reference against a ruling made by a registrar in execution of a decree of this court and the applicant had the right to do so.

In conclusion, the respondent having failed to protect the agreed sum against the Income Tax charge which she would have done in the consent by providing for the applicant to suffer it, and yet the same agreed sum was taxable, she could not run away from the Income Tax Act provisions.

Consequently, the application succeeds with no Orders as to costs. The order of the Registrar granting execution in respect of the outstanding balances is set aside together with the Order of costs.

Delivered & signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye …….
2. Hon. Lady Justice Linda Tumusiime Mugisha …….

PANELISTS

1. Mr. Rwomushana Reuben Jack …….
2. Ms. Rose Gidongo …….
3. Mr. Beatrice Aciro …….

Dated: 21/05/2021