THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: ARACH-AMOKO, OPIO-AWERI, MUGAMBA, MUHANGUZI, TUHAISE. JJ.S.C.]

CIVIL APPLICATION NO. 26 OF 2018

(Arising from Supreme Court Civil Appeal No. 09 of 2015)

BETWEEN

SIRAJE HASSAN KAJURA:::::::::::::::::::::::::::::::::::: APPLICANT

AND

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

[An Application to recall the judgement of the Supreme Court in Civil Appeal No. 09 of 2015 dated 20th December 2017] for purposes of reviewing and or correcting the errors of facts on record and amending/varying its orders) (Arach-Amoko, Nshimye, Opio-Aweri,Mwondha and Tibatemwa,JJ.S.C)

RULING OF THE COURT

The applicant filed this application by Notice of Motion under Rules 2(2), 35 and 42 of the Supreme Court Rules seeking:

> **1.By reason of the errors apparent on the face of the record of the judgment in Civil Appeal No.09 of 2015 dated 20th December,2017, this Honourable Court be pleased to recall its judgment for purposes of reviewing and, or correcting the errors of facts on record and amending or otherwise varying its orders.**
>
> **2.Costs of the application be provided for.**

The application was based on the following grounds: -

1. That this Honourable Court determined the question as to whether retrenchment packages are taxable under the

provisions of the Income Tax Act instead of whether retrenchment packages were subject to PAYE under the Income Tax Act.

2. That this Honourable Court in its judgement determined issues of law and fact that did not form part of the grounds of appeal and not part of the facts of the case both in the High Court and the Court of Appeal.

3. That this Honourable Court interfered with the concurrent finding of the trial Court and the first appellate Court without reasonable justification and questioned the findings of fact of the trial court.

4. That this Honourable Court did not give reasons for its judgment on all the grounds of appeal as contained in the memorandum of appeal presented in the judgement herein.

5. That this Honourable Court held that the payments made by the Privatization Unit to the respondents amounted to employment income without due consideration of the facts since the applicant(s) had never been employed by the Privatization Unit.

6. That this Honourable Court in its judgment did not consider all the necessary laws and circumstances of the case before arriving at its decision.

7. That this Honourable Court erred in law in finding that the retrenchment packages amounted to compensation as provided under the Income Tax Act contrary to earlier decided cases by this Honourable Court.

8. That there is need to recall the judgement entered in Civil Appeal No.09 of 2015 delivered on 20th December ,2017 for purposes of reviewing and or correcting the errors of fact and law on record and amending or otherwise varying the same for having affected the rights of the applicants.

9. That it is in the interest of justice that the judgment entered in Civil Appeal No.09 of 2015 delivered on 20th December ,2017 be recalled for purposes of reviewing and correcting the errors of fact and law on record and amending or otherwise varying the same for having affected the rights of the applicant.

The said application is supported by an affidavit dated 25th October 2018 sworn by the applicant.

Ms. Gloria T. Akatuhurira, from Legal Services and Board Affairs Department of the respondent filed an affidavit in reply dated 26th March,2020 opposing the application.

Background

The applicant and one hundred and sixty (160) other employees of the defunct Dairy Corporation Ltd were retrenched with effect from 31st August 2006.

The Privatization Unit of the Ministry of Finance paid the applicant terminal benefits which comprised of salary, gratuity, long service award, transport, home allowance, leave allowance, settlement allowance and payment in lieu of notice. The Privatization Unit sought advice from the respondent tax authority regarding tax payable on the aforesaid benefits due to the applicant. The respondent then computed the sum of UGX.1, 171,778,314/= (one billion, one hundred seventy-one million, seven hundred seventy-eight thousand, three hundred fourteen shillings) as Pay as You Earn (PAYE) tax which was remitted to the respondent.

The applicant in representative capacity then filed High Court Civil Suit No.117 of 2009 challenging the assessment and payment of the said sum. The applicant further claimed that what was paid to them was not employment income but rather a 'thank you' following the privatization of M/s Dairy Corporation. This payment, the applicant argued, was akin to gratuity and hence not liable to tax under section 19 of the Income Tax Act, Cap.340.

The High Court decided in favour of the applicant and stated that the respondent unlawfully charged PAYE upon the terminal benefits of the applicant. It was ordered that Shs.1.171,778,314/= be paid to the applicant as special damages with interest at 8 percent per annum thereon from the date of filing the suit till payment in full together with general damages of Shs. 2,000,000/= to each of the applicants with interest at 8 percent per annum.

Being aggrieved by the decision of the High Court the respondent appealed to the Court of Appeal on one ground which was:

Whether the appellant unlawfully charged PAYE upon terminal benefits of the respondents.

The Court of Appeal in agreement with the trial judge's findings answered the question in the affirmative. The respondent was further aggrieved by the findings of the justices of the Court of Appeal. It appealed to this court in Civil Appeal No.9 of 2015.

This court by majority decision, allowed the respondent's appeal and set aside the judgments of the lower courts on the basis that the applicants' retrenchment packages were taxable and were not tax exempt. It is because of the discontent with this Court's decision the instant application for recall of the same has been made.

Representation

At the hearing of the application, Mr. Babu Rashid represented the applicant while Mr. George Okello, Assistant Commissioner Litigation for the respondent appeared on its behalf. The applicant was present in court.

Submissions by counsel

Counsel for applicant submitted that this court interfered with the concurrent findings of the trial court and the first appellate court without justification. According to him, this was a significant error that occasioned a gross miscarriage of justice to the applicant. Counsel further contended that there were errors of fact and law on the face of the record, saying that this court determined issues of law and fact that did not form part of the grounds of appeal. According to counsel, another error was when court held that

payment made by the Privatisation Unit to the respondent amounted to employment income without consideration of the fact that at that time the applicant and others had been retrenched and hence were not employees of the Privatisation Unit.

Counsel submitted that the court made an error when it held that retrenchment packages amounted to compensation as provided under the Income Tax Act without any case or express provision in the Act. Counsel contended that there was no proper interpretation of section 19 of the Income Tax Act. Counsel submitted that it was the duty of every citizen of Uganda to pay taxes as stipulated by Article 17(1) of the Constitution but added that that tax had to be clearly known and expressly provided for in the income tax law as per Article 152(1) of the Constitution.

Counsel submitted that there is no evidence on record to show that the Privatisation Unit of the Ministry of Finance and Economic Planning was at the time the employer of the applicant. He argued that since M/s Dairy Corporation Ltd was no more, as it was divested, the Privatisation Unit had no basis for withholding the Shs. 1,171,778,314/= as PAYE.

Counsel submitted that under section 19(6) of the Income Tax Act there was no evidence that the Privatisation Unit was a third party or associate of M/s Dairy Corporation Ltd which was divested. He argued that neither the Privatisation Unit nor the Ministry of Finance could be the employers or qualify as third party or associates in law. Counsel contended that effective 1st September,2006, the applicant was no longer an employee of the defunct enterprise and that he was not in employment. Counsel

was emphatic that the applicant was no longer getting income from the employment.

Counsel submitted that it was a fact that compensation was not defined in the Income Tax Act and the fact that the Public Enterprises Reform and Divestiture Act,1993 provided for it under section 21 thereof does not mean in the least the benefits were subject to tax. According to counsel the retrenchment package was the state's fulfilment of the fundamental rights of Ugandans like the applicant who had lost the right to work in the public enterprise.

Counsel for the respondent opposed the application and submitted that it did not meet the requirement of Rule 2(2) and Rule 35(1) of the Rules of this court. Counsel submitted that there was no demonstration of what went wrong or what ought to be corrected. He argued further that there was nothing to show that the process of the court had been abused by the respondent or the court. According to counsel, there was nothing to show the decision was null and void. He added that there were no grounds for review but observed that the application was in form of an appeal. Counsel further contended that misconstruing a statute or other provisions of law are not grounds for review but rather grounds for appeal since the court had made a conscious decision in matters in controversy and had exercised its discretion in favour of the respondent.

Counsel submitted that there is no slip whatsoever in the manner in which the court dealt with the issue before it and that the

applicant's grounds in support of the motion are utterly baseless and without merit.

Consideration of the application

This application is premised on Rule 2(2) and Rule 35 of the Rules of this court. We have perused the application, the affidavits and submissions of both the applicant and the respondent.

In **Otim Moses vs Uganda, Criminal Application No.14 of 2018,** this court stated that;

"It is settled law that the decision of this Court on any issue of law or fact is final and a losing party cannot seek for its reversal. The same court cannot sit to hear an appeal against its own decision. From the law and practice however, circumstances arise in which this court may be called upon to revisit its decisions. These were contemplated under the Rules of this Court and were embedded in Rule 2(2) and 35(1) of the Judicature (Supreme Court Rules) (Directions) S.1 13-11(hereinafter called Rules of the Court). These are the provisions that parties have often pleaded to invoke the inherent power of the Court to revisit its own decisions.
For avoidance of doubt, Rule 2(2) of the rules of the Court provides:
(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and

void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay

Rule 35(1) of the Rules of the Court provides:

(1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the court, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given.

From the above provisions of the law, it is clear that while rule 2(2) of the Rules extends to substantive errors of jurisdiction on the part of the Court, rule 35(1) of the rule is restricted to accidental errors or omissions on the part of the Court. These provisions summarise the instances when the court can on its own motion or when called upon to do so give a second look at its decision not in appeal but in review. Specifically, rule2(2) shows that the Court may review its judgment for purposes of: (1) achieving the ends of justice (ii) preventing abuse of process of the Court and (iii) setting aside its judgment that has been proved null and void after it has been passed.

The powers of the Supreme Court as a final court of appeal, to review its owns decisions have been extensively discussed in a number of cases both from within and outside Uganda as will be shown in this judgment. We have found it pertinent to lay

out the parameters under which the inherent power and discretion may be exercised by the Supreme Court"

The case of **Otim Moses vs Uganda (supra)** and several others decided earlier clearly show the jurisdiction of this court under Rules 2(2) and 35 of the Rules this court.

Upon scrutiny of the application, the affidavits and submissions of the applicant, the applicant desires this court to recall its judgment contending that:

1. This court made an error when it held that retrenchment packages amounted to compensation without any case or express provision under the Income Tax Act.
2. That this court found that the payments made by the Privatisation Unit to the respondent amounted to employment income yet the applicant was not an employee of the Privatisation Unit.
3. That there was no proper interpretation of section 19 of the Income Tax Act.
4. That there is no evidence on record to show that the Privatisation Unit of the Ministry of Finance and Economic Planning was at the time the employer of the applicant replacing M/s Dairy Corporation Ltd which was divested.
5. That under section 19(6) of the Income Tax Act there was no evidence that the Privatisation Unit or the Ministry of Finance was a third party or associate of M/s Dairy Corporation Ltd which was divested.
6. That compensation was not defined in the Income Tax Act.

The above submissions of the applicant were doubtless opposed by the respondent. Counsel for the respondent went on to state that the application was an abuse of court process.

In **Isaya Kalya & 2 Others Vs Moses Macekenyu Ikagobya, Supreme Court Civil Application No. 28 of 2015,** this court stated:

"All the above authorities show that an application for review of the judgment of this court should not be a disguised appeal by an applicant asking this court to sit on appeal against its own decision. The decision of this court is final and can only be reviewed under rule 35 of the rules of this court (the slip rule) or under rule 2(2) of the same rules which delimits the scope in respect of which the review of the decisions of this court can be done.

By being the final court of appeal in this country this court enjoys the power of infallibility though obviously it is not infallible. As Robert H. Jackson, judge of the Supreme Court of USA said of his court, '*we are not final because we are infallible, but we are infallible only because we are final.*'

Where a party believes that the court made an error of fact or law in its judgment, that party will only succeed in moving the court to correct that error if the error falls under the three instances indicated in rule 2(2) of the rules of this court. And as rightly stated in Haridas v. Suit. Usha Rani Banik & Others (supra) the error should be apparent on the face of the record where, without argument, one sees the error 'staring one in the face'."

The underlining above is our emphasis.

This court notes with great concern that this application is a disguised appeal. All the applicant's issues raised in this application were formally raised in Civil Appeal No.9 of 2015 in this Court and they were thereafter all resolved by this Court.

We have for clarity perused the lead judgment and those supporting it. We have also read the dissent thereto. We find no illegality or errors committed by justices of this court in exercise of their discretion warranting us to recall the judgment.

In **Orient Bank Limited vs Fredrick Zaabwe & Mars Trading Limited, Supreme Court Civil Application No.17 of 2007**, this court stated that;

"It is trite law that the decision of this Court on any issue of fact or law is final, so that the unsuccessful party cannot apply for its reversal. The only circumstances under which this Court may be asked to re-visit its decision are set out in Rules 2(2) and 35(1) of the Rules of this Court. On the one hand, Rule 2(2) preserves the inherent power of the Court to make necessary orders for achieving the ends of justice, ..."

Underlining for our emphasis.

In conclusion, we find no merit in the application. This application does not fall within the ambit of Rules 2(2) and 35 of the Rules of this Court to warrant us to recall the judgment in Civil Appeal No.9 of 2015.

The application is hereby dismissed with costs to the respondent.

Dated at Kampala this.....of 2020

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Hon. Justice Stella Arach-Amoko
Justice of the Supreme Court

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Hon. Justice Rubby Opio-Aweri
Justice of the Supreme Court

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Hon. Justice Paul Mugamba
Justice of the Supreme COURT

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Hon. Justice Ezekiel Muhanguzi
Justice of the Supreme Court

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Hon. Justice Percy Night Tuhaise
Justice of the Supreme Court