THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

HCT-00-CV-CS-0579-2007

INFORMER NO. TCI/002/07/05 – 06 ::::::::::::::::::::::::Plaintiff alias KASAMPA KALIFANI

VERSUS

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT

The plaintiff's claim against the defendant is for a sum of Shs.207,335,380/= being outstanding balance due to the plaintiff as informer's fees.

At the conferencing, the following facts were agreed upon by the parties:

1. The plaintiff gave the defendant information regarding under declaration of Tax to Uganda Revenue Authority by Tororo Cement Industries Ltd.
2. The defendants subsequently collected the under declared taxes from the said Tororo Cement Industries Ltd.
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/=.

Issues

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

No evidence was adduced in the matter. The parties treated it as a point of law and accordingly filed written submissions.

Counsel

Mr. Enock Barata for the plaintiff

Mr. Moses Kazibwe for the defendant.

Issue No. 1: ***Whether the plaintiff is entitled to 10% of the whole amount recovered.***

From the pleadings, the fact of the entitlement of the plaintiff at law is not disputed. What is given by the defendant as the reason for denying the plaintiff the amount claimed is that he was paid what he ought to have received and that the amount the plaintiff now claims is calculated on the interest component of the tax recovered. The thrust of the defendant's case is that the amount collected on which the plaintiff's claim is based, comprised the interest component of the monies recovered and therefore are not regarded by the defendant as ***tax*** within the meaning of section 21 of the Finance Act (No. 1 of 1999) from which the plaintiff's right of action arises.

The Section (repealed in 2008) provided:

> ***"The Commissioner General shall reward any person who provides information leading to recovery of tax ……with a reward of ten percent of the tax recovered."***

The question then is what is ***tax*** within the meaning of the above section.

As I have already stated above, the plaintiff's case is that ***tax*** in the section cited refers to all monies recovered following the information supplied by an informer such as the plaintiff herein to the defendant. The defendant does not agree. According to learned counsel for the defendant, tax does not include interest or penalties imposed upon a tax payer.

I have addressed my mind to the able arguments of counsel as stipulated in their written submissions. It is not necessary to reproduce them here verbatim.

In the instant case, the tax collected was withholding tax. It falls under Part XIII of ***INCOME TAX ACT, Cap. 340.***

Under this law, specifically section 116 thereof, "***employer shall withhold tax from a payment of employment income to an employee as prescribed by regulations made under section 164***." Section 2 (e) (qqq) of the Income Tax Act defines 'tax' as meaning:

> ***"any tax imposed under this Act."***

It is not a useful definition for purposes of the issue now before court.
The Finance Act 1999 stated in S.6 (3) as follows:

> ***"3. A person who fails to pay tax imposed under this Statute on or before the due date is liable to pay a penal tax on the unpaid tax at the rate specified in the sixth schedule for the tax which is outstanding."***

It would appear to me that this was the basis for the recovered amount in the sum of Shs.2,147,593,800/=. Now under Section 136 (6) of Income Tax Act, Cap. 340:

> ***"The provisions of this Act relating to the collection and recovery of tax apply to any interest charged under this section as if it were tax due."***

The interest charged under section 136 is simple interest.

Learned Counsel for the plaintiff has submitted that the tax collected being withholding tax, the meaning of tax is to be gleaned from the Income Tax Act under which withholding tax falls.

In view of the provisions of the law stated above, I accept this submission.

The Literal rule of Statutory interpretation states that simple words which have an obvious every day meaning '***say what they mean'***: the courts must give them that meaning without any gloss. With time, the Literal Rule has become outdated and counter-productive. Such an attitude was echoed by Lord Denning in ***Engineering Industry Training Board vs Samuel Talbot [1969] 1 ALL E.R. 480*** when he said:

> ***"But we no longer construe Acts of Parliament according to their literal meaning. We construe them according to their object and intent."***

I agree.

Applying the same principle to the instant case, section 21 of the Finance Act (No. 1 of 1999) is indeed a recovery provision. It has for its main purpose the procurement of information, from persons now commonly known as whistle blowers, to facilitate recovery of taxes. This is done at a cost to Uganda Revenue Authority. This cost is in the context of the Act 10% of the sums recovered.

In ***John Musisi alias Joseph Musiitwa Kabuusu vs Commissioner General, Uganda Revenue Authority & Anor HCCS No. 0072 of 2005*** my brother Justice F.M.S. Egonda – Ntende said:

> ***"……..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 been the clear intent of the legislature in this regard."***

I also agree with the above reasoning.

It would appear to me that the effect of reading section 21 of the Finance Act (No. 1 of 1999) and section 135 (6) of the Income Tax Act, Cap. 340, is that once interest has been assessed on tax arrears, it becomes **tax** which is collected and recovered as **tax**. The interest cannot in my view be divorced from the principal amount, for purposes of raising the 10% reward for the informant. I am fortified in so saying by the decision of the Former East African Court of Appeal in ***Income Tax Commissioner vs Roshanali Nazerally Merali & Anor [1964] E.A. 95***.

In that case the Commissioner assessed the respondents as administrators of the estate of a deceased with tax and included therein a sum for additional tax (chargeable under Section 40 of the East African Income Tax (Management) Act, 1952. It was not disputed that there had been a default or omission on the part of the deceased before his death rendering Section 40 applicable but it was submitted for the respondents that the additional tax chargeable under S.40 amounted to a penalty, that at common law a penalty is not recoverable after the death of a person concerned and that the Act should be construed so as not to override the common law unless that intention was to be plainly gathered.

The respondents appeal to the Local Committee was rejected whereupon they appealed to the Supreme Court which allowed the appeal and set aside the assessment to additional tax on the ground that it was a penalty and as such only recoverable by a suit instituted for its recovery. On further appeal by the Commissioner, it was held that although the effect of Section 40 of the Act was to impose higher rates in cases of default and omission, the important consideration was that whilst the section was expressed in terms of amount, it was invariably an ***'amount of tax'***, the additional tax was plainly tax within the meaning of the Act and Section 40, enacted that the person concerned shall be chargeable with it. The court held further that though the additional tax chargeable by section 40 had been designed as a penalty, there was no distinction in any part of the Act between the treatment accorded to this additional tax and any other tax.

The appeal was therefore allowed, decree of Supreme Court set aside and assessment confirmed.

It would appear to me that the instant case is similar to Income Tax Commissioner, supra, on facts. If a person failed to pay tax imposed under the Statute on or before the due date, he was liable to pay a penal tax on the un paid tax at the rate specified in the law. In the instant case the penal tax was assessed at Shs.2,147,593,800.=. The amount which was collected from the tax defaulter as a result of the plaintiff's information to the defendant was Shs.4,072,453,800/= and it included the said penal tax of Shs.2,147,593,800/=. The defaulter did not contest the amount. It therefore became payable by the said defaulter and it was indeed recovered from them. In the context of Section 136 (6) of the Income Tax Act, ibid, the total sum of Shs.4,072,453,800/= because the tax due and recoverable from the defaulter from which the informant was entitled to his cut of 10%. I would agree with the submission of learned counsel for the plaintiff that if the legislature had intended that payments of the 10% be calculated on what the defendant now refers as the principal tax, the legislature would have expressly said so.

It would not have couched section 21 in the manner it did. The law in my view makes no allowance for any distinction between the tax arrears and interest thereon for purposes of the 10% calculation. I so find. Accordingly the plaintiff is entitled to an outstanding balance of Shs.207,335,380/= being the balance of his entitlement of 10% informer's reward from the defendant for the service he rendered to them which led to the recovery of Shs.4,072,453,800/= as tax from Tororo Cement Industries Ltd.

Issue No. 2: <u>Remedies</u>

The plaintiff's lead prayer is that the defendant pays to him the outstanding sum of Shs.207,335,380/= and interest thereon at the rate of 25% per annum from the date of accrual up to the time of full payment.

In view of the court's finding that he is entitled to 10% of the total amount collected, he has in my view made out a case for the grant to him of this relief. The amount is decreed to him.

As regards interest on special damages, I am in agreement with the submission of learned counsel for the plaintiff that interest should be paid by the defendant on the outstanding amount which the defendant has been withholding unjustifiably since payment to him of the Shs.199,910,000/=. I, however, do not consider the rate of 25% in any way justified. I award interest on special damages at court rate per annum from the time the undisputed amount of Shs.199,910,0000/= was paid to him till payment in full.

Given the plaintiff's election not to address court on general damages, and convinced as I am that this case is not a proper one for the award of general damages, be it substantial or nominal, I have awarded none.

In keeping with the principle that the loser pays the winner's costs, the plaintiff will have the costs of the suit.

Orders accordingly.

Yorokamu Bamwine
JUDGE
10/08/2009