

**The Republic of Uganda**  
**In The High Court of Uganda, At Kampala**  
**Civil suit NO.117 of 2009**

**Siraje Hassan Kajura:.....:PLAINTIFF**

**VERSUS**

- 1. Dairy Corporation Ltd.**
- 2. Uganda Revenue Authority:::: :: : : : : : : : : : : Defendant**

**Before : Hon. Justice V.F Musoke Kibuuka**

**JUDGMENT**

**INTRODUCTION**

This is a representative action. The plaintiff Siraje Hassan Kajura, sued on his own behalf and on behalf of 160 others, all of them former employees of the first respondent. The plaintiff obtained leave of this court to file the representative suit vide High Court Miscellaneous Application No.161 of 2008.

The plaintiffs seek the following reliefs:

- a) a declaration that taxation of pay as you earn (P.A.Y.E) on their terminal benefits was unlawful;
- b) an order awarding to them Shs.1,171,778,814/= as special damages;

- c) general damages;
- d) interest on (b) and (c) at 25% per annum from 31<sup>st</sup> August, 2006, till payment in full; and
- e) costs of this suit.

### **FACTS AND PLEADINGS**

The plaintiff and all 160 others are former employees of the first defendant. Their services were terminated on 31<sup>st</sup> August, 2006. Thereafter, the Privatisation Unit (P.U.) Ministry of Finance Planning and Economic Development, paid terminal packages to them. The second defendant levied PAYE on each package. The total amount charged was shs.1,171,778,314/=. The fact that amount was deducted as PAYE is not disputed by the second defendant.

The plaintiff's case is that the deduction in the form of PAYE, from each package was contrary to law because the payments constituted an allowance or gratuity. The plaintiff relies upon the interpretation given by the Solicitor General, on behalf of the Attorney General, with regard to similar payments to the

former employees of National Housing And Construction Corporation, on 28<sup>th</sup> January, 1997, which was to the effect that PAYE was not chargeable on terminal benefits. The second defendant subsequently refunded to those employees the money it had deducted from their packages in the form of PAYE.

The first defendant did not file any defence. Although in the plaint, the plaintiff had alleged that the first defendant had wrongly calculated the packages payable to him and the other 160 others, that allegation was not followed by the plaintiff to any extent. It is also not covered by the written submissions of either counsel. It appears, therefore, that the case against the first defendant was abandoned or dropped by the plaintiff.

Courts takes it in that light.

The second defendant filed a defence. In it, it pleaded that the plaintiff and the 160 others were paid taxable benefits following termination of their services by dairy corporation. It pleaded that the tax was paid by the Privatisation Unit, Ministry of

Finance Planning And Economic Development. It pleaded that the tax was levied upon the basis of the provisions of section 19(1) (a)and (d), of the Income Tax Act, Cap.340.

The second defendant contended that section 8, of the Pensions Act had no application to the instant case because it only applies to officers in the Public Service under the Government of Uganda. It denied that employment in the Dairy Corporation was pensionable employment as envisaged in the Pensions Act.

**ISSUES:** The substantive issue for determination in this suit is only one. It is whether the second defendant unlawfully deducted PAYE from the plaintiffs' terminal benefits. The consequential issue of whether the plaintiffs merit the reliefs they seek would naturally follow.

The main argument advanced by Mr. Augustine Ssemakula, learned counsel for the plaintiff, is that terminal or a Retrenchment package constitutes a gratuity. It is money given to an employee upon cessation of the employment relationship

between the two. It is a **"thank you"** for the period the employee has worked for the employer. For that reason, Mr. Ssemakula, argued that such gratuitous payment could not be regarded as income derived from employment because the plaintiffs having paid PAYE on all their earnings up to 31.8.2006, could not have their gratuitous payment also taxed. Counsel concluded by submitting that a retrenchment package or retirement benefit, did not constitute taxable income as envisaged under section 19 of the Income Tax Act. On the contrary, it was akin to a pension which is out rightly exempt under section 23(1)(n), of the Income Tax Act.

Learned counsel for the second defendant, Mr. Kazibwe, did not, in the least, agree with the arguments advanced by his learned colleague. To him, the PAYE levied upon the terminal benefits of the plaintiffs was lawful under the provisions of section 19(1)(a) and (d) of the Income Tax Act, Cap 340.

About the opinion given by the Solicitor General in respect of the terminal benefits of the former employees of the National Housing And Construction Corporation Ltd, in respect of a similar matter and which opinion the second defendant had already complied with, Mr. Kazibwe sought to hide behind the fact that the opinion had been given on 28<sup>th</sup> January, 1997, before the Income Tax Act, Cap 340, came into force on 1<sup>st</sup> July, 1997. Mr. Kazibwe, however, did not say how the coming into force of that Act changed or affected the legal position to which the Solicitor General's opinion in the National Housing And Construction Corporation's case exposed.

Court is in total agreement with learned counsel, Mr. Kazibwe with regard to his submission that a tax provision must be interpreted strictly. Court duly agrees with what was stated by the court in the English case of Cope Brandy Syndicate Vs IRC

(1921) K.B. 64, that.....” in a taxing Act, one has to look at what is clearly said. There is no reason for intendment.....There is no presumption as to tax -----. Nothing can be read in,

nothing is to be implied, one can only look fairly at the language

used”. Similarly, court appreciates the same principle as applied

again by the English Court in Rennel Vs IRC (1963) 1 E.R. 803,

in the following words, “- - - - in interpreting tax statutes, one has to

simply look at the words of the statute and construe them fairly and

reasonably and a result in any particular case must be accepted whether

it is the tax authority or the tax payer who is thereby advantaged.”

With the above principle in mind court will now examine the

provisions of section 19(1)(a) and 19(1)(d), of the Income Tax Act, cap 340, which provisions the second defendant relies upon, in supporting the deductions made by it from the terminal benefits of the plaintiffs.

Section 19 (1) (a), of the Income Tax Act, provides:-

“19 (1) subject to this section, employment 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, bonus, or the amount of any traveling, entertainment, utilities, cost of living, housing, medical, or other allowances;”

To court, and with all due respect to learned counsel, Mr. Kazibwe, the word "**gratuity**" and the words "**or other**

**allowance**", appearing in this provision, must be interpreted **eusdem generis**. They must all relate to payments earned or made while the person paying the tax is still in employment and not while he or she is out of employment. To court that is what the law clearly envisages through that provision. That appears to have been the intention of Parliament when it enacted that provision

Therefore, a retirement benefit, whether called a gratuity or allowance or given any other name, cannot, in the view of court,

be lawfully covered by the provisions of section 19(1)(a), of the Income Tax Act. The words in which that provision is couched are quite clear and unambiguous. They must, therefore, be given their full effect and in their ordinary meaning. When that is done, it becomes clear that the plaintiffs' retirement benefits could not be lawfully taxed in relation to PAYE, under that provision of the Income Tax Act. Doing so, just as the defendant did, would amount to acting contrary to law. The deductions would be made unlawfully. Such deductions would not be authorized under that provision of the Income Tax Act.

Learned counsel, Mr. Kazibwe made what this court considers to be, with due respect, untenable. He argued that because the plaintiffs' terminal benefits consisted of some taxable items, such as leave pay, the entire terminal benefits were taxable. If this arguments were to be sustained then death gratuity, which is constituted by three times the last annual salary of the dead officer, would also be taxed on account of being constituted by

salary which is ordinarily a taxable item under section 19(1)(a), of the Income Tax Act.

Mr. Kazibwe then argued that the deductions made from the plaintiffs' terminal benefits would be made lawfully under the provisions of section 19(1) (d) of the Income Tax Act. That provision reads as follows:

"19(1) -----

(d) any amount derived as compensation for termination of any contract of employment, whether or not provision is made in the contract from payment of such compensation, or any amount derived which is in commutation of amounts due under any contract of employment. "

It appears to court that the position of section 19(1)(d), of the Income Tax Act, with regard to the deduction of PAYE from the terminal benefits of the plaintiffs, is not different from the one court has stated in relation to section 19(1)(a), of the same Act.

The provisions of section 19(1) (d) of the Income Tax Act is equally clear and unambiguous. The provision imposes PAYE upon money paid to a party to a contract of service, as compensation where the contract has been prematurely terminated. It is quite incomprehensible that the defendant sought to fit the terminal benefits of the plaintiffs into the ambit of section 19(1)(d), of the Income Tax Act. Such payment is gratuitous. It cannot be logically or legally be referred to as compensation within the meaning of section 19(1)(d), of the Income Tax Act. The intention of parliament could not have been to tax gratuitous payments, in the form of terminal benefits under the provisions of section 19(1)(d), of the Income Tax Act. Terminal benefits cannot be appropriately be referred to as compensation. The formula upon which terminal benefits are calculated and determined is very different from that upon which compensation is calculated.

Indeed, in the view of this court, the kind of compensation which section 19(1)(d), of the Income Tax Act, envisages and

clearly focuses upon, is quite similar to the one Kanyeihamba, JSC, described and categorized into two distinctive categories in Barclays Bank of Uganda Vs. Godfrey Mubiru SCCA No.01 of 1998. The learned justice of the Supreme Court did so in the

The following words:

“ There is a distinction between a contract which makes no provision for termination prior to the expiry of the fixed period of duration and one in which there is a provision enabling either party to terminate the employment. In the event of a wrongful termination by the employer, the employee in the former contract would be entitled to recover, as damages, the equivalent of remuneration for

the balance of the contract period, whereas in the latter

case, the wronged employee would be entitled to recover,

as damages, the equivalent of remuneration for the period stipulated in the contract for notice”.

In this court's view, in either of the two situations described by the learned justice of the Supreme Court in Mubiru's case, the

payment would qualify, under section 19(1)(d) of the Income Tax Act, for taxation. Such payment constitutes or is derived as "compensation for termination of a contract of employment." Terminal benefits, on the other hand, do not appear to court to so qualify because they do not appear to court to so qualify because they do not constitute compensation. They are essentially gratuitous payments whatever other names they may be called.

Accordingly, it could not have been lawful for the defendant to charge PAYE, under section 19(1) (d) on the plaintiff's terminal benefits.

Lastly, Mr. Ssemakula, as stated earlier in this judgment, sought to rely upon an opinion given by the Solicitor General, on behalf of the Attorney General in a matter, in pari materia, with regard to.- the terminal benefits of the former employees of National Housing Corporation. The General Manager, NHC, on 23<sup>rd</sup> December, 1996, addressed a letter to the Honourable Minister of Justice Attorney General, seeking his opinion as to whether It had been lawful for the defendant to charge PAYE upon the

terminal benefits of the former employees of NHC. The letter was answered, on 28<sup>th</sup> January, 1997, by the Solicitor General who opined as follows:

"The provisions of section 4A, of the pensions Act, Cap 2S1, as amended by Decree No.6/78 and Statute No. 4/94, clearly stipulate that terminal benefits are exempted from tax.

By copy of this letter, the Commissioner General, Uganda Revenue Authority is requested to make a tax refund to the affected workers."

The provisions of section 4A of the Pensions Act, Cap.281, are today existent in section 8 of the Pensions Act, Cap.286.

In defending the deductions of PAYE from the plaintiffs' terminal benefits by the defendant, Mr. Kazibwe sought to throw the opinion of the Solicitor General in the analogous case of the former employees of NHC overboard. He submitted that it was

Irrelevant to the instant case on account of the fact that the opinion was given on 28<sup>th</sup> January, 1997, before the Income Tax

Act, Cap.340, came into force on 1<sup>st</sup> July, 1997.

With all due respect to learned counsel for the defendant, court cannot agree with that submission. It is clearly not well founded. Both sections 4A of the Pensions Act as it appeared in Cap.281 and sections 8, of the Pensions Act, Cap.286, as it appears today, were very exclusive provisions. They provided that "Notwithstanding any provision in any written law to the contrary, no income tax shall be charged upon any pension, gratuity or other allowance granted under this Act."

Under section 8, of the interpretation Act, Cap.3 a general reference to any written law, includes reference to any Act of Parliament included in a revised edition of the Laws of Uganda. In other words a reference to "**any written law**" means any written law for the time being in Uganda. This clearly includes the Income Tax Act, in enacting of which, it is presumed,

Parliament was aware of the existence of the provisions of section 8 of the Pensions Act, cap 286.

Lastly, Mr. Kazibwe strongly objected to the Solicitor General's reliance Upon the pension's Act, which, according to learned counsel, only applies to employees in the Public Service and has no relevance to employees of the former statutory corporations, such as the Dairy Corporation, to which the instant case relates.

Again, with due respect, court finds itself unable to agree with that submission. It is a matter of general knowledge that all those former statutory corporations had in their terms and conditions of service provisions or clauses which provided that the retirement or terminal benefits of their employees would be the same as those accruing to public officers, under the

Pensions Act. Court presumes that this was the reason why the solicitor General made reference to the Pensions Act, in his opinion, with regard to the employees of the NHC.

Lastly, it is clear to court that when the Solicitor General gave the opinion relating to the former employees of NHC, he was acting on behalf of the Attorney General by virtue of section 29 of the Interpretation Act. In other words, the opinion which the Solicitor General gave as one of the Attorney General since the request for that opinion had been addressed to the Attorney General himself. The defendant, after receiving a copy of that opinion and after acting upon it to refund the money it had deducted as PAYE from the former employees of the National Housing Corporation, it would automatically act in a similar manner with regard to the instant case, which is similar in all respects.

Court, in that regard, wishes to reiterate, though by way of analogy, the observation made by Kanyeihamba, JSC, in *Bank of Uganda Vs. Banco Arab Espanol, SCCA NO.01 of 2001*, with regard to any opinion given by the Attorney General as the chief legal advisor to Government. The Learned Justice of the Supreme Court wrote, *"In my view, the opinion of the Attorney*

General, as authenticated by his own hand signature on an agreement or other legal transaction should be accorded the highest respect by Government and public institutions and their agents. Unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further inquiries or verifications”

Court, therefore, answers the substantive issue in this case in the affirmative. It follows that court orders a refund to the plaintiff and the 160 others on whose behalf he also represented this suit, the sum of shs. 1,171,778,314/= which constitutes the total deductions as PAYE. That amount is awarded, as special damages to the plaintiffs.

The plaintiffs also sought general damages. Court is aware of the inconveniences and the mental and physical suffering that the plaintiff have undergone and endured throughout the 8 years following the deductions made upon their otherwise meager terminal benefits. Court awards each one of them

shs.2,000,000/= as general damages upon that account and with interest at 8<sup>0</sup>/0 per annum from the date of judgment till payment in full.

Court also awards interest at 8% per annum upon the special damages of shs.1, 171,778,314/=, from the date of filing of this suit till payment in full.

## **RESULTS**

In the result, court enters judgment in favour of the plaintiffs against the defendant. It makes the following declaration orders:

- a) a declaration that the defendant unlawfully charged PAYI:: upon the terminal benefits of the plaintiffs;
- b) an order awarding shs.1,171,778,314/= to the plaintiffs, as special damages;
- c) an order awarding interest at 8<sup>0</sup>/0 per annum, on the special damages, from the date at the filing of this suit, 25<sup>th</sup> June, 2009, till the date of payment in full;

per annum, from the date of judgment **till** payment in full; and an order awarding the costs of this suit to the plaintiff.

V.F.Musoke Kibuuka

(Judge)

16.12.12