

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 208 OF 2016

KABAYIZA. R BRIAN:.....PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY:.....DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff filed this suit in 2016 arising out of an objection to an assessment which allegedly arose out of the plaintiff's share of chargeable income in the sum of 2,237,384,207/= from Muwema & Mugerwa Advocates and Solicitors arising from legal fees paid to the firm from the URA v Shell & 10 others case, The Road Licence Case, the BAT v Farmers Case. The plaintiff contended that the disallowance of his objection to Assessment number PI0116543653 without consideration of the grounds upon which it was premised is illegal.

The plaintiff stated in his plaint that on 12th February 2016, the defendant served on the plaintiff a Notice of Assessment in a sum of 88,553,682/= being a share of the chargeable income in the sum of 2,237,384,207/= from the firm of Muwema & Mugerwa Advocates & Solicitors arising from legal fees paid to the firm from the URA v Shell & 10 Others, the Road Licence Case, the BAT v Farmers case.

The plaintiff contended that he objected on 15th March 2016 and stated that the income rising from the road licence case of 320,000,000/= and BAT v Farmers case of 640,000,000/= relate to the tax period when he was not a partner in the firm of Muwema & Mugerwa Advocates and Solicitors. The payment from URA v Shell & 10 Others case of 5,752,152,621/= was reversed and invalidated by the Judgment of the Supreme Court in Civil Appeal No. 02 of 2013

The defendant in its defence contended that the income tax was based on the plaintiff's share of income arising from legal fees paid to Muwema Mugerwa Advocates & Solicitors in regard to URA v Shell & 10 Others, the Road Licence Case and BAT v Farmers case.

The defendant further contended that the income tax assessment was based on income earned by the plaintiff for the period 01/01/2014 to 31/12/2014 on which the plaintiff did not account for tax.

The defendant disallowed the plaintiff's objection and contended that the assessments raised against the defendant were not erroneous and due and payable.

The parties filed a joint scheduling memorandum where the following facts and issues were agreed for court's determination;

Agreed facts

- 1) On the 12th of February 2016, the Defendant served upon the Plaintiff a Notice of Assessment Number **PI010116543653** in the sum of **918,874,949/=**.
- 2) The assessment arose from the Plaintiff's purported share of chargeable income in the sum of **2,237,384,207/=** from the firm of **Muwema & Mugerwa Advocates and Solicitors** arising from legal fees paid to the firm from the **URA v Shell & 10 Others case, the Road licence case, the BAT v Farmers case**.
- 3) On the 15th of March 2016, the Plaintiff objected to the said Assessment indicating to the Defendant that:
 - a) the income arising from **the Road licence case** of **320,000,000/=** [Uganda Shillings Three Hundred Twenty Million] and **BAT v Farmers case** of **640,000,000/=** [Uganda Shillings Six Hundred Forty Million] relate to a tax period when he was not partner in the firm of Muwema & Mugerwa Advocates and Solicitors; and

- b) the payment from the URA v Shell & 10 Others case of **5,752,152,621/=** was reversed/invalidated by the Judgement of the Supreme Court in Civil Appeal No.02 of 2013.
- 4) Pursuant to the said objection, on the 23rd of March 2016 the Plaintiff and a one **Daphin Kabagonza**, a staff of the Defendant met in her offices at UAP Business park Nakawa to discuss the objection to the assessment.
- 5) The objection to the assessment was disallowed by the Defendant.
- 6) In 2014, the Supreme Court in Shell & 10 Others v Muwema & Mugerwa Advocates & Uganda Revenue Authority nullified a remuneration agreement pursuant to which legal fees had been paid to the said firm by Uganda Revenue Authority.

ISSUES

1. *Whether this Honourable Court has original jurisdiction to hear this matter?*
2. *Whether the plaintiff was a partner in the firm of Muwema & Mugerwa & Company Advocates at the time legal fees were paid for the case of Shadrack Mwijakubi v BAT?*
3. *Whether the plaintiff was a partner in the firm of Muwema & Mugerwa at the time legal fees were paid by for the Road Licence case.*
4. *Whether defendant can lawfully assess income tax upon the plaintiff in light of the circumstances of the case.*
5. *Whether the plaintiff is entitled to an award of General damages?*
6. *Whether the plaintiff's goods/property were lawfully seized*
7. *What remedies if any.*

The defendant did not produce their witness on the day the matter was fixed for hearing and the court proceeded under Order 17 Rule 4 to determine this suit. The plaintiff was represented by *Counsel Kavuma Terrence* while the defendant was represented by *Donald Bakashaba*

Whether this Honourable Court has original jurisdiction to hear this matter?

The plaintiff's counsel submitted that the jurisdiction of the High Court is prescribed under **Article 139 (1)** of the **Constitution of Uganda**. The said Article provides as hereunder;

'The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law'.

In paragraph 5 and 6 of the Plaintiff, the Plaintiff contended that he was not a partner in the firm of Muwema and Mugerwa Advocates in the period between 2008, 2009 and 2010 to warrant assessment of any income tax upon him arising from the said period.

In paragraph 1 of the written statement of defence, the Defendant generally denied the contents of the Plaintiff.

In such circumstances a determination has to be made as to whether the Plaintiff was a partner in the firm of Muwema & Mugerwa in the period when income was earned by the said firm for the Road Licence case and the BAT Case. Determination of the issue whether or not the Plaintiff was a partner in the firm of Muwema & Mugerwa Advocates is not within the jurisdiction of the Tax Appeals Tribunal under Tax Appeals Tribunal Act. We refer the Court to **Section 14 (1)** of the **Tax Appeals Tribunal Act** which provides that:

*'Any person who is aggrieved **by a decision made under a taxing Act** by the Uganda Revenue Authority may apply to the tribunal for a review of the decision'.*

Determination of the issue whether or not the Plaintiff was a partner in the firm of Muwema & Mugerwa Advocates in 2008, 2009 and 2010 is not a decision made under a taxing Act so as to bestow jurisdiction upon the Tax Appeals Tribunal for review of such decision. Given that the Tax Appeals Tribunal lacks the jurisdiction to determine membership of a partnership at the time in issue, the High Court naturally has the jurisdiction to determine the same.

The defendant's counsel contended that the defendant's notice of Assessment and objection decision to Notice of Assessment to the applicant constituted taxation decisions of the respondent. Counsel relied on the decision of URA v

Rabbo Enterprises & Another in his submission that this court lacks jurisdiction and that the proper procedure is that all tax disputes must first be lodged with the Tax Appeals Tribunal and only taken to High Court on appeal.

Therefore, according to them the suit is in wrong court and they prayed that it should be dismissed or transferred to the Tax Appeals Tribunal.

Analysis

The plaintiff's case is that he was being assessed to pay taxes as a partner to the firm of Muwema and Mugerwa Advocates and solicitors. The dispute appears to be whether the plaintiff was a member of the said partnership and later whether he was liable to pay taxes that accrued before he was a partner in the said law firm.

Therefore, the matter before the court involves consideration and interpretation of provisions of the Partnership Act which is not a taxation statute. There are situations like in the present case where the case rotates about other legislations and this may require the court to interpret other provisions of the law. In the case of ***Commissioner General Uganda Revenue Authority v Meera Investments Ltd SCCA No. 22 of 2007*** the court held that;

“Having found that this case was not concerned with mere assessment, demand and refusal to pay tax but with the interpretation of and relationship between Uganda Revenue Authority and the Uganda Investment Act, the issue of the issue of the suit being premature does not arise. I therefore find no merit in this ground which accordingly ought to fail”.

The Court further held at page 13 thereof that:

“As I observed earlier in this judgment the dichotomy is more pronounced in a case like the present one where the taxpayer is actually challenging the Commissioner General's powers to impose a tax on property. That kind of dispute properly belongs to the jurisdiction of the High Court and not a tax tribunal.”

The implication of the above case is that when the case is not concerned with the mere assessment, demand and refusal to pay tax but with legal issues involving interpretation of rights and obligations under other legislation, the High Court has original jurisdiction to entertain the case.

The Supreme Court in the case of ***Uganda Revenue Authority v Rabbo Enterprises Ltd and Another SCCA No. 12 of 2004*** considered the Meera case and simply distinguished it without making a finding that Meera case is no longer good law regarding the jurisdiction of the High Court in tax matters. At page 17 & 18 thereof the court held that;

“ It is possible that the learned justice came to the conclusion that the dispute was concerned with demand and fairness of assessment, he would have held that the matter had to be presented to the tribunal. I am inclined to believe that it is because the dispute revolved around powers granted by two Acts of parliament to different entities that the learned justice made a finding that it was the high court to deal with what was in essence an issue of statutory interpretation.”

It is therefore my opinion as premised on the above decisions, the Meera case is still good law where a case involves tax matters and also involves interpretation of other statutes which have a bearing on the tax decision; in such cases the jurisdiction is with the High Court. To that extent, the jurisdiction of the High Court is not taken away and this brings finality to matters having other disputes related to interpretation of other legislations.

Similarly, Justice Stephen Mubiru in the case of *Radion Pacis Ltd v Commissioner General Uganda Revenue Authority HCCS No. 8 of 2013 (Arua)* considered all the above authorities and noted that;

“The residual jurisdiction of the High court over tax matters has never been ousted by any enactment or court decision but has by judicial practice and precedents only been curtailed and limited in exceptional matters of interpretation of tax law such as that which presented itself in Commissioner General Uganda Revenue Authority v Meera Investment Ltd SCCA No. 22 of 2007”

Therefore, to this extent this court has jurisdiction to hear a matter intertwined with interpretation of laws which are not necessarily tax law but which have a bearing on the tax dispute.

1. *Whether the plaintiff was a partner in the firm of Muwema & Mugerwa & Company Advocates at the time legal fees were paid for the case of Shadrack Mwijakubi v BAT?*

2. *Whether the plaintiff was a partner in the firm of Muwema & Mugerwa at the time legal fees were paid by for the Road Licence case.*
3. *Whether defendant can lawfully assess income tax upon the plaintiff in light of the circumstances of the case.*

The above issues could also be compounded in the issue also raised by the defendant;

Whether the income tax assessed upon the plaintiff was lawful and justified.

In paragraph 3 of his witness statement, the Plaintiff stated that upon receipt of the additional administrative assessment, he formally objected to the same. The objection is **Exh. P2** at page 4 of the plaintiff's trial bundle. The first ground of objection is that:

'The additional administrative assessment was premised on payments that were never my income.'

Pursuant to the Plaintiff's objection, a meeting was held between the parties, a record of the same is **Exh. P3** on the 2nd page of **Exh. P3**, the record of the meeting between the parties indicates that:

'The team agreed that URA has more information concerning the road licence case to determine whether Brian Kabayiza was a partner in Muwema & Mugerwa at the time. Conclusion: the objection officer is to consult and get back to the client. An exit meeting may be called to discuss the findings.'

In paragraph 5 of his witness statement, the Plaintiff testified that not further meeting was called by the Defendant to discuss their findings if at all. To his surprise the objection was disallowed. The objection decision disallowing the Plaintiff's objection is **Exh. P4** and the ground for disallowance are that:

'The taxpayer failed to avail documentation to support evidence of his income as requested for.'

In disallowing the Plaintiff's objection, the Defendant made the following errors in law.

First of all the Defendant did not evaluate and take into consideration the grounds given by the Plaintiff for objecting to the assessment. This is especially so

with regard to the Road Licence case where the Defendant agreed in **Exh. P3** that *it has more information concerning the case to determine whether the Plaintiff was a partner at the time.*

Thirdly there was never any evidence before the Defendant that the Plaintiff earned undeclared additional income between the 1.01.2014 to the 31.12.2014 to justify the assessment. **See Kasoma Fred v James Sembatya Court of Appeal Civil Appeal 78 of 2011** for the proposition that *where there is no evidence to support a find of fact is a question of law.* The Defendant's case is premised on **Exh P1** particularly at page 3 thereof where a purported tax computation is shown therein;

*'However the partners **had not declared the above income**, so each partner was assessed that income from their mother stations where Kabayiza Brian belongs to Kampala East.*

Kabayiza Brian also earned a salary of 6,000,000 in the year 2014/2015 on which he paid tax'.

What is clear from the **Exh. P1** at page 3 of the Plaintiff's trial bundle is that the Plaintiff paid tax on income earned for the year 2014/2015. What is in contention is the administrative additional income tax assessment of **918,874,949** said to arise from undeclared income.

Since the Plaintiff in his objection stated that the additional administrative assessment was premised on payments that were never his income, the Defendant needed to show/avail evidence of additional income earned and not declared by the Plaintiff to the Defendant to justify the additional assessment.

Clearly **Exh. P3** does not show any evidence of undeclared additional income being presented to the Plaintiff at any one time during their meeting on the 23rd of March 2016 or at any time thereafter to warrant the assessment.

Since the assertion of undeclared additional income was made by the Defendant the burden of proof lay upon the Defendant to prove that fact and this they did not; at the time of determining the objection and during the proceedings in this Court. **Section 101** of the **Evidence Act** provides that:

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

The Defendant failed to show any iota of evidence that the Plaintiff earned undeclared income for the period 1.01.2014 to 31.12.2014 upon which the additional assessment was premised.

It is our submission that the Defendant has not adduced any evidence, documentary or otherwise, showing that the Plaintiff earned any income from **BAT case, Road Licence case** or the **URA v Shell and 10 others case** in the period 1.01.2014 to 31.12.2014 to warrant the administrative additional assessment in the sum of **918,874,949**.

Exh. P5 at page 10 to 15 of the Plaintiff's trial bundle is the amended partnership deed for Muwema & Mugerwa Advocates which admitted the Plaintiff as a partner in the said firm. The said deed is dated **1st February 2011 (see page 10)**.

From the above, it is evident that income from BAT was earned by the firm of Muwema & Mugerwa on the **29th of July 2010** before the Plaintiff was admitted as a partner in the said firm. As such he cannot incur any liabilities arising from the said income.

The plaintiff's argument is fortified in the provisions of **Section 19 (1)** of the **Partnership Act 2010** which provides for liabilities of a partner admitted into an existing firm in the following terms.

'A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he or she became a partner'.

The plaintiff contended that it malicious for the Defendant to raise an assessment upon the Plaintiff allegedly for undeclared income earned in the period **1.01.2014 to 31.12.2014** yet the evidence presented to the Defendant at the time of

objection indicated that this was income earned by the firm of Muwema & Mugerwa in **2010** when the Plaintiff was not a partner in the said firm.

The plaintiff's counsel invited court to find that the Plaintiff was not a partner in the firm of Muwema & Mugerwa Advocates at the time it earned fees from the BAT and as such any additional income tax assessed upon him for the said case is unjustified.

Road Licence case: In paragraph 5 of the Plaint, it is averred that the Plaintiff was not a partner in the firm of Muwema & Mugerwa Advocates at the time legal fees legal fees of **320,000,000/=** arising from the road licence case were paid by the Defendant. This averment is not specifically denied by the Defendant who did not even adduce any evidence to the contrary. In paragraph 8 of his witness statement the Plaintiff testified that:

'Legal fees of UGX 320,000,000/= arising from the Road License case were paid by the Defendant to the firm of Muwema & Mugerwa Advocates and Solicitors sometime before 2008 or 2009, at a time when I was neither practicing with nor a Partner in the said law firm'.

Premised on the foregoing we invite this Court to find that the additional income tax assessment of **918,874,949/=** has no basis premised on the record before court, is unjustified by the Defendant and thus illegal since the plaintiff was not a partner.

The defendant's counsel argued that chargeable income of a partnership is provided under section 65 of the income tax Act which stipulates the principles of Partnerships and Partners. Therefore, the defendant followed the above principles and that the defendant did not discharge his burden since the plaintiff never furnished the necessary information including a partnership return.

Section 67 of the Income Tax Act provides for taxation of partners and that the said provision was duly followed. The said assessment was legal and followed section 65(5) & (7) and that the former partnership is treated as having disposed of all the assets of the partnership to the reconstituted partnership.

The defendant's counsel further argued that in absence of evidence of any partnership return of income for the year it was hard to determine the whether

there was an election by the partnership as provided under section 68(5) of the Income Tax Act.

Analysis

The plaintiff disputes the assessment made against him on one main ground that he was not a partner at the time the said income was earned by the firm of Muwema & Mugerwa & Company Advocates & Solicitors. The plaintiff adduced evidence of a partnership deed as exhibited PE5.

The partnership deed is clearly indicated as Amended Partnership Deed between FRED MUWEMA, HERBERT KIGGUNDU-MUGERWA, SIRAJ ALI, KABAYIZA.R. BRIAN, TERENCE KAVUMA AND CAROLINE TUSINGWIRE. This amended partnership according to the PE5 was amending the existing partnership deed dated 6th April 2009 between Fred Muwema and Herbert Kiggundu Mugerwa. It set out the contribution to be made by the senior partners of 50,000,000/= and while the new partners had to make a contribution of 10,000,000/=.

Therefore the propriety of the assessment made against the plaintiff had to consider his status at the time of the tax assessment that was made. The plaintiff became a partner on 1st February 2011. This therefore implied that any assessment on his income had to be premised within that period and anything before that period would be irregular.

It appears the taxing officers of the defendant ignored the clear evidence on record and never produced any evidence to the contrary in order to justify their assessment premised on wrong deductions not supported by the clear evidence of the plaintiff joining the partnership. The plaintiff's evidence of not being a partner or a practicing advocate with the said law firm before then was not considered. There was no evidence to support the finding of fact that the plaintiff was a partner at the time the said income accrued to the partnership.

This court does not agree with the submission of the defendant which is premised on lack of evidence or failure to prove not being a partner during the said period. It is true that sections 65 to 68 of the Income Tax Act provide for the taxation principles of a partnership and the same principles must be guided by evidence and not conjectures or imaginations of the taxing officer.

A partnership is not a taxable entity under income tax Act. Since Partnerships are not recognized legal entities for tax purposes, there is no separate partnership income tax. Rather, **the income from the partnership business is taxed to the individual partners at individual tax rates.** Therefore membership of a partnership is a key factor in consideration of who is liable to pay income tax.

The determination of the existence of a partnership is a question of law based on the facts of each case. The interpretation of a partnership is a question of law. The mutual relationship between the parties as evidenced by their methods of carrying on a business is a question of fact. Therefore, payment of tax or who is entitled to pay tax is an issue of law not agreement, contract or compromise. See ***ADDAX v FIRS (2012) 7 TLRN 74***

Section 19 (1) of the **Partnership Act 2010** which provides for liabilities of a partner admitted into an existing firm in the following terms.

‘A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he or she became a partner’.

The onus is in the respondent as a tax body to adduce evidence to prove that taxpayer has failed to pay the required tax premised as at when it is due. This onus is satisfied when proper evidence is placed before the taxpayer and not through assumed tax liability without proper evidence.

Therefore, the government’s goal to generate more revenue internally should not be pursued without regard to the need to ensure that justice is done to the taxpayer in all circumstances. This balancing act should ensure that the taxpayer is not unfairly obligated to pay disputed tax arbitrarily without regard to the evidence pointing to the tax liability.

The plaintiff like all other taxpayers ought to be treated fairly and justly in tax matters and should be given the opportunity to be involved in the process of determining the extent of their tax liability and be given a fair hearing. The plaintiff rightly contended in this case that the respondent’s tax officer failed or refused to consider his evidence of not being a partner in the said partnership firm at the time the income was generated that resulted in tax liability much later after he was admitted as partner.

Therefore, the additional income tax assessment of 918, 874,949/= was not justified in the circumstances since it did not consider the plaintiff's evidence of not being a partner or practicing advocate with the said law firm of Muwema & Mugerwa Advocates & Solicitors.

I therefore order that this matter of assessment of tax liability be reconsidered by respondent in accordance with the principles of fairness and consideration of all the evidence before it.

I decline to award any general damages or costs of the suit.

I so Order

SSEKAANA MUSA

JUDGE

7th October 2022