THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 115 OF 2012

(ARISING FROM THE JUDGMENT OF HON. MR. JUSTICE VINCENT ZEHURUKIZE IN HCCS NO 0156 OF 2010 DATED 20TH JUNE, 2012)

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

1. **LUGEYA SAMUEL}**
2. **MULINDWA HOMIDAS} .....APPELLANTS**

VERSUS

UGANDA REVENUE AUTHORITY} .....RESPONDENT

JUDGMENT OF COURT

This appeal arises from the judgment of the High Court honourable Mr Justice Vincent T. Zehurukize. The plaintiffs sued in a representative capacity on their own behalf and on behalf of 903 former employees of Uganda Commercial Bank whose services were terminated in 1993 and 1994 on the basis that a tax known as "Pay as You Earn" (PAYE) was unlawfully deducted from their terminal benefits by the respondent authority. The plaintiffs had filed a suit in the High Court for recoveries of monies unlawfully and wrongfully taxed under terminal benefits amounting to Uganda shillings 416,754,338/=, interest and costs. The plaintiff's action was dismissed with no order as to costs and being aggrieved by the decision of the High Court lodged this appeal to the Court of Appeal on the following grounds:

1. The learned trial Judge erred in law and in fact when he held that the respondent lawfully taxed PAYE from the appellant's terminal benefits.

2. The learned trial Judge misdirected himself on the law relating to the taxation of terminal benefits thereby reaching a wrong conclusion that the respondent had lawfully taxed the appellant terminal benefits.

3. The learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion that terminal benefits are taxable under the Income Tax Act.

At the hearing of the appeal learned counsel Ms Nakku Mwajuma appeared for the respondent but the respondent was not represented. She submitted that the parties were served and accordingly prayed that the written submissions on record be accepted as the submissions of the parties. The matter proceeded by way of the written submissions of the parties on record and judgment was reserved on notice.

Resolution of appeal

We have carefully considered the written submissions of the appellant's counsel Messieurs C. Mukiibi Sentamu & company advocates which was filed on record on 31st July, 2018 as well as the submissions of the respondent's counsel that had been filed on record on 15th August, 2018. The contention of the appellants is that the learned trial Judge misdirected himself on the law relating to taxation of the terminal benefits and indeed erred in law and fact when he held that the respondents lawfully taxed PAYE from the appellant's terminal benefits. This in our view is a point of law and the only facts which are not in dispute are those facts relating to the taxation of the appellant's terminal benefits. There is therefore no need to reappraise the evidence other than to establish the background facts leading to the taxation of terminal benefits of the appellants.

The background facts are stated in the written submissions of the appellant's counsel and are that the appellant and 903 employees of Uganda Commercial Bank whose services are terminated in 1993 and 1994 respectively were paid terminal benefits and the respondent taxed off Uganda shillings 416,754,238/= as PAYE which the appellants claimed was unlawfully and illegally taxed. Consequently the appellants on their own behalf and on behalf of the others sued the respondent for recovery of the sum allegedly unlawfully and wrongfully taxed as PAYE. At the hearing of the suit, the only agreed issue for determination was whether the deduction of PAYE was unlawful. The learned trial Judge dismissed the appellant's suit hence the appeal.

The gist of the submissions of the appellant's counsel was that there was no evidence on record that the Privatisation Unit of the Ministry of Finance and Economic Planning was at any one time an employer of the appellants. Uganda Commercial Bank was no more since it had been divested and could not make any more payments to the

appellants. The Privatisation Unit of the Ministry of Finance and Economic Planning was not an employer of the appellants at the time and therefore could not withhold PAYE under the provisions of section 116 of the Income Tax Act (ITA) that empowers employers to withhold tax. Secondly, payment of the appellants was made by the Privatisation Unit "a third party", and there was no proof or anything on record at the hearing that the Privatisation Unit made this payment under an arrangement with Uganda Commercial Bank according to the requirements of section 19 (6) of the Income Tax Act. It followed that the trial Judge misdirected himself on the law and thus arrived at a wrong decision. The appellant's counsel prayed that the appeal is allowed with costs to the appellant.

For her part Ms Nakku Mwajuma agreed with the facts and the issues stated by the appellant's counsel. She also argued grounds 1, 2 and 3 of the appeal simultaneously as they address the same issue of law of whether the taxation of the appellant's terminal benefits was lawful. The Respondent's counsel submitted that the legal position on the taxable nature of the terminal benefits was conclusively settled by Supreme Court in **Uganda Revenue Authority v Siraje Hassan Kajura; SCCA No. 9 of 2015** and we do not need to reproduce the submissions herein.

We have carefully considered the submissions of counsel, the facts of the appeal as well as the law. We have further considered the judgment on the same issue by the Supreme Court in **Uganda Revenue Authority v Siraje Hassan Kajura; SCCA No. 9 of 2015.** We note that the point of law raised in this appeal was settled and this court similarly and recently determined the same points of law in a similar matter in **Katureebe Eridad and Wanzala Ivan v Uganda Revenue Authority; Civil Appeal No 55 of 2012** where we followed the decision of the Supreme Court cited above**.** In **Katureebe Eridad and Wanzala Ivan v Uganda Revenue Authority** (supra) grounds 1 and 2 of the appeal were the same as in the appellant's appeal in this appeal and were that:

1. The learned trial Judge erred in law and in fact when he held that the Respondent lawfully taxed PAYE from the Appellant's Terminal Benefits.

2. The learned trial Judge misdirected himself in the law relating to the taxation of Terminal Benefits thereby reaching a wrong conclusion that the Respondent had lawfully taxed the Appellants Terminal Benefits.

The appeal was argued by learned Counsel Mr. Asaph Agaba of Messrs C. Mukiibi Sentamu & Co. Advocates from the same firm which lodged the current appeal under consideration. The decision of this court in **Katureebe Eridad and Wanzala Ivan v Uganda Revenue Authority; Civil Appeal No 55 of 2012** applies squarely to the points of law in this appeal and this is what we said in part:

> "We have carefully considered the statutory provisions applicable to taxation of employment income and particularly section 19 of the Income Tax Act as well as exempt income under section 21 of the Income Tax Act. We have further reviewed and revisited a decision of this court in **Uganda Revenue Authority v Siraje Hassan Kajura; Civil Appeal No 26 of 2013** where this court held that retrenchment packages were not taxable under section 19 of the Income Tax Act. This decision was overturned by the Supreme Court in **Uganda Revenue Authority v Hassan Kajura Supreme Court; Civil Appeal No 09 of 2015**. We are therefore not bound to follow our earlier decision which is no longer good law. The Supreme Court whose decisions are binding on this court held that terminal benefits are taxable under Section 19 of the Income Tax Act under similar facts as in this appeal. We respectfully follow the decision of the Supreme Court and consider this appeal in light of that decision."

We considered the definition of employment income under section 19 of the Income Tax Act and noted that in light of the decision of the Supreme Court of Uganda in **Uganda Revenue Authority v Hassan Kajura** (supra), after considering sections 19 (1) (a) (b), (c) and (d) of the Income Tax Act, section 19 (1) is general enough to include any earnings of the employee by whatever name called so long as it is derived from the employment. Furthermore, we considered subsections (a) – (d) of section 19 and held that P.A.Y.E on the terminal benefits was taxable income.

With regard to the issue of whether Privatisation Unit was an employer of the appellants we again adopt our judgment in **Katureebe Eridad and Wanzala Ivan v Uganda Revenue Authority** (Supra) that costs and expenses associated with termination of contracts of employment are paid from the divestiture account managed by the Privatisation Unit of the Ministry of Finance where proceeds of sale of shares have to be deposited and we said:

> "It follows that the costs of termination of employment could only be met by the Ministry of Finance from the sale of shares of British American Tobacco (U) Ltd.

For that reason the payment was not from a third party but by the Government of Uganda acting on behalf of the British American Tobacco Ltd when it was divesting itself from ownership thereof. The provisions cited by the Appellant's Counsel of section 19 (6) for the argument that the Privatisation Unit was not an employer of the Appellant and could not withhold tax is inapplicable. In any case the withholding of tax is a method for collecting income tax from employment income. The income tax can still be assessed and paid even where it was not erroneously withheld by the employer."

Finally, we are bound by the decision of the Supreme Court where they held in **Uganda Revenue Authority v Siraje Hassan Kajura SCCA No 9 of 2015** that retrenchment benefits received by the respondents by necessary implication fall squarely within the ambit of section 19 (1) (a) of the ITA, at page 11 Opio Ruby Aweri, JSC held that:

"The key words in the definition of the term employment income envisaged in section 19 (1) (a) of the Income Tax Act have to be defined. The provision reads "any income derived by any employee from any employment." The term derive is defined by the Oxford Learners Dictionary to mean "arise or originate from" therefore for income to be termed as employment income, it has to originate or arise from an employer to the employee."

The Supreme Court considered all the subsections of section 19 of the ITA and concluded that the respondents in that case who were employees of Messieurs Dairy Corporation who lost their jobs due to privatisation of the employer company and were given packages in exchange of their jobs. The packages amounted to compensation. They held that section 19 of the Income Tax Act provides for employment income which is exempt from taxation and this did not include retrenchment packages. They concluded that retrenchment packages are taxable except the exempted portion of the packages which are expressly provided for.

We are bound by the judgment of this court in **Katureebe Eridad and Wanzala Ivan v Uganda Revenue Authority** (supra) and the Supreme Court in **Uganda Revenue Authority v Siraje Hassan Kajura SCCA No 9 of 2015** and we accordingly apply it to the facts and issue in this appeal and find that the Appellant's appeal lacks merit. We hereby dismiss it. On the question of costs, because the Supreme Court decision cited above was made in December 2017 after the appellant's appeal had been filed in September 2012. Moreover, this court had earlier held that PAYE was not deductible

from retrenchment packages and the matter was not yet finally settled. We accordingly dismiss this appeal with no order as to costs.

Dated at Kampala the 7th day of May 2019

Kenneth Kakuru

Justice of Appeal

Geoffrey Kiryabwire

Justice of Appeal

Christopher Madrama Izama

Justice of Appeal