

5 The respondent was an employee in Dairy Corporation, which was a government corporation. Following the Government Policy for Public Enterprise Reform and Divestiture of 1991, Dairy Corporation was restructured. This led to the respondent, Mr. Siraje Kajura, together with 160 other employees being declared redundant.

10 Section 21 of the **Public Enterprises Reform and Divestiture Act Cap 98**, provides that the Minister of Finance would ensure that **provision is made for payment of compensation to employees** who are declared redundant as a result of the restructuring of public enterprises. Resulting from this, Mr. Kajura and the other
15 employees were given a terminal package.

Uganda Revenue Authority (URA) subjected the packages to Pay As You Earn Tax. As indicated on the record of the High Court, the package was said to have been comprised of salary, gratuity, long service award, transport, home allowance, leave allowance,
20 settlement allowance and payment in lieu of notice. This led Mr. Kajura to bring a representative action against URA in the High Court contending that the package was not taxable. The High Court held in favour of Mr. Kajura. URA appealed against the High Court decision to the Court of Appeal. The Court of Appeal upheld the
25 decision of the High Court and also found in favour of Mr. Kajura. Dissatisfied with that decision, URA made a further appeal to this Court.

Before this Court, URA argued that the package was derived by virtue of the respondent's previous employment in the defunct Dairy Corporation and therefore qualified as employment income subject
30 to Pay As You Earn tax. The appellant relied on **Sections 4(1) and Section 19 (1) of the Income Tax Act**.

On the other hand, the respondent argued that the package was a 'thank you' from Dairy Corporation and not derived by virtue of
35 being in employment. That the money was received upon his employment contract being terminated and he thus did not qualify

5 as an employee as defined in **Section 2 (x)** and **Section 2 (z)** of the Income Tax Act respectively.

Court analysis

Section 2 (x) defines an employee as: “**an individual engaged in employment.**”

10 **Section 2 (z)** defines employment *inter alia* as:

(i) the position of an individual in the employment of another person;

(ii)

(iii) or

15 (iv) the holding or acting in any public office;

To determine whether the package received by the respondent is taxable, a tax Statute ought to say so.

20 **Section 19(1) of the Income Tax Act** stipulates different categories of income derived from employment which are taxable. These among others include:

a) Any wages, salary, leave payment, payment in lieu of leave, overtime payment, fees, commission, gratuity, bonus, travelling allowance, entertainment, utilities, cost of living, housing allowance, medical allowance or other allowance.

b)

c)

d) Amounts derived as compensation for termination of employment contracts. (My emphasis)

30 Further categories of taxable employment income are provided for in **Section 19 (6) of the Income Tax Act** as follows:

- 5 a) Any amount derived in respect of employment provided by the employer, his associate or by a third party having an agreement with the employer.
- b) Any amount provided to an employee or employee's associate. (for example: relative, partner, partnership)
- 10 c) Any amount provided in respect of past, present or prospective employment. (My Emphasis)

According to **Section 4 (1)** of the **Income Tax Act**, a tax is imposed on every person with a chargeable income. This Section provides as follows:

15 **Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income.** (My emphasis)

20 Chargeable Income is defined in **Section 15 of the Income Tax Act** as the gross income of the person for the year less total deductions allowed under the Act for the year. Gross income includes employment income. (See: **Section 17** of the Income Tax Act.)

25 From the facts outlined above, it is clear that the respondent received the package by virtue of his past employment with the Dairy Corporation. Consequently, in line with **Section 19 (6) (c) (supra)**, the argument by the respondent that the package which was received was not taxable because he was no longer in a

30 subsisting employment relationship is untenable in law.

Furthermore, I opine that retrenchment is just but one way of bringing a subsisting contract of employment to an end. Under **Section 21** of the **Public Enterprises Reform and Divestiture Act**, the Minister of Finance was obliged to ensure that provision is

35 made for payment of compensation to employees who are declared

5 redundant as a result of the restructuring of a public enterprise. It
is under this section that the respondent was paid what is referred
to as a retrenchment package. It follows that the payment was
taxable under **Section 19 (1) (d) supra** which provides for taxation
of amounts derived as compensation for termination of employment
10 contracts.

As already stated in this judgment, to determine whether the
package received by the respondent is taxable, a tax Statute ought
to specifically say so. I must add that on the other hand, if money
received by an individual is to be exempted from tax the exemption
15 must also be specifically provided for in the law. I am alive to the
fact that under **Regulation 24 of the Pensions Regulations** (under
the Pensions Act), if an officer holding a pensionable office ceases to
hold that office as a result of the abolition of that office under the
Public Service Reform Programme, that officer is entitled to
20 severance pay. And according to **Section 8 of the Public Service
Act**, income tax is not to be charged on payments under the
Pensions Act. The Section provides that: **“Notwithstanding any
provision in any written law to the contrary, no income tax
shall be charged upon any pension, gratuity or other allowance
25 granted under this Act.”** (My Emphasis).

Analysis of the above law would lead to the conclusion that
severance pay received by a Public Servant as a result of being laid
off as part of government’s restructuring would not be subject to
tax. I must emphasize that this is because the law provided for that
30 exemption. In contrast to this, the **Public Enterprises Reform and
Divestiture Act** did not exempt recipients of payments referred to
therein as “compensation” from taxation. I therefore find that the
argument of Mr. Kajura that the package received was akin to that of
Public Servants under the Public Service Act is not tenable. Indeed
35 as the Court of Appeal noted in their judgment, the retrenchment
packages do not qualify as pension.

5 As stated by the Court of Appeal, the employment contracts of the
respondent was terminated by operation of law. I am in no doubt
that this would also be true of pensionable officers whose
employment may be terminated under the Public Service Reform
Programme. However, it is a trite principle of taxation that in tax
10 matters, one has to look at the language of the tax statute to
determine the taxability of the tax payer. On the one hand, the
severance pay has been specifically exempted from taxation. On the
other hand, there is no statute that has exempted the compensation
payable under Public Enterprises Reform and Divestiture Act from
15 taxation. I am persuaded by the decision of **AG vs. Bugishu Coffee
Marketing Association Ltd [1963] EA 39** in which Justice Slade
not only held that, for a taxing Act one must look at the language
used to ascertain the nature of the obligation created but also cited
with approval the words of Rowlatt J in **Cape Brandy Syndicate vs.**
20 **Inland Revenue Commissioners (1921) KB 64** at page 71 that:

“In a taxing Act, one has to look merely at what is clearly
said. **There is no room for any intendment. There is
no equity about a tax.**” (My emphasis)

25 Arising from the preceding discussions, I respectfully disagree with
the Court of Appeal finding that the character of the package given
to Mr. Kajurawas not such as those envisaged under the provisions
of the Income Tax Act.

Conclusion and Orders

30 I come to the conclusion that the compensation package received by
the respondent was taxable.

Therefore, the appeal succeeds.

Consequently, I would set aside the orders and judgments of the
lower courts.

5 **Costs**

Each party prayed that costs be granted in this Court and in the courts below. The rule is that costs follow the event. However, the special circumstances of this appeal dictate that the respondent is not condemned in costs. The respondent was retrenched from employment and has been trying to claim that which was taxed off the compensation package based on his interpretation of the law. The purpose of the compensation package was to ameliorate the respondent's loss of his job. This purpose would be defeated if the respondent is condemned to costs. I would therefore exercise my judicial discretion not to award costs to the appellant.

Instead, I would order that each party bears its own costs in this Court and in the courts below.

20 Dated at Kampala this ...20th Day of ...December.... 2017.

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25 **PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA**
JUSTICE OF THE SUPREME COURT.