

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA.**

**(CORAM: ARACH-AMOKO, NSHIMYE. OPIO AWERI, MWONDHA,
TIBATEMWA JJSC)**

CIVIL APPEAL NO.09 OF 2015

BETWEEN

UGANDA REVENUE AUTHORITY:.....APPELLANT

AND

SIRAJE HASSAN KAJURA :.....RESPONDENT

*[Appeal against the judgment of Court of Appeal before Bossa, Kakuru
and Kiryabwire, JJA. given on the 7th day of June of 2013]*

JUDGMENT OF A.S. NSHIMYE, A.G. JSC.

I have had the benefit of reading the lead judgment of my brother, Hon Justice Opio Aweri JSC. I agree with his evaluation of the issues and conclusion.

In his judgment, he sets out the background of the dispute all through from the High Court to the Court of Appeal, before it reached this Court. I need not to reproduce the same in detail.

However, for the sake of emphasis, the respondent and 160 others whom I will refer to in the judgment as “respondents” who were the plaintiffs in the High Court, were retrenched employees of the then Dairy Corporation Ltd, which Government Privatized in 1991 under the Public Enterprises, Reform and Divestiture (PERD) Act Cap 98.

The respondents lost their employment and income they were deriving or had accrued to them from the defunct Corporation. They were rendered redundant.

Parliament, in the Public Enterprises Reform and Divestiture Act Section 21, obliged the Minister for Finance to make payment of compensation to employees who lost their jobs as a result of the Government’s policy decision to divesture its Enterprises, Dairy Corporation Ltd having been one of them.

Section 21 of the said Act provides:

“The Minister responsible for finance should ensure that provision is made for payment of compensation to employees who are declared

redundant as a result of the restructuring or liquidation of public enterprises through the establishment and operation of redundancy account to be opened at a commercial bank approved by the Minister responsible for finance". (Underlining is mine)

The word "**compensation**" in the above section was not defined. However, by its literal meaning in the Dictionary it means, In the Black's Law Dictionary 9th Ed Page 322

"Compensation paid to an employed person especially one who has been laid off".

In my view, such money would put a retrenched employee in such a position he/she would have enjoyed, as if, he/she was on the job and earning within the ambit of the contract of employment which was terminated.

In compliance with the above quoted section of the law, the respondents were each given a terminal retrenchment package. In the package, there was salary that was due and payable, salary in lieu of notice,

gratuity, long service award, transport home allowance and settlement allowance.

Bearing in mind section 19(1) of the Income Tax Act, the appellant considered the items or lump-sum constituting the retrenchment package, to be taxable income subject to exemptions. It collected tax totaling to Shs **1,171,778,314** (*One Billion one hundred and seventy one million seven hundred and seventy eighty thousand three hundred and fourteen*) from the respondents, hence the dispute.

It was the case for the respondent in the two Courts below that, the money received as retrenchment package was not taxable in accordance with the Income Tax Act. On the other hand, the case for the appellant was that the terminal benefits were not except under the law and therefore, they were taxable.

Both the trial and appeal Courts upheld the submission of the respondents that their benefits were not taxable.

Being dissatisfied with both concurrent decisions of the Courts below, the appellant appealed to this court on three grounds namely:

- 1. That the learned justices of the Court of Appeal erred in law and in fact when they held that the benefits received by the respondent are not taxable.**
- 2. That the learned justices of the Court of Appeal erred in law when they held that the character of the package given to the respondent was not such as those envisaged under the provision of the Income Tax Act.**
- 3. That the learned justices of the Court of Appeal erred in law when they held that the appellant unlawfully taxed the respondents on the payments they received.**

The consideration and disposal of the above three grounds of appeal boil to the issue whether, what the respondents received was employment income or compensation. It was certainly not the former because

they were redundant and not working at the time of receipt of the money.

The appellant is mandated and empowered by both the Constitution Article 79(1) and the Income Tax Act Section 4 (1) to levy tax on employment incomes of citizen.

Equally Article 17 (1) (g) places an obligation on every citizen to pay taxes in accordance with laws made by Parliament.

Section 19(1) (a) (b) (c) (d) (e) (f) (g) and (h) of the Act is clearly reproduced in the lead judgment. It spells out those incomes, compensations and other benefits that attract taxation. It is clear from the record and submission of both counsel that the money that was paid to the respondents and named "**retrenchment package**" was compensation within the meaning of Section 19 (1) (d) of Income Tax Act.

It provides:

19(1) d

"Any amount derived as compensation for the termination of any contract of employment, within or not provision is made in the contract

of employment of such compensation or any among amount derived within communication of amounts due under any contract of employment”.

Section 21 of the PERD Act (Supra) did not specifically exempt the ***compensation*** mentioned therein. It follows therefore, that the retrenchment package that was paid was compensation within the meaning of section 19(1) (d) of the Income Tax Act and was taxable because it was not exempted from tax.

As court, however sympathetic we may be, the rules of interpretation of statutes prohibit us from adding or subtracting anything in a statute which was sealed by Parliament.

I adopt and agree with the authorities of ***RV the judge of the city of London court [1892] 10B 273 and The Registered Trustees of Kampala institute vs Departed Asians property custodian board, SCCA No. 21/1993*** which both Counsel relied on, on this point.

For that reason, I would agree with counsel for the appellant on the three grounds of appeal that their Lordships of the Court of Appeal and of the original court erred in law when they held that the retrenchment money was not taxable.

I would concur with the lead judgment that the appeal be allowed and the judgment of the Court of Appeal be set aside.

I would also order that each party bears its own costs

Dated at Kampala, this ----20th ---- day of ---December--- 2017.

A.S. NSHIMYE

A.G. JUSTICE OF SUPREME COURT