THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.09 OF 2015

UGANDA REVENUE AUTHORITY..... APPELLANT

VERSUS

SIRAJE HASSAN KAJURA..... RESPONDENT

(*CORAM: ARACH-AMOKO, NSHIMYE, OPIO-AWERI, MWONDHA, TIBATEMWA JJ.S.C)*

(Appeal against Judgment of Court of Appeal before Bossa, Kakuru and Kiryabwire JJA given on the 7th day of June 2013.)

JUDGMENT OF OPIO-AWERI (JSC)

Introduction

This is a second appeal by the appellant, Uganda Revenue Authority, against the decision of the Court of Appeal which ruled that terminal benefits paid to the respondents were not taxable under Section 19 of the Income Tax Act.

Brief Facts

The brief facts forming the background to this appeal as contained in the judgment of the Court of Appeal dated 12th March 2015 are as follows:-

The respondent and one hundred and sixty (160) other former employees of the defunct Diary Corporation Ltd were retrenched with effect from 31st August 2006.

The Privatization Unit, Ministry of Finance paid the respondent terminal benefits which comprised of salary, gratuity, long service award, transport, home allowance, leave allowance, settlement allowance and payment in lieu of notice.

The privatization unit sought advice from the appellant tax authority about tax payable on the benefits due to the respondent. The appellant then computed the sum of UGX.1, 171,778,314/-(one billion, one hundred and seventy one million, seven hundred seventy seven thousand, three hundred fourteen shillings) as Pay as You Earn (PAYE) tax which was remitted to the appellant.

The respondent in representative capacity then filed High Court Civil Suit No.117 of 2009 challenging the assessment and payment of the said sum. The respondent further claimed that what was paid to them was not employment income but rather a 'thank you' following the privatization of M/s Diary Corporation. This payment, the respondent argued was akin to gratuity and hence not liable to tax under Section 19 of the Income Tax Act, Cap.340.

The High Court decided in favour of the respondent and stated that the appellant unlawfully charged PAYE upon the terminal benefits of the respondent. It was ordered that Shs.1.171,778,314/- be paid to the plaintiff as special damages with interest of 8 percent per annum thereon from the date of filing the suit till payment in full and general damages of Shs.2,000,000/- to each respondent with interest of 8 percent per annum.

Aggrieved by the decision of the High Court the appellant appealed to the Court of Appeal only on one ground namely;

Whether the appellant unlawfully charged PAYE upon terminal benefits of the respondents.

The Court of appeal in agreement with the trial judge's findings answered the question in affirmative. The appellant was aggrieved by the findings of the justices of the Court of Appeal, hence this appeal.

This appeal is based on three grounds of appeal, namely;

1. ***The learned Justices of the Court of Appeal erred in law and in fact when they held that the benefits received by the respondent were not taxable.***
2. ***The learned Justice of the Court of Appeal erred in law when they held that the character of the packages given to the respondent was not such as those envisaged under the provisions of the Income Tax Act.***

3. ***The learned Justices of Court of Appeal erred in law when they held that the appellant unlawfully taxed the respondent on the payments received.***

The appellant invited this Court;

(a) To allow the appeal and set aside the Orders of the Court of Appeal in Civil Appeal No. 26 of 2013.
(b) To Order the respondent to pay costs of this Court and in the Courts below.

Representation

The appellant was represented by Mr. George Okello while the respondent was represented by Mr. Asaph Agaba. Both counsel filed written submissions.

Submissions for the Appellant on Grounds 1, 2, & 3

Mr. Okello contended that all the 3 grounds of appeal relate to the finding of the learned Justices of Appeal that terminal benefits paid to the respondent were not taxable under the provisions of section 19 of the Income Tax Act and as such, argued them together.

He submitted that the holding of the Court of Appeal that the retrenchment packages as were given to the respondents are not expressly or by necessary implication provided for under section 19 (1) (a) of the Income Tax Act was erroneous since some items listed in the appellant's Written Statement of Defence are taxable. Mr. Okello implored court to read section 19(1) together with Section 19 (2) (a), (b), (c), (d), (e), (f), (g), and (h) which provisions make exceptions to subsection (1) in so far as taxability of some of the items mentioned therein was concerned.

Mr. Okello further submitted that their lordships in their considerations ignored the clear wording of section 19 (1) (a) of ITA, especially that providing that "any income derived by an employee from any employment." He contended that the justices erred when they reasoned that to be taxable, such payments as itemized in section 19 (1) (a) must relate to the payment made or earned while the tax payer is still in employment and not while out of it. Counsel argued that the above reasoning was erroneous since if such interpretation is to be taken, the

section would have been worded differently with words such as "subsisting" or "existing" employment.

Mr. Okello argued that the meaning of the provision that "any income derived by an employee from any employment" as envisaged in Section 19(1) was found in subsection (6) of the same section which clearly defines it to include any amount or benefit derived in respect of employment if it is provided in respect of past, present, or prospective employment.

Mr. Okello argued that their lordships appreciated the literal rule but failed to apply it while interpreting the Income Tax Act when they read words into the clear interpretation of section 19 (1) of the Income tax Act.

Mr. Okello relied on the case of **The Registered Trustees of Kampala Institute v. Departed Asians Property Custodian Board, SCCA no.21 of 1993**, (followed by the Court of Appeal in **Crane Bank v. URA CA no.96 of 2012** where it was held that;

"It is a wrong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity. It is a wrong thing to do so…"

Counsel accordingly contended that it was erroneous on the part of their Lordships not to consider the provisions of Section 19 (6). Mr. Okello concluded that had the respondent not been an employee of the Diary Corporation, the privatization unit would not have paid them.

Counsel further submitted that the amounts paid to the respondent also properly qualified as compensation payments under section 19 (1)(d) of the Income tax Act. He relied on **Collins Concise Dictionary** which defines compensation at p.342 to mean;

"that act or process of making amends for something: something given as reparation for loss, injury etc."

Mr. Okello disagreed with the learned Justices when they relied on the case of **Patrick Nabiryo & 117 Ors v. Uganda Electricity Board, HCCS No.67 of 2008** to hold that compensation has some element of proportionality between what has been lost and what is being provided to replace the loss. Mr. Okello added that since compensation is not defined in the Income tax Act, then the literal meaning from the dictionary should have been adopted.

Mr. Okello contended that the Income tax Act is a law made by Parliament in the exercise of its constitutional mandate under Article 79 (1) pursuant to Article 152 (1) of the Constitution. That its enactment was to impose taxes as per Section 4 of Income tax Act payment of which it is a duty of every citizen according to Article 17(g) of the Constitution. He further argued that all persons and items exempt from tax are provided for either under the Constitution or under Section 21 of Income Tax Act. He relied on the case of **Crane Bank v. URA C.A No.96 of 2012** where court stated that;

"laws which permit tax exemption must be construed strictissimi juris against the entity claiming the same. Thus, the law does not look with favor at tax exemptions and he who seeks to be this privileged must justify it by words too plain to be mistaken and so categorical to be misinterpreted."

Mr. Okello added that compensation is envisaged under the Public Enterprise Reforms Divesture Act Cap.98, Section 21 which mandates the minister responsible for finance to make provisions for payment of compensation of employees declared redundant as a result of restructuring of public enterprises. Mr. Okello further argued that the only way to save compensation packages from taxation is when it is exempt which is not the case in the instant matter.

Counsel noted that their lordships deplored lack of evidence on the specific terms of the employment contract when they noted that such evidence would have assisted them in resolving the matter. He was however of the view that since no employment contract was submitted in court by the respondents, they failed to prove that their packages going by the terms of their contracts were not liable for income tax and therefore court should have held in favor of the appellant.

Counsel concluded that the learned Justices of Appeal erred when they upheld the decision and orders of the High court which lacked basis and that there was no evidence or precedent adduced before the High Court to justify the award.

He prayed this Court to set aside the decisions of the lower courts and allow the appeal with costs. In the alternative, he prayed that upon allowing the appeal, court may order a retrial of the dispute on the basis of evidence that may be adduced in the trial court.

Respondents' Submissions on grounds 1, 2, & 3

In reply to the above arguments, Mr. Agaba submitted for the respondent that the taxation of the retrenchment benefits was elaborately resolved by the lower courts and that section 19 (1) of the Income Tax Act is inapplicable to the taxing of the respondent's terminal benefits.

Mr. Agaba argued that when interpreting tax statutes, the literal approach of interpretation has to be strictly applied. He stated that the court gives force and life to the interpretation of statutes having regard to the wording of the statutes and the particular facts. That section 19 (1) (a) of ITA relates to payment earned when the tax payer is still in employment and not out of employment and especially after retrenchment. Counsel agreed with the holding in the case of the registered Trustees of the **Kampala Institute v. Departed Asians Property Custodian Board SCCA No.21 of 1993** as relied on by the appellant which is to the effect that it is wrong to read into an act of Parliament words which are not there especially the words "retrenchment benefits."

Mr. Agaba submitted that the Learned Justices of Appeal concluded correctly when they stated that a retrenchment benefit, whether gratuity or allowance or/given any other name cannot be lawfully covered by the provisions of section 19 (1) (a) of the Income Tax Act and therefore the deductions were done unlawfully.

Mr. Agaba also contended that the terminal benefits under section 19(1)(d) of the Income Tax Act are very clear and do not constitute compensation since the section provides for amounts derived as compensation for the termination of any contract of employment as taxable. He submitted that the nature of payments in the current appeal do not fall under section 19(1) (d) of the Income Tax Act. He relied on the decision of *Kanyeihamba, JSC* in **Barclays Bank of Uganda Ltd. v. Godfrey Mubiru (1999-2000) HCB 18** where it was stated that compensation is a penalty for loss of employment. He submitted that retrenchment packages following government restructuring programme cannot be seen as compensation within the meaning of the section. He argued that compensation always has an element of proportionality as to what has been lost and what is being provided for to replace the loss. He submitted that in the instant case, the retrenchment benefit did not even

in the stretch of imagination amount to compensation as envisaged under the Income Tax Act.

Mr. Agaba further contended that the arguments that section 19 (6) (c) was applicable was also untenable because the appellant had taxed PAYE from the respondent up to 31st August 2006. He added that the respondent having paid PAYE out of all the monthly payments could not be taxed on the terminal benefits which were like a "thank you" token. He defined the term to "retrench" per the **Oxford Learner's Dictionary** to mean to spend less money; to reduce costs or to tell somebody that they can't continue working for you. Counsel also relied on the case of **Samuel Lubega & Anor. V UCBL SCCA No.24 of 2010** where **Justice Bart Katureebe, JSC** (as he then was) stated that;

"The purpose of retrenchment package was to ameliorate their loss of a job."

Mr. Agaba defined amelioration to mean "the act of improving something; a state of being made better." He argued that this was different from compensation which is defined by the same dictionary to mean "remuneration and other benefits received in return for their services rendered; especially salary and wages". He asserted that the retrenchment packages do not fall under the ambit of section 19 of the ITA.

On the alternative prayer by the appellant that court orders retrial of the dispute on the basis of evidence that may be adduced in the trial court, Mr Agaba disagreed arguing that the main issue in the dispute was delved into and discussed extensively by both lower courts therefore there was no error on the part of the Justices that occasioned a miscarriage of justice that should warrant a retrial.

In conclusion, counsel prayed to this Court to disallow the appeal, uphold the judgment of the Court of Appeal and the trial Court that the benefits were unlawfully taxed and should be paid back and the costs here and below be paid by the appellant.

Rejoinder by the Appellant.

In rejoinder, counsel for the appellant reiterated his earlier submissions and prayers.

Resolution

I have perused the record of proceedings and the submissions of both counsel.

The question at hand is whether retrenchment packages are taxable under the provisions of the Income Tax Act.

The above question raises two issues:-

1- Do retrenchment packages amount to employment income as provided for under Section 19 of the Income Tax Act.
2- Do retrenchment packages amount to compensation as provided for under the Income Tax Act.

Before I resolve the above issues, it is important to lay some background on our tax system as relevant to this case.
The Supreme Law on taxation is the Constitution of Uganda.

Article 152 (1) of the Constitution provides:-

"**No tax shall be imposed except under the authority of an Act of Parliament"**

The above Article clothes Parliament as the only authority to create taxes. The Income Tax Act is one of the statutes governing taxes created by Parliament pursuant to Article 79 (1) of the Constitution which provides:-

"Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda".

The duty to pay tax is also provided for in the Constitution under Article 17 (1) (g) which states as follows:-

"It is the duty of every citizen of Uganda to pay taxes".

The obligation to pay Income Tax is provided under Section 4 of the Income Tax Act.

A cardinal principle of the interpretation of taxing statutes was laid down by **Rowlatt** in **Cape Brandy Syndicate v IRC (1921) K.B 64** where he held that:-

"In a taxing Act, clear words are necessary in order to tax the subject..... In a taxing Act, one has merely to look at what is clearly said. There is no room for an intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in it, nothing is to be implied. One can only look fairly at the language used".

The principle propounded in the above case is the literal rule which is to the effect that when words of a statute are clear and unambiguous, they should be given their plain meaning and that Courts should not read into the Sections of a taxing statute words that are not there so as to meet the minds of the legislators. The rationale for the literal rule was stated as far back in the case of **R v The Judge of City of London Court [1892] 1** and **13 273,** thus

"To prevent Court's from delving into the political arena, in order to pressure the dichotomy between the functions of Parliament and Courts, the former creating the law and the latter in theory applying the law".

In other words, the fundamental role of the Court is to give force and life to the interpretation of a statute having regard to the language of the statute and the particular facts of the case.

a. Do retrenchment packages amount to employment income as provided under Section 19 (1) of the Income Tax Act?

This question raises a need to interpret Section 19 of the Income Tax Act in its entirety. The Section provides as follows:-

"**Subject to this Section, employment income means any income derived by an employee from any employment and includes the following amounts, whether of a revenue or capital nature,**

a) Any wages, salary, lease pay, payments in lieu of lease, overtime pay, fees, commission, gratuity, bonus or the amount of any traveling , entertainment, or utilities, cost of living, housing, medical or other allowances.

b) The value of any benefit granted.

c) The amount of any discharge or reimbursement by the employer of expenditure incurred by an employee, other than expenditure incurred by an employee on behalf of the employer which serves the proper business purposes of the employment.

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

e) Any amount by a tax exempt employer as premium for insurance on the life of the employer or any of his or her dependants.

f) Any amount derived as consideration of the employee's agreement to any conditions of employment or to any changes in his/her conditions of employment.

g) The amount by which the value of shares issued to an employee under an employee share acquisition scheme at the date of issue exceeds the consideration, if any, given by the employee for the shares including any amount given as consideration for the grant of a right or option to acquire the shares.

h) The amount of any gain derived by an employee on disposal of a right or option to acquire shares under an employee share acquisition scheme".

It was the contention of counsel for the appellant that the Learned Justices of the Court of Appeal ignored the clear wording of Section 19(1), of the Income Tax Act specifically that providing. "**Any income derived by an employee from any employment**" and instead read into the provisions of the ITA when they reasoned that to be taxable, such payment must be earned or made while the tax payer is still in the employment and not while out of it. In deriving so, the Learned Justices of the Court of Appeal read into the provisions, words that were not there.

The Court of Appeal while interpreting Section 19 held as follows:-

"***The learned trial Judge held that, with regard to Section 19 (1) (a) of the ITA, such payments must relate to payments earned or made while the tax payer is still in employment and not while he/she is out of employment.***

We agree, we find that it is untenable to assert that the package is taxable merely because of the manner in which it has been described and itemized. Further the retrenchment packages as were given to the respondents are not expressly or by necessary implication provided for under Section 19 (1) (a) of the ITA. We agree with the trial judge that that provision is clear and unambiguous and only provides for employment income inclusive of the heads expressly provided for……."

While it is very true that the term retrenchment packages is not expressly provided for under the ITA, however retrenchment benefits received by the respondents by necessary implication fall squarely within the ambit of Section 19 (1) (a).

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.

Section 19(6) of the Income tax Act provides as follows;

"For the purposes of this Section, an amount or benefit is derived in respect of employment if it:-

a) Is provided by an employer or a third party under an arrangement with the employer or an associate of the employer.

b) Is provided to an employee or to an associate of an employee and

c) Is provided in respect of past, present, or prospective employment.

All the above elements exist in the packages paid to the respondents.

In the instant case, the respondents were employees of the Defunct Diary Corporation who were laid off (retrenched) after their employer was privatized under the Privatization Unit (third party since Defunct Diary Corporation had been privatized. They were paid because they were employees of Defunct Diary Corporation and they were paid those benefits in a bid to make better what they had lost. They were paid in respect of their past employment with the Corporation.

It is therefore my considered view that the packages paid to the respondents properly fall under employment income. I accordingly agree with the appellant that the trial court and the learned Justices of the Court of Appeal read unto Income Tax Act words which are not there while interpreting the Section 19 (1) (a) of Income Tax Act that to be taxable these payments must relate to payments earned while the tax payer was still in employment and not while out of it. The above interpretation is erroneous as it is not supported by the wordings of the Income Tax Act. If that was the intention of Parliament, it would have inserted words such as subsisting or existing employment. It is therefore my conclusion that the retrenchment packages envisaged in Section 19 of the income tax are liable for taxation. For the above reasons, I find that the authorities relied on by the respondents which are ***Samuel Lubega &ors Vs UCBL SCCA No. 24 of 2010 and Barclay Bank of Uganda Limited Vs Godfrey Mubiru [1998-2000] HCB 18*** were quoted out of context. The former case was about miscalculation of severance pay and the effect of a waiver statement among others while the latter case entailed wrongful dismissal and neither of the two cases discussed the taxability of retrenchment benefits.

b. Do retrenchment packages amount to compensation as provided for under the Income Tax?

Section 19 (1) (d) of the Income Tax Act provides as follows:-

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

Counsel for the appellant contended that the terminal benefits could be properly referred to as compensation as envisaged under the provision of section 19 (1) (d) since they were given to an employee after termination of their contract. Counsel for the respondents on the other hand argued that the nature of payments received by the respondents did not fall within the purview of Section 19 (1) (d) of the ITA.

The Justices of the Court of Appeal on this issue held that:-

"***considering the nature of payments in this appeal, it is our finding that they do not fall within the purview of Section 19 (1) (d) of the ITA Retrenchment packages following a government restructuring programme cannot be seen as compensation within the meaning of that Section".***

Compensation is not defined under the Income Tax Act therefore Court has to resort to the Dictionary meaning of the term. In the **Cambridge Advance Learners Dictionary,** compensation is defined as money that is paid to someone in exchange for something that has been lost or damaged or for some problem or something that makes you feel better when you have suffered something bad.

Section 19 (1) (d) is very clear and unambiguous and is literally to the effect that any amount given to an employee as compensation for the termination of his or her contract of employment whether stipulated in the terms of contract or not, amounts to employment income which is taxable.

In the instant case, the respondents who were employees of M/S Diary Corporation lost their jobs due to privatization of their employer company and were given packages in exchange of their jobs. Those packages amounted to compensation within the preview of Section 19 (1) (d).

Compensation is also provided for under the Public Enterprises Reforms Divestiture Act Cap 19 under section 21 which mandates the Minister responsible for Finance to make provisions for payment of compensation of employees declared redundant as a result of restructuring of Public Enterprises. Pursuant to the above law, the respondent and his colleagues were paid retrenchment packages by way of compensation.

I further find that the learned Justices also wrongly read into the clear wordings of Section 19 (1) (d) when they ruled that the retrenchment packages paid to the respondents could not be compensation within meaning of Section19 (1) (d) of the Income Tax Act.

According to the case of the **Registered Trustees of Kampala Institute V DAPCB SCCA 21/1993** which was relied on by both Counsel, it is a wrong thing to read into the Act of Parliament words which are not there and in the absence of clear necessity.

Another grave error committed by the trial court and the learned Justices of the Court of Appeal was to brand the packages taxed as **PAYE.** This confusion led to a misinterpretation of the provisions of Section 19 (6) of ITA when the courts observed that by taxing the respondents up to 31st August 2006, their income had already been taxed and so their terminal benefits could not later be taxed. With greatest respect, it is true that the appellant taxed **PAYE** from the respondents up to 31st August 2006 under the normal circumstances while the respondents were earning monthly income. However the packages which were taxed after retrenchment were employment income which accrued to the respondents from their past employment. This was very different from **PAYE** which was taxed up to the end of 31st August 2006. The above packages were not exempt from taxation. Tax exemptions are provided for under the Constitution and the Income Tax Act.

Section 19 of the Income tax Act provides for employment income which are exempt from taxation. They do not include retrenchment packages. Further exemptions are provided under Section 21(1) of the Income Tax Act.

Section 21(1) provides as follows;

(1)The following amounts are exempted from tax;

a. The income of a listed institution;

b. The income tax of any organization or person entitled to privileges under the Diplomatic Privileges Act to the extent provided in the regulations and orders made under that Act;

c. The official employment income derived by a person in the public service of the government of a foreign country if –

(i) The person is either a non resident person or is a resident individual solely by reason of performing such service;

(ii) The income is payable from the public funds of that country; and

(iii) The income is subject to tax in that country;

d. Any allowance payable outside Uganda to a person working in a Ugandan foreign mission;

e. The income of any local authority;

f. The income of an exempt, other than-

(i) Property income, except rent received by an exempt organization in respect of immovable property which is used by the lessee exclusively for the activities of the organisation specified in paragraph (bb) (i) of the definition of "exempt organisation" in section 2 ;or

(ii)Business income that is not related to the function constituting the basis for the Organization's existence;

g. Any education grant which the commissioner is satisfied has been made bona fide to enable or assist the recipient to study at a recognised educational or research institution;

h. Any amount derived by way of alimony or allowance under any judicial order or written agreement of separation;

i. Interest payable on treasury bills or Bank of Uganda bills;

j. The value of any property acquired by gift, bequest devise or inheritance that is not included in business, employment or property income;

k. Any capital gain that is not included in business income ;

l. Employment income derived by an individual to the extent provided for in a technical assistance agreement where-

(i) A short term resident of Uganda;

(ii)The minister has concurred in writing with the tax provisions in the agreement ;

m.Foreign – source income derived by-

(i) A short term resident of Uganda;

(ii)A person to whom paragraph (c) or (l) of this subsection applies; or

(iii) A member of the immediate family of a person referred to in sub paragraph (i) and (ii) of this paragraph;

n. A pension

o. A lump sum payment made by a resident retirement fund to a a member of the fund or a dependent of a member of the fund ;

p. The proceeds of a life insurance policy paid by a person carrying on a life insurance business; or

q. The official employment income of a person employed in the Uganda people's defence Force, or the Uganda police, or the Uganda Prisons Service, other than a person employed in civil capacity.

Retrenchment packages are not part of any clause in the above provision and therefore not exempt.

In conclusion, the duty to pay taxes is sanctioned by the Constitution. Unless exempted, the obligation to pay income tax is mandatory. As was held in the case of **Crane Bank V URA (Supra),** laws that permit tax

exemptions must be construed strictissimi juris against the entity claiming the same. The law does not look with favor at tax exemption and he who seeks to be this privileged must justify it by words too plain to be mistaken and so categorical to be misinterpreted.

In the instant case, it is my view that the words in Section 19 of the Income Tax Act regarding taxable employment income are too plain to be mistaken. The language used in Section 19 of the Income Tax Act, does provide for exempt employment income. Retrenchment packages are not included on the list of exempt income. The appellant was right and had the mandate to tax the same.

By way of emphasis, the issue before this court - is not a rare area of litigation. There are several persuasive precedents within Uganda and foreign jurisdictions in respect to whether terminal benefits or retrenchment packages are liable for taxation. The Courts have rightly in my view reasoned that such packages are liable for taxation as employment income. ***See; Katureebe Eridad & Anor V URA, HCCS No. 107 of 2010*** *(Eldad Mwangusya J as he was then),* ***Lugeya Samuel & Anor V URA, HCCS No. 0156 of 2010*** *(V.T Zehurikize J);* ***Namatiti Patrick Bukene and Anor V Civil Aviation Authority & URA, HCCS NO.203 of 2013 (Nyanzi J), Nkote Charles & Anor V URA & Anor, HCCS NO. 107 of 2009*** *(Eldad Mwangusya J as he was then),* ***Omondi Martin V URA, Claim No. 003 of 2014 (Industrial Court of Uganda), Eric Timbigamba V URA. TAT Application No. 13 of 2003*** *(Tax Appeals Tribunal of Uganda).*

In the case of **Nkote Charles & Anor V URA & Anor,** (Supra)**, Mwangusya J** (as he then was) observed as follows;

"The consent decree already cited in this judgment recognized that two categories of emoluments accrue at the termination of somebody's employment. The Income Tax Act cited by both Counsel also makes the distinction between gratuity which is included in the definition of Employment income under S. 19(1) and pension which, under S.21(1)(n) of the same Act is exempt from tax. This distinction made under the Act and recognized by the consent Decree is the key to determining the issue as to whether the taxation by PAYE from the Plaintiffs was lawful. <u>This distinction is a clear indication that while Terminal Benefits are taxable under the</u>

Act, Pension is not. So the answer to the issue is that the taxation by the PAYE from the Plaintiffs' Terminal benefits was lawfully done.... " (Emphasis mine)

Further **in Namtiti Patrick Bukene & Anor Vs URA & Anor** (Supra), **Nyanzi. J held that;**

"I am therefore persuaded to rely on those sections and the authorities cited to hold that terminal benefits or golden handshakes are in other words gratuity and they are compensation from a terminated contract and are taxable under S. 19(1)(d) of the ITA. If they were exempt, the legislature would have expressly stated so under S.21 of the ITA..... For the above reasons, I find that the plaintiff's terminated benefits in issue were subject to taxation. The taxation of Pay as you Earn from the terminal package was lawfully done by virtue of S. 19(1)(a) & (d) of Income Tax Act.." (Emphasis mine.)

The above opinion stretches to other jurisdictions like Tanzania. ***See; MR. Eliza Kisimbo & Anor Vs Commissioner General [2005]1 TLR 138 (Tax Revenue Appeals Board).*** In that case, it was held as

"the long service awards and golden hand shake payments should be treated as gratuitous payments and taxed"

Further in Zimbabwe, retrenchment benefits are deemed employment income and are taxable. **Section 8 (1) of the Income Tax Act of Zimbabwe** follows defines what constitutes "gross income" and retrenchment packages are brought into taxation under this section. **Section 73 of the same Act** provides for the payment of employee tax including tax on retrenchment packages with held by employers. The same Act in **Section 14** as read with **Paragraph 4(p) of the Third Schedule to the same Act** exempts the greater of Us Dollars 5000 or one third of up to US Dollars 4500 of the amount of any severance pay, gratuity or similar benefit received on cessation of employment due to retrenchment, under the scheme approved by the Minister responsible for Labor.

The implication of this is that retrenchment packages are taxable except the exempted portion of the packages which is expressly provided for.

In Malaysia, loss of employment packages are taxed under **S. 13 (1) of the Income Tax Act of 1967**. The amount paid on the termination of an employment may consist of the following elements;

. It is attributable to loss of employment such as redundancy (compensation).

. It is attributable to the past services of the employee (gratuity).

Therefore redundancy payment is considered to be taxable salary.

In conclusion, I find that the claim by the Respondents that their packages were exempt from taxation and was a "thank you" payment was not based on law but on mere sentiments.

For the above reasons this appeal is allowed. All the decisions and orders of the lower courts are set aside and quashed. Considering the circumstances of this case, parties are to bear own costs.

Dated At Kampala this...20th..day of ...December....2017.

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HON. JUSTICE OPIO RUBY AWERI, JSC.