

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION**

HCT-00-CC-CS-0106-2009

CRANE BANK LIMITEDPLAINTIFF

VERSUS

COMMISSIONER GENERAL URA.....DEFENDANT

BEFORE: HON MR. JUSTICE M. W. MUSENE

JUDGMENT

The plaintiff, crane bank limited filed the present suit against the Defendant, Commissioner General, Uganda Revenue authority seeking a declaration that it is entitled to a 15% tax deduction on all taxes payable within the meaning of section 17 of the persons with disabilities Act, 2006 for its years income, 1st January, 2008 to 31st December, 2008. The plaintiff also claimed general damages and costs. The plaintiff was represented by Mr. Enock Barata of M/s Birungi, Barata & Associates, while the Defendant was represented by the legal services and Board Affairs Department of Uganda Revenue Authority.

The brief facts as outlined in the Joint Scheduling Memorandum were as follows:-

1. The plaintiff is a company carrying on the business of providing banking services, and has a year of income running from the 1st day of January to 31st December every year. Between the 17th day of November, 2008 and the 12th day of January 2009, the plaintiff hired/employed 12 persons with disabilities.

2. On the 9.12.2008, the plaintiff wrote to the Defendant and claimed a 15% tax deduction under section 17 of the persons with disabilities Act, 2006 and section 22 (i) of the Income tax Amendment Act. This was followed by a written request by the Defendant to the plaintiff to submit documents verifying the claim. The plaintiff submitted the documents to the defendants on 16.1.2009.
3. The defendants by a letter dated 28.1.2009 rejected the plaintiffs claim on the ground that the provisions of the Income Tax amendment) Act did not apply to the plaintiff. The reason given was that the plaintiff's year of income which ended on 31.12.2008 had commenced on 1.1.2008 and not on or after 31.7. 2008 as stated in the Act (Commencement date).
4. The plaintiff made another appeal in a letter dated 23.2.2009 to which the Defendant responded on 20.3.2009 re-affirming the earlier position that the plaintiff is not entitled to the tax deduction since their year of income commenced on 1.1.2009 and not on or after July, 2008. At the scheduling conference, the following issues were framed for determination by the court.
 1. Whether the persons with Disabilities Act, 2006 is applicable to the plaintiffs claim for a tax deduction.
 2. Whether the Income Tax (Amendment) (No 2) Act 2008 covers the year of income commencing 1st January, 2008.
 3. Whether a tax deduction is deductible before arriving at a chargeable income or it is deductible after arriving at the tax payable.
 4. What remedies are available in the circumstances?

On the 1st issue, counsel for the plaintiff submitted that the persons with Disabilities Act 2006, applied to all private employers employing 10 or more persons at the time it was subsisting. They added that the law did not provide for a minimum time for which the persons with disability should be employed. It was further submitted that the persons with Disability Act, came into force on 4.8.2006 and applied to all businesses and persons in Uganda irrespective of what any other law provided. Counsel for the plaintiff further added that the Act became

relevant to the plaintiff from the time the plaintiff employed 10 people, and that was on 9.12.2008 reference was also made to section 2 of the Income Tax Amendment Act, 2008 under which section 17 of the persons with Disabilities Act was repealed.

Counsel for the defendant on the other hand submitted that the PWD Act does not apply to the plaintiff's claim for Tax deduction in view of the repeal of S. 17 of the persons with disabilities Act. Counsel for the Defendant relied on the principle of statutory interpretation to the effect that no inference is proper if it goes against the express words parliament has used. (*expressum facit cessare tactum*). **That latin maxim was re-instated in Whiteman Vs Sadler (1910) AC 514**, that express Enactment shuts the door to further implication.

Counsel for the Defendant therefore submitted that the Persons with Disability Act was not applicable as the evidence on record that as appointment letters issued by the plaintiff to persons with disability show that plaintiff employed Persons with Disability between 17.11.2008 to 8.12.2008. They added that by that time, **S.17 of the Persons with Disability Act** had been repealed under the Income Tax (Amendment) Act (No. 2) of 2008.

As far as the 1st issue is concerned, and in the view of the submissions by both sides, it is pertinent to state the long title of the People with Disabilities Act. It provides:-

“An Act to provide a comprehensive legal protection for persons with disabilities in accordance with Article 32 and 35 of the constitution; to make provision for the elimination of all forms of discrimination against persons with disabilities towards equalization of opportunities and for related matters.”

The main purpose of the law was to address the affirmative action with regard to persons with disabilities. Under 3(a) of the Persons with Disabilities Act, it is stated that the object of the Act are:-

- (a) To provide dignity and equal opportunities to persons with disabilities and it is equally important to re-instate section 17 of the Act:-

“private employers who employ ten or more persons with disabilities either as a regular employers, apprentice, or learner on fulltime basis shall be

entitled to tax reduction of fifteen percent of all payable tax upon proof to the Uganda Revenue Authority.”

The following grounds have to be satisfied before the 15% deduction is considered:-

- (a) Such employees’ people with disabilities should either be regular, apprentice or learner employees.
- (b) They should be on full time basis and;
- (c) The claim for tax deduction should first be presented to URA for proof.

The Act came into force on 4.8. 2006.

The Act did not provide the meaning of “**payable tax**” under section 17. Since this was not a tax statute, it implies that recourse to such a definition is from that tax statute.

This then leads me to the **Income Tax Act** Cap. 340 and the Income Tax (Amendment) Act, No. 2 of 2008. Section 5 (I) of the Income Tax Amendment) Act repealed section 17 of the People with Disabilities Act. It provides as follows:-

“5. Amendment of Section 22 of the Principal Act is amended

(f) Section 17 of the persons with disabilities Act is repealed.”

In view of the above provisions of the law, it becomes clear that by the time the plaintiff wrote to the defendant claiming a 15% Tax deduction, the Act No.2 of 2008 which repealed section 17 of People with Disabilities Act was already in force. I am therefore obliged to agree with the submissions of counsel for the Defendant that section 17 of the People with Disabilities was repealed by section 5(f) of the Income Tax Amendment Act, No 2 of 2008, and is therefore not applicable to the claim by the plaintiff. I accordingly find the 1st issue in the negative. I now turn to the 2nd issue as to whether the income Tax (Amendment) Act No2 of 2008 covers the years of income concerning 1st January 2008.

Counsel for the plaintiff’s submissions were that the above issue arises from interpretations of eh word, “year of income” reference was made to S.2 (aaaa) of the income Tax Act which defines years of income to mean;

“the period of twelve months ending on 30th June, and includes a substituted year of income and a transitional year of income.”

It was further submitted that section 2(aaaa) of the income Tax Act and section 2 of the Income Tax Amendment) (No. 2) Act 2008 should be read together with section 46 (2) of the financial Institutions Act. And finally that between November, 2008 and July 2009, the plaintiff was an employer and employed at least 10 people with disabilities. Counsel for the plaintiff concluded that the law does not discriminate between those who operated years of income re running from January to December, which has not been expressly stated. On the other hand, Counsel for the respondents submitted that the Income Tax Amendment Act (No. 2) of 2008 provided for the relevant commencement date as:

“... This Act shall be deemed to have come in force on 1st July 2008...”

It was further submitted on behalf of the defendant that section 2 of the Income Tax (Amendment) (No 2) of 2008 applies to 2 years of income.

(a) Year of income commencing on or after 1st July 2008 which is relevant to the plaintiffs case

Year of income commencing on or after 1st July 1997 which applied to part IXA of the principal Act.

And part IXA of the Income Tax Act, Cap 340 makes special provisions for taxation of petroleum operations and is not relevant to the present case. Counsel for the Defendant quoted the case of **Attorney General Vs Bugisu Coffee Marketing Association Limited (1963) E.A. 38**, where at page 41, Slade J. quoted with approval the case of **Canadian Eagle Oil C. Ltd VS R (1946) A.C. 119** as follows:-

“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. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language use”

This court has carefully considered the submissions on both sides and is highly persuaded by the quoted passage from the Judgment of Slade J. in the case of **Attorney General Vs Bugisu**

Coffee Marketing Association Limited. Emphasis was that as far as a taxing Act is concerned, there should be no presumption and there is no equity about Tax. So one has to interpret the language used as fairly as possible.

It is therefore important as far as this case is concerned to re-instate what “**a substantial year of income**” means Section 39 (I) of the Act provides:-

“A tax payer may, apply in writing to use as a tax payer of income being a twelve month period other than a normal year of income and the commissioner may subject to subsection (3) by Notice in Writing, approve the application.”

In their submissions, counsel for the plaintiffs stated that the plaintiff is a financial institution governed by the Financial Institutions Act, whose year of income under section 46 (2) states on every 1st day of January to 31st day of December each year.

The question that arises is whether the plaintiff’s year of income falls within that given by the Act and if so when could the tax deduction of 15% be claimed by the plaintiff. When the plaintiff submitted documents to the defendant to verify their claim, the plaintiff submitted several contract of employment and /or appointment letters of the twelve employees whose earlier date of appointment was:

Kimuli Kigozi Arnold 8.11.2008 and latest is Nakanjako Josephine of 12.1.2009.

It is therefore clear and plain that the plaintiff obtained the statutory number of a minimum of 10 persons for tax purposes under Act No. 2 of the 2008 by 28.12.2008. And on 9.12.2008 the plaintiff wrote claiming a tax deduction of 15 % as already noted.

In such circumstances, this court finds and holds that it would therefore be presumptuous and misleading on the part of counsel for the plaintiff to urge that the section should extend to apply to substituted years of income which fall within the entire year of 2008. To do so would be stretching the argument too far and would mean that the plaintiff benefits from the 15% deductions including the period when they had not yet employed the minimum 10 persons with disabilities. This court cannot accept such a misleading interpretation of the law by learned counsel for the plaintiff. In conclusion on this issue therefore, I find and hold that the proper

commencement date for the 15% tax deduction is 1st July 2008 for a normal year of income, and 1st January, 2009 for the plaintiffs substituted year of income.

The next issue is whether the tax deduction is deductible before arriving at a chargeable income or is deductible after arriving at a tax payable. According to the submissions of Counsel for the plaintiff, court is to follow the literal interpretation of first ascertaining all the payable tax and then deduct 15% of the total, such that the employer pays 85% of what should have been paid. Counsel of the plaintiff therefore concluded that in respect of the period before the person with Disabilities Act was repealed, the computation of the deduction remains the same and should cover all tax heads including customs, VAT, Excise Duty, etc. With effect from the period when the required number of persons with disabilities were employed. Counsel for the Defendant opposed the above submissions. This court finds and holds that the Income Tax law as amended in 2008 made it clear that it is only Income Tax that is applicable. That tax relief is specifically granted in the income Tax Act and does not extend to value added tax, customs duty, excise tax or any other as the rest have their own laws and statutes like the Value Added Tax Act and the East African Customs Management Act.

On the last issue of remedies, it is a known rule of law and practice that cost follow the success of a matter. However, courts are anxious to promote reconciliation and harmonious working relationship among litigants, particularly in matters of Taxation by a National Taxation body such as the defendant Uganda Revenue Authority. Uganda Revenue Authority requires the cooperation and good working relationship with all tax payers so as to effectively collect all taxes due in the interests of this country and the people of Uganda. In such circumstances, and in view of this court's powers under S. 98 of the Civil Procedure Act, and as a gesture of reconciliation, I order that each party meets or bears their own costs.

In the result, I order as follows:-

1. Sections 17 of the person with disabilities act was repealed by section 6 (f) of Act No. 2 of 2008 and therefore does not apply to the instant case.
2. The income tax (Amendment) Act No. 2 of 2008 does not cover years of income commencing 1st January 2008 but only years of income commencing 1st July, 2008 to 20th

June 2009 and for purposes of the plaintiff who used a substituted year of income commencing 1st January to 31st December, 2009.

3. Each party bears its own costs.

Judge

3.5.2013

Mr. Birungi Cephas for the plaintiff.

Mr. Bernard Olok for Defendant

Mr. Ojambo court Clerk present

Court: Judgment read out in open court

Justice W. M. Musene

High Court Judge

3.5.2013