

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 81 OF 2023**

JUMA ISABIRYE.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. KABAKUMBA MASIKO, MR.  
WILLY NANGOSYAH.

**RULING**

This Application is in respect of an application for discovery and production of documents and some witnesses that are vital for resolving this matter pursuant to Section 98 and Section 22 (b) of the Civil Procedure Act (CPA), Order 10 Rule 14 and Order 16 Rule 1 of the Civil Procedure Rules (CPR).

**1. Background Facts**

Sometime in 2017, the Applicant reported to the Respondents a case of concealment of illegal wildlife products by fish maw exporting companies in their export shipments.

Fish Maw Group Companies is made up of 12 Companies namely: XURI International Ltd, OSI International Ltd, Kitebi Brothers, East African Bladders, Rong Zang International Ltd, Hongli Zonghua, Quang Sea Foods, Lusango International and Weishe International Ltd.

On the 13 December 2017, the Respondent conducted an operation on the Companies based on the information received from the Applicant. As a result of the operation, taxes of Shs. 666,665,103 was collected from four out of 12 companies. On 14 December 2018, the Respondent paid the Applicant Shs. 62,666,519 being the 10% of the recovered principal tax.

The Respondent alleged that the 8 companies were dropped because they had already profiled them for audits that were ongoing. The Respondent also alleged that

some of the companies were already audited and there was no specific information for tax evasion.

The Applicant claimed that he was entitled to an informer reward in respect of taxes collected from all the twelve companies and not only the four.

In order to determine whether the taxes collected from the remaining companies were indeed as a result of prior audits conducted by the Respondent, the Applicant requested the Respondent to provide certain documentation to that effect, which the Respondent declined to provide, hence this application for discovery

## **2. Issues**

The issues for determination are:

- i) Whether the documents sought by the Applicant are relevant and material to the issues to be tried?
- ii) Whether the documents sought by the Applicant are privileged or protected by law?
- iii) Whether the documents are in the Respondent's possession, custody, control or power?

## **3. Representation**

The Applicant was represented by Mr. Sydney Ojwee while the Respondent by Ms. Doreen Amutahaire and Mr. Agaba Edmond.

## **4. Submissions by the Applicant**

**Whether the documents sought to be disclosed are relevant or material to the issues to be tried?**

The Applicant cited Order 10 rule 14 of the Civil Procedure rules which provide: "*Court will at any time during the dependency of any suit, order the production by any party to a suit, upon oath, of such documents in his or her possession or power, relating to any matter in question in the suit, as the court shall think right; and the court may deal with the documents, when produced, in such manner as shall appear just*".

The Applicant submitted that from the above order, there is a pending suit in the Tribunal vide App No.81 of 2023 and the Respondent is the sole custodian of the

documents as pertains tax collection or recovery of the taxes and it is only the party that can produce these documents if the Tribunal was to benefit from them.

The Applicant cited the case of ***Sango Bay Estates Ltd & Others v Dresdner Bank [1971] EA*** where it was observed that the purpose of discovery is to save costs to dispose of a matter fairly.

The Applicant submitted that the following documents are all relevant and material in enabling the Applicant to advance its case.

- (i) Management report of the raid conducted on the Applicant,
- (ii) Statements recorded by the directors of the companies,
- (iii) Letters for the audit carried out on some of the companies as alleged by the Respondent.
- (iv) The audit reports,
- (v) Registration certificates for the two companies that the Respondent states that were not registered at the time of providing the information,
- (vi) Payment registration numbers and receipts made by the 12 companies

The Applicant cited ***Simbamanyo Estates Limited v Equity Bank Uganda Limited & Others Miscellaneous Application No.583 of 2022*** where Justice Stephen Mubiru held that:

*“The application must reasonably be calculated to lead to the discovery of admissible evidence”*

For an order of discovery to be made, the documents or information must first be shown to be above observation. The Respondent based on the information rendered to recover from the 12 companies which can be proven based on the documents in the Respondent's custody.

The Applicant submitted that the management report of the raid conducted on the 13 of September 2017 on the 12 companies would help to show the exact number of companies raided and what was recovered from the companies. This will help in determination of whether any taxes were recovered from the same companies.

The Applicant submitted that the audit commencement letters and the audit reports of the 8 companies are very vital as they will help in the determination of when the audits

commenced, ended and if the information obtained was not as a result of the report made by the Applicant.

The Applicant requested for the production of some officers that conducted the raid as the Applicant alleged that these officers would be more knowledgeable about the information they gave and which companies they raided and the subsequent taxes they collected.

**Whether the documents sought by the Applicant are not privileged or protected by law?**

The Applicant submitted that the documents it seeks to recover are not privileged documents. The Applicant cited the case of ***Kiconco Julius V Attorney General & Others Misc. Cause No.86 of 2023*** where it was held:

*“To qualify for protection on whether a document is privileged, communication must be shown to have originated in confidence that it will not be disclosed. This element of confidentiality must be essential in full and satisfactory maintenance of relationship between parties”.*

The Applicant alleged that he gave information that was used by the Respondent to recover taxes from the companies. The Applicant submitted that the documents requested are normally availed to the Tribunal during the proceedings.

The Applicant cited Order 10 rule 19 (2) of the Civil Procedure Rules which provides that where an application for an order for inspection, privileges claimed for any document, court may inspect a document for purposes of deciding as to the validity of the claim of privilege. The Applicant submitted that this order gives the Tribunal powers to inspect the documents that the Applicant prays are disclosed.

**Whether the documents are in the Respondent’s possession, custody, control or power?**

The Applicant submitted that the documents asked for are in the possession and in control of the Respondent. And it is only the Respondent who can give access to these documents. In ***Mpalanyi Julius v Kanyesigye Julius. Civil Appeal No.05 Of 2020***, it was observed that possession can be broken into two which is

- i) Constructive possession, which is the legal possession of an object that is not in the person's direct control
- ii) Actual possession which is used to describe immediate physical contact.

The Applicant submitted that the Respondent is in both constructive and actual possession of the documents.

## 5. Submissions of the Respondent

In reply, the Respondent submitted that they are guided by Order 10 as stated by the Applicant which guides on the discovery of documents. The same Tribunal can order for the same on the conditions that were stated in the case ***John Kato v Muhlbauer AG and Another High Court Misc.Cause No.175 of 2011*** where the High court stated the conditions for court to grant an application for discovery as follows;

- (i) There must be evidence that the documents requested are in possession of the Respondent;*
- (ii) That the documents must be relevant to the issue to be tried; and*
- (iii) Discovery should not be used as a fishing expedition by the Applicant to try and build up a case which he is not sure of.*

The Respondent submitted that it carried out a joint operation that included the CID department, Interpol and wildlife. The Respondent submitted that that they are not aware of the alleged management report and if it existed, it would contain confidential information and there would be no reasonable justification to compromise its confidentiality. The Respondent further submitted it is not in possession of the search warrants and the statements sought by the Applicant.

The Respondent submitted that it did not recover any taxes from the eight fish maw exporting companies as alleged by the Applicant. The Applicant did not provide any specific information regarding tax evasion as required by the Informer Management and Rewards Policy.

The Respondent submitted that it is not liable to produce payment registration numbers and payment receipts of the eight fish maw exporting companies and the documents are not relevant to the resolution of the issue in dispute hence the Applicant's request is vague.



The Respondent further submitted that all the taxes paid by the eight companies were compliant with the taxing statute and as a result the Respondent did not identify any tax evasion in relation to them.

The Respondent contended that the assessments cannot be disclosed without the consent of the said taxpayers.

The Respondent submitted that in response to paragraph 8 of the Applicant's affidavit in support, the Respondent contended that the audit report that has been provided is included in the trial bundle. However, the reports are not relevant in solving the issues in dispute.

The Respondent submitted that in response to paragraph 9 of the Applicant's affidavit in support, the Respondent asserts that they are not aware of the two companies referred to by the Applicant.

The Respondent submitted that in paragraph 23 where the Applicant seeks cross examination of Ms. Akello Jane, Mr. Ogutu Moses, Mr. Balamaga Geoffrey, the Respondent contains that these individuals have since left the employment of the Respondent and are no longer under the Respondent's control and for Mr. Bumali the fourth individual is a police officer who participated in the raid is not an employee of the Respondent. However, Mr. Bumali is ready to testify, provided the Applicant furnishes facilitation for him to travel from Gulu as mandated under Order 16 Rule 2 of the Civil Procedure Rules.

The Respondent concluded by citing the case of ***Gale v Denman Picture Houses Limited 1930 K.B page 588*** where it was stated:

*"the plaintiff who issues a writ must be taken to know what his case is. If he merely issues a writ on a chance of making a case, he is issued with what is to be called a fishing bill to try and find out whether he has a case or not".*

The Respondent alleged that for the Applicant to ask for documents which may be relevant so that he may see if he has a case or not is the most undesirable proceeding.

## **6. The Applicant's submissions in rejoinder**

In rejoinder, the Applicant submitted that the TPCA which provides for whistleblower and Section 8 of the Finance Act does not require the information about tax evasion should be specific and how specific it should be.

The Applicant submitted that the practice is that once a person has information that leads to recovery of tax, he/she reports to the authority and once the authority or the Respondent is satisfied, the person is issued a TIF form. In this specific case, the Applicant was issued with two TIF forms. One with serial number 1029 and serial number 0712.

In the TIF forms that the Applicant completed, he stated that there are domestic taxes and customs taxes that are being evaded by the companies stated. The Applicant argued that the Respondent cannot claim, after having accepted the information and subsequently raided all the 12 companies, that the information was only specific about four. It is obvious that the Respondent is trying to avoid paying the Applicant his due commission.

The Applicant further submitted that although the Respondent alleges that what was reported was wildlife, the report made was about tax evasion. Further, the operation / raid which was subsequently carried out was strictly conducted by the Respondent alone. The Applicant submitted that the Respondent has a department compromised of police officers and they sanction their own charges.

The Applicant submitted that in response to paragraph 13 of the affidavit in reply, the Respondent is indeed in possession of the search warrants and statements as it is both a procedural and legal requirement that it obtains a search warrant before it conducts a search and also that it obtains statements from those that have been arrested. These events took place and therefore the Respondent cannot deny having those pertinent documents.

The Applicant submitted that documents are critical evidence in determining whether taxes were recovered and if their recovery was a result of the information that was provided by the Applicant.

## **7. Determination of the Tribunal**

Having listened to and perused the submissions of the parties, this is the decision of the Tribunal

### **Whether the documents sought by the Applicant are relevant and material to the issues to be tried?**

The Applicant filled an application seeking for disclosure of some key documents that are in possession of the Respondent that would help in resolving this dispute. The Applicant contended that it reported twelve companies and that the Respondent recovered taxes from all of them. The Respondent argues that it collected taxes from only four companies and that they did not collect from the other eight companies as the information was specific to the four companies.

The Applicant seeks for discovery of documents as stated in their submissions above. The Applicant also sought for leave of the Tribunal to order the Respondent to produce the officers who conducted the investigation and the raid on the 12 companies to enable the Tribunal reach a justifiable conclusion.

The Applicant alleged that after the Information was received, default and additional assessments were issued by the Respondent. The audit commencement letters and reports will show what the audits covered and why and when they were started. The Applicant also asked for details of the companies that are said not to have been registered at the time.

However, the Respondent contended that the Applicant did not provide specific information of tax evasion. Further, that the information was helpful to only recover from the four companies and not the eight companies.

The Respondent submitted that the individuals that the Applicant wants to testify have since left the employment of the Respondent and are not under the Respondent's control and for Mr. Bumali is a police officer who participated in the raid is not an employee of the Respondent and has no control over him. However, when he was contacted, he was ready to come and testify, provided the Applicant furnishes facilitation for him to travel from Gulu as mandated under Order 16 Rule 2 of the Civil Procedure Rules.



The Tribunal relied on Section 22 (2) (b) of the Tax Appeals Tribunal Act provides:

*“For the purpose of hearing a proceeding before the Tribunal, the Tribunal shall have powers of the High Court to summon a person to appear before it-*

*(b) to produce books, documents or things in possession, custody or control of the person named in the summons that are mentioned in the summons”.*

Order 7 rule 15 of the CPR is to the effect that where the document is in possession of the plaintiff, he or she shall state whose possession it is. The Applicant in this case has stated in whose possession the documents are which is the Respondent.

Order 10 rule 14 of the Civil Procedure Rules provides:

*“The court may, at any time during the pendency of a suit order the production by any party to the suit, upon oath, of such documents in his or her possession or power relating to any matter in question in the suit, as the court shall think right.....”*

In ***Compagnie Financiere du Pacifique v Peruvian Guano Co (1882) 11 QBD 55***, Lord Justice Brett held;

*“...a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary if it is a document which may fairly lead him to a train of enquiry which may have either of those two consequences”.*

In this case, the Applicant alleged that it needed the documents to prove its case. However, this may either improve or damage it. What we know is that the documents are in the possession of the Respondent. The Respondent has to show that indeed there was no collection from the eight companies reported.

In this case, we find that in order to prove or disprove the alleged facts, we need evidence which shows whether taxes were collected from the 8 companies or not following the Applicant’s information. Furthermore, since the Respondent stated that one officer is willing to come and testify, the Applicant should facilitate that witness to travel to Kampala to testify.

**Whether the documents sought by the Applicant are relevant and material to the issues to be tried?**

The Applicant submitted that the documents are all relevant and material in enabling the Applicant advance it's case.

According to the Applicant, the Respondent collected taxes form 12 Companies. However, the Respondent stated that they collected from only four companies, it is on this background that the Applicant sought remedy from the Tribunal to order the Respondent to produce these documents.

The Respondent submitted that it is not liable to produce payment registration numbers and payment receipts of the eight companies and the documents are not relevant to the resolution of the issue in dispute hence the Applicant' s request is vague.

The Respondent has to demonstrate that they did not rely on the information provided by the Applicant to collect taxes from the eight companies. The Tribunal finds them vital for the adjudication of the dispute.

**Whether the documents sought by the Applicant are not privileged or protected by law?**

The Respondent submitted that if the alleged management report existed, it would contain confidential and proprietary information and there would be no reasonable justification to compromise its confidentiality.

However, Section 22 of the CPA provides that Cort may make orders relating the delivery and answering of documents. Furthermore, Order 10 Rules 15 and 18 provide that any party to a suit can at any time issue a notice to the other party to produce documents for his inspection and make copies of them.

However, the Tribunal should be cautious when ordering for some information to be sure that the content will not cause prejudice to the other party due to its sensitivity.

**In *Patricia Mutesi v Attorney General Misc App No. 0912 OF 2016* Court held:**

*"A court is responsible for protecting against the unreasonable investigation into a party's affairs and must deny discovery if it is intended to annoy, embarrass, oppress or injure the*

parties or the witnesses who will be subjected to it. A court will stop this discovery when used in bad faith and if the information to be produced is not protected by privilege”.

In this case, we do not see evidence of bad faith, neither does the Respondent give us evidence of privilege. The Respondent can provide documents to the taxpayer under supervision or after verification by the Tribunal that the documents are privileged. Order 10 rule 19 (2) of the CPR provides:

“On application for an order for inspection, privilege is claimed for any document, the court may inspect the document for the purpose of deciding as to the validity of the claim of privilege”.

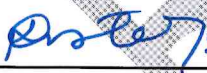
In the case of **Bauman Uganda Limited v Kibirige MB No. 198 of 1969**, it was held:


“If a party objects to the production of any documents, he or she must give grounds of such objection by way of a notice. Despite the objection, court has power to order for production of such documents.”

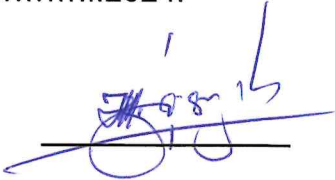
In the circumstances, we order the Respondent to avail to the Applicant the said documents in relation to the eight companies.

This application is therefore allowed with costs to the Applicant in the main cause.

Dated at Kampala this 25<sup>th</sup> day of October 2024.

  
CRYSTAL KABAJWARA  
CHAIRPERSON

  
KABAKUMBA MASIKO  
MEMBER

  
WILLY NANGOSYAH  
MEMBER

