THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 45 OF 2021

RICHARD MWAMI.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE.

RULING

This ruling is in respect of commission payable to a whistle blower for additional taxes that were collected by the respondent.

The applicant provided information to the respondent relating to a tax evasion by MTN Uganda Limited (MTN) on its mobile money platform for the period January 2011 to December 2014 which led to an investigation and recovery of taxes. On 13th June 2018, the respondent paid the applicant Shs. 635,199,554 and in November 2018 Shs. 17,404,526. The applicant is seeking a further Shs. 3,429,917,892 which the respondent argues he is not entitled to.

Issues:

1. Whether the applicant is entitled to a further informer's commission of Shs. 3,429,917,892?
2. What remedies are available to the parties?

The applicant was represented by Mr. Ronald Kalema and Ms. Vanessa Mbekeka while the respondent by Mr. Sam Kwerit.

This dispute revolves around the amount of reward an informer is entitled to in respect of the information he availed to the respondent. Though the informer was given a reward, he feels he provided more information than what he was paid.

The applicant testified that he was employed by MTN at the time it launched a mobile money platform called 'Fundamo'. He was a key resource person in its set up and was familiar with its operations. In April 2014, he was wrongfully terminated for alleged gross negligence that led to mobile money fraud. He successfully sued MTN for wrongful termination. In October 2014, he wrote to the Commissioner General informing her that MTN understated its revenues and evaded taxes on its mobile money platform from 2011 to 2014. He showed how this was being done in over 20 meetings. The respondent set up investigation teams. He was issued a Tax Evaders Information form (TIF) acknowledging receipt of information. The forms showed that the tax heads included VAT, excise duty and income tax. He stated that the information he provided included that MTN was computing local excise duty at a point of sale instead of a point of usage. He stated that the consent order, exhibit A12, shows that Shs. 40,839,328,991 was collected. The respondent filed a report on the findings.

Ms. Victoria Namyalo, the respondent's witness, stated that on 7th October 2014, the respondent received information from the applicant about tax evasion by MTN. The applicant alleged that MTN was involved in creation of fictitious transactions on its mobile money platform which would then be converted into illegal money that were not declared for tax purposes. MTN was also involved in under declarations of revenues earned from the mobile money platform known as 'Fundamo'. The applicant's information was supported by his letter of 16th February 2015. She stated that the respondent's team met the applicant several times. He provided information on how mobile money works, ledger accounts, subscriber accounts and the Stanbic bank agreement.

She testified that the respondent conducted investigations on MTN based on information from the applicant and on other unresolved issues in previous audits and investigations of 2003 to 2009 relating to point of imposition and computation of excise duty on the

provision of airtime by MTN. The witness confirmed that the respondent discovered under declared revenues. It was agreed that the issue of imposition of local excise duty, in *MTN v URA* High Court Civil Suit (HCCS) 938 of 2016, be referred to The Tax Appeals Tribunal for interpretation. She stated that the investigations resulted in a tax liability of Shs. 34,786,432,482 that MTN has paid including that in the partial consent judgment of 1st June 2018 regarding the HCCS No. 938 of 2016. She contended that the applicant is not eligible to get a reward for taxes recovered from excise duty on international calls as it involved matters of law that had been resolved from prior investigations and audits as communicated to him on 3rd May 2021. She contended that the issue relating to calculation of excise duty on point of sale or usage and on international incoming calls involved interpretation of law and were not part of the information provided by the applicant. She testified that the applicant was entitled a commission on taxes collected of of Shs. 6,526,040,805 and was paid the 10% in two installments.

The applicant submitted that S. 8 of the Finance Act 2014 provides that the Commissioner General shall pay to a person who provides information leading to the recovery of tax or duty, 10% of the principal tax or duty recovered. The applicant cited *Latigo Geoffrey v Uganda Revenue Authority* Application 88 of 2019 where the Tribunal relied on *Edward Turyarugayo v URA,* CA 98 of 2013 (Court of Appeal), *John Musisi v URA* HCCS 27 of 2005 and *Matagala Vincent v URA* HCCS 275 of 2008 to establish the standard of proof that a tax informer must meet to merit a reward. The applicant summarized the ingredients as below:

(a) The informer must show that he provided information relating to tax evasion of a taxpayer to the respondent.

(b) The Information must have been acknowledged officially by the respondent on a Tax Evaders Identification Form (TIF), showing the names of the informer, the alleged tax evader, the period of evasion, and the tax type.

(c) The information must have been directly used by the respondent to recover taxes. The informer must show that an investigation was carried out that confirmed the tax evasion of the taxpayer

(d) Reward must only be on taxes recovered from the investigation. No reward is payable on taxes that have not been recovered from the taxpayer.

The applicant submitted that he has discharged the burden of proof to merit a 10% reward from all the tax heads because of the investigation for the period 2011 to 2014.

The applicant submitted that it is not in dispute that he provided information to the respondent. He wrote to the respondent in October 2014 with details of how mobile money works. He provided ledgers, grant Thornton report, Stanbic agreement with MTN, dispute account and subscriber accounts. He met with the investigation team many times to explain to them how mobile money works, to assist interpret the information obtained from MTN and to share intelligence on where to get additional information. The TIF form indicates that information he shared with the tax investigations department. The applicant cited *Edward Turyarukayo v URA.* (supra) where Kasule J. stated that;

> "It appears to me that the only conclusive evidence of proof that binds URA with informants is the TIF, being the official document issued by URA in acknowledgement of information supplied.... The TIF prescribes the kind of specific information that must be supplied including name of the alleged tax evader, type of tax evaded, place and estimated amount of evasion"

The applicant submitted that he was issued a TIF form clearly states the name of the tax evader, the period of evasion and the tax evaded is Shs.196 billion.

The applicant cited *Latigo Godfrey v URA* (supra), where the Tribunal noted that

> "If Information is provided and the respondent carries out an audit or return examination to verity that tax is payable and confirms so, an informer is entitled to recover for the amount indicated in the TIF. He cannot recover from additional taxes not indicated in the TIF"

The applicant submitted that where an audit is prompted by an informer's report and taxes are recovered the informer is only entitled to taxes recovered from that audit and not any more. The rationale for this was stated in *Vincent Matagala v URA* by Justice Sekaana, where he stated that, the respondent receives payment from tax-payers on a regular basis, and in the absence of evidence, there is a danger of awarding a 10% reward on regular taxes recovered, or taxes recovered based on information given by another

informer, or from routine audits. The applicant submitted that he has taken great care not to claim a reward from taxes not arising from his whistle-blower action.

The applicant invited the Tribunal to look at the investigation report of the respondent into the tax affairs of MTN for the period 2011 to August 2014. Paragraph 2.1 of the report stated as follows:

> "The investigation was initiated as a result of Information obtained from an informant alleging that MTN (U) Limited may have under declared revenues earned from the mobile money operations. The informant submitted that MTN may have engaged in creating fictitious financial transactions on the mobile money system with the aim of benefiting from such transactions."

The applicant submitted that following the investigation, taxes of Shs. 6,351.995.622 were voluntarily paid by MTN. The respondent raised assessments for income tax, VAT and excise duty on MTN for the period 2011 to 2014. MTN objected to the assessments and the objections were disallowed. In December 2016, MTN filed HCCS 938 of 2016 in the High Court challenging the objection decisions from the taxes assessed. The applicant submitted that the parties entered a partial consent judgment in June 2018 where MTN agreed to pay Shs. 10,210,561,977 which comprised corporation tax, excise duty, VAT. The respondent's witness confirmed that the amounts were collected successfully from MTN. The parties in the consent referred the issue of excise duty of Shs. 24,273,771,472 on the concept of usage to the Tax Appeals Tribunal for determination. The application was decided in favor of the respondent and taxes collected.

The applicant submitted that the reasons the respondent advanced that it was not entitled to excise duty because it was based on Point of sale (POS) against usage were not valid and are only meant to deny him his legal reward. The arguments include that the assessments were based on previous investigations, in particular the URA audit of MTN of 2003 to 2009, and on HCCS 938 of 2016 which involved interpretation of law. The applicant submitted that the High Court suit was a direct result of assessments that were a result of the 2011 to 2014 investigation. This was prompted by the applicant's evaders report. The applicant contended that there is no evidence that the point of usage was previously investigated or that the assessment was covered by a separate audit.

The applicant argued that in *David Olaka v URA* HCCS 92 of 2014, the respondent produced a separate customs audit report with findings that showed that the scope of the audit already covered the claimant's information in that case. The claimant was not entitled to taxes recovered from another audit. In the instant case, the respondent has failed to produce the report showing that this assessment arose from another audit.

The applicant submitted that the respondent collected Shs. 40,836,328,991 from the 2011 to 2014 from investigations that resulted from his information. MTN paid Shs. 18,223,874,962 in full and final settlement of MTN's Excise duty liability for the period 2011 to 2014 under the High Court suit. The tax in dispute in the Tax Appeals Tribunal case was Shs. 24,273,771,472 which makes up the total Shs. 40,836,328,991 above. The respondent only conceded to collecting a total of Shs. 34,786,432,482. The applicant stated that the respondent is arguing that he is not entitled to collect a reward on Shs. 28.093,888,201. Both parties agree that the applicant was paid Shs. 653,714,997. To the applicant, that was a part payment and as such the applicant is entitled to the balance of Shs. 3,429,947,902 based on the total taxes collected from the investigations.

In reply. the respondent submitted it is not in dispute that the applicant provided information. The respondent also cited *Edward Turyarugayo v Uganda Revenue Authority*, (supra) where Justice Remmy Kasule held that that only conclusive evidence of proof that binds URA with the informants is the TIF being the official document issued by URA in acknowledgment of the information supplied. Any information given without first filling the TIF is deemed whistle-blower's information with which URA is under no duty to pay a 10% for the tax recovered. The TIF prescribes the kind of specific information which must be supplied including, name of alleged tax evader, type of tax evaded, period of evasion, place of evasion and estimated amount of evasion. The respondent submitted that the applicant was duly issued with a TIF.

The respondent testified that the information provided by the applicant related to MTN's under declaration of revenues earned from the Mobile Money Platform known as

'Fundamo'. The respondent testified that the information received yielded taxes of Shs. 6,692,544,281 and the applicant was paid a reward of 10%. The respondent cited *Latigo Geoffrey v URA* (supra) where the Tribunal stated that an informer is not entitled to recover from additional taxes not indicated in the TIF.

The respondent submitted that it relied on its own information in the URA domain and independent returns examination that led to the collection of extra tax from the taxpayer. The respondent submitted that the part of the additional taxes collected from MTN arose because of the legal interpretation as to what point excise duty should be imposed by the Tax Appeals Tribunal in *MTN Uganda Limited v Uganda Revenue Authority* Application 8 of 2019. The dispute arose from MTN Uganda charging excise duty at the point of sale while the respondent contended that excise duty should have been computed at the point of usage. The information about MTN's computing excise duty at the point of sale was not part of the information provided by the applicant but within the knowledge of the respondent. The respondent cited D*avid Olaka v Uganda Revenue Authority* HCCS 92 of 2014 *where* Justice Ssekaana Musa, held that.

> ".... that URA as a revenue collector receives payments from tax payers on a regular basis and so in a claim by an informer, if the evidence is not properly evaluated there is a danger of awarding a 10% award on normal tax recovery or taxes recovered based on information given by another informer or even tax recovered on the basis of routine audit by the defendant."

The respondent submitted that the issue is whether the information was new, substantial and or genuinely received by it in accordance with due process. The respondent submitted that it is a public body which receives all sorts of information from the public including information from informers. Information must be received following due process, and it must be new and substantial in the collection of revenue in question.

It submitted that the applicant is not entitled to any extra reward because it did not use his information to collect the extra tax but from its own routine independent audits from information within its domain, skill and expertise of its staff.

In rejoinder, the applicant reiterated what was stated in its submissions.

Having listened to the evidence, perused the exhibits and read the submissions of the parties, this is the ruling of the tribunal.

The applicant is a whistle blower who provided information to the respondent on tax evasion by MTN on its mobile money platform for the period January 2011 to December 2014 which led to an investigation and recovery of tax. On 13th June 2018, the respondent paid the applicant Shs. 635,199,554 and in November 2018 Shs. 17,404,526. The applicant is seeking a further Shs. 3,429,917,892 which the respondent argues he is not entitled to.

The entitlement to an informer for information provided is stated in by S. 8 of the Finance Act 2014 which stated that.

> "The Commissioner General shall pay to a person who provides information leading to the recovery of tax or duty, 10% of the principal tax or duty recovered."

This was the applicable law at the time the applicant provided his information to the respondent.

The applicant submitted that the respondent collected taxes of Shs. 40,836,328, 991 from the 2011 to 2014 after investigation that resulted from his whistle blower information. MTN paid Shs. 18,223,874,962 in full and final settlement of MTN's tax duty liability for the period 2011 to 2014 under the High Court suit. The tax in dispute in the Tax Appeals Tribunal case was Shs. 24,273,771,472 which makes up the total Shs. 40,836,328,991 The applicant stated that he was paid Shs. 653,714,997. He is entitled to a balance of Shs. 3,429, 947,902 based on the total taxes collected from the investigation and the suits in the High Court and the Tribunal.

In order for the Tribunal to determine whether the applicant is entitled to an additional amount of reward, it is important to know what information did he provide, and what the respondent relied on to lead to recovery of tax.

In October 2014, the applicant wrote to the Commissioner General informing her that MTN understated its revenues. In the said letter, the applicant stated that the respondent for "the period January 2011 – December 2011, MTN under stated their (sic) revenue by 84 Billion. The evasion of taxes has continued till today." He stated that he wanted to show the respondent how that was done. At time of the letter, the Tribunal cannot state whether the applicant was availing information as a concerned citizen who was not seeking a reward or out of a sense of 'patriotism'. It is important to know when the applicant become a commercial informer with information for sale.

After setting up investigation team the applicant was issued a tax evaders information form (TIF) acknowledging receipt of information. In *Edward Turyarukayo v Uganda Revenue Authority (supra)* Kasule J. stated that

> "Having subjected the evidence on record to a fresh scrutiny, it appears to me that the only conclusive evidence of proof that binds URA with the informants is the TIF, being the official document issued by URA in acknowledgement of the information supplied.
> Any information given without first filing the TIF is deemed whistle-blower's information with which URA is under no duty to pay a 10% for the tax recovered. The TIF prescribes the kind of specific information which must be supplied including, Name of the alleged tax evader, type of tax evader, type of tax evaded, period of evasion, place of evasion and estimated amount of evasion."

Therefore, the first information provided without the TIF being filed did not create an obligation on the respondent to pay a reward. The said information can be ignored.

The TIF the applicant filed, exhibit R1 shows the type of tax evaded is VAT, excise duty and income tax. It is for the period January 2011 to 2014. It put the estimated amount of tax evaded as Shs. 196 billion. It states the particulars of alleged evasion were in documents that were shared with the respondent's Tax Investigation Department c/o (care of) Alex Nuwagira. The email trail, exhibit A2, between the applicant and Mr. Alex Nuwagira show that he provided a number of documents. In a letter of 16th February 2015, the documents included a ledger, subscriber accounts, Grant Thornton report, Stanbic agreement with MTN, Mobile money statements and dispute account report. By gleaning

at the said documents, it is difficult to discern which taxes the applicant was complaining that were evaded by MTN.

It is exhibit A4 where the applicant attempts to show the fraudulent transactions MTN had on its mobile money platform starting in May 2011. He states that Shs. 23 billion was fictitiously created on the platform. This was by over-drawing the account. The applicant contended that MTN benefited from the fictitious money by sending it to its ship afloat. Though the applicant states that MTN was involved in fraudulent transactions, the report does not show the tax liability of those transaction and how the respondent taxed them and how it should have taxed them. If 23 billion were fictitiously created, did it attract excise duty, VAT or income tax? Should the respondent have taxed fictious transactions? Does the law allow that? The Tribunal does not think so. Exhibit A4 should have been availed to the Criminal Investigation Department of the police, and not to a revenue collecting body, as it does not disclose any tax liability evaded. In the report the applicant states that the 23 billion were fictitiously created, does it give rise to a tax liability of Shs. 40,836,328, 991? The said report does not indicate revenues nor mention any tax liability. The applicant alleged in its TIF that the respondent evaded taxes estimated at Shs.198 billion. However, there is no evidence how the said tax or a portion thereof arose in the accounts and transactions mentioned in exhibit A4.

A report on tax investigations into MTN, Exhibit R2 shows the effect of the information the applicant availed on its tax liability. It is stated that

> "This investigation... was initiated as a result of information obtained from an informer that MTN U Ltd may have under declared revenues generated from their mobile money platform during the period 2011. Additionally, it was also alleged that MTN may have engaged in fictious financial transactions on their mobile money transactions."

The information the applicant availed was that MTN underdeclared revenues generated on its mobile money platform.

The Tribunal notes that the applicant was rewarded Shs. 653,714,997. It was the evidence from the respondent that salvaged the day. That is the irony of recovery of taxes involving whistleblower's information. The knowledge of what is recovered is mostly within

the respondent's domain. The respondent's witness, Ms. Victoria Namyalo put the monies recovered by it under the following heads.

TABLE A

Item	Tax	Amount
1	Corporation tax (transaction fees)	118,152,277
2.	Excise Duty (Mobile money transactions fees)	114,969,125
3.	Excise Duty (Mobile Money Airtime)	6,237,026,417
4.	Excise Duty (POS v Usage)	18,223,874,962
5.	Excise Duty (International incoming calls)	9,870,013,239
6.	VAT (Airtime sold through mobile money)	222,396,462
		34,786,432,482

She stated that the information the applicant availed led to recoveries in items1,2,3 and 6. The Tribunal notes taxes collected in items 1, 2, 3 and 6 were services provided on the mobile money platform. Item 5 is excise duty on international incoming calls

The Tribunal agrees that the applicant was entitled to a commission on the corporation tax of Shs. 118,152,277. Excise duty on mobile money transaction of Shs. 114,969,125, excise duty of Shs. 6,237,026,417 and VAT on airtime sold through mobile money of shs. 222,396,462. The total lability is shs. 6,692,544,281. The respondent admits that the applicant was entitled to Shs. 6,526,040,305, which it contends was principal tax. The Tribunal finds it inconceivable that the interest on the above amount from 2011 to 2019 would be Shs. 166,503,476. It must have been part of the principal. Therefore, the applicant would be entitled to 10% of Shs. 6,692,544,281 minus what he was paid.

The applicant contended that he was entitled to excise duty arising from Point of Sale against Point of Osage, which is item 4. The applicant contended that the tribunal awarded taxes ofShs. 24,273,771,472 to the respondent as a result of the legal interpretation as to what point excise duty should be imposed; whether at the point of sale or point of usage in *MTN Uganda v Uganda Revenue Authority* Application 8 of 2019. Shs. 18,223,874,962 was paid. In the TIF and the working report, exhibit A4 the applicant

does not mention how MTN evaded excise taxes using the tax point or point of sale as against usage by MTN. He only mentioned under declared revenues and fictitious transactions. The dispute at which point excise duty should have been taxed is a legal one which most probably was outside the comprehension of a person without legal knowledge. The applicant did not testify in the suit. There is no evidence that he provided information to that effect. Before the dispute was resolved in the Tax Appeals Tribunal one cannot say that MTN was evading taxes. More precisely, it was avoiding taxes. One cannot evade a tax which is in dispute in respect of interpretation of the law. It is not information an informer can claim because it needed court interpretation. It involved speculation. What would have happened if the court decided otherwise? The Excise Tariff (Amendment) Act which was the subject of interpretation in *MTN v URA* Application 8 of 2019 before the Tribunal, was passed in 2002. The applicant introduced mobile money in 2009. Queries about the interpretation and application of the Act to mobile money may have arisen around 2009. If we are to believe that the respondent worked on the applicant's information on excise duty in respect of item 4, the interpretation of the Excise Tariff (Amendment) Act involved further legal investigation and evaluation into the applicability of the Act. The respondent used more skill and expertise to discover loopholes. In *David Olaka v Uganda Revenue Authority* HCCS 92 of 2014 Justice Ssekana held:

> "I find the claim very illegitimate since the defendant officials upon obtaining some clue on tax evasion may use more skill and expertise to discover more loopholes which may lead to recovery of more taxes and this should never be claimed as new information in order to claim more money to the original informers."

It would be unfair to ignore the effort put in by the respondent especially where the applicant does not show that it availed the said skills.

There is also no evidence that the applicant availed information on international coming calls, which is item 6. The information the applicant provided was on mobile money platform which is different from that of mobile call platform. The Tribunal already noted that the applicant triggered investigation by the respondent that led to recovery of further taxes from MTN. However, the applicant does not dispute that some of the information that led to the recovery of the taxes was in the respondent's domain as result of previous

audits and investigations of 2003 to 2009. This is because tax collection is a continuous process and a lot of information comes into the respondent's knowledge. In a letter of 28th November 2014, exhibit A6, MTN wrote to the respondent promising to co-operate in its investigation. In the report on investigation into MTN, exhibit R2 it is stated that:

> "During the investigation reconciliations, MTN U Ltd agreed to and paid a tax liability of local excise duty worth UGX 6,351,995,542 however the investigations later resulted into assessments worth UGX 186,442,336,622 and UGX 48,791,438,38. MTN U ltd objected to these assessments to which URA reviewed the grounds for the objection and responded with an objection decision..."

In *KB Serial No. O561 v Uganda Revenue Authority* Justice Ssekana Musa cited *Mutagala Vincent v Ugandan Revenue Authority* HCCS 274 of 2008 where it was stated that:

> "It is not enough merely to show that an informer gave information and produced receipts to show that the information gave led to recovery of taxes. There should be direct evidence to show that the information given led to recovery of the taxes. This is because the defendant as a revenue collector receives payment from tax payers on a regular basis and so if the evidence is not properly evaluated there is a danger of awarding the 10% reward on regular tax or taxes recovered based on information given by another informer or even tax recovered on the basis of routine audit by the defendant"

In *Ahamya Sam v Uganda Revenue Authority* HCCS 487 of 2007 Justice Lameck Mukasa stated that:

> "The tax in addition sum of Shs. 232,953,339/= was recovered by the defendant not as a result of the plaintiff's information but as the information volunteered by the company in its letter. Exhibit D3 ..."

There was recovery of taxes of Shs. 9,870,031,239 which was in respect of international calls which was done without an input from the applicant. This was information probably volunteered by MTN. Taking the above into consideration, it would be difficult for the Tribunal to state that the recovery of Shs. 9,870,031,239 arose from information provided by the applicant.

Taking all the above into consideration the Tribunal notes the applicant failed to prove the nexus between the information he provided and the tax liability of excise duty in respect

of the application of tax point on usage and also the nexus between his information and international incoming calls. The information provided was useful in some tax heads where the applicant was paid 635,199,554 leaving a balance of Shs. 38,829,221. This is after deducting Shs. 653,714,997 from 692,544,218. This application is allowed with costs. The respondent is ordered to pay Shs. 38,829,221

Dated this 5th day of July 2022.

DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MS. CHRISTINE KATWE.**
CHAIRMAN	**MEMBER**	**MEMBER**