THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 158 OF 2020

WHISTLE BLOWER (REF.TID 1708319150) ==========APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE: DR. ASA MUGENYI MRS. CHRISTINE KATWE MR. SIRAJ ALI

RULING

This ruling is in respect of an application challenging the respondent's decision to apply the provisions of S. 74A of the Tax Procedures Code Act 2019 to a reward due to the applicant, a tax informer, in respect of information provided to the latter in 2017.

In September 2017, the applicant provided information to the respondent which led to the recovery of taxes from Royal Van Zanten Uganda Limited (herein after the taxpayer). The taxes owed by the taxpayer was Shs. 4,400,000,000. In July 2020, the applicant was informed by the respondent that it had recovered Shs. 2,200,000,000 from the taxpayer. On 4th August 2020, the applicant received Shs. 118,000,000 from the respondent being 5% of the sum recovered. On 23rd August 2020, the applicant wrote to the Commissioner Legal Services & Board Affairs of the respondent expressing his gratitude for the payment but contended that it had been wrongfully calculated at 5% instead of 10% as provided by the law which was in force when he provided the information. On 15th October 2020, the Assistant Commissioner of Public and Corporate Affairs of the respondent informed the applicant that the reward rate applies to the time the tax was recovered and not at the time it was discovered and as such S. 74A of the Tax Procedure Code Act entitles the applicant to a payment at a rate of 5%.

The following issues were set down for determination.

1. Whether the applicant is entitled to the payment of the reward commission at the rate of 10%?

2. What remedies are available to the parties?

The applicant was represented by Mr. Ronald Kalema while the respondent by Mr. George Ssenyomo.

Both parties opted not to call witnesses but file written submissions as they contended that the dispute was a question of law, namely, which law ought to apply in determining the amount of reward due to the applicant.

The applicant submitted that he is entitled to a reward commission at the rate of 10% and not 5% because he supplied information used by the respondent to recover tax, in September 2017, and the law then was S. 8 of the Finance Act 2014 and not S. 74A of the Tax Procedures Code Act 2014 (amended in 2019). This right crystallized upon recovery of the tax. The applicant submitted that the respondent decided to reward the applicant under a law that did not exist when he acquired his right to the reward at 10%. The applicant submitted that S. 74A of the Tax Procedures Code (Amendment) Act does not act retrospectively. The applicant contended that S. 74A enacted in 2019 cannot apply to the relationship between the respondent and him which began in 2017. The applicant submitted that S. 74A ought to be applied progressively to acts which commenced after its coming into force on 1st July 2019. The applicant relied on the definition of the term "retrospective' or 'retroactive' in *Black's Law Dictionary*, 8th Edition, page 1343, as "A legislative act that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect." The applicant submitted that the law is that a statute shall not be applied retrospectively unless express provision is made for such application in the statute itself. He cited Madrama J. in *James Mundele Sunday v Pearl of Africa Tours & Travel* High Court Civil Suit No. 89 of 2011. The applicant submitted that a perusal of Tax Procedures Code (Amendment) Act 2019, shows that it was not intended to have retrospective effect. The applicant submitted that the Commencement section of the Act, which states that the Act would come into force on 1st July 2019, clearly indicated that prospective nature of the Act. For an illustration of a retrospective application, the applicant relied on S. 1 of the Income Tax (Amendment) Ac no. 2 of 2017, which stated that the Act shall be deemed to have come into force on 1st July 2015.

Without prejudice to his earlier submissions, the applicant submitted that the repeal of S. 8 of the Finance Act 2014, did not do away with the applicant's right to a reward commission at the rate of 10%. The applicant submitted that his right to a reward commission at the rate of 10% is preserved by S. 13(2)(e) of the Interpretation Act. The applicant cited *Pioneer General Association Ltd v Ziwa* [1974] 1 EA 161 at 163-164 where the court noted that the repealing Act does not contain any saving clause, the plaintiff could not sue the defendant. The applicant submitted that his entitlement was not affected by completion of the investigations by the respondent after the enactment of S. 74A of the Tax Procedures Code (Amendment) Act. The applicant submitted further that the reward of 10% was an incentive to him and that it was unjust to alter the terms after he had already exposed himself to risk.

The applicant prayed that the respondent pays the balance of his reward equivalent to 5% of the tax recovered to make the total rate at which the applicant is paid 10% which is Shs. 118,624,679. The applicant also prayed for the costs of the suit and interest on the amount in question at the rate of 24% p.a. until payment in full.

The respondent submitted that the informant reward rate is determined at the time the tax is recovered and when the information is given. The respondent submitted that no right or obligation arose before recovery of tax because the information provided has not yet led to the recovery of taxes. The respondent cited *John Musisi alias Joseph Musiitwa Kabuusu* HTC-00-CC-CS-0072 of 2005, where Egonda-Ntende J., stated in respect of S. 7 of the Finance Act 1999, that the reward due to a tax informer was 10% of the tax recovered and not tax discovered as due. The respondent also cited *Matagala Vicent v URA* HCCS No. 274 of 2008, where Obura J. stated that before an informant can be paid a reward there ought to be direct evidence to prove that the information provided by the informant led to recovery of taxes. The respondent submitted that the above cases emphasize the need for the reward due to be tagged to the amount of tax recovered. The respondent also cited Clause 7 of its Informer Management and Reward Policy which provides that an informer's reward shall relate to recovery of tax that directly relates to

information provided under a Tax Evaders Information Form (TIF) excluding penalties and interest as provided by the law.

In response to the applicant's submissions on retrospective application of laws, the respondent contended that before the enactment of S. 74A no right had accrued to the applicant as no tax had been recovered. Tax was recovered in 2020 after the enactment of S. 74A. The respondent concluded that the amount of reward due to the applicant ought to be at the rate applicable at the time the tax was recovered and not when the information leading to the recovery of the tax was submitted by the informer to the respondent. The respondent prayed that the application be dismissed with costs.

Having read the submissions of the parties the following is the ruling of the Tribunal.

In 2017, the applicant provided information to the respondent in respect of Royal Van Zanten Uganda Limited. At that time the law in respect of commission to informers was provided in the Finance Act 2014. S. 8 of the Act read,

> "**Payment to informers.**
> The Commissioner General shall pay to a person who provides information leading to the recovery of a tax or duty, the equivalent of ten percent (10%) of the principal tax or duty recovered."

In 2019, the Tax Procedure Code (Amendment) Act was passed. It stated that the principal Act is amended by inserting immediately after S.74 the following:

> "74A. **Payment of informers**
> The Commissioner General shall pay to a person who provides information leading to the recovery of a tax or duty, the equivalent of five percent of the principal tax or duty recovered."

The wordings in the Sections are the same but the commission was reduced to 5%. The respondent recovered tax of Shs. 2,200,000,000 from the taxpayer. On 4th August 2020, the respondent paid the applicant Shs. 118,000,000 being 5% of the sum recovered. The applicant contends that he is entitled to a commission of 10% and not 5%.

The dispute between the parties boils down to, what law ought to be applied in determining the quantum of reward, due to the applicant, a tax informer. The applicant's position is that the law applicable ought to be S. 8 of the Finance Act 2014, which entitles him to a reward of 10% of the tax recovered. The respondent on the hand states that the law applicable is S. 74A of the Tax Procedures Code Act, which entitles the applicant to a reward of only 5% of the tax recovered. The main thrust of the applicant's case is that his right to payment under S. 8 of the Finance Act 2014, accrued at the time that he provided the respondent with the requisite information. The respondent's case on the other hand is that the applicant's right only accrued at the time that tax was recovered through the information supplied to the respondent.

It is therefore important for us to determine at what point the applicant's right to a reward accrued. Both Sections provide that the Commissioner General shall pay a person who provides information leading to recovery. Therefore, as soon as an informer provides information and there is a recovery the informer is entitled to a reward. So there is question when does the right accrue? Is it at the provision of information or at the time of recovery? The respondent argued that before the enactment of S. 74A, no right had accrued to the applicant as no tax had been recovered.

The applicant argued that the repeal of S. 8 of the Finance Act 2014 by S. 74A of the Tax Procedures Code (Amendment) Act 2019, did not affect his right to a reward at 10% of the tax recovered, for the reason that his right was preserved by S.13 of the Interpretation Act, since it had been acquired before the repeal of the Finance Act. The Interpretation Act consolidates the law relating to the construction and interpretation of Act of Parliament. S. 13(2) provides that where any Act repeals any other enactment, then unless the contrary intention appears, the repeal shall not –

> "(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed"

The word 'right' is defined by *Black's Law dictionary* 10th Edition p. 1517 as

> "**2**. Something that is due to a person by just claim, legal guarantee, or moral principle <the right of liberty>. **3.** A power, privilege, or immunity secured to a person by law <the right to dispose of one estate>. **4.** A legally enforceable claim that another will do or will

not do a given act; a recognized and protected interest the violation of which is wrong <a breach of duty that infringes one's right>. **5**. (often pl.) The interest, claim, or ownership that one has in tangible or intangible property < a debtor's rights in collateral> <publishing rights>..."

Therefore, to determine when the applicant's right arose: one must ask when was he entitled to claim for his reward? Was it at the time he passed on information or at time of recovery of the tax? Further, S. 13(2) of the Interpretation Act states:

(d) "any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed"

The applicant having given information, the respondent carried out investigations. If we are to assume that the right to the reward accrued at the time he gave information, would the remedy in respect of the applicant's right to a reward deemed to have continued to exist as if no repealing Act had been passed?

In *Pioneer General Association Ltd v. Ziwa* [1974] EA 161 where S. 104 of the Traffic Act, 1951, gave a third party, a right of action against an insurer, in respect of death or injury caused by or arising out of the use of an insured vehicle. This right of action was however contingent on the third party obtaining judgment against the insured. In 1971, before the third party had obtained judgment against the insured, the Act was repealed and replaced by the Traffic and Road Safety Act 1970. The new Act did not provide for the right of action by third parties against insurers. The court relying on S. 15(1) of the Interpretation Act, which has been reproduced as S. 13 (2)(c) of the present Interpretation Act, held that the third party's right of action against the insurer was not affected by the repeal of the Traffic Act 1951, as the insurer had incurred the obligation to indemnify the third party at the time the accident had taken place. The applicant relying on the decision argued that his right to a reward at 10% of the tax recovered was acquired at the time that he provided the respondent with the requisite information. Consequently, by virtue of S. 13(2)(c) of the Interpretation Act, this right was not affected by the repeal of S. 8 of the Finance Act.

The facts in the Pioneer General case are similar to those in this case. In the Pioneer General case, the insurer's obligation to the third party was incurred at the time of the accident because the insured event was death or injury to any person arising out of the use of the vehicle on the road at the time of the accident. The third party's right accrued at the time the accident occurred. The third party was entitled to this right by S. 104 of the Traffic Act 1951. Following the repeal of the 1951 Act, the third party right was not affected as it had been preserved by S. 15(1) of the Interpretation Act which is similar to S. 13(2)(c)of the current Interpretation Act. In the instant case, it is clear from S. 8 of the Finance Act that an informer's right to a reward is created immediately upon the provision of information. The obvious inference is that an informer's right to a reward accrues at the time the information is provided but not at the time of the recovery of tax.

The right of an informer arises at the point of tax incidence. That is when the tax liability of the taxpayer arises or when the respondent becomes aware that tax is due from the taxpayer. There can be no recovery unless there is liability. The information the informer provides assists if not establishes liability. The point where tax is recovered is important in only determining what amount is due to the informer. If no taxes are recovered the informer receives nothing. Recovery may be delayed by investigations carried out by the respondent. Therefore the informer's right is contingent right, that is, it depends on the occurrence of an event, in this case, recovery.

The right to claim a reward as an informer under S. 8 of the Finance Act and later under S.74A of the Tax Procedure Code Act constitutes a chose in action. A 'chose in action' is defined by *Black's Law Dictionary* 10th Edition p.294 as:

> "A proprietary right in per personam, such as a debt owed by another person, a share in a joint-stock company, or a claim for damages in tort. 2. The right to bring an action to recover a debt, money or thing."

S. 8 of the Finance Act and latter S.74A of the Tax Procedure Code Act give an informer the right to bring an action to recover an informer's reward. The right of an informer reward is a proprietary right, it is intangible property. The right accrues as soon information is given to the respondent and crystalizes when the tax is recovered. The applicant's right to sue arose in 2017 under the Finance Act 2014 and not under the Tax Procedure Code

(Amendment) Act 2019. By the time, the Tax Procedure Code (Amendment) Act was passed, the applicant had already given his information to the respondent. The Tax Procedure Code (Amendment) Act clearly states that it came in force on 1st July 2019. It cannot cover information given before it became effective. The informer's right being a proprietary right, he cannot be deprived of it by legislature as it would infringe on his constitutional right to property. Having provided information, an attempt to reduce the reward from 10% to 5% would be deprivation of property as the informer would be entitled to less property. In *Shah v Attorney-General of Uganda* (1969) EA 261, the court considered the constitutional rights of a person to his property. The court held that a judgment debt was property within the meaning of the Constitution (the one in operation then was the 1967 Constitution), which was protected by the Constitution.

The applicant also argued that the application of the Tax Procedures (Amendment) Code Act, 2019, to matters which began in 2017, offends the rule against the retrospective application of statutes. Madrama J. in *James Mundele Sunday v Pearl of Africa Tours and Travel,* High Court Civil Suit No. 89 of 2011, cites with approval the English decision of *Re: School Board Election for the Parish of Pulborough* [1894] 1 QB 725, where Lopes L.J, stated that statutes operate only in respect of cases and facts which come into existence after their enactment, unless a retrospective application is intended. In the instant case, the relationship between the applicant and the respondent started in September 2017, when the applicant relying on the promise of the reward under S. 8 of the Finance Act 2014, provided the respondent with information about the non-payment of tax by Royal Van Zanten Ltd. This relationship constitutes a single transaction with a series of interdependent steps. The first step, being the provision of information, the second step being an investigation by the respondent as to the veracity of the information provided, the third step being the recovery of tax and the fourth step being payment of the reward. At the start of the transaction the law in force was S. 8 of the Finance Act, 2014. This is the law which ought to apply to this transaction. S. 74A of the Tax Procedures (Amendment) Code Act, 2019, can only apply to facts which came into existence after its enactment. It cannot apply to a transaction which commenced in the year 2017, even though the recovery of tax which was a condition precedent to the payment of the reward took place in the year 2020 after the enactment of the Act. Nothing

in the Tax Procedures (Amendment) Code Act shows that it was intended to apply retrospectively.

We accordingly find that the applicant is entitled to the payment of the reward commission at the rate of 10%. We accordingly order as follows

1. The respondent pays the applicant Shs. 118,624,679 which is the balance on the 10% of the principal tax recovered.
2. The respondent pays the costs of this application.
3. The applicant is awarded interest at the rate of 24% per annum from the date of this ruling until payment in full.

It is so ordered.

Dated at Kampala this 22nd day of April 2021.

DR. ASA MUGENYI	**MS. CHRISTINE KATWE**	**MR. SIRAJ ALI**
CHAIRMAN	**MEMBER**	**MEMBER**