

RWANDA REVENUE AUTHORITY v. MUHIRE

[Rwanda SUPREME COURT – RCOMA0035/13/CS (Kayitesi R., P.J., Gakwaya and Gatete, J.) May 3, 2016]

Tax law – Income tax – Business profit – No tax may be levied on the loan granted to the taxpayer since it is not the income from business transactions or the income from the investment – Law N°16/2005 of 18/8/2005 on direct income tax, article 10.

Damages – Advocate fees – The win on some grounds by the plaintiff is not likely to prevent him from being granted the lawyer’s fee as long as he/she hired him – Decree-Law of 30/07/1888 governing the contracts and the contractual obligations, article 258.

Tax law – Tax statute of limitation – The statute of limitation for the value added tax is of public order which may be raised by the taxpayer at any stage of proceeding – Law N°25/2005 of 4/12/2005 on tax procedures, article 27 – Law N°06/2001 of 20/1/2001 on Value Added Tax, article 37.

Facts: After Rwanda Revenue Authority audited Muhire, RRA notified him that he has to pay tax amounting to 32,957,990Frw encompassing the income tax and value added tax for several fiscal years he did not pay. Muhire appealed against it, to the Commissioner General, in the letter dated 6th May 2012; he was informed that his appeal has no ground.

He seized the Commercial High Court arguing that the value added tax for fiscal years of 2005, 2006 and 2007 cannot be paid since RRA did not claimed it before the prescription and that in the computation of the value added tax RRA included the loan among the taxable income. The court decided that the statute of limitation concerning the value added tax should not be analysed since no appeal was made to the Commissioner General. It also held that the money that has been lent to Muhire should not be deducted from the sales revenue except the debt of 10,177,083Frw for sales revenue of 2007.

Rwanda Revenue Authority appealed to the Supreme Court arguing that the Commercial High Court disregarded the provided arguments on 10,177,083Frw that was decided to be deducted from the sales revenue. It added that among all the grounds relied on by Muhire, he only won on one of them and therefore no lawyer’s fee would be granted to him.

Muhire responded that 10,177,083Frw consists of the loan he acquired from Kwitonda as proven by the answer he wrote to RRA in whereby he admitted it.

Muhire lodged a cross appeal arguing that he should not have been requested to pay the tax for 2005 and 2006 fiscal years since the fact that RRA did not assess the veracity of the declaration he made for the period of three years, that right was time barred, which made the tax final and therefore no other tax should be imposed on him for those fiscal years.

Held: 1. The taxable income consists of the income from business profit and investment income which implies that the loan awarded to the taxpayer should not be taxed. Therefore no tax should have been imposed to Muhire for the money he has been lent.

2. The win on some grounds by the plaintiff is not likely to prevent him from being granted the lawyer’s fee as long as he/she hired him.

3. The statute of limitation for the value added tax is of public order which may be raised by the taxpayer at any stage of proceedings.

**Appeal has no merit.
Cross appeal has merit.
Court fees to RRA.**

Statutes and statutory instruments referred to:

Law N°25/2005 of 4/12/2005 on tax procedures, article 27(3).
Law N°16/2005 of 18/08/2005 on direct taxes on income, article 10.
Law N°15/2004 of 12/6/2004 relating to evidence and its production, article 3.
Law N°06/2001 of 20/1/2001 on Value Added Tax, article 36.
Law of 30/07/1888 governing contracts or obligations, article 258.

No case was referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] RRA conducted tax audit for Muhire Jean Pierre. From this audit, it imposed the tax of 32,957,990Frw which includes tax on income; value added tax for 2005, 2006 and 2007 fiscal years. On March 20, 2012, Muhire Jean Pierre made an administrative appeal to the Commissioner General requesting to handle his injustice. On May 16, 2012 the Commissioner General replied that his appeal lacks merit.

[2] Muhire Jean Pierre filed the complaint to the Commercial High Court and the latter in the judgment N° RCOM0160/12/HCC rendered on January 7, 2013 decided that the prescription of the value added tax for 2005 fiscal year (From January to November) must not be examined because that tax was not final given that Muhire Jean Pierre had never appealed against it to the Commissioner General¹.

[3] It decided further that 9,000,000Frw that Muhire Jean Claude claimed to have been a loan from Kayijuka Alphonse must not be deducted from the annual turnover of the year 2005. It further decided that 7,350,432Frw which he said it was the payment made to him by MINAGRI and 4,863,500Frw which he pretends was business expenses must not be deducted from taxable income for the year 2006. The Court held in addition that 10,177,083Frw must be deducted from the annual turnover for the year 2007. Muhire Jean Pierre was awarded 300,000Frw for advocate fees.

[4] Rwanda Revenue Authority appealed to the Supreme Court alleging that the Commercial High Court disregarded its arguments on 10,177,083Frw which was confirmed to be deducted from the annual turnover by Muhire Jean Pierre for the year 2007 and that the very Court disregarded also that on all grounds of appeal filed by Muhire Jean-Pierre, he only won the case on one ground and hence he could not be awarded advocate fees.

[5] Likewise, Muhire Jean Pierre filed a cross appeal claiming that it must not demand him to pay taxes for the 2005 and 2006 fiscal years because its failure to examine whether Muhire Jean Pierre had successfully declared the tax within the period of three years, it was

¹ Muhire Jean Pierre claimed that the tax for 2005 fiscal year was time barred since RRA did not make any follow up and he got answered that he had not raised such point before the Commissioner General.

time barred and hence the tax that he declared became final and no other tax should be imposed for those both fiscal years.

[6] The public hearing was conducted on March 29, 2016, whereby RRA was represented by the State Attorney Byiringiro Bajeni while Muhire Jean Pierre was represented by Nsengiyumva Abel, the counsel.

II. ANALYSIS OF LEGAL ISSUES

a. Concerning the appeal of Rwanda Revenue Authority (RRA)

Whether 10,177,083Frw must not be deducted from the annual turnover of Muhire Jean Pierre for the year 2007.

[7] Byiringiro Bajeni, the state attorney for Rwanda Revenue Authority claimed that the Commercial High Court disregarded the arguments of RRA with regard to the tax of 10,177,083Frw for the 2007 fiscal year which Muhire Jean Pierre alleges to have been the loan he acquired from Kwitonda Jean de Dieu. He explained that the contract on which Muhire Jean Pierre bases his defence was denied by Kwitonda Jean de Dieu in his correspondence to RRA dated 14 September 2010. He stressed that the terms in that contract are far different from explanations that Kwitonda Jean de Dieu himself gave to RRA in his correspondence dated January 8, 2010 since, from the contract, Muhire Jean Pierre specifies that Kwitonda gave him a loan and that Kwitonda would give him the interests of 1,000,000Frw while he is the lender. He further states that in his letter, Kwitonda Jean de Dieu states that he gave him that money cash so that he could reimburse him either in money or cement since he was doing construction activities. He concluded arguing that the signature of Kwitonda Jean de Dieu as on that contract is different from the one on his correspondences mentioned above as well as on his identity card.

[8] Nsengiyumva Abel, counsel for Muhire Jean Pierre states that 10,177,083Frw is the loan he borrowed from Kwitonda Jean de Dieu. He added that the Court had based on partnership agreement dated January 4, 2007 which indicates that he acquired that loan in the context of buying the cement wholesale from CIMERWA. He continued arguing that RRA wrote to Kwitonda Jean de Dieu asking him whether he had really gave the loan to Muhire Jean de Dieu and his reply was positive; hence, according to him the appeal filed by RRA lacks merit.

VIEW OF THE COURT

[9] Article 3 of Law N°15/2004 of 12/6/2004 relating to evidence and its production provides that “each party has the burden of proving the facts it alleges”.

[10] Article 10 of the Law N°16/2005 of 18/08/2005 on direct taxes on income provides that taxable income is composed of the following: employment income, business profits and investment income.

[11] As it is identified on paragraph 25 of the appealed judgment, the Commercial High Court explained that the arguments that RRA asked Kwitonda Jean de Dieu in the correspondence dated September 14, 2010 whether he had lent the money to Muhire Jean Pierre but rejected the conclusion of the contract dated January 4, 2007, have no merit because the contract that he denied is the one dated January 4, 2010. The Court further

explained that the allegations that the signatures of Kwitonda Jean de Dieu which do not look alike must not be examined in case no criminal action for forgery was filed and therefore decided that 10,177,083Frw should be deducted from the annual turnover for the year 2007 since RRA asked Kwitonda Jean de Dieu in the latter of October 8, 2010, whether he lent such amount to Muhire Jean Pierre and he confirmed that he did in 2007 so that he could buy the cements and sell them to him in return on CIMERWA wholesale price.

[12] As it is highlighted in the case file, Muhire entered into partnership agreement with Kwitonda Jean de Dieu whereby the later lent ten millions and one hundred and seven thousand (10,177,000Frw) so that he could buy the cement from CIMERWA for sale. He added that he had to buy it and hand it over to Kwitonda Jean de Dieu who should retail it on the price fixed by CIMERWA and under the name of Muhire Jean Pierre. He explained that they had agreed that the loan should generate interest of a million in favor of Muhire Jean Pierre for every 100 sacks. The agreement was supposed to be terminated at any time Muhire Jean Pierre could afford to refund him his capital ($\pm 10,177,083$ Frw).

[13] The letter of Kwitonda Jean de Dieu in the case file dated September 14, 2010 which was the response to the correspondence N°045/RRA/RSZ/LE/10 authored by the Coordinator of RRA in Rusizi and Nyamasheke Districts demonstrates that he had not entered into the contract with Muhire Jean Pierre on January 4, 2010, instead, they entered into contract at the beginning of the year 2010 whereby he was arranging to sale CIMERWA cement. In correspondence of October 8, 2010 made by Kwitonda Jean de Dieu which is included in the case file, in response to the letter of the Coordinator of RRA Branch for Rusizi and Nyamasheke dated September 22, 2010, he confirmed that he lent 1,000,000Frw to Muhire Jean Pierre in the year 2006 and 10,177,083Frw in the year 2007.

[14] The Supreme Court finds that the assessment of the documents mentioned above demonstrates with no doubt that Kwitonda Jean de Dieu had indeed lent to Muhire Jean Pierre 10,177,083Frw on January 4, 2007.

[15] The Supreme Court finds further that with regard to the trader, the taxable income is the business profit and investment income. Therefore, the fact that the money in question is the debt or the loan that Kwitonda Jean de Dieu accorded to Muhire Jean Pierre must be deducted from the taxable business profit (deductible expenses).

[16] With regard to the arguments of RRA that the signature of Kwitonda Jean de Dieu on that contract is different from that which is on the aforementioned letters as well as that on his identity card, the Supreme Court finds that as long as Kwitonda Jean de Dieu confirms that he lent Muhire Jean Pierre 10,177,083Frw as it is clear in the contract they had concluded on January 4, 2007, then the allegations of RRA cannot be considered. Apart from that, as explained by the High Court, there is no reason to examine the allegations of RRA as long as it did not file a criminal action claiming that the contract in issue is a forgery.

[17] Based on the provisions of the law as mentioned in the previous paragraphs, the Supreme Court finds that 10,177,083Frw must be deducted from taxable business profit. Therefore this ground of appeal filed by Rwanda Revenue Authority has no merit.

Whether Muhire Jean Pierre must be awarded the advocate fees.

[18] Byiringiro Bajeni, the State Attorney states that the Commercial High Court disregarded that Muhire Jean Pierre won on only one ground of appeal while RRA won the

case on more grounds than Muhire Jean Pierre did, hence the latter must not be awarded damages since it is a win-win situation.

[19] Counsel Nsengiyumva Abel replied that the existence of evidence that Muhire Jean Pierre hired legal counsel before the Commercial High Court justify the award of that fee.

VIEW OF THE COURT

[20] Article 258 of the Civil Code Book III provides that any act of man, which causes damage to another obliges the person by whose fault it happened to be held liable.

[21] Based on the provisions of this article 258 as aforementioned, to repair the damage must be done *restitutio integrum* but, for this to work, evidence in support must be produced.

[22] As it is clear in paragraph 32 of the appealed judgment, RRA argued before the Commercial High Court that the advocate fees that requested by Muhire Jean Pierre has no merit while in paragraph 33 of that very judgment, the Court explained that RRA must pay counsel fees to Muhire Jean Pierre since some of his grounds have merit..

[23] The Supreme Court finds that the Commercial High Court did not error in awarding Muhire Jean Pierre the advocate fees that he had requested based on article 258 of the Civil Code Book III because it was necessary to hire a lawyer as it was evident during the hearing and that some of his grounds of appeal had merit. It finds in addition that the fact that the case between RRA and Muhire Jean Pierre is a win-win situation should not have been a ground for not awarding him the advocate fees he requested.

[24] Based on the above motivations, the Supreme Court finds that the grounds of appeal of Rwanda Revenue Authority lack merit.

B. Concerning cross-appeal filed by Muhire Jean Pierre.

Whether the Value Added Taxes for 2005 fiscal year imposed on Muhire Jean Pierre were time barred.

[25] Counsel Nsengiyumva Abel states that article 27 of Law N°25/2005 of 4/12/2005 on tax procedures provides that tax administration was entitled to verify whether Muhire Jean Pierre had properly declared the tax in the period of three years. He stressed that the fact that RRA did not do it was stripped off its rights, hence the tax he declared became final and he must not be imposed another one for those years.

[26] With regard to the fact that the judge decided not to examine that ground (on paragraph 7 of the judgment) because it was not mentioned in the appeal addressed to the Commissioner General, counsel Nsengiyumva Abel explained that Muhire Jean Pierre had never modified the claim, instead, it is a new ground supporting that RRA must not impose the value added tax for the fiscals years 2005 and 2006.

[27] Byiringiro Bajeni, the State Attorney presented his defence requesting the Court to not examine such ground because since for him, it is a new claim. He explained that Muhire Jean Pierre had never appealed against it to the Commissioner General as provided for by tax laws, which implies he had admitted that decision.

[28] Byiringiro Bajeni, the State Attorney states that could the Court find its examination necessary, to his view, no due consideration should be given to them because Muhire Jean Claude was given a notice for tax audit for those fiscal years on December 23, 2008 and those taxes were not yet time barred. He continued arguing that the prescription in issue was interrupted by the notice given to him on February 16, 2011 given that the deadline was December 23, 2011.

VIEW OF THE COURT

[29] Article 27(3) of Law N°25/2005 of 4/12/2005 on tax procedure which was into force when Muhire Jean Pierre was given rectification note provides that the “rectification note may be issued in a period of three (3) years, starting from the day of the filing of the tax declaration. A rectification note has to be issued at least on the last day of the three year period. The prescription mentioned in this paragraph is interrupted if the taxpayer has been informed to be audited by the Tax Administration, when there has been an affidavit thereof or by other deeds of acknowledgement by the taxpayer concerning the tax liabilities and all other provisions provided in the other laws”.

[30] Article 36(1) of Law N°06/2001 of 20/1/2001 on Value Added Tax which was into force at the time Muhire Jean Pierre was issued the rectification note provides that “a registered tax payer shall make tax declaration on value added tax in accordance with prescribed documents and procedure within 15 days after Value Added tax period”.

[31] The Supreme Court finds that even if in his submissions, Muhire Jean Pierre requests the Court to confirm the prescription of taxes for 2005 and 2006 fiscal years, but as it is clear on paragraph 4 of the appealed judgment, Muhire Jean Pierre requested the Commercial High Court to confirm that the value added tax for the fiscal year 2005 from January till November that he declared became final because Rwanda Revenue Authority was entitled to conduct tax audit within three years and it did it after the prescribed period. Hence, the Court should only examine the prescription of value added tax for 2005 fiscal year as alleged by Muhire Jean Pierre.

[32] The Court finds that as indicated on paragraph 7 of the appealed judgment, the Commercial High Court explained that the statute of limitation concerning the value added tax for 2005 fiscal year from January to November must not be examined because Muhire Jean Pierre did not appeal against it to the Commissioner General because in his/her decision it is not evident that he invoked the prescription of tax while the Court is referred to only after the tax payer deems he is aggrieved by the decision of the Commissioner General. Therefore, the value added tax for 2005 fiscal year from January till November that Muhire Jean Pierre had declared is not final.

[33] The Supreme Court finds that Rwanda Revenue Authority issued assessment note on December 16, 2008 and he acknowledged reception on December 23, 2008 for tax declaration (IR, TPR and TVA) he made for 2005, 2006 and 2007 fiscal years.

[34] The Supreme Court finds that based on article 36(1) of the Law N°06/2001 of 20/1/2001 referred to above and on article 27(3) of the Law 25/2005 of 4/12/2005 referred to above, tax declaration on value added tax of January 2005 had to be done by Rwanda Revenue Authority not later than February 15, 2008 while that of November had to be done not later than December 15, 2008, therefore the fact that Rwanda Revenue Authority had

notified Muhire Jean Pierre on December 23 that it was to conduct tax audit for 2005, 2006 and 2007 fiscal years on January 5, 2009 implies that the value added tax for 2005 year from January to November that Muhire Jean Pierre had declared became final.

[35] With regard to the arguments of Rwanda Revenue Authority that this ground about the state of limitation regarding value added tax for 2005 fiscal year should not be examined by this Court since it is the new claim which had not been referred to Commissioner General at appeal, the Supreme Court finds that these arguments lack merit because the statute of limitation referred to in article 27(3) of the aforementioned Law N°25/2005 of 4/12/2005 is of public order in such a way that it may be raised by the tax payer at any stage of the proceedings either before Commissioner General or the Court. It finds further that this cannot be considered as a new claim since it consists of the defence at the disposal of the tax payer which he/she may raise at any stage as mentioned above.

[36] Based on the explanations in the previous paragraphs, the Supreme Court finds that this ground of appeal filed by Muhire Jean Pierre has merit. Hence, he must be imposed value added tax only for 2005 fiscal year that he had declared to Rwanda Revenue Authority.

Whether Muhire Jean Pierre must be awarded damages he seeks.

[37] Muhire Jean Claude states that he requests the Supreme Court to order Rwanda Revenue Authority to pay 500,000Frw for advocate fees.

[38] Rwanda Revenue Authority replied that the requests of Muhire Jean Pierre are not founded.

VIEW OF THE COURT

[39] Article 258 of the Civil Code Book III provides that any act of man, which causes damage to another obliges the person by whose fault it happened to be held liable.

[40] Based on the explanations detailed above, the Supreme Court finds that Muhire Jean Pierre deserves to be awarded 500,000Frw for advocate fees since he hired the services advocate.

III. DECISION OF THE COURT

[41] Decides that the appeal of Rwanda Revenue Authority has no merit;

[42] Decides that 10,177,083Frw must be deducted from the taxable business profit made by Muhire Jean Pierre;

[43] Decides that cross appeal filed by Muhire Jean Pierre has merit;

[44] Decides that Muhire Jean Pierre must be imposed to pay the value added tax for 2005 fiscal year that he declared to Rwanda Revenue Authority;

[45] Orders Rwanda Revenue Authority to pay Muhire Jean Pierre 500,000Frw for advocate fees at this instance;

[46] Orders Rwanda Revenue Authority to pay court fees worth 100,000Frw.