

RUBERANDINDA v. RWANDA REVENUE AUTHORITY (RRA)

[Rwanda SUPREME COURT – RCOMAA00030/2017/CS (Kayitesi R, P.J., Gakwaya and Mukandamage, J.) 25 May 2018]

Tax law – Taxation – Communication between the Tax administrator and the Taxpayer through the registered letter – When the tax administration or the taxpayer uses the post office to communicate, the sender is deemed to have discharged his obligations when the letter is received by the post office and puts a stamp on it, irrespective of when the recipient will receive it. Therefore, the decision of the Commissioner General on the appeal of Ruberandinda was delivered within 60 days as required by the law. – Law N°25/2005 of 04/12/2005 on tax procedures article 4.

Tax law – Taxation – The post office to which a registered letter is delivered is any post office which the Tax Administration or the taxpayer uses to send it as long as that letter has the recipient name and the number of the post office box, which the taxpayer recorded in Rwanda Revenue Authority – Law N°25/2005 of 04/12/2005 on tax procedures article 4.

Facts: After Ruberandinda was assessed without notice, Rwanda Revenue Authority charged him Value added tax and income tax worth 81.587.393Frw for the fiscal year of 2009 and 2010, subsequently on 29/9/2015 he appealed to the Commissioner General requesting the tax to be reduced to 11.415.245Frw, the Commissioner General received his appeal on 01/10/2015 and replied him on 27/11/2015, informing him that his appeal has merit in parts and therefore he should pay 62.639.977Frw.

Ruberandinda was not contented with that decision and filed a claim to the Commercial Court of Huye arguing that he did not receive the response of the Commissioner General on his appeal within the provided timelimit because the letter got into his post office box at Muhanga after the expiry of the 60 days which is provided by the law. The Court found his claim with merit and held that he should pay the tax of 11,415,245Frw for the year 2009 and 2010 plus the penalties for those two years, RRA was also ordered to pay him damages for dragging him into lawsuits and that for counsel fees.

The Tax Administration appealed to the Commercial High Court claiming that the previous court erred in holding that the appeal of Ruberandinda to the Commissioner General had merit, the Court found the appeal of RRA with merit basing on the letter which Ruberandinda wrote to the Commissioner General and also on the registered letter replied to him which was delivered to the post office of Kigali and reached to Muhanga where the plaintiff resides, it found that the taxpayer received the response of the Commissioner General within 60 days provided by the law.

Ruberandinda appealed to the Supreme Court stating that the grounds of his appeal are all summed up in one which purposely intends to establish where the decision of the Commissioner General should be delivered in order to reach the taxpayer, because RRA took the letter to the Post office of Kigali while he resides at Muhanga and that is the address he gave to RRA, thus RRA had to deliver its letter to the Post of Muhanga.

He further argues that the date which should have been based on in counting 60 days in which RRA had to have delivered the response to him is the one which is indicated by the stamp of the

Post Office of Muhanga which is on the letter containing the notification, he further states that his appeal was received on 01/10/2015 and the last day for the notification to be delivered to the Post Office of Muhanga was 30/11/2015, while the letter of the Commissioner General bears a stamp which indicates that it was received by the Post Office of Muhanga on 02/12/2015 after the expiry of the 60 days, therefore he requests for damages and the compensation for the profit he should have got within 82 days he spent following up the case.

Rwanda Revenue Authority argues that the period of 60 days was respected because the Commissioner General got the appeal of Ruberandinda on 01/10/2015 and it delivered its response to the Post Office on 27/11/2015. And alleging that the post office address of the post which the taxpayer gave to RRA is that of Muhanga, is groundless because it is the duty of the post office to put letters in the post office box but not that of Rwanda Revenue Authority. It concludes that it is normal the letter to bear the stamp of the post office of Muhanga, because that indicates that the taxpayer received his letter, but there is also a proof that it was submitted to the Post office of Kigali and it received that letter.

Held: 1. When the tax administration or the taxpayer uses the post office to communicate, the sender is deemed to have discharged his obligations when the letter is received by the post office and puts a stamp on it, irrespective of when the recipient will receive it. Therefore the decision of the Commissioner General on the appeal of Ruberandinda was delivered within 60 days as required by the law.

2. The post office to which a registered letter is delivered is any post office which the Tax Administration or the taxpayer uses to send it as long as that letter has the recipient name and the number of the post office box, which the taxpayer recorded in Rwanda Revenue Authority.

3. The date indicated on the stamp of the post office which received the registered letter is the one based on to determine whether that letter was sent by the Tax Administration within 60 days.

4. The motivations contained in the Judgment RCOMAA 00070/2016/CS – RCOMAA 0076/16/CS, between RRA and Murebwayire Agnès rendered on 03/11/2017 by the Supreme Court, that article 6, 2° of the Law N°25/2005 of 04/12/2005 on the tax procedure, is interpreted to mean that the post office mentioned in that article is the one located at the place where the taxpayer resides but not the one located at Kigali or any other post office in the country, is misconstrued, because that article provides that the post office to which the letter should be delivered is the main post office at Kigali for Rwanda Revenue Authority or a taxpayer who resides in Kigali, and for the taxpayer residing in provinces, the post office that receives the letter designated for Rwanda Revenue Authority is the one where he resides, whose address he gave to Rwanda Revenue Authority, which then sends the letter to Rwanda Revenue Authority.

Appeal lacks merit.

The rulings of the Commercial High Court sustained.

The court fees deposited by the plaintiff is equivalent to the expenses incurred in this case.

Statutes and statutory instruments referred to:

Law N°25/2005 of 04/12/2005 on tax procedures article 4, 5, 6 al 2 and 32.

No cases referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] Rwanda Revenue Authority assessed Ruberandinda Viateur without notice and charged him value added tax of 81,587,393Frw for the fiscal year of 2009 and 2010.

[2] On 29/09/2015, Ruberandinda Viateur appealed to the Commissioner General stating that he does not acknowledge the taxes he was charged, he requests that he should only pay the tax of 11,415,245Frw which he acknowledges, the Commissioner General received that letter on 01/10/2015 and he replied it on 27/11/2015, informing him that his appeal has merit in parts and that the tax amount to 18,947,416Frw should be waved and he pays 62,639,977Frw.

[3] Ruberandinda Viateur was not contented with that decision and sued to the Commercial Court of Huye claiming that he received the letter of the Commissioner General responding to his appeal after the expiry of the 60 days which are provided by the Law, because that letter got into his post office box in Muhanga on 02/12/2015, he prays that he pays only the amount of tax he acknowledges.

[4] In the Judgment RCOM 0472/15/TC/HYE rendered on 13/05/2016, the Court found his claim with merit on the ground that he was notified of the Commissioner General's response after the expiry of the legally provided period, and ruled that he pays 11,415,245Frw for both income tax and Value Added Tax for fiscal year of 2009 and 2010, plus the penalties for those two years. It ordered RRA to give him 500,000Frw in damages for both dragging him into lawsuits and for counsel fees.

[5] RRA appealed to the Commercial High Court arguing that the Judge erred in holding that the appeal of Ruberandinda Viateur to the Commissioner General had merit on the ground that the Commissioner General responded on his appeal after the expiry of the 60 days period provided by the Law¹, on 10/03/2017, the Commercial High Court rendered a judgment RCOMA 00320/2016/CHC/HCC, and held that Ruberandinda Viateur got the response from the Commissioner General on his appeal within the timelimit provided by the law, therefore his appeal lacks merit.

[6] In its decision the Court based on the letter which the plaintiff wrote to the Commissioner General on 29/09/2015, received by the RRA on 01/10/2015 and the Commissioner replied his appeal through a registered letter which was deposited to the Post Office of Kigali on 27/11/2015, and reached in the post office box N°169 at Muhanga, the domicile of the plaintiff on 02/12/2015, and thus concluded that the period of 60 days provided by article 32 of the above mentioned Law and the provisions of article 5 paragraph 2² of the same law were both respected.

¹ It relied on article 32 of the law N°25/2005 of 04/12/2005 on tax procedures as amended and completed to date which provides "The Commissioner General makes a decision on the appeal within a period of thirty (30) days and sends it to the taxpayer. The Commissioner General may extend this period once for another thirty (30) days and informs the taxpayer. When no decision is taken within this period, the appeal is assumed to have a basis."

² When a taxpayer and the tax administration send each other a letter by post, they shall be deemed to have discharged their respective obligations as of the date of receipt of such a letter by the post office

[7] On 08/04/2017, Ruberandinda Viateur appealed to the Supreme Court arguing that the Commercial High Court erred in holding that the decision of the Commissioner General on his appeal was issued within the period provided by the law, because it reached his post office at Muhanga after the expiry of the 60 days provided by the law, this caused him to be charged 62,639,977Frw of tax, which he shouldnt have paid, he requests for counsel fees and the compensation profit he was supposed to get within 82 days he spent following up on the lawsuits.

[8] The case was heard in public on 03/04/2018, Ruberandinda Viateur represented by Counsel Nsengiyumva Abel while Rwanda Revenue Authority represented by Counsel Twahirwa Jean -Baptiste.

II. ANALYSIS OF THE LEGAL ISSUES.

1. Whether the decision of RRA on the appeal of Ruberandinda Viateur contained in the registered letter was issued on time.

[9] Counsel Nsengiyumva Abel representing Ruberandinda Viateur, states that the grounds of appeal they submitted are all summed up in one which seeks to establish where the decision of the Commissioner General have to be passed or sent in order to reach the taxpayer, because the Commercial High Court held that the letter is considered to have reached the taxpayer when it is deposited at the Post Office. He further explains that the letter of the Commissioner General of Rwanda Revenue Authority was deposited at the Post Office of Kigali while Ruberandinda Viateur lives in Muhanga, and the address of his residence is B.P 169 Muhanga, it is also the same adress which he gave to Rwanda Revenue Authority, he also noted that the letter of the Comissioner General bears the same address as it can be found in the case file, therefore RRA had to take the letter of his client to the Post Office of Muhanga, he bases his arguement on article 4 of the Law N° 25/2005 of 04/12/2005 on tax procedures which provides that the considered address is that of residence, and that the last paragraph of article 5 of the same Law states the post office located where a person resides but not the Post Office as an institution because its not provided for by the law.

[10] The counsel for Ruberandinda Viateur claims that the date which should have been based on in counting the 60 days in which RRA had to have given him the notification is the one which is indicated on the stamp of the post Office of Muhanga on the letter which contained the notification, he also states that the appeal of Ruberandinda Viateur was received on 01/10/2015, thus the last day for the notification to reach the Post Office of Muhanga was 30/11/2015, while the letter which the Commissioner General wrote to Ruberandinda Viateur bearsg a stamp which indicates that it reached in the Post Office of Muhanga on 02/12/2015 after the expiry of the 60 days.

[11] Counsel Nsengiyumva Abel states that the appeal of Ruberandinda Viateur is based on the judgment RCOMAA 00070/2016/CS – RCOMAA 0076/16/CS between RRA and Murebwayire Agnès rendered by the Supreme Court because it has similar facts with the case at hand, the court found that Murebwayire Agnès wrote to the Commissioner General on 01/09/2015 appealing against the tax, the Commissioner General notified her of his decision on her appeal on 05/11/2015, 67 days after, which is contrary to the provisions of article 32 of the

law mentioned above , basing on article 6, paragraph 2 and article 4 of the same law , that court decided that the decision of the Commisioner was communicated to the taxpayer after the legally provided period had expired, therefore it found her appeal with merit and ordered that tax to be waived, therefor he prays that the Court should reffer to that jurisprudence when making its ruling.

[12] Counsel Twahirwa Jean- Baptiste representing Rwanda Revenue Authority argues that for the letter meant for the taxpayer to be sent through the post office located where he resides is one of the various means used, because sometimes the taxpayer can pick it himself from RRA offices, in that case it can't tell him to go and get the decision on his appeal from Muhanga.

[13] He states that for him he does not separate the headquarter of the Post Office from its branches because the branches do not have the legal personality, because when a letter is submitted to the headquarter or the main Post Office that means that it has received it, he finds that the letter which contains the decision was sent to the right place , thus he requests the court to apply the provisions of article 4 and 5 of the above mentioned law.

[14] Regarding the period of 60 days which the plaintiff allege that were not respected by Rwanda Revenue Authority, he finds that it respected that period because it received the appeal of Ruberandinda Viateur on 01/10/2015 and it took the letter containing the decision to the Post Office on 27/11/2015. He further states that the allegations of Ruberandinda Viateur that the address he gave RRA is that of the post office of Muhanga, has no ground because wether it took it to Kigali or Muhanga, the duty of putting letters in the post office box belongs to the Post Office not Rwanda Revenue Authority. He finds that it's normal that the letter bears the stamp of the post office of Muhanga, because it indicates that the taxpayer received his letter, he adds that there is also an evidence indicating that it was submitted to the Post office of Kigali and it recieved it.

THE VIEW OF THE COURT.

[15] Regarding whether Rwanda Revenue Authority replied the appeal of Ruberandinda Viateur within 60 days as required by the law, it has to be determined by establishing whether various provisions relating to communication between the Taxpayer and tax collector were repected.

[16] Regarding where the letter has to be delivered, article 4³ of the Law N°25/2005 of 04/12/2005 on tax procedures as amended todote, which was in force when RRA sent that letter, is costrued to mean that in sending the information to a taxpayer or any other person the Tax Administration sends it to the address given to it by the taxpayer or any other person, to the extent that in case of change of that address RRA must be notified. Regarding the methods of sending of documents between RRA and the taxpayer, article 5⁴ of that Law indicates four

³ Law N° 25/2005 of 04/12/2005 on tax procedures as amended to date provides that the Tax Administration sends letters, information or any other communication to the taxpayer or any otherperson at his or her official seat or known residence

⁴ Law N° 25/2005 of 04/12/2005 on tax procedures as amended to date, provides that any information between the Minister, the Tax Administration, the Commissioner General or the Appeals, Commission and the taxpayer or any other person is delivered through any of the following means: 1° a registered letter[...]

various methods which the Tax administration can use to send the information, which includes a registered letter, the one used when the Commissioner General was replying to the appeal of Ruberandinda Viateur in this case.

[17] Regarding the Post Office where the registered letter has to be delivered, article 6 paragraph two of the Law N°25/2005 of 04/12/2005 mentioned above provides that when a taxpayer and the tax administration send each other a letter by post, they shall be deemed to have discharged their respective obligations as of the date of receipt of such a letter by the post office.

[18] The Court finds that this article is construed to mean that when the Tax administration or the taxpayer use the post office to communicate, the sender is deemed to have discharged his obligations when it is received by the post office and puts a stamp on it, irrespective of when the recipient will receive it, its obvious that the post office mentioned in this article is any post office which the tax administration or the tax payer uses, as long as he has indicated on it the post office address of the recipient, that is to say the names, number of the post office box where he lives as provided by article 4 of the law interpreted above.

[19] Regarding this case, in order to establish that RRA sent a registered letter responding to the appeal of Ruberandinda Viateur before the expiry of the 60 days period, the Court finds that it should be determined by the date indicated on the stamp of the main Post office of Kigali, which RRA gave the registered letter to send it to the address which Ruberandinda Viateur gave to RRA, that is to say his names and the post office address of the place where he lives, as provided by article 4 of the Law mentioned above.

[20] The documents in the case file demonstrate that the document dated 02/09/2015 of Rwanda Revenue Authority⁵ concluding the assessment on the income tax which Ruberandinda Viateur had to pay before he appealed to the Commissioner General, indicates that he lives in Muhanga because it had the following identification: “Ruberandinda Viateur, TIN: 100845349, B.P. 169 Muhanga, Tél: 0788324023”.

[21] The documents in the case file also demonstrate that the registered letter N° 517/15/CG/LLBS/RPA dated 27/11/2015 which the Commissioner General of Rwanda Revenue Authority wrote to Ruberandinda Viateur in response to his appeal, indicates that he sent it to the address which he gave to RRA: “Ruberandinda Viateur, C/O AFICCO Ltd, TIN: 100845349, B.P. 169 Muhanga. Tél: 0788324023”.

[22] Furthermore, it demonstrates that the letter containing the appeal of Ruberandinda Viateur was received by the Commissioner General of Rwanda Revenue Authority on 01/10/2015 (page 14 of the case file of the Commercial Court of Huye) and on 27/11/2015, he also replied him using a registered letter through the Post Office of Kigali (annex 5 of the evidences submitted by RRA), which was delivered to Ruberandinda Viateur on the post office box of N°169 at Muhanga on 02/12/2015.

⁵ Written by its employees, Ndatabayе Maurice (Investigation Officer), Mwirere Delphine Acting Group Leader, Niyigaba Faustin, Acting Pricipal Investigation Officer, and Mugabe Robert, Deputy Commisiionner for Revenue Investigation and Enforcement Department.

[23] Therefore the Court finds, on 01/10/2015 the administration of RRA received the appeal of Ruberandinda Viateur and in responding to that appeal, it delivered a registered letter to the Main Post Office at Kigali on 27/11/2015, within 57 days, before the expiry of the 60 days, using the address which Ruberandinda Viateur himself gave to RRA, as provided by the first paragraph of article 6, of the Law N°25/2005 of 04/12/2005 mentioned above which provides that "when the tax law sets a time in which certain act, confirmation or communication has to be made or given, the time is calculated from one day after the date shown by one of the following: 1° the post office stamp on the letter mentioned under point 1° of paragraph one of article 5 of this law; 2° the day of receipt of the letter or communication mentioned under point 2° of paragraph one of article 5 of this law”.

[24] Regarding the Judgment RCOMAA 00070/2016/CS – RCOMAA 0076/16/CS, between RRA and Murebwayire Agnès rendered on 03/11/2017 by the Supreme Court, which Ruberandinda Viateur seeks to be referred to by the Court in reaching its decision on his appeal, the Court finds that it should not be referred to because it states that article 6, 2° of the Law N°25/2005 of 04/12/2005 mentioned above, is interpreted to mean that the post office mentioned in that article is the one located at the place where the taxpayer resides but not the one located at Kigali or any other post office in the country, which is misconstrued, because as explained above that article provides that the post office to which the letter should be delivered is the main post office at Kigali for Rwanda Revenue Authority or a taxpayer who resides in Kigali, and for the taxpayer residing in provinces, the post office that receives the letter designated for RRA is the one where he resides, whose address he gave to RRA, which then sends the letter to RRA.

[25] Basing on the legal provisions and motivations given above, the Court finds that the response of the Commissioner General of Rwanda Revenue Authority on the appeal of Ruberandinda Viateur was issued within the 60 days period as required by article 32 of the Law stated above, therefore his appeal lacks merit, as it was also found by the Commercial High Court, therefore the judgment it rendered is sustained.

2. Whether the damages requested by RRA in the cross appeal has merit

[26] Counsel Twahirwa Jean-Baptiste states that Rwanda Revenue Authority, which he is representing requests for 5,000,000Frw of the counsel fees on each instance because it was dragged into lawsuits which required to hire the service of the counsel, and also 500,000Frw for procedural fees.

[27] Counsel Nsengiyumva Abel argues that in case the judgment comes out in favour of Rwanda Revenue Authority the Court in its discretion awards it reasonable amount for counsel and procedural fees, because what it is requesting for is excessive.

VIEW OF THE COURT

[28] The Court finds that Ruberandinda Viateur must give Rwanda Revenue Authority 500,000Frw for counsel fees on this instance and 500,000Frw for the procedural fees awarded in its discretion because he has lost the case and RRA was represented by an advocate and also followed up the case in the Supreme Court.

III. DECISION OF THE COURT

[29] Holds that the appeal of Ruberandinda Viateur lacks merit;

[30] Holds that the rulings of the judgment RCOMA 00320/2016/CHC/HCC rendered on 10/03/2017 by the Commercial High Court is sustained;

[31] Orders Ruberandinda Viateur to pay to Rwanda Revenue Authority 500,000Frw for counsel fees and 500,000Frw for procedural fees in addition to that awarded by the Commercial High Court;

[32] Orders that the court fees of 100,000Frw paid by Ruberandinda Viateur is equivalent to the costs in this case.