

Docket: 2012-4553(IT)G

BETWEEN:

PAUL LUBEGA-MATOVU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2013-1807(IT)I

AND BETWEEN:

ROSE LUKWAGO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on common evidence on August 21 and 22, 2014, January 6 and 7, 2015, and April 27 and 28, 2015 at Toronto, Ontario

Before: The Honourable Justice Judith Woods

Appearances:

For the Appellants: Paul Lubega-Matovu

Counsel for the Respondent: Kathleen Beahen

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**JUDGMENT**

Upon appeal by Paul Lubega-Matovu and Rose Lukwago with respect to reassessments made under the *Income Tax Act* for the 2006, 2007 and 2008 taxation years, it is ordered that the appeals are dismissed.

Signed at Toronto, Ontario this 12th day of June 2015.

“J.M. Woods”

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Woods J.

Citation: 2015 TCC 147  
Date: 20150612  
Docket: 2012-4553(IT)G

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and  
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### **REASONS FOR JUDGMENT**

Woods J.

#### I. Background

[1] Paul Lubega-Matovu and Rose Lukwago appeal with respect to reassessments made under the *Income Tax Act* for the 2006, 2007 and 2008 taxation years. The reassessments disallowed deductions for business losses claimed by both appellants, disallowed rental losses claimed by Mr. Lubega-Matovu, and imposed gross negligence penalties on Mr. Lubega-Matovu.

[2] Mr. Lubega-Matovu is a retired auditor with the Canada Revenue Agency (CRA), and in the taxation years at issue he had a senior position with the CRA with responsibility for auditing large corporations. His employment income in these years, as disclosed in his income tax returns, was in the neighbourhood of \$70,000 to \$80,000.

[3] Against this income, Mr. Lubega-Matovu deducted the following aggregate business and rental losses: \$52,748 for 2006, \$61,625 for 2007, and \$67,768 for 2008.

[4] As for Ms. Lukwago, she reported a small amount of income from carrying on business in the taxation years at issue. She also deducted business losses from a purported business carried on in common with Mr. Lubega-Matovu. According to the Reply, the losses that Ms. Lukwago reported were approximately \$3,846 in 2006, \$3,336 in 2007, and \$11,188 in 2008.

[5] The Minister denied the losses claimed by the appellants in their entirety with the result that the appellants' net income from each activity was nil. In addition, the Minister imposed gross negligence penalties on Mr. Lubega-Matovu in respect of all the disallowed amounts.

[6] It is worth noting that reassessments similar to these had been issued to Mr. Lubega-Matovu for the previous two taxation years, 2004 and 2005. He appealed these reassessments to the Tax Court of Canada (2010 TCC 291) which dismissed the appeals for lack of reliable supporting evidence. A further appeal to the Federal Court of Appeal (2011 FCA 265) upheld the decision except for penalties which were deleted for technical reasons. The findings of Justice Campbell in the Tax Court are encapsulated in the following excerpt:

[18] The present hearing lasted a full day and I must confess that, at the end of the hearing, I was left with the impression that I had only partial truths, conflicting evidence and still not a particle of proof from the Appellant to substantiate that these expenditures were actually related to his business activities.

[7] The activities that are at issue in these appeals were also at issue in the prior appeal. It appears that Justice Campbell was not happy with the length of the earlier proceeding, which lasted a full day. These appeals also lasted far too long at 5½ days, mainly due to disorganization on the part of Mr. Lubega-Matovu who represented both appellants.

[8] At this hearing, a large volume of documentary evidence was introduced on behalf of the appellants. In addition, I heard oral testimony from the appellants and two business acquaintances, John Clark and Eric Alexander. For the Crown, the only witness was the appeals officer, Karol Maar.

[9] I would comment in particular about the reliability of the testimony of the witnesses. I found the testimony of Mr. Lubega-Matovu and Ms. Lukwago to be so vague and conflicting as to be unreliable except to the extent the testimony was supported by other evidence. I found the testimony of the other witnesses to be generally reliable, but the questions asked of Mr. Clark and Mr. Alexander by Mr. Lubega-Matovu did little if anything to support the losses that were claimed.

[10] Notwithstanding that a large amount of evidence was presented at this hearing, my conclusion is similar to that of Justice Campbell in the prior appeal.

## II. PanelForm International Ltd.

[11] Mr. Lubega-Matovu claimed significant losses from an arrangement with PanelForm International Ltd. (“PanelForm”). PanelForm was a Canadian corporation that was attempting to sell equipment that would manufacture panels to be used for low cost housing. PanelForm’s owner, Murray Harder, used to work for a corporation that was in the same business.

[12] Mr. Lubega-Matovu’s testimony regarding PanelForm was vague and confusing. As far as I could tell, PanelForm’s business was in its infancy and it was exploring potential markets in various parts of the world. As far as the evidence reveals, PanelForm’s business never really got off the ground.

[13] Mr. Lubega-Matovu had a commission arrangement with PanelForm to market its product in Africa for a 10 percent commission. Based on the testimony of Mr. Clark, who had been a sales manager for PanelForm, Mr. Lubega-Matovu’s role was to provide contacts in Africa that PanelForm could pursue. He also said that Mr. Lubega-Matovu could contribute his accounting expertise to the business.

[14] It is not clear from the evidence how extensive Mr. Lubega-Matovu’s marketing activity was. It is clear from Mr. Clark’s testimony that Mr. Lubega-Matovu was in Africa more than once, but it is not clear whether these trips were undertaken solely to promote PanelForm, or whether Mr. Lubega-Matovu travelled primarily for personal or other business reasons. Mr. Lubega-Matovu’s testimony as to his substantial efforts on behalf of PanelForm, which

included paying significant amounts to agents, was not at all convincing. There clearly was some activity on the part of Mr. Lubega-Matovu, but I am not satisfied that it was extensive.

[15] As for supporting documentation, this consisted of a large amount of disorganized primary source documents as well as accounting records. None of this documentation convinced me that significant expenditures were incurred by Mr. Lubega-Matovu for this business.

[16] I would comment in particular about supporting documentation from purported agents. None of this evidence was convincing and the third parties did not testify. If genuine expenditures had been incurred, it should have been possible for Mr. Lubega-Matovu to obtain reliable supporting documentation.

[17] In addition, there was evidence of genuine expenditures such as moneygrams, but these documents did not corroborate that the expenditures were incurred by Mr. Lubega-Matovu in relation to PanelForm.

[18] As for the accounting records introduced into evidence, in order to give these records weight, I would have to conclude that Mr. Lubega-Matovu's self-serving testimony regarding the preparation of these records was truthful. The impression that I had was just the opposite.

[19] Mr. Lubega-Matovu also called two supporting witnesses who also had an arrangement with PanelForm to market its product.

[20] Mr. Alexander was a friend of the owner of PanelForm, Murray Harder. Mr. Alexander traveled for business in developing countries and during these trips he was able to pursue PanelForm's business at the same time without incurring much expense. His testimony did not provide corroboration of expenses incurred by Mr. Lubega-Matovu.

[21] Mr. Clark was the sales manager for PanelForm for a time, with his financial participation to be negotiated down the road. Mr. Clark understood the product from a technical perspective and he also had significant business experience.

[22] For the most part, I found the testimony of Mr. Alexander and Mr. Clark to be truthful, but it did not provide corroboration that Mr. Lubega-Matovu incurred specific expenditures attributable to PanelForm in the taxation years at issue.

[23] For example, Mr. Lubega-Matovu asked Mr. Clark how many trips he took to Africa. It was not clear what year these trips were taken and in what capacity Mr. Clark was acting. It was revealed in cross-examination of Mr. Clark that he left PanelForm to pursue a similar technology that he himself developed. It was often impossible to determine whether Mr. Clark's activities were in connection with PanelForm or his own business. I would note in particular that there is evidence that Mr. Clark's business was in operation by August, 2008 (Ex. A-20).

[24] Mr. Clark did testify that he made a first trip to Africa where the costs were shared with Mr. Lubega-Matovu. This testimony was simply too general to provide support for a deduction for particular expenditures in the taxation years at issue.

[25] It is possible that Mr. Lubega-Matovu did incur some expenses in relation to PanelForm, but I am not satisfied that significant amounts were involved. In addition, the evidence was not satisfactory to establish any particular expenditures made in the taxation years at issue.

[26] I would also comment concerning Mr. Lubega-Matovu's claim that he paid Ms. Lukwago \$5,000 per year for administrative services in relation to this business. Ms. Lukwago also testified that she was quite busy doing administrative work such as answering the phone.

[27] I was not convinced by the evidence as a whole that these fees were ever paid to Ms. Lukwago or that she had performed significant services in relation to PanelForm. Mr. Clark testified that Ms. Lukwago provided input, but this testimony was not detailed enough to support remuneration being paid.

[28] The conclusion that I have reached with respect to PanelForm is that the losses that were claimed have not been substantiated.

### III. Market America

[29] Mr. Lubega-Matovu and Ms. Lukwago reported losses as 80/20 partners in a partnership that was a distributor of nutritional products for a business called Market America. The business model for Market America was a typical pyramid selling arrangement. Mr. Lubega-Matovu testified that they would earn money from selling products and also from managing others.

[30] The evidence with respect to Market America suffered the same problem as with PanelForm. On the whole, the self-serving testimony of Mr. Lubega-Matovu

and Ms. Lukwago was too vague and not supported by reliable corroborating evidence.

[31] Although the evidence suggests that Mr. Lubega-Matovu was involved in purchases of products by other persons, the evidence did not establish what business losses, if any, were actually incurred.

[32] I would comment in particular that the accounting records presented with respect to Market America were unreliable for the same reason as the PanelForm records. Further, Mr. Lubega-Matovu testified that the partnership paid Ms. Lukwago a fee of \$5,000 per year. I am not satisfied that such a fee was ever paid.

#### IV. Rental losses

[33] Mr. Lubega-Matovu claimed losses from purported rentals of a portion of his principal residence. Again, there was a lack of cogent, detailed evidence to support these losses. I would note that one of the purported tenants was Ms. Lukwago. The evidence as a whole suggests that she was not a tenant but a common law partner of Mr. Lubega-Matovu in the years at issue. The evidence regarding other tenants, Lucy and/or Rita, was simply too vague to support losses being claimed.

#### V. Administration fee to Ms. Lukwago

[34] Ms. Lukwago seeks a reduction of her income in the event that the \$5,000 fees purportedly paid to her by Mr. Lubega-Matovu were disallowed. It is not appropriate to make this adjustment because I am not satisfied that these amounts were reported as income by Ms. Lukwago.

#### VI. Gross negligence penalties

[35] The imposition of gross negligence penalties against Mr. Lubega-Matovu is appropriate. The evidence as a whole suggests that the losses that were claimed were manufactured to offset employment income. It is hard to imagine a stronger case for gross negligence penalties than this which involves a senior CRA auditor who would have been very knowledgeable about proper support for business expenditures.

#### VII. Conclusion



[36] In conclusion, the appeals by Mr. Lubega-Matovu and Ms. Lukwago will be dismissed in their entirety.

[37] The respondent has asked to make submissions on costs. Submissions may be filed by the respondent no later than June 30, 2015. Reply submissions by the appellants may be filed no later than July 15, 2015. The submissions shall not exceed 5 pages in length.

Signed at Toronto, Ontario this 12<sup>th</sup> day of June 2015.

“J.M. Woods”

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Woods J.

CITATION: 2015 TCC 147

COURT FILE NOS.: 2012-4553(IT)G  
2013-1807(IT)I

STYLES OF CAUSE: PAUL LUBEGA-MATOVU and HER  
MAJESTY THE QUEEN  
  
ROSE LUKWAGO and HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 21 and 22, 2014, January 6 and 7,  
2015 and April 27 and 28, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Judith Woods

DATE OF JUDGMENT: June 12, 2015

APPEARANCES:

For the Appellants: Paul Lubega-Matovu  
Counsel for the Respondent: Kathleen Beahen

COUNSEL OF RECORD:

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Name: n/a

Firm: n/a

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