

RWANDA / JUDGMENT

Rwanda Revenue Authority v. Munyaneza

RWANDA REVENUE AUTHORITY V. MUNYANEZA

COURT

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Text

Page 1

Rwanda Revenue Authority v. Munyaneza [Rwanda SUPREME COURT – 2011SC – RCOMA 0047/10/CS (Nyirinkwaya , P.J., Kanyange and Mukandamage , J.) July29, 2011] Tax Laws–Tax procedure – Tax assessment – When the assessment finds that the taxpayer has used false invoice– Appeal of a taxpayer who is not satisfied with auditors’ decision– Whether the court decided on matters in which it had been seized– Whether forging documents has another meaning in English language – Whether “forged documents”(inyandiko mpimbano) in Kinyarwanda is not different with “false or incorrect declaration” in English as provided in article 203 of the East African Community Customs Management Act. Facts: The appellant assessed the defendant in 2009 and finds that he has used false invoices and directly informed him the amount he is supposed to pay. The defendant was not satisfied, appealed against the decision to the Commissioner of customs, it was decided that he shall pay 921.490.807 Rwf included in that amount 480.609.416 Rwf of duties and taxes evaded and 440.881.390 Rwf as fines. The defendant filed a claim to the Commercial high court requesting the annulment of that tax; it was held that he should not pay it, except for the offense of forging documents which should also be established by criminal courts. The court’s decision was based on article 219 (b) of East African Community Customs Management

Act which claims that Commissioner of customs cannot order for the taxpayer who did not plea guild to be punished. The appellant appeal against the ruling in The Supreme court, explaining the basis of his appeal on two grounds(1) The fact that the First Judge decided on an offense of forging documents in which he was not sue of(2) The fact of confirming that Commissioner of customs does not have authority to charges penalties a taxpayer who does not admit the offense, in spite of the article 135 of the East African Community Customs Management Act which gives him authority to recover from a taxpayer that has paid less and charges him without prosecuting of any offense. Held: 1. The previous court did not decided exceeding the subject matter since the offense called “forging documents”(icy’inyandiko mpimbano) in Kinyarwanda is not different with “false or incorrect declaration” in English, provided in article 203 of the East African Community Customs Management Act.

2. Rwanda revenue authority does not have authority to recover, duties, levies, fees, based on the offense of forging documents in order to increase expenses, offense that the taxpayer does not admit unless convicted the criminal courts. Appeal without merit; The case appealed remains unchanged; The court fees charged to the Public Treasury. Statutory instruments referred to: East African Community Customs Management Act, Art 203.

Page 2

No Cases referred to:

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Munyaneza Evariste have been assessed in the year 2009 by customs officers ,they finds that he has used forged documents (false or incorrect documents) with the intention of increasing expenses, and they directly informed him about the amount he is supposed to pay, he appealed to the Commissioner of customs, after reviewing calculation,The commissioner informed that he shall pay 921.490.807 Rwf including in that amount 480.609.416 Rwf of duties and taxes evaded and 440.881.390 Rwf as fines. [2] Munyaneza lodged a claim to the Commercial high court requesting the annulment of that tax; it was held that he should not pay it, except for the offense of forging documents with intention of increasing expenses, which should also be established by criminal courts. The decision of the judge was based mainly on article 219 (b) of East African Community Customs Management Act which claims that Commissioner of customs cannot order for the taxpayer who did not plea guild to be punished. [3] Rwanda Revenue Authority appealed in the supreme court, the case was heard in public on 28/06/2011, all parties were presents, Rwanda Revenue Authority represented by counsel Tugirumuremyi Raphaël and counsel Kayitare Paul, Munyaneza Evariste represented by counsel Nsengiyumva Abel. [4] In the hearing the pleading team of Rwanda Revenue Authority explained that the appeal of Rwanda Revenue Authority is based on two grounds : The fact that the First Judge decided on an offense of forging documents which he was not sue of , The fact of confirming that Commissioner of customs does not have authority to charges penalties a taxpayer who does not admit the offense, in spite of the article 135 of the East African

Community Customs Management Act which gives him authority to recover from a taxpayer that has paid less and charges him without prosecuting of any offense II.THE LEGAL ISSUE TO BE EXAMINED IN THE CASE AND ITS ANALYSIS

- a) To know whether the court has decided in accordance with the claims. [5] The pleading team of Rwanda Revenue Authority state that the first instance instead of examining tax and duties that Munyaneza is supposed to pay, much emphasized has been made on the offense of forging documents without knowing its origine .since in the minute of the audit that was made and the letter of Commissioner of customs informed him that he had made incorrect declaration and was asked to correct and pay taxes as provided by the laws. [6] Counsel Nsengiyumva Abel representing Munyaneza stated that the first instance did not decided exceeding the subject matter since Rwanda Revenue Authority has itself stated that his

Page 3

client made an incorrect declaration based on forging documents, offense which is provided in article 203 (b) of the East African Community Customs Management Act. [7] The court finds that the first instance did not exceeded the subject matter since it appears in the judgment that what is called forging documents in Kinyarwanda is not different with “ false or incorrect declaration” in English as provided in article 203 of the East African Community Customs Management Act, which was the basis of Rwanda Revenue Authority decision of charging Munyamahoro,Taxes,duties and fines that he is requesting the annulment.

- b) To know whether Rwanda Revenue Authority has authority of effectively collect taxes, duties and fines from Munyamahoro without suing him for an offence. [8] Rwanda Revenue Authority’s pleadings team allege that the first instance did not give value to what is provided in article 135 of East African Community Customs Management Act . which state that when a person has paid less taxes contrarily to what he or she was supposed to paid , he is ordered to pay taxes as he or she ought to have paid,and he or she may be subject of penalties when he or she has been notified and has failed to pay taxes on due time without suing him first for offense. [9] They again allege that Rwanda Revenue Authority is not pursuing Munyameza for an offense due to the fact that its main duties is to collect taxes and duties and not suing for a offense that may be prosecuted or not as provided in article 228 of The East African Community customs Management Act. they found that the fines charged to Munyaneza should be cancelled if he pays taxes and duties since there is no motive of charging him fines for an offense whose he is not prosecuted. [10] Counsel Nsengiyumva representing Munyaneza says that article 135 of the East African Community Customs Management Act shall not be used since it concern a taxpayer who has paid less taxes in contrast to what he or she should have paid or when he or she has been refunded an exceeding amount that he or she was supposed to be refunded before provisional entry as provided in article 38 of this law,the taxpayer is ordered to provide deposit in addition to the amount estimated as the duty for the purpose of making such provisional entry. [11] The court found that article 228 of East African Community Customs Management Act cannot be

the basis of confirming that Commissioner of customs has authority of collecting taxes and duties from Munyaneza without necessary prosecuting him since the article concerns the one who has authority to prosecute before the court (the power of officer to prosecute), no mention of any Authority that Rwanda Revenue Authority may alternatively have claim duties from a taxpayer who does not admit the offense of using forged documents. [12] The court found that article 135 of East African Community Customs Management Act also cannot confirm that Commissioner of customs has authority to collect taxes and duties from Munyaneza without necessary prosecuting him since it concern the amount the taxpayer is requested to pay in case of a difference between the amount he or she was supposed to pay and the amount that he or she has paid or between the amount he or she was supposed to be refunded and that he or she was refunded that is not the issue in this case related to taxes , duties and fines ,based of an offense of forged document provided in article 203 of the East African

Page 4

Community Customs Management Act, punishable by an imprisonment not exceeding three year or fines not exceeding 10.000 USD as provided in article 203 in fine. [13] Article 219 of East African Community Customs Management Act on its first paragraph provides that in case the Commissioner of customs has evidences that a taxpayer has committed an offense provided under this act he may settle the issue by agreement and oblige taxpayer to pay what is supposed to pay, paragraph two provide that power to be used when the taxpayer has plead guilt in accordance with the prescribed form, likewise article 220 of that act of East African Community Customs Management provide that : ‘.. a prosecution for an offence under this Act may be heard and determined before a subordinate court; and where a such court hears and determines the prosecution, it shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Act on a person convicted of the offense’ [14] Thus the Supreme Court found that based on those articles,Rwanda Revenue Authority does not have power of recovering taxes and duties on Munyaneza in accordance of an offense of forged document in order to increase expenses ,offense that he does not admit ,unless it is decided by criminal courts , as it was decided by the first judge. III. DECISION OF THE COURT [15] Decides that, the appeal of Rwanda Revenue Authority is baseless; [16] Decides that, the case RCOM 0012/10/HCC Ruled by The commercial High court does not change; [17] Orders court fees to be charged to Public Treasury.

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