

THE SUPREME COURT SEATING IN KIGALI, DECIDING COMMERCIAL MATTERS,  
DECIDES IN A PUBLIC HEARING, CASE RCOMAA 00030/2017/SC AS FOLLOWS,

---

## PARTIES

**APPELLANT: RUBERANDINDA Viateur** son of Bahutu Laurent and Musaninkindi Angelique, residing in Kamugina Village, Nyamabuye Cell, Muhanga Sector, Muhanga District, Southern Province.

**RESPONDENT,** Rwanda Revenue Authority (RRA) on behalf of its Commissioner General

**MATTER OF LITIGATION:** - Income tax and VAT worth Frw 62,639,977 relating to fiscal years 2009 and 2010 charged contrary to the laws.

- Damages worth Frw 9,000,000.

**SUBJECT MATTER:** Appeal against Case No RCOMA 000320/2016/CHC/HCC decided by the Commercial High Court, on 10/03/2017

---

## I. CASE SUMMARY

1. RUBERANDINDA Viateur was subject to an audit without notice by Rwanda Revenue Authority (RRA), and was ordered to pay income tax and VAT equivalent to FRW 81,587,393 for Fiscal Years 2009/2010.
2. RUBERANDINDA Viateur appealed to the Commissioner General on 29/09/2015 stating he disagreed with the two taxes, and requested justice to pay the tax he agrees to worth Frw 11,415,245, his letter reached the Commissioner General on 01/10/2015, the Commission General responded on 27/11/2015, stating that his appeal was legally grounded for certain issues, and that an amount of **Frw 18,947,416** should removed, and indicated to him that he would pay **Frw 62.639,977.**

3. RUBERANDINDA Viateur expressed dissatisfaction, and filed a case with the Commercial Court of Huye, arguing that the letter by the Commissioner General in response to his appeal, reached him after a deadline of 60 days provided for by the Law, because it reached his postal address of Muhanga on 02/12/2015, and requested to pay the amount of tax he agrees to.
4. The Court decided Case RCOM 0472/15/TC/HYE on 13/05/2016, deciding that his claim was legally grounded, stating that the fact that he was informed of the reply by the Commissioner General after the deadline provided for by the laws, the reasons for his appeal was considered to be valid, and decided that he should pay Frw 11,415,245 as income tax and value added tax for Fiscal Years 2009 and 2010, and penalties related to those two years. The Court ordered RRA to pay him Frw 500,000 as damages for case proceedings including counsel fees.
5. RRA appealed to the Commercial High Court, arguing that the Judge decided that the appeal lodged by RUBERANDINDA Viateur was legally grounded, because the Commissioner General of RRA reacted to his appeal after the deadline of 60 days provided for by the Law, while it was not true. The Commercial High Court decided Case No RCOMA 00320/2016/CHC/HCC, on 10/03/2017, upholding the decision that RUBERANDINDA Viateur received the reply from the Commissioner General on his appeal within the period provided for by the law<sup>1</sup>, hence deciding that the appeal lodged by RRA was legally grounded.
6. In taking the decision, the Court based on the letter the claimant wrote to the Commissioner General on 29/9/2015, which reached RRA on 01/10/2015, in its response to his appeal, using a registered letter which was put in Kigali Postal Office on 27/11/2015, reached his postal box No 169 in Muhanga on 02/12/2015, at the claimant's registered address, therefore meaning that the 60 days provided for by Article 32 of the Law referenced below, was respected, The Court further stated that even the provisions of Article 5, paragraph 2<sup>2</sup> of the said Law, were also respected.
7. RUBERANDINDA Viateur appealed to the Supreme Court on 08/04/2017, arguing that the Commercial High Court ruled that the decision of the Commissioner General of RRA on his appeal, was notified within the period acceptable by the law while it is not true, because it was deposited in the post office box at Muhanga, after expiry of the 60 days provided for by the Law, a situation which resulted in the payment of undue tax penalty of Frw 62,639,977, and

---

<sup>1</sup> The Court based on Article 32 of the Law No 25/2005 of 04/12/2005 on tax procedures as modified and complemented to date, which provided that 'The Commissioner General or any other competent staff of the Tax Administration designated by the Commissioner General may extend this period once for another thirty (30) days and informs the taxpayer'

<sup>2</sup> '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'

requested various compensations including counsel fees and interests he was entitled to within a period of 82 days spent in the case proceedings.

8. The case was heard in public on 03/04/2018, with RUBERANDINDA Viateur represented by Me NSENGIYUMVA Abel, as counsel while Rwanda Revenue Authority was represented by Me TWAHIRWA Jean Baptiste, as counsel.

## **II. ANALYSIS OF LEGAL ISSUES**

### **1. Considering whether the reply to a registered letter written by RRA on the appeal lodged by RUBERANDINDA Viateur was submitted on time.**

9. Me NSENGIYUMVA Abel, counsel representing RUBERANDINDA Viateur, states that the grounds of appeal lodged which concur on only one issue aimed at knowing where the decision of the Commissioner General should be channelled in order to reach the taxpayer, because the Commercial High Court indicated that when communication has reached the post office the taxpayer is assumed to have received his/her communication. He explains that the communication of the Commissioner General of Rwanda Revenue Authority was deposited in the post office of Kigali and RUBERANDINDA Viateur resides in Muhanga, whereas his registered address is B.P. 169 Muhanga, which was given to Rwanda Revenue Authority, even the letter by the Commissioner General bears this address as noticed in the file, that therefore RRA should have submitted communication of his client to the post office of Muhanga, that his argument is based on Article 4 of the Law on fiscal procedure of 2005, which stipulates that the known residence of a person is taken into consideration, adding that the last paragraph of Article 5 of that Law states that 'the post office' of a person's residence, is not a head office of the postal office as an 'Institution', because there is no such mention in the Law.
10. The counsel representing RUBERANDINDA Viateur says that the date from which the counting of 60 days should start from for RRA to have submitted communication to taxpayer, is the one indicated by the stamp of the post office of Muhanga which must be on the envelope containing the communication, he states that the appeal lodged by RUBERANDINDA Viateur was received on 01/10/2015, and that 30/11/2015, is the last day of on which the reply had to reach the post office of Muhanga, whereas the letter RUBERANDINDA Viateur wrote to the Commissioner General bears a stamp indicating that it reached the post office of Muhanga on 02/12/2015, after expiry of the 60 days.
11. Me NSENGIYUMVA Abel argues that the appeal lodged by RUBERANDINDA Viateur is further based on Case RCOMAA 00070/2016/CS-RCOMAA0076/16/CS decided by the Supreme Court, between RRA and MUREBWAYIRE Agnès, that the contents of this case law (*judicial precedents*) are in perfect harmony with this case at hand, because this Court found that MUREBWAYIRE Agnès wrote to the Commissioner General on 01/09/2015 appealing against the tax charged to her, the

Commissioner General notified his decision on her appeal on 05/11/2015 after 67 days, contrary to the provisions of Article 32 of the said Law, deciding that the reply by the Commissioner General was submitted to the taxpayer after expiry of the deadlines, based on Article 6, paragraph 2 and Article 4 of the said Law, and ruled that the appeal filed by Murebwayire is legally grounded and that she should be relieved of the tax, and requests the Court to make its ruling basing its decision on that judicial precedent.

12. Me **TWAHIRWA Jean Baptiste**, counsel representing Rwanda Revenue Authority, says that issues as to whether the communication intended to the taxpayer should be channelled through the post office of his place of residence, is one of the means used, because there are instances whereby the taxpayer him/herself may physically report to Rwanda Revenue Authority to receive a reply, that in such a case, RRA would not tell him/her to return to Muhanga in order to get his/her reply.
13. As for him, he does not see any difference between the Head office of the Post Office and its branches because the branches do not have legal personality, that once a decision has been submitted to a post office or to a head office of the Postal Office, it is assumed to have received it, and he thinks that the reply was deposited to the place where it ought to be deposited, and that he requests the Court to examine the provisions of Articles 4 and 5 of the above Law.
14. Regarding the 60 days which the claimant says were not respected, he says that his view is that the deadline was respected because Rwanda Revenue Authority received the appeal filed by **RUBERAANDINDA Viateur** on 01/10/2015, and deposited the related reply to the post office on 27/11/2015. He further explains that the allegations of **RUBERANDINDA Viateur** on the communicated address being the post office of Muhanga, are baseless because he can deposit it in Kigali or in Muhanga, his view is that the obligation to deposit communication in a postal office box, is done by a post office not by Rwanda Revenue Authority. He also says that the fact that the envelope bears the stamp of the post office of Muhanga, is an ordinary formality indicating that the taxpayer has received his /her communication but there is also a certificate indicating that an envelope was deposited and received by the post office of Kigali.

### **COURT FINDINGS**

15. Issues as to whether RRA submitted a reply on the appeal filed by **RUBERANDINDA Viateur** within the 60 days provided for by the Law, should be interpreted in the way the various articles relating to the methods of communication between the tax authority and the taxpayer were respected.

16. Regarding the place where communication should be sent, Article 4<sup>3</sup> of the Law No 25/2005 of 04/2/2005 on tax procedure as modified and complemented to date, in force at the time RRA gave that communication, makes it clear that in sending communication to a taxpayer or any other person, RRA authorities have the obligation to use the address given by that taxpayer or any other person, such that even when there is change of address, RRA should be informed, and respect such a change. As for issues relating to the methods of communication between RRA and a taxpayer, Article 5<sup>4</sup> of that Law explains about four (4) different ways a tax administration may use in order to ensure communication reaches the taxpayer or any other person, including a registered letter, which in fact, was used in this case at hand, when the Commissioner General was reacting to the appeal filed by RUBERANDINDA Viateur.
17. Concerning the post office (sending post office) to which communication in a registered letter is given, Article 6, paragraph 2 of the above Law No 25/2005 of 04/12/2005, stipulates 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 notes that this article makes it clear that the tax administration or the taxpayer used the post office to send communication, when the sender has submitted communication to the post office, which receives and stamps it, he thus fulfils his obligation, regardless of the time the post will submit communication to the receiver, it should be clearly understood that the post office in question which received the communication is any post office used by the tax administration and the taxpayer in sending their communication, provided that it has mentioned the address of the receiving post, this entails their names, number of the postal box of their place of residence as stated in Article 4 of this Law referenced above.
19. As regards this case, for there to be an indication that RRA sent to RUBERANDINDA Viateur a registered letter in response to his appeal before

---

<sup>3</sup> Article 4 of the Law No 04/12 of 04/12/2005 on tax procedure as modified and complemented to date, provided that the Tax Administration sends letters, information or any other communication to the taxpayer or any other person at his or her official seat or known residence.

<sup>4</sup> Article 4 of the Law No 04/12 of 04/12/2005 on tax procedure as modified and complemented 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;[...]'.

expiry of the 60 days period, the Court notes that consideration should be made of the date indicated by the stamp of the Head of Office of the Postal Service of Kigali to which RRA gave the registered letter intended for him for it to later send it to the address RUBERANDINDA Viateur gave to RRA, this is to say, his names and postal address, as stated in Article 4 of the Law above mentioned.

20. The case file indicates that the letter dated 02/09/2015 by Rwanda Revenue Authority <sup>5</sup> in completion of the audit of the tax on income which was due for payment by RUBERANDINDA Viateur before he files an appeal to the Commissioner General, explaining that he resides in Muhanga because communication was addressed to him on the following details: 'RUBERANDINDA Viateur, TIN 100845349, B.P. 169 Muhanga' Tel: 0788324023.
21. The case file also indicates that the registered letter No 517/15/CG/LLBS/RPA dated 27/12/2015 the Commissioner General of Rwanda Revenue Authority addressed to RUBERANDINDA Viateur as a response to his appeal, indicates that it sent it to the address he personally gave to RRA, 'RUBERANDINDA Viateur, C/O AFICCO Ltd, TN 100845349, B.P. 169 Muhanga,' Tel: 0788324023.
22. The case file further indicates that the appeal letter by RUBERANDINDA Viateur was submitted to the Commissioner General of Rwanda Revenue Authority on 01/10/2015 (page 14 of the file in the Commercial Court of Huye), who copied this response using the method of a registered letter channelled through the post office in Kigali on 27/11/2015 (annex 5 of RRA exhibits), and was submitted to RUBERANDINDA Viateur at his postal address No 169 in Muhanga on 02/12//2015.
23. The Court notes therefore that as the RRA Administration received the appeal filed by RUBERANDINDA Viateur on 01/10/2015, and when replying, submitted to the head office of the Kigali Postal Office, a registered letter in response to his appeal dated 27/11/2015, within a period of 57 days, less that than the 60 days, using the address given by RUBERANDINDA Viateur himself, pursuant to the provisions of Article 6, paragraph One of the above Law No 25/2005 of 04/12/2005 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 shall be calculated from one day after the date shown by one of the following: 1° the letter must be postmarked within a period of one business day from the date of receipt by the post office of the communication letter provided under Sub Paragraph 1° of Paragraph One of Article 5 of this Law'*.

---

<sup>5</sup> It was written by its employees, NDATA BAYE Maurice (Investigation Officer), MWIRERE Delphine, Acting Group Leader, NIYIGABA Faustin, Acting Investigation Officer, and Deputy Commissioner for Revenue Investigation and Enforcement Department.

24. As regards Case No RCOMAA 00070/20116/CS-RCOMAA 0076/16/CS handed down by the Supreme Court on 03/11/2017, parties being RRA versus MUREBWAYIRE Agnès, on which RUBERANDINDA Viateur bases his argument to request that this Court should take it into account in making its decision on his appeal, the Court finds that it should not rely on this judicial precedent, because it states that Article 6, 2<sup>o</sup> of the above Law No 25/2005 of 04/12/2005, makes it clear that the post office in this article is not that of Kigali or any other post office across the country, but rather the post office of the taxpayer's registered address, whereas this interpretation is not true, because, as explained further above, this article explains on the contrary that the post office to be submitted with the communication is the head office of the Post Office in Kigali either for RRA or the taxpayer who resides in Kigali, whereas for the taxpayer whose registered address is in the Province, the post office to be submitted with the communication addressed to RRA, is the post office of his place of residence of which address he gave to RRA, which will further send it to RRA.
25. Based on the stated legal provisions and the explanations given above, the Court notes that the decision of the Commissioner General of Rwanda Revenue Authority on the appeal lodged by RUBERANDINDA Viateur has respected the period of 60 days provided for by Article 32 of the above Law, his appeal is therefore not legally grounded, the High Court also made the same observation, and the decision in this case must be maintained.
- 2. Considering whether the damages sought by RRA in the cross appeal is legally substantiated**
26. Me TWAHIRWA Jean Baptiste says that Rwanda Revenue Authority he represents, seeks Frw 5,000,000 as counsel fees at each level of case hearing for his involvement in case proceedings, resulting in its need for legal representation, plus Frw 5,000,000 for case proceedings.
27. Me NSENGIYUMVA Abel says that should Rwanda Revenue Authority win the case, the Court would allocate to it, at its discretion, commensurate damages and counsel fees, because the claimed compensations are exaggerated.

## **COURT FINDINGS**

28. The Court notes that RUBERANDINDA Viateur should give to Rwanda Revenue Authority Frw 500,000 as counsel fees at this level, and an additional Frw 500,000 for case proceedings, determined at its discretion, for losing this case, and that

RRA pleaded its case being represented by its counsel, and made a follow up of its appeal to the Supreme Court.

**III. DECISION OF THE COURT**

29. **Declares** that the appeal filed by RUBERANDINDA Viateur is not legally grounded;
30. **Declares that** the decision in Case No RCOMA 00320/2016/CHC/HCC rendered by the Commercial High Court on 10/03/2017 is to be maintained;
31. **Orders** RUBERANDINDA Viateur to give to Rwanda Revenue Authority Frw 500,000 as counsel fees and Frw 500,000 for case proceedings in addition to the amount allocated by the High Commercial Court;
32. **Orders** that the court fees worth Frw 100,000 deposited by RUBERANDINDA Viateur are equivalent to the amount of case proceedings costs.

**SO ORDERED AND PRONOUNCED IN THE PUBLIC HEARING OF 25/05/2018**

KAYITESI R. Emily

Presiding Judge

sé

GAKWAYA Justin

Judge

sé

MUKANDAMAGE Marie Josee

Judge

sé

GAKURU Ahmed

Court Registrar

sé

*Certified copy of the original*

*Done at Kigali, on 14/09/2018 Jerome IMANIRAHARI [Signature and Court's Stamp]*