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### Zambia Revenue Authority v Matalloy Company Limited SCZ/08/ 016/2020

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***Zambia Revenue Authority v Matalloy Company Limited SCZ/08/016/2020***  
*Mwaba Mulenga Chileya*<sup>1</sup>

**The facts**

Justice Mumba Malila supplements the jurisprudence on tax law in this judgment that deals with the obligation of a taxpayer in tax cases. The case<sup>2</sup> focused on the responsibility of taxpayers to prove their eligibility for a tax credit from the Zambia Revenue Authority. Briefly, the case also discusses the concept of tax credits, and their use by taxpayers.

Matalloy Company Limited ('the Respondent') was an incorporated company that was also registered under the Value Added Tax Act ("VAT Act"). Registration under the VAT Act allows a person or entity to claim a refund for value added tax ('VAT') paid on goods imported into the country known as a tax credit. After importing certain goods, the Respondent submitted certain documentation to the Zambia Revenue Authority ('the Appellant') to claim a VAT refund on those goods. In October 2018, the Appellant carried out an audit on the Respondent which revealed that information in the VAT refund claim documentation submitted by the Respondent did not correspond with the information in the import documents for the goods submitted to the Revenue Authority. Based on this discrepancy, the Appellant rejected the Respondent's claim for a tax credit.

The Respondent commenced an appeal in the tax appeals tribunal, claiming that the VAT was duly paid on the imported goods, and it further said that the discrepancy was attributable to an error. The Appellant opposed the appeal. Zambia Revenue Authority maintained that the discrepancy in the documents submitted were material inaccuracies, because the documents showed a markedly different Tax Payer Identification Number ("TPIN") which was not the Respondent's registered TPIN. It relied on Sections 15(1) and 18 (3) of the VAT Act to show that the taxpayer was not entitled to a refund because it did not submit the documents prescribed by the VAT Act. The Tribunal held that the Zambia Revenue Authority was wrong to rely on different documents other than those submitted by the taxpayer during its' internal audit, and that the Authority should have relied on the documents given to it by the taxpayer.

**Holding**

The Zambia Revenue Authority appealed the holding of the Tribunal to the Supreme Court of Zambia. All three judges who heard the appeal concurred that the responsibility to comply fully with tax rules rests on the Respondent. The Court further reasoned that this extends to the burden of proving that information submitted for purposes of complying is factually correct. Reversing the holding of the Tribunal, the Court held that by failing to submit the correct documentation, the Respondent did not discharge the burden of proving why it was entitled to the deduction.

**Significance**

First, the judgment clarified who bears the burden of proof in tax matters. In civil litigation generally, the burden of proof signifies a party's responsibility to prove or establish their claim in court.<sup>3</sup> A party making a claim is said to be pleading the affirmative, because they raise the first issue and maintain the affirmative of the issue.<sup>4</sup> Generally, in pleadings commenced by a

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<sup>2</sup> Zambia Revenue Authority v Matalloy Company Limited SCZ/08/016/2020.

<sup>3</sup> Phipson on Evidence 17<sup>th</sup> Edition at para 6-06.

<sup>4</sup> Odgers' Principles of Pleading and Practice 22<sup>nd</sup> edition.

statement of claim, the Plaintiff must establish all the facts they assert in their statement of claim, and the Defendant must prove all the facts he or she has stated in their pleadings.<sup>5</sup> To discharge the burden of proof, a party must produce sufficient evidence to persuade the court of their claim.<sup>6</sup> Importantly, how the evidence is brought before the court does not matter. A party that does not bear the burden of proof can introduce evidence to prove their opponent's claim. However, bearing the burden means a party bears the risk of losing the case if the evidence they produce is not convincing to the required standard.

In tax refund cases, a taxpayer claiming the refund is likened to a creditor claiming money in traditional debt recovery cases, where one party seeks to recover money from another.<sup>7</sup> That party is required to firstly prove they are entitled to some money, and also to the sum of money claimed.<sup>8</sup> Similarly, in other jurisdictions such as the United States, case law on tax refund suits establishes that the taxpayer must prove the government collected overabundant tax and that the taxpayer must justify the amount by which he or she is entitled to a refund.<sup>9</sup> Any doubt in the evidence produced by a taxpayer is resolved against the taxpayer because the taxpayer bore the burden of proof and failed to discharge it.

The judgment also highlighted that the evidentiary burden of persuasion fact to entitle a taxpayer to an exemption is quite high. At page J28 of the judgment, the court reasoned that:

what is known as the burden of proof in tax matters is in fact the responsibility To prove entries, deductions, statements and payments made on a taxpayers returns. A taxpayer must be able to demonstrate or substantiate the elements necessary for either deduction or credit by providing accurate information and all details needed. Under VAT, as with other taxes, this compliance burden is facilitated by proper record keeping by the taxpayer.<sup>10</sup>

In civil litigation, the party with the burden of proof must prove their claim to the required standard. This is known as the standard of proof.<sup>11</sup> Linked to the burden of persuasion, the evidence given by a party must meet this standard to discharge the burden of proof.

In other jurisdictions, this standard is reached when the evidence produced is 'clear and convincing.'<sup>12</sup> Clear and convincing means that the claimant has proved something as being reasonably certain. The judgment did not establish that the standard of proof is greater in tax cases as opposed to other claims. The Court did however refer to the fact that a taxpayer must prove his claim with accurate information.<sup>13</sup> It can therefore be inferred that the standard of proof in tax cases is on a slightly higher scale than a balance of probabilities because all documentation submitted by the taxpayer must be correct and accurate. Submitting incorrect documents or documents with errors weakens the taxpayer's case and diminishes the taxpayer's chances of persuading the Court to rule in his or her favour.

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<sup>5</sup> Ibid.

<sup>6</sup> Bater v Bater [1950] 2 All ER 458.

<sup>7</sup> John A. Townsend, 'Burden of Proof in Tax Cases: Valuation and ranges – an update' [2020].

<sup>8</sup> The judgment of the High Court in a debt collection case Citizens Economic Empowerment Commission v Mercy Mwambazi and Sunday Mwambazi (trading as MEMWAZI Enterprises) 2016/HP/2230 alluded to this.

<sup>9</sup> Intra note 6 at p.16.

<sup>10</sup> Zambia Revenue Authority v Matalloy Company Limited

<sup>11</sup> Bater v Bater [1950] 2 All ER 458.

<sup>12</sup> Intra note 6 at 10.

<sup>13</sup> Zambia Revenue Authority v Matalloy Company Limited

For practical and policy reasons, this approach of placing the burden of proof on the taxpayer works to ensure that all parties prove their case using evidence in their possession. Case law supplements the rule that parties must give evidence to support and prove their claim. In *Khalid Mohammed v The Attorney General*, the Supreme Court dealt with a claim in which the Defendant's defence failed, and the Plaintiff asserted that he had the right to succeed.<sup>14</sup> The Court held that a Plaintiff must prove their case, regardless of whether the Defence set up by Defendant has collapsed. In relation to tax cases, this means that a taxpayer bearing the burden of persuasion must prove their claim even if the Revenue Authority does not contest the claim.

This rule holds up in other tax cases that do not deal with tax refunds. In *Mopani Copper Mines Plc v. the Zambia Revenue Authority*, the Supreme Court dealt with an appeal from the Tax Appeals Tribunal that held in favour of the Revenue Authority.<sup>15</sup> The Tax Appeals Tribunal in the Mopani case agreed with the assessment of tax given by the Revenue Authority. In this case, both the Revenue Authority and the taxpayer exchanged data to support their respective assessments. The taxpayer's determination of the assessment was based on a hedging agreement, and it sought to rely on this agreement to prove its claim that the assessment amount the taxpayer must therefore show that the determination by the Revenue Authority is erroneous and must show exactly how it is erroneous.

Theoretically, in tax cases where it is alleged that the taxpayer has paid less tax, the Revenue Authority must have the duty of proving evasion or avoidance.<sup>16</sup> However, on policy grounds, it is more practical to say that the burden of proof is discharged by both the taxpayer and the Revenue Authority at different stages of the assessment.<sup>17</sup> For instance, as was demonstrated in the Mopani case – the taxpayer appealed against an assessment of the Revenue Authority that the authority determined after an audit. The Revenue Authority's audit was based on transfer pricing practices between the taxpayer and its' parent company, and the taxpayer claimed the Revenue Authority's data was flawed so it opposed the assessment. Although the taxpayer is the party that instituted the appeal in the Tax Appeals Tribunal and was the party asserting a claim, the Revenue Authority also submitted evidence to justify its' assessment.

Secondly, in the Judgment, the Supreme Court clarified the policy rationale of VAT refunds, and the requirement of taxpayers to prove that they are entitled to a refund. The Court reasoned as follows regarding the requirement to submit documents prescribed in Section 15 (1) of the VAT Act:

Our view is that Rule 15(1) is not onerous in its requirements. It stems fraudulent VAT refunds, and this presents a fair and reasonable trade-off between minimising the taxpayer's compliance burden and minimising the risk of issuing fraudulent VAT refunds which we have earlier alluded to.<sup>18</sup>

This in a sense establishes an optimal burden of proof – one that acts as a deterrent against fraudulent claims by taxpayers. The policy rationale for ascribing this duty on taxpayers is a balance between the gravity of possible sanctions, the amount of effort required to enforce the provision, and the cost of regulation.<sup>19</sup> In practice, this means that the Zambia Revenue Authority weighs the cost of gathering evidence, and considers which party stands to lose the most if little to no evidence is produced. It is important to consider what this signifies, with the

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<sup>14</sup> *Khalid Mohammed v the Attorney General*.

<sup>15</sup> *Mopani Copper Mines Plc v The Zambia Revenue Authority Appeal No. 24 of 2017*.

<sup>16</sup> Sukumar Mukhopadhyay, 'Lightening the Burden of GAAR' [2012] 47:45 pp. 17 – 19.

<sup>17</sup> *Ibid* at 19.

<sup>18</sup> *Zambia Revenue Authority v Matalloy Metal Company Limited Judgment* at p. 29.

<sup>19</sup> Louis Kaplow, 'On the Optimal Burden of Proof' (2011) 119 *Journal of Political Economy* 1104, 1108.

Zambia Revenue Authority arguably having more resources than a single taxpayer. The Zambia Revenue Authority could choose whether to use the taxpayer's returns, returns submitted by other parties or information from other law enforcement agencies. This, however, depends on the integrity of information submitted to the authority, and the apparent imbalance in resources is reset to a coordinated system that requires both the taxpayer and the revenue collecting agency.

The *Matalloy* case confirmed that taxpayers have a duty to support the authenticity of their records. Other than the fact that the submission of returns is a legal duty, the verification of entries is important for the revenue authority to determine the correct tax liability, and this gives taxpayers an obligation to ensure their records are accurate.

### **Conclusion**

In tax cases, taxpayers generally are in a better position to give evidence of the relevant facts of which they sometimes have exclusive knowledge. In the *Matalloy Metals* case discussed in this review, Justice Malila justifies this as the policy rationale for Section 15(3) of the VAT Act which requires taxpayers to submit prescribed documentation in their claim for a tax refund.