

Federal Court of Appeal



Cour d'appel fédérale

Date: 20161121

Docket: A-1-16

Citation: 2016 FCA 293

**CORAM: STRATAS J.A.
WEBB J.A.
WOODS J.A.**

BETWEEN:

BENJAMIN OKEKE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on November 21, 2016.
Judgment delivered from the Bench at Toronto, Ontario, on November 21, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

WOODS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on November 21, 2016).

WOODS J.A.

[1] The appellant, Benjamin Okeke, appeals from a judgment of the Tax Court of Canada (2015 TCC 301) which upheld the disallowance of a portion of charitable donation tax credits claimed by him pursuant to section 118.1 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act).

[2] In Mr. Okeke's income tax return for the 2008 taxation year, he claimed a tax credit for charitable donations on the basis that he made donations to two charities totalling \$9,800. The two charities were referred to as Revival Time Ministries Int. and Operation Save Canada Teenagers.

[3] In reassessing this taxation year, the Minister of National Revenue allowed the claim but only to the extent that the donations were evidenced by cheques. The total amount of the cheques was only \$800. The remainder of the donations (\$9,000) were purportedly made by way of cash donations. The Minister disallowed the total of the amounts claimed as cash donations.

[4] In the Tax Court, Justice Valerie Miller (the trial judge) dismissed the appeal on two grounds. First, she concluded that the evidence did not support that cash donations were made. Second, she found that the tax receipts for these donations did not satisfy the requirements of section 3501 of the *Income Tax Regulations*, C.R.C. c. 945.

[5] In our view, the trial judge made no reviewable error, here palpable and overriding error, in her conclusion that Mr. Okeke did not sufficiently establish that the purported cash donations were made. There is ample support for this conclusion.

[6] In this Court, Mr. Okeke submits that the cash donations are supported by letters written by the founder of the charities, Daniel Mokwe.

[7] The trial judge found that the details in Mr. Mokwe's letters were not reliable. Mr. Okeke submits that the trial judge made an error in this conclusion by relying on a fact which was not supported by the evidence that the charities did not have records for 2008 at the relevant time.

[8] The problem with this submission is that even if there was not clear evidence on the existence of such records, there was ample other evidence to support the trial judge's finding that statements by Mr. Mokwe were not reliable.

[9] In particular, the evidence reveals that the charities had falsified bank statements that were given to the CRA. In addition, the charities issued donation receipts for amounts that wildly exceeded the charities' bank deposits. In this regard, the bank deposits for several years were for an aggregate amount of only \$12,000 and yet the donation receipts issued by the charities for the same period were for a total of \$7.8 million.

[10] Accordingly, there is ample support for the trial judge's conclusion that statements by Mr. Mokwe are not reliable.

[11] In light of our conclusion that the trial judge made no reviewable error concerning the \$9,000 donations, it is not necessary that we consider the second issue which is whether the tax receipts are deficient. We express no comment on it.

[12] Finally, Mr. Okeke submits that it is not his fault that the charities falsified information, and he submits that the CRA were also at fault in not alerting him to problems with the charities in a timely manner.

[13] These submissions do not assist Mr. Okeke because he has the onus of proof. Even if the allegations regarding wrongdoing by the CRA were true, this would not be a sufficient ground to invalidate the assessment and allow the tax credit (*Main Rehabilitation Co. Ltd. v. The Queen*, 2004 FCA 403, 2004 D.T.C. 6762).

[14] We conclude that the appeal will be dismissed, with costs to the respondent.

"Judith M. Woods"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-1-16

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE
VALERIE A. MILLER DATED DECEMBER 1, 2015, NO. 2015-123(IT)I**

STYLE OF CAUSE: BENJAMIN OKEKE v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 21, 2016

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
WEBB J.A.
WOODS J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

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