Docket: 2010-3706(IT)I

BETWEEN:

TOM OLOYA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Julia Oloya (2010-3707(IT)I)
on June 8, 2011 at Windsor, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant Himself
Counsel for the Respondent:	Joanna Hill

JUDGMENT

The Appellant's appeals from the reassessments made under the *Income Tax Act* that denied the Appellant's claims for tax credits for charitable donations for 2005 and 2006 are dismissed, without costs.

Signed at Halifax, Nova Scotia, this 20th day of June, 2011.

"Wyman W. Webb"

Webb, J.

Docket: 2010-3707(IT)I

BETWEEN:

JULIA OLOYA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Tom Oloya (2010-3706(IT)I)
on June 8, 2011 at Windsor, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant:	Tom Oloya
Counsel for the Respondent:	Joanna Hill

JUDGMENT

The Appellant's appeals from the reassessments made under the *Income Tax Act* that denied the Appellant's claims for tax credits for charitable donations for 2005 and 2006 are dismissed, without costs.

Signed at Halifax, Nova Scotia, this 20th day of June, 2011.

"Wyman W. Webb"

Webb, J.

Citation: 2011TCC308
Date: 20110620
Docket: 2010-3706(IT)I

BETWEEN:

TOM OLOYA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Docket: 2010-3707(IT)I

AND BETWEEN:

JULIA OLOYA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The Appellants were reassessed to deny the tax credits that they had claimed in relation to the charitable donations identified by them in their tax returns for the following years:

Year	**Appellant**	**Amount**
2005	Tom Oloya	$25,000
2005	Julia Oloya	$16,500
2006	Tom Oloya	$26,450

Year	Appellant	Amount
2006	Julia Oloya	$14,450

[2] The amounts claimed all related to receipts issued by International Farm Aid and Relief Mission ("IFAARM"). This was a charitable organization that was formed by Tom Oloya to provide assistance to farmers in Uganda and other developing countries. The organization was formed in 2004 and became a registered charity on April 1, 2005. Tom Oloya also indicated that he became particularly interested in the work being done by the Northern Uganda War Affected Women Organization, an organization that, as described by the Appellants in their letter to the Canada Revenue Agency dated August 20, 2010, was "a group comprising women who had lost their spouses as a result of the rebel atrocities". Tom Oloya's intentions were clearly honourable and charitable but he lacked the necessary accounting skills and knowledge of the rules related to charitable organizations to operate the charity properly and to ensure that it issued proper receipts.

[3] There were a number of issues related to the record keeping of IFAARM (including its donation receipts and its charity information return) and its registration as a registered charity was revoked on September 5, 2009.

[4] The amounts claimed for 2005 were reflected in the following receipts issued by IFAARM:

Receipt No.	Issued to:	Amount	Date of Donation:
0114	Tom Oloya	$25,000	December 31, 2005
0102	Julia Oloya	$16,500	December 31, 2005

[5] These were the only receipts that were issued by IFAARM for 2005. The amount for Tom Oloya was an estimate of the value of the services that he had provided to IFAARM.

[6] The tax credit that an individual may claim as a result of gifts made by that individual to registered charities is provided in subsection 118.1(3) of the *Income Tax Act* (the "*Act*"). This subsection provides that the tax credit is based on the individual's total gifts. The definition of "total gifts" in subsection 118.1(1) of the *Act* provides that one of the limiting amounts is the individual's total charitable gifts. The definition of "total charitable gifts" (also in subsection 118.1(1) of the *Act*) provides that it is based on the fair market value of the gift (or gifts).

[7] In *Slobodrian* v. *Minister of National Revenue*, 2003 FCA 350, [2004] 1 C.T.C. 124, 2003 DTC 5632, Justice Noël, writing on behalf of the Federal Court of Appeal stated that:

> 15 It follows that a gift for income tax purposes must involve the transfer of something known to law as property. The mere supply of services without compensation involves no property and hence cannot form the subject matter of a gift. This is to be contrasted with remunerated services which once performed give rise to rights capable of ownership and which can in turn form the subject matter of a gift. The simplest example of this would be the remunerated worker who assigns gratuitously his right to the remuneration which he has earned. In the present case, it is common ground that the applicant was to render his services without any form of compensation.

[8] Tom Oloya acknowledged that the receipt for $25,000 issued by IFAARM to him for 2005 was for services rendered by him without remuneration and at the commencement of the hearing he stated that he was no longer pursuing his claim for a charitable donation in relation to the receipt issued for his services. However, he submitted a list of items for which he had paid in the hope that he would be able to claim a credit for these. The items included the registration fees paid to form IFAARM, telephone charges, charges related to the website for IFAARM, stationary, legal fees and part of the cost of his trip to Uganda in 2006. The total amount that he paid for the items was $2,639.

[9] However, neither the receipt issued for 2005 nor the receipt issued for 2006 to Tom Oloya was for any of the amounts identified on the Appellant's list of items. Subsection 118.1(2) of the *Act* provides, in part, that:

> (2) A gift shall not be included in the total charitable gifts, … of an individual unless the making of the gift is proven by filing with the Minister
>
> (*a*) a receipt for the gift that contains prescribed information;

[10] Since there was no receipt for any of the items included in the list submitted by Tom Oloya at the hearing, no amount can be included in his total charitable gifts for any of these items. As well, Tom Oloya indicated that he and his wife did expect to be reimbursed for the amounts that they had spent on behalf of IFAARM and that these amounts should have been identified as loans. As a result, the amounts expended on these items would not be gifts in any event.

[11] It appears that the receipt issued to Julia Oloya for 2005 was for the following (which were not identified on the receipt):

Item:	Amount:
Services rendered (without remuneration):	$12,400
Computer, desk, chairs, phone and printer:	$1,100
Use of room in the house:	$3,000
Total:	$16,500

[12] As noted above, the provision of services does not result in a gift of property and therefore the amount for services cannot be included as total charitable gifts for the purposes of the *Act*. Tom Oloya had also acknowledged at the beginning of the hearing that Julia Oloya was no longer pursuing any claim in relation to the amount related to the services that she had provided.

[13] Counsel for the Respondent did not contest the amounts identified for the computer, desk, chairs, phone and printer. However, the issue related to this part of the claim is that there is no indication on the receipt that was issued that it was issued for these items. As noted above, subsection 118.1(2) of the *Act* provides that an individual must file a receipt that contains prescribed information in order to claim a credit for a charitable donation. The prescribed information is set out in section 3501 of the *Income Tax Regulations*. Subsection 3501(1) of the *Income Tax Regulations* provides in part that:

> 3501. (1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,
>
> …
>
> (*e.1*) where the donation is a gift of property other than cash
>
> (i) the day on which the donation was received,
>
> (ii) a brief description of the property, and
>
> (iii) the name and address of the appraiser of the property if an appraisal is done;

[14] There is nothing on the receipt to indicate that the receipt was issued for any property other than cash. There is simply the one amount of $16,500 which is identified as the “amount donated”. There is also only one “date of donation” which was stated to be December 31, 2005, even though the amount included services, the items referred to above and the amount for rent. Tom Oloya indicated that the items

were given to IFAARM during the summer of 2005. The receipt issued to Julia Oloya did not contain the prescribed information and therefore she is not entitled to claim a credit in relation to the transfer of the computer and other items to IFAARM.

[15] The amount for rent was for the use of a room in their house. Tom Oloya described this claim in the schedule that he submitted as follows:

> Room to be used as office space for IFAARM work to be rented at $250.00 per month, use of internet facility and utilities included. There was no money paid, and rent to be considered as donation to IFAARM.

[16] It is not clear whether the Appellants charged IFAARM rent or were simply making a claim for the equivalent amount that would have been charged for rent. Since the Appellants would have been required to include the rental amount in their income on an accrual basis[1] and since they did not include this rental amount in their income, it seems to me that they did not charge rent. If they would have charged rent (and included the rent in their income), then the rental amount receivable would have been property that could have been donated to the charity. However, such property would have to be identified in the receipt.

[17] Since presumably the Appellants simply claimed an amount equivalent to rent, one question would be whether any property was given by the Appellants to IFAARM. The definition of property, as noted by the Federal Court of Appeal, in *Slobodrian*, above, is set out in subsection 248(1) of the *Act*. This subsection provides that:

> "property" means property of any kind whatever whether real or personal or corporeal or incorporeal and, without restricting the generality of the foregoing, includes
>
> (*a*) a right of any kind whatever, a share or a chose in action,
>
> (*b*) unless a contrary intention is evident, money,
>
> (*c*) a timber resource property, and
>
> (*d*) the work in progress of a business that is a profession;

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[1] There may also have been expenses that were incurred for the purpose of earning the rental income which could have been deducted in determining their income for the purposes of the *Act*.

[18] Even if the granting of the right to use the room in the house resulted in a transfer of property to IFAARM, since the receipt did not identify this property Julia Oloya cannot include this amount as part of her total charitable gifts for 2005.

[19] The receipts for 2006 were issued in relation to an alleged transfer of certain land in Uganda by the Appellants to IFAARM. Tom Oloya's father held this land and promised the Appellants at their wedding that he would transfer it to them. However, the land was in the part of Uganda where a war was being fought and Tom Oloya's father did not execute any documents to convey his interest in this land to the Appellants. The Appellants did arrange to have the land transferred to the Northern Uganda War Affected Women Organization. Although the Appellants discussed, between themselves, their intention to transfer this land to IFAARM, there is nothing to indicate that this land was actually transferred to IFAARM. Therefore there is nothing, other than the statement of Tom Oloya's father, and the stated intentions of the Appellants, to show that the land was transferred from Tom Oloya's father to the Appellants or by the Appellants to IFAARM.

[20] Since the land is in Uganda, it is a question of the law of Uganda whether Tom Oloya's father transferred an interest in real property to the Appellants when he stated, at their wedding, that he would do so. Foreign law is a question of fact. Justice Rothstein in *Backman* v. *The Queen*, 178 D.L.R. (4th) 126, [1999] F.C.J. No. 1327, stated as follows:

> 38 Where foreign law is relevant to a case, it is a question of fact which must be specifically pleaded and proved to the satisfaction of the Court. Professor J.-G. Castel has summarized the effect of the failure of a party to establish foreign law as a fact before the Court:
>
>> If foreign law is not pleaded and proved or is insufficiently proved, it is assumed to be the same as the lex fori. This seems to include statutes as well as the law established by judicial decision.
>
> 39 Professor Castel acknowledges that some Canadian courts have been reluctant to apply the presumption that the law of the foreign jurisdiction is the same as that of the forum, where the law of the forum is a statute. However in *Fernandez v. Mercury Bell (The)*, Marceau J.A. held that the salient distinction is not whether the law of the forum is statutory or common law:
>
>> What has appeared constant to me, however, in reading the cases, is the reluctance of the judges to dispose of litigation involving foreign people and foreign law on the basis of provisions of our legislation peculiar to local situations or linked to local conditions or establishing regulatory requirements. Such reluctance recognizes a distinction between substantive provisions of a general character and

> others of a localized or regulatory character; this distinction, a distinction, formally endorsed I think by Cartwright J. in the two passages I have just quoted, is wholly rational which is more than can be said of a simple division between common law and statute law. …

In a separate concurring opinion, Hugessen J.A. observed that even at the time when the preponderance of English law was judge-made, it was doubtful that it would have been argued that a statute of general application should not come within the rule of presumption:

> My second observation relates to the suggestion, in some of the authorities, that the application of the lex fori is limited to the common law as settled by judicial decisions and excludes all statutory provisions. Here again I think the expressions of the rule have been coloured by the historical context and go back to a time when the great body of English law was judge-made; statutes were creatures of exception, outside the general body of the law. Even at that time, however, I doubt that it would seriously have been argued that a statute of general application such as, for example, the Bills of Exchange Act should be overlooked, so as to oblige the court to search in the obscurities of history to determine the state of the law prior to its enactment. The proper expression of the rule, as it seems to me, is that the court will apply only those parts of the lex fori which form part of the general law of the country.

40 I think that legislation with respect to partnerships is such an example of statutory law of general application. There is nothing intrinsically local or particular with respect to partnerships, and there is considerable uniformity in this area of law across jurisdictions.

[21] There was no evidence with respect to how an interest in land in Uganda could be transferred. Tom Oloya stated that in Uganda, a person holds a 99 year lease for land and at the end of the 99 years the person must apply for another 99 year lease. In the letter from the lawyers representing the Northern Uganda War Affected Women Organization, there is a reference to the registration of the land which suggests that there is some requirement for a document in writing.

[22] Section 1 of the *Statute of Frauds* (Ontario) R.S.O. 1990, CHAPTER S.19, provides that:

> **1.** (1) Every estate or interest of freehold and every uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments shall be made or created by a writing signed by the parties making or creating the same, or their agents thereunto lawfully authorized in writing, and, if not so made or created, has the force and effect of an estate at will only, and shall not be deemed or taken to have any other or greater force or effect.

[23] Therefore the laws of Ontario would require a written document to transfer an interest in land. It seems to me that a presumption can be made that the laws of Uganda would also require that an interest in land can only be transferred by a

document (which would be in writing) signed by the transferor. Since there was no such document conveying an interest in the land from Tom Oloya's father to the Appellants, no interest in this land was conveyed to them. Therefore they did not have an interest in the lands and could not make a gift of the lands to the charity. There was also no such document conveying an interest in the land to IFAARM. Therefore there was no conveyance of an interest in the land from the Appellants to IFAARM and the Appellants did not make any gift of the land to IFAARM.

[24] The receipts that were issued by IFAARM for 2006 were also deficient as the receipts did not identify the property that the Appellants had claimed was transferred to IFAARM.

[25] As a result the Appellants' appeals in relation to the reassessments that denied the Appellants' claims for tax credits for charitable donations for 2005 and 2006 are dismissed, without costs.

Signed at Halifax, Nova Scotia, this 20th day of June, 2011.

"Wyman W. Webb"

Webb, J.

CITATION:	2011TCC308
COURT FILE NOS.:	2010-3706(IT)I; 2010-3707(IT)I
STYLE OF CAUSE:	TOM OLOYA AND HER MAJESTY THE QUEEN AND BETWEEN JULIA OLOYA AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Windsor, Ontario
DATE OF HEARING:	June 8, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	June 20, 2011

APPEARANCES:

For the Appellant Tom Oloya:	The Appellant Himself
Agent for the Appellant Julia Oloya:	Tom Oloya
Counsel for the Respondent:	Joanna Hill

COUNSEL OF RECORD:

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