

IN THE COURT OF APPEAL OF SWAZILAND

In the Appeal of:

CIV. APP. NO. 2/77

THE COMMISSIONER OF TAXES

(Appellant)

versus

SWAZILAND RANCHES LIMITED

(Respondent)

Held at MBABANE
on 5th June, 1978

B E F O R E : N. OGILVIE THOMPSON, P.
A. MILNE, J.A.
A.J. SMIT, J.A.

FOR APPELLANT : E.B. BROOMBERG

FOR RESPONDENT : A.J. SWEYSKY

J U D G M E N T

(Handed down on the 26th July, 1978)

Milne, J.A.:

I regret that I am unable to agree with the conclusions arrived at by Ogilvie Thompson, P. I associate myself, of course, with everything in his judgment up to the end of the paragraph in which he refers to the judgment of Schreiner, J.A., in Rabinowitz & Another v. De Beers Consolidated Mines Ltd., 1958(3) S.A. 619 at 631 F - 632 F.

As regards the quotation from the judgment of Rumpff, C.J., in Buglers Post (Pty) Ltd. v. S.I.R., 1974(3) S.A. 28 (A.D.), it has, I think to be borne in mind that the judgment was not dealing with buildings on the farm but with the taxpayer's expenditure in acquiring a servitude of water over someone else's property. I shall revert to this quotation later. Nor do I find myself able, with respect, to agree with the ensuing statement of Ogilvie Thompson, P., that (leaving aside subparagraph (f)) "none of the items in paragraph 17(1) can be said to be connected with the actual operating of the farm in the sense

of income-earning operations as that expression is understood in tax matters", least of all, perhaps, subparagraph 17(1)(h) which authorizes the deductibility of expenditure in respect of "the building of roads and bridges used in connection with farming operations". In most farming operations involving agriculture, as distinguished from farming other forms of animal husbandry, crops have to be transported from the fields where they are harvested to other places. In the case of citrus, the fruit will have to be carried from the orchards through the farm on their way to the graders and since, nowadays, such transportation will be by motorised vehicles, good roads (and bridges across rivers and streams) will be required, especially if the citrus-growing operations are extensive; and, a fortiori, is this the case in respect of sugar farming in which the cane is carried from the fields through the farm and thence onwards to the mill. I do not propose to go into further items in paragraph 17(1) save to say that on very many farms (not least in most cases of animal husbandry) fences are decidedly necessary in respect of income-earning operations, not merely for paddocks but for the boundaries of the farm; as also dams and boreholes or both, where the farm has no rivers or streams from which it is entitled to draw water.

As regards the history of subparagraph (f) of paragraph 17(1), perhaps I may be permitted to say that I wholly agree with what Ogilvie Thompson, P., says about this but, regretfully, I find myself unable to reach the final conclusion which he does from his examination of that history and the context and the wording of the subparagraph.

It is clear, as he says, that in subparagraph (f) the Legislature does not require as a pre-requisite for deductibility that expenditure in respect of buildings

used for the domestic purposes of a farmer's employees, should have any direct connection with the actual operations of farming. But it seems to me, with respect, once it is clear that a farmer has erected a building on his farm, though it is not used or intended to be used for the domestic purposes of his employees at all, that unless one concludes that he may have erected the building as a matter of mere charity, or for the purposes of some commercial venture quite separate from his farming operations and that the building is not used for the domestic purposes of persons other than his employees, one is entitled and, indeed, obliged to say that he has erected the building, for business reasons, in connection with his farming operations. In this case the agreed facts as set out by the President show quite clearly and strongly that the erection of the school and the beer halls was not done for charity or in connection with some commercial venture other than the taxpayer's farming operations, or for the domestic purposes of persons other than the taxpayer's employees, but solely in order to ensure that the taxpayer would have a contented and, therefore, as well, a stable labour force. The Legislature as we have seen, regards the cost (within the prescribed limits) of buildings used for the domestic purposes of a farmer's employees as deductible, clearly showing, in my view, that it is much concerned with the housing on his farm of a farmer's employees. Why should it be so concerned other than to ensure that the farmer's resident labour force will be a contented one? What, one asks, were the beer halls and the school erected for other than for bettering of the taxpayer's farming operations by enhancing the productivity of his employees, as the agreed facts indeed indicate? I find myself unable to say that the buildings with which we are concerned in this case were any less used in connection with the taxpayer's farming operations than buildings used by its employees as places where they merely sleep and

eat and wash and, presumably, spend some leisure. No less in the former case than in the latter can the buildings be said, in any sense, to be used in any direct connection with the farming operations, but the Legislature plainly recognises that buildings may be used in connection with farming operations, although they are in no way, at all, directly so used.

I find myself impelled to say that the buildings in question in this case were used in connection with the farming operations, and not for any operations but the farming operations, of the taxpayer. It follows that as regards the judgment of Herbstein, J., in Income Tax Case No. 885 (23 SATC 336) I find myself, with great respect, totally at odds with his view that buildings erected by a farmer for the purpose only of ensuring that he has a contented labour force cannot qualify for deductibility under legislation couched in the same terms as paragraph 17(1)(f). I do not think that the instance he gives of the erection of a cinema to be used only as such is one likely to occur in practice and the question is academic in any case. If, however, the taxpayer, in the present case, were to give free cinema shows either at the school or at the beer halls, I cannot believe that that would make these latter less qualified for deductibility. It is not necessary to deal with the hypothetical case of a covered swimming pool or a squash court but, if it were and it could rightly be said that they were erected for the purpose of having a contented labour force in order to increase its productivity, it follows that I would disagree with Herbstein, J.'s obiter dictum about them. As regards the school in that case, the learned Judge said that it was not used in order to educate the employees of the taxpayer. It will be clear from what I have already said that I regard the erection of a school for the children of employees, as being a very definite factor involved in keeping the employees themselves contented.

Returning to the above-mentioned quotation from the judgment of Rumpff, C.J., in the Bugler's Post case, it is clear that he was emphasizing that the intention of the Legislature in the similarly worded paragraph involved in that case was to encourage a farmer to improve his own farm, so as to increase its productivity. On the accepted basis in the present case that the buildings consisting of the school and the beer halls were erected by the taxpayer on its own farm, solely to ensure that it would have a labour force on its farm which was contented and therefore productive, I am in no manner of doubt that these buildings were improvements to the farm designed to improve its productivity as a farm, and that any purchaser of the farm with a view to carrying on only farming operations upon it would manifestly be happy to pay correspondingly more for it than he otherwise would, because they would assist him in conducting more successful farming operations on it than he would without them.

For the foregoing reasons the Order I would make in this case would be as follows:

1. The appeal is dismissed with costs.
2. The cross appeal is allowed with costs.
3. The above Orders for costs include the fees of two Counsel.
4. The Commissioner is directed to assess the Taxpayer for the year in issue upon the basis that the two amounts of E20837.10 and E14,356 are admissible for deduction under paragraph 17(1)(f) of the First Schedule to Act 84/1959.

.....(Signed)
(A. MILNE)
JUDGE OF APPEAL

I agree.

.....(Signed)
(A.J. SMIT)
JUDGE OF APPEAL