

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20230208**

**Docket: A-338-21**

**Citation: 2023 FCA 30**

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.  
GLEASON J.A.  
GOYETTE J.A.**

**BETWEEN:**

**FLAUBERT TSHIDIMU KUBIANGANA**

**Appellant**

**and**

**HIS MAJESTY THE KING**

**Respondent**

Heard at Toronto, Ontario, on February 8, 2023.

Judgment delivered from the bench at Toronto, Ontario, on February 8, 2023.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**BOIVIN J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Toronto, Ontario, on February 8, 2023)**

**BOIVIN J.A.**

[1] The appellant is appealing the judgment of the Honourable Madam Justice Dominique Lafleur of the Tax Court of Canada (the TCC judge) delivered by conference call on November 16, 2021 (2018-722(IT)I). In her decision, the TCC judge upheld the reassessments made by the Minister of National Revenue for the taxation years at issue (2012, 2013 and 2014) and dismissed the appellant's appeal.

[2] The standards of review that apply in this case are palpable and overriding error for questions of mixed fact and law and for questions of fact, and correctness for questions of law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[3] We have not been persuaded that the TCC judge made any errors warranting our intervention.

[4] First, the TCC judge correctly interpreted her jurisdiction and did not err in refusing to consider the appellant's allegations that there was a breach of conduct on the part of the Canada Revenue Agency (sections 169, 222 and 224 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act); *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557).

[5] Second, the TCC judge correctly instructed herself in law in applying the test developed by the Supreme Court of Canada in *Stewart v. Canada*, 2002 SCC 46, [2002] 2 S.C.R. 645, to determine whether the appellant had a source of income arising from a business under the Act. Faced with a lack of evidence and evasive and sometimes contradictory testimony, the TCC judge was able to draw the conclusion that the appellant did not have a tutoring business. Based on this finding, it was self-evident that, in the absence of business income, there was no need to consider the issue of expense deductions. Finally, we are also satisfied that the TCC judge did not err in finding that the requirements of paragraph (8)(1)(h.1) of the Act were not met and, therefore, that the appellant was not entitled to a deduction for motor vehicle expenses in connection with his employment at the centre for 2012.

[6] For these reasons, the appeal will be dismissed with costs.

“Richard Boivin”

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J.A.

Certified true translation  
Vera Roy, Jurilinguist

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-338-21

**STYLE OF CAUSE:** FLAUBERT TSHIDIMU  
KUBIANGANA v. HIS MAJESTY  
THE KING

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 8, 2023

**REASONS FOR JUDGMENT OF THE COURT  
BY:** BOIVIN J.A.  
GLEASON J.A.  
GOYETTE J.A.

**DELIVERED FROM THE BENCH BY:** BOIVIN J.A.

**APPEARANCES:**

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**SOLICITORS OF RECORD:**

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