

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL REGISTRY AT KAMPALA

APPLICATION NO. 139 OF 2023

ABAS KALULE APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

RULING

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MRS. CHRISTINE KATWE

This ruling is in respect of a preliminary objection raised by the Respondent under section 15 (1), section 16 (1) (c) of the Tax Appeals Tribunal Act ("TAT Act") and section 25 (now section 27) of the Tax Procedures Code Act ("TPCA") seeking:

- a) A declaration that this application be dismissed with costs to the Respondent for failure to comply with the mandatory statutory requirement of paying 30% of the tax in dispute.
- b) That this application is time barred.

1. Background facts

On 20 September 2020, the Respondent conducted a review of the Applicant's tax matters for the period of January 2016 to December 2018. The Respondent alleged that the Applicant had undeclared sales and issued additional VAT and income tax assessments for the period that totaled to Shs. 1,347,138,161. The Applicant objected to the assessments in 2021 and the Respondent issued objection decisions in April and May 2021 as well as February 2022 maintaining the income tax assessments and partially allowing the VAT objection. Consequently, the VAT assessment was revised downwards to Shs. 174,983,724.

On 15th April 2022, relying on third party information, the Respondent issued amended assessments that discharged the Applicant's tax liabilities as shown in the table below:

| Assessment date | Period | Tax Head | Assessment Number | Tax charged / (discharged) | Reason |
|-----------------|---------------------------|------------|-------------------|----------------------------|--|
| 19 April 2022 | 01/07/17 – 30/06/18 | Income Tax | CR012200353942 | (108,000,000) | As per objection decision |
| 15 April 2022 | May 16 | VAT | MI022200351213 | (159,614,099) | Adjustment made as per third party information |
| 15 April 2022 | Feb 16 | VAT | MI022200351104 | (154,214,146) | Adjustment made as per third party information |
| 15 April 2022 | Jan-16 | VAT | MI022200351273 | (69,749,999) | Adjustment made as per third party information |

Subsequently, on 23 February 2023, almost a year later, the Respondent revised the Applicant's tax position for the same tax period 2016 – 2018 by reinstating the earlier assessments that the Respondent had issued in 2021. This gave rise to an additional VAT liability of Shs. 383,578,246 and income tax liability of Shs. 108,000,000.

The Respondent alleged that the assessments of 15 and 19 April 2022 wherein the Applicant's tax liabilities were discharged, were fraudulently revised by a former officer of the Respondent. Upon the discovery of the fraud, the Respondent reinstated the assessments to reflect the Respondent's earlier objection decision.

On 7, 8 and 9 April 2023, the Applicant objected to the reinstated assessments and the Respondent issued their objection decision on 25 July 2023, maintaining the assessment.

Being dissatisfied with the Respondent's objection, the Applicant filed this matter before the Tribunal on 18 August 2023.

The Respondent raised two preliminary points of law on ground:

- (i) That Applicant had not paid the mandatory 30% of the tax in dispute;
- (ii) The application is time barred as the Applicant ought to have filed their application in 2021/2022 in respect of the Respondent's initial objection decision.

2. Representation

At the hearing of the application, Mr. Haruna Mbeta appeared for the Applicant while Ms. Charlotte Katutu and Mr. Kenan Aruho appeared for the Respondent.

3. Submissions by the Respondent

(i) Non-payment of 30% of the tax in dispute

The Respondent submitted that the application is bad in law and ought to be dismissed with costs because the Applicant has not paid 30% of the tax in dispute as required by law.

The Respondent cited Section 15 of the Tax Appeals Tribunal Act, Cap 345 which provides:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30% of the tax in dispute as required by law."

The Respondent contended that the position on the requirement to pay 30% has been settled by the Supreme Court in the celebrated decision in *Uganda Projects Implementation Centre v Uganda Revenue Authority, Supreme Court Constitutional Appeal No. 2 of 1999*. The Supreme Court held that the statutory requirement in the then VAT Act (similar to s.15 of the TAT Act), requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, is constitutional, and, did not infringe on the right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law.

The Respondent submitted that the Applicant neither paid the 30% of the disputed tax nor did it make an application for a waiver of this requirement. The Respondent argued that compliance with this provision is a mandatory precondition for jurisdiction of the Tribunal to entertain this appeal. As such, the failure to make this payment renders the Applicant's application improperly before the Tribunal.

The Respondent relied on the case of *Metcash Trading Co. Ltd v Commissioner for South African Revenue Services & Another [2006] 62 SATC 84*, wherein it was held that a tax payer has to pay his tax and argue later.

The Respondent prayed that since the Applicant had not paid 30% of the tax in dispute, the application should be dismissed with costs to the Respondent.

(ii) The Application is time barred

The Respondent submitted that the Applicant was required to file the appeal within 30 days from the date of the decision by the Commissioner as stipulated under section 16(1) of the TAT Act. The section provides that an application for review shall be made within 30 days of the taxpayer being notified of the taxation decision. Section 16(2) of the same Act provides that the Tribunal may, upon application in writing, extend the time for the making of an application to the Tribunal for review of a taxation decision.

The Respondent submitted that only 4 assessments were fraudulently revised downwards; the rest of the assessments and objection decisions as issued in February, April and May 2021 remained untampered with. Therefore, the application in respect of the assessments which were not fraudulently revised is time barred. Since the objection decisions in respect of the remaining assessments were issued in February, April and May 2021, the Applicant ought to have applied to the Tribunal within 30 days of the objection period. Therefore, the application of 18 August 2023 is time barred in respect of these assessments.

In support of this argument, the Respondent relied on the case of *Uganda Revenue Authority v Uganda Consolidated Properties Ltd, Civil Appeal No.31 of 2000* where court held that, "time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with."

4. Submissions in reply by the Applicant

(i) Non-payment of 30 percent of the tax in dispute

The Applicant submitted that he paid the whole 30 percent of the tax in dispute of Shs. 792,575,467. The Applicant adduced payment receipts as proof of payment

(ii) The Application is time barred

The Applicant submitted that the application is not time barred as it was filed within a period of 30 days of the Respondent's objection decisions of 25 July 2023. The Applicant averred that when the Respondent vacated the earlier assessments, this created a legitimate expectation on the Applicant's part that the assessments were vacated, which should be upheld. The Applicant further submitted that the Respondent's objection decision of 25 July 2023 was made outside the 90 day timeframe prescribed by the Tax Procedure Code Act and was therefore made illegally and unlawfully. The Applicant prayed that the Respondent's objection decision be set aside.

5. The Respondent's submissions in rejoinder

The Respondent did not file any submissions in rejoinder.

6. Determination by the Tribunal

Having read and considered the submissions of both parties as well as the authorities relied upon, this is the ruling of the Tribunal.

(i) Non-payment of 30% of the tax in dispute

The Applicant adduced evidence to prove payment of 30 percent of the tax in dispute. The payment receipts that the Applicant provided are shown in the table below:

| SN | Ref. No./PRN | Date | Bank | Amount in Shs. |
|----|----------------|-----------|----------------|--------------------|
| 1. | 5639030 | 8 Dec 23 | Equity Bank | 40,000,000 |
| 2. | 5638844 | 8 Dec 23 | Equity Bank | 60,000,000 |
| 3. | 2240008977524 | 9 Dec 23 | Stanbic Bank | 60,000,000 |
| 4. | 2240009021140 | 9 Dec 23 | Stanbic Bank | 2,000,000 |
| 5. | 2240009400763 | 18 Dec 23 | Centenary Bank | 15,000,000 |
| 6. | 2240009401352 | 18 Dec 23 | Stanbic Bank | 60,000,000 |
| 7. | 0382089070063 | 18 Dec 23 | Agent | 750,000 |
| 8. | 08667911852976 | 18 Dec 23 | Stanbic Bank | 50,000 |
| | Total | | | 237,800,000 |

30 percent of the tax in dispute of Shs. 792,575,467 is Shs. 237,772,640.

The Tribunal therefore finds that the Applicant paid 30 percent of the tax in dispute. Therefore, the first point of the preliminary objection fails and is hereby dismissed.

(iii) The Application is time barred

The facts of this case are convoluted. They revolve around the discharge and reinstatement of assessments that were issued by the Respondent, objected to by the Applicant and objection decisions made by the Respondent. Consequently, there are varying accounts of what the correct tax in dispute is.

Based on the Respondent's submission's, the confusion arising from the vacation and reinstatement of the assessments arose from the fraudulent actions of an errant officer of the Respondent who was subsequently dismissed by the Respondent. As part of the Respondent's statement of reason for the decision, the Respondent provided charge sheets from the Uganda Police indicating the offences which the errant officer was charged with. The charge sheet clearly indicates that the officer adjusted, among other taxpayers, the tax ledgers of the Applicant.

It is not mentioned anywhere in the Respondent's submissions that the Applicant participated in the fraud.

In 2022, when the Respondent vacated the Applicant's liability that arose from the Respondent's objection decision of 2021, it created a legitimate expectation on the Applicant's part that the tax liabilities were discharged. In 2023, when the Respondent discovered the fraudulent actions of their officer, they reinstated the assessments to revert to their earlier position of 2021. This was the correct and reasonable thing to do in the circumstances. Having received the new assessments, the Applicant also did the right thing by objecting to the said assessments. Non-objection would tantamount to admission of the tax liability. Consequently, the Respondent made an objection decision on 25 July 2023 and the Applicant filed this application on 18 August 2023.

It appears that both the Applicant and the Respondent were victims of the fraudulent actions of the Respondent's errant officer. In cases such as this where a third party's actions adversely affect both the Applicant and the Respondent, relying on technicalities

is not helpful. The correct approach would be to determine the case on its merits and ensure that any wrong that may have been occasioned to whichever party is made right.

In the Tribunal's view, the discharge of the taxpayer's liabilities and the reinstatement of the liabilities overtook the Respondent's earlier objection decision. The Applicant contested the reinstated assessments and was entirely within their rights to object and

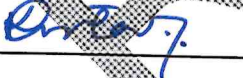
file this application when the disagreed with the Respondent's objection decision of 25 July 2023.

Since the application was filed on 18 August 2023, which is within 30 days from the date of the objection decision of 25 July 2023, the Tribunal finds that the application was not out of time. The Respondent's preliminary objection is therefore without merit.

Accordingly, the second preliminary point of law raised by the Respondent fails and is hereby dismissed.

Each party should bear its own costs.

Dated this 6th day of September 2024



MS. CRYSTAL KABAJWARA
CHAIRPERSON



MR. SIRAJ ALI
MEMBER



MRS. CHRISTINE KATWE
MEMBER

