

S THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 2 of 2022

ABWAYO CONSTANCEAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MR. SIRAJ ALI

RULING

This ruling is in respect of an application seeking orders for the extension of time within which the applicant may file an application for a review.

This application was brought under Sections 14 and 16 of the Tax Appeals Tribunal Act, S. 98 of the Civil Procedure Act, Rules 11 and 31(2) of the Tax Appeals (Procedure) Rules, and Order 52 Rules 1,2 and 3 of the Civil Procedure Rules.

The facts of the application are that. The applicant is a registered taxpayer. The respondent assessed her income tax of Shs. 12,088,591.60. She objected to the said assessment. An objection decision was made on 27th March 2021. The applicant contends that she was never served with the objection decision. On 11th May 2022, she was served with a demand notice of the income tax.

The applicant was represented by Mr. Micheal Ogernewot while the respondent by Mr. Derrick Muhumuza.

The application was supported by the affidavit of the applicant who deponed that she is a registered taxpayer. She operates various businesses including rentals and a school. On 10th December 2019, the respondent assessed her income tax of Shs. 12,088,591.60. She states that she was never served with the assessment. She learned of the tax assessment when her auditor went to respondent's office to file a tax return for 2020.

In November 2020, through her auditors, she objected to the assessment. Around 11th May 2022, she was called by the respondent to visit their office in Gulu. She was served with a demand notice of Shs. 20,748,243. She accessed the decision and she was dissatisfied with it. She contended that the failure to file the application was because she was never notified of the objection decision by the respondent.

In reply, Mr. Sam Kwerit deponed that the applicant was served with an objection decision on 27th March 2021. He stated further the applicant ought to have lodged its application before the Tribunal by 27th April 2021. He contended that the applicant does not have justifiable reason to warrant an extension of time.

The applicant submitted that the Tribunal has jurisdiction to review the decision of a taxing authority under S. 14 of the Tax Appeals Tribunal Act. She contended that an application to review a taxation decision ought to be lodged within 30 days from the day of service of the objection decision. She stated that the objection decision was made on 27th March 2021. It was never served on her. She became aware of the objection decision on 11th May 2022. She stated that S. 16(7) of the Tax Appeals Tribunal Act provides that an application for a taxation decision has to be made within six months after the date of the taxation decision. She contended that the above provision locks out an applicant technically and leave her with no remedy.

The applicant further submitted that S. 16(2) of the Tax Appeals Tribunal Act provides that a Tribunal may upon application in writing, extend the time for the making of an application for review of a taxation decision. She cited *Farid Meghan v Uganda Revenue Authority* HCCA 6 of 2021 where the court stated that in none of the two provisions is a time limit imposed for the consideration of an application for extension of time. The applicant also cited *Tight Security Limited v Chartis Uganda Insurance Co. Limited* Misc. Application 8 of 2014, where the court held that "Good Cause relate to and include the factors which caused inability to file within the prescribed period of 30 days". She also cited *Mulindwa George William v Kisubika Joseph* Civil Appeal 12 of 2014 where the Supreme Court of Uganda set out the factors to be considered in an application for extension of time.

The applicant contended that she did not ordinally delay to bring her application. She learnt of the objection decision on 11th May 2002. The application was filed on August 2022. The reason for failing to file the main application in time was that she was not served an objection decision. She also needed to obtain payrolls. She was affected by the COVID lockdown. She contended that her application has high chances of success. She also contended that the respondent will not suffer any prejudice which cannot be atoned by an award of costs.

The applicant also contended that the constitution provides for a right to a fair hearing. She cited *Hikima Kyamanya v Sajjabi Chris* CACA 1 of 2006 where it was held that for the effective administration of justice the courts are enjoined to investigate all disputes and decide them on merit. She also cited *Caroline Turyatamba v Attorney General* constitutional Petition 15 of 2016 where the court stated that a court before whom a hearing is being conducted, should give the parties a right to be heard before judgment affecting the right is made.

In reply, the respondent cited *Uganda Revenue Authority v Uganda Consolidated Properties Limited* Civil Appeal 75 of 2000 where the Court of Appeal stated that "Timelines set by statutes are matters of substantive justice and not mere technicalities and must be strictly complied with." The respondent submitted that the decision of the Commissioner was made on 27th March 2021. It cited *Cable Corporation Ltd. v Uganda Revenue Authority* Civil Appeal 1 of 2011 where the High Court upheld the decision of the Tribunal which stated that the 30 days start to run on receipt of a letter communicating the decision from the respondent. It contended that the time started to run after 27th March 2021.

The respondent cited Rule 11 of the Tax Appeals Tribunal Rules which stated that a Tribunal may grant an application if it is satisfied that the taxpayer was unable to file the main application due to absence from Uganda, due to illness or any other reasonable cause. The respondent cited *Farid Meghani v URA* (supra) where the court stated that the reasons for extension are specified in Rule 11. Sufficient reason or any other reasonable cause must relate to the inability or failure to take a particular step. The court stated that the motion must set forth with particularity, the facts said to

constitute reasonable cause for the requested extension. "Mere conclusory allegations lacking in factual detail are not sufficient."

The respondent contended that restrictions on movement were imposed on 18th April 2020 by the President. However, on 1st June 2020 the said restrictions were removed and the public was allowed to use private vehicles. The restrictions were reinstated on 7th June 2021 where a 42-day country wide lockdown was effected. The respondent contended that the objection decision was made on 27th March 2021. The applicant had up to 27th April 2021 to file an application for review. The applicant filed the application for extension on 28th July which is more than one year since the decision was made. The respondent contended that the applicant slept on her rights. It cited *Farid Meghani v URA* (supra) where the court noted that the Tribunal exercised its discretion judiciously when it denied the applicant extension of time after the COVID restrictions had been removed. The respondent also cited *Victoria Flowers v Uganda Revenue Authority* Application 12 of 2008 where the Tribunal dismissed an application for extension of time on grounds that the applicant had not exercised due diligence in pursuing its rights for an application for review within the stipulated time.

Having read the application and the submissions of the parties, the following is the ruling of the tribunal.

The respondent assessed the applicant income tax of Shs. 12,088,591.60. She objected to the said assessment. An objection decision was made on 27th March 2021. The applicant contends that she was never served with the objection decision. She only became aware of the objection decision on 11th May 2022, when her auditors had gone to the office of the respondent.

In *Uganda Revenue Authority v Consolidated Properties* Civil Appeal 31 of 2000 the Court of Appeal held that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. The time for one to file an application for review is set in S. 25 of the Tax Procedure Code Act which states that

"(1) A person dissatisfied with an objection decision may, within 30 days after being served with a notice of the objection decision lodge an application with the Tax Appeals Tribunal for review of the objection decision."

S. 16 of the Tax Appeals Tribunal Act provides that.

“(1) An application to a tribunal for review of a taxation decision shall-

- (a) be in writing in the prescribed form.
- (b) include a statement of the reasons of the application; and
- (c) be lodged with the tribunal within thirty days after the person making the application has been served with notice of the decision.

(2) A tribunal may upon the application in writing, extend the time for the making of an application for a review of a taxation decision.

Both laws provide for the taxpayer being served with a notice of the decision. The applicant contends that she was not served with an objection decision. As a result, she was not able to file an application for review in time.

S. 16(2) of the Tax Appeals Tribunal Act allows for a party to apply for an extension of time. Rule 11 of the Tax Appeals Tribunals (Procedures) Rules provides that an application which is not filed within time, the tribunal may, in its discretion upon the application in writing, extend the time for making an application. The applicant has to show sufficient grounds or good cause as to why she was not able to file her application in time. *In Tight Security Limited v Chartis Uganda Insurance Co. Limited* Misc Application 8 of 2014, the court held that.

“Good Cause relate to and include the factors which caused inability to file within the prescribed period of 30 days. The Phrase ‘good cause’ is however wider and includes other causes other than causes of delay such as the public importance of an appeal and the court should not restrict the meaning of good cause. It should depend on the facts and circumstances of each case and prior precedents of appellate courts on extension of time.”

In *Mulindwa George William v Kisubika Joseph* Civil Appeal 12 of 2014, The Supreme Court of Uganda set out the following factors that should be considered in an application for extension of time.

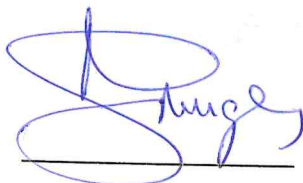
- i. The Length of delay.
- ii. The reason for the delay.
- iii. The possibility or chances of success.
- iv. The degree of prejudice to the other party.

Therefore, the Tribunal has to determine whether there are sufficient reasons as to why it should extend time.

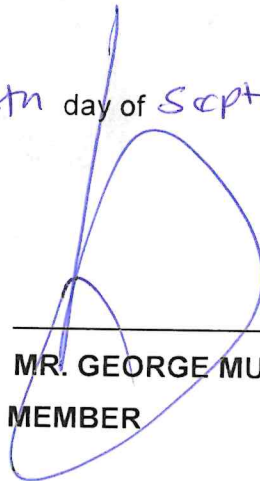
It is difficult for an applicant to prove that it was not served as there can be no evidence of non-service. It is on the respondent to prove that the applicant was served. The respondent's deponent, Mr. Sam Kwerit, depones that the applicant was served on 27th March 2021. He is not a process server. He does not indicate who served the applicant and the person who identified the applicant. He does not disclose his source of information. From the evidence adduced one cannot say that the applicant was ever served with the objection decision.

Rule 11 of the Tax Appeals Tribunals (Procedure) Rules requires the tribunal to exercise its discretion. Failure to serve a taxpayer with an objection decision is sufficient ground to warrant an extension of time from the date she became aware or was served with the decision. Since the applicant became aware of the decision around 11th May 2022, the Tribunal is convinced that she exercised due diligence when she filed this application for extension of time. There was no unreasonable delay in filing the application. The applicant's application has a good possibility of success. It will not prejudice the respondent who omitted to serve her with the objection decision. In the premises, the Tribunal will grant the application with costs to the applicant.

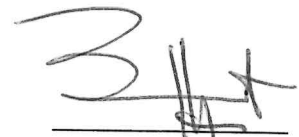
Dated at Kampala this *29th* day of *September* 2022.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MR. SIRAJI ALI
MEMBER