

THE REPUBLIC OF UGANDA.
IN THE TAX APPEALS TRIBUNAL AT KAMPALA REGISTRY.
MISCELLANEOUS APPLICATION NO. 130 OF 2024.
(ARISING OUT OF TAT APPLICATION NO.227 OF 2022)

AC YAFENG CONSTRUCTION LIMITED APPLICANT
VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

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

RULING

This ruling is in respect of an application brought under Rule 30 of the Tax Appeals Tribunal (Procedure) Rules 2012, Order 6 Rule 19 Of the Civil Procedure Rules and Section 98 of the Civil Procedure Act.

The Applicant seeks leave to amend its application vide TAT Application 227/2022 by substituting the issues framed thereunder with one issue.

1. Background facts

This application is supported by an affidavit deposed by Mr. Emeka Okoye, the Director of the Applicant company, sworn on 16 January 2024 stating as follows:

- (i) On 14 September 2022, the Applicant lodged TAT application 227/ 2022 on grounds that it had been wrongly assessed PAYE in the sums of Shs. 322,024,319.
- (ii) On 6 August 2024, the Applicant was informed by the Tribunal that his witness statement and case as presented by the new lawyer had departed from the application filed on the 14 September 2022.
- (iii) That the Applicant's lawyer advised the Applicant that they can seek leave of the Tribunal to amend the application and reflect the actual grievance.
- (iv) That the previous legal counsel filed the application on the Applicant's behalf without the involvement of the Applicant.
- (v) That the Applicant is a lay man without any tax knowledge and only got to know that the application was not addressing his grievance when he was informed by the Tribunal.

- (vi) That the gist of his case is whether it is legal for the Applicant to continue paying PAYE for employees who are no longer employed by it.
- (vii) That it is necessary to amend TAT application 227/2022 to determine the real controversy between the parties.
- (viii) That it is in the interest of justice that this application for amendment is allowed.
- (ix) That the Respondent will not be prejudiced in any way if this application is granted and the balance of convenience lies in his favour.

The Respondent filed an affidavit in reply deposed by Kenan Aruho, a Supervisor in the Respondent's Legal Department, sworn on 13 November 2024 opposing the application on grounds that:

- (i) On 24 March 2021, the Respondent conducted a search and seizure operation at the Applicant's premises and obtained documents in relation to employment particulars of the Applicant's employees.
- (ii) The Respondent issued the Applicant with a management letter detailing its findings and the taxes payable namely, PAYE amounting to Shs. 222,356,987 for the period 2019-2021.
- (iii) The Applicant objected to the PAYE assessments on the grounds that the Respondent treated per diem as allowances subject to PAYE.
- (iv) The Respondent reviewed the Applicant's objection and issued an objection decision upholding the assessment on the basis that the Applicant had failed to account for tax on total employee remuneration.
- (v) The Applicant objected to the Respondent's objection decision challenging the PAYE assessment on grounds that it had been wrongly assessed PAYE.
- (vi) That the Respondent filed a statement of reasons opposing the application.
- (vii) In specific reply to paragraphs 3 to 8 of the Applicant's affidavit in support, the Respondent stated that the averments of the application are misleading as there is no evidence the Tribunal advised the applicant to amend its pleadings.
- (viii) That in specific reply to paragraph 7 and 8 of the affidavits in support, the application is not sustainable in law as its intended to introduce a new cause of action that is not related to TAT Application 227/2022.
- (ix) That the jurisdiction of the Tax Appeals Tribunal is restrained to adjudicate objection decisions and not averments pleaded at will by parties and as such, this application is expressly prohibited by the law.

- (x) That the application is misconceived, frivolous, vexatious and an abuse of court process and ought to be struck out or dismissed with costs on account of the fact that it does not amend the criteria for court to exercise its jurisdiction and allow amendment of TAT Application 227/2022.
- (xi) That it is in the interest of justice that the orders prayed for in this application are not granted and that the application is dismissed with costs.

2. Representation

At the hearing of this Application, Mr. Sydney Ojwee appeared for the Applicant while Mr. Tonny Kalungi and Mr. Samuel Oseku appeared for the Respondent.

3. Submissions of the Applicant

The Applicant submitted that they lodged TAT application No.227 of 2022 on grounds that they had wrongly been assessed PAYE in the sums of Shs. 322,024,319. In their application, the Applicant's former lawyers framed the issue:

- “1. *Whether the site allowances are exempt under section 19(2) (d) of the Income Tax Act*
2. *“what is the actual amount of site allowances the Applicant paid to its employees.”*

The Applicant prayed for leave to amend their application so that the real issue in controversy between the parties is determined. The issues in the application in its current form do not reflect the real issue that needs determination by the Tribunal.

The Applicant submitted that the tribunal is vested with jurisdiction to grant such applications in order to avoid the substance of the matter from being defeated by technicalities. The applicant cited **Article 126(2) (e) of the Constitution of the Republic of Uganda, 1995** as amended which states that;

“In adjudication of cases of both civil and criminal nature, courts shall, subject to the law, administer substantive justice without undue regard to technicalities.”

The Tribunal has wide and extensive powers to allow amendment of pleadings. These powers are designed to prevent the failure of justice due to procedural errors, mistakes and defects. Thus, the object of amendment of pleading is to enable the parties to alter

or amend their pleadings so as to determine the true substantive merits of the case having regard to substance rather than form.

The Applicant cited the law on amendment of pleadings which is provided for under **Order 6 Rule 19 Of the Civil Procedure Rules S1 71-1** which states that;

“The court may at any stage of the proceedings allow either party to alter or amend his/her pleadings in such a manner and such terms as may be necessary for the purposes of determining the real question in controversy between the parties”

This position was re-affirmed in the case of **Sarah Nyakato V Lin Jeng Liang M.A No 316 Of 2022**, where it was held that the object of amendment of pleadings is to enable the parties alter their pleadings so as to determine the true substantive merits of the case having regard to the substance rather than form.

The Applicant also cited the case of **Nyanzi Sam V Daisy Lwanga Namirembe MA 3123 of 2023**, where it was held that the recognised principles governing the exercise of discretion in allowing the amendment of pleadings are as follows;

- (i) That the amendment should not work injustice to the other side. An injury that can be compensated for by way of costs is not treated as an injustice.
- (ii) Multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed.
- (iii) An application made malafide should not be granted.
- (iv) No amendment should be allowed where it is expressly or implied prohibited by any law.

The Applicant further submitted that the amendment to the original application shall not prejudice the Respondent or cause it injustice as it does not bring in new facts but rather refocuses the issues to resolve the contention at hand. The Applicant's actual grievance is whether it is liable to pay PAYE for employees who are no longer employed by it.

The Applicant additionally submits that the poor structuring and raising of issues was the mistake of the Applicant's previous lawyers who made the application on behalf of the Applicant therefore their mistakes should not be visited on the Applicant.

4. Submissions by the Respondent

The Respondent submitted that the law on amendment of pleadings is governed by **Order 6 Rule 19 Of the Civil Procedure Rules** and this provision grants court the discretion to grant leave to the parties to amend their pleadings at any stage of the proceedings, however courts have overtime developed parameters within with such discretion should be exercised. The Respondent relied on **Muwolooza & Brothers V N. Shah & Co. Ltd Civil Appeal No.26 Of 2010** where it was held that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and there is no injustice of the other side can be compensated by costs. The court will not refuse to allow an amendment simply because it introduces a new case but there is no power to enable one distinct cause of action to be substituted for another. The court will refuse leave to amend where the amendment would change the action into one of a substantially different character.

The Respondent also made reference to the principles which govern the exercise of discretion in allowing amendments to pleadings (see

- (i) The amendment should not work injustice to the other side. An injury that can be compensated for by way of costs is not treated as an injustice.
- (ii) Multiplicity of proceedings should be avoided as far as possible and all amendments which multiplicity should be allowed.
- (iii) An application which is made malafide should not be granted
- (iv) No amendment should be allowed where it is expressly or impliedly prohibited by the law.

The Respondent further submitted that the Applicant lodged TAT Application 227/2022 on grounds that it had been wrongly assessed PAYE and raised their issues, therefore it is surprising that the matter went on through scheduling and mediation and it is only at the hearing stage that the Applicant sought to amend their pleadings to raise this. Specifically, the Respondent contends that the issue as to whether the Applicant is liable to pay PAYE for employees who are no longer employed by it or during periods when they were not paying salaries was never pleaded.

Therefore, this amendment seeks to introduce a new cause of action contrary to what was pleaded and this is against the cardinal principle of parties being bound by their

pleadings. The Applicant throughout the assessment, objection process and through mediation did not plead nor raise the issue whether it is liable to pay PAYE for employees who are no longer employed by it or during periods when they were not paying salaries is a total contravention of the objection decision and consequentially falls outside the mandate and jurisdiction of the Tribunal.

Further, the Respondent submitted that the amendment is expressly prohibited by law as it falls outside this jurisdiction of this Tribunal and the Applicant has failed to prove that the application passes the parameters as laid out in the case of *Gasso transporters (supra)* for court to exercise its discretion and invite the Tribunal to deny the grant of this application and dismiss it with costs.

5. Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant submitted that the amendment will not introduce a new cause of action as the same has always been that the Applicant was assessed PAYE on grounds that it under declared tax from the employees remuneration. In the sought amendment, the Applicant seeks to focus the issues in contention to why it contends that it did not under declare tax from the employees remuneration. The Respondent's contentions on a new cause of action in the Applicant's amendment are misplaced.

6. The Determination by the Tribunal

Having read the submissions of the parties, this is the decision of the Tribunal.

Rule 22 of the Tax Appeals Tribunal Rules grants the Tribunal the discretion to allow parties to amend their pleadings provided that such amendments do not raise new issues. Further, the application ought to be made at any time before the closure of the case.

The principles that govern the exercise of discretion to allow or disallow amendment of pleadings were laid down in the Supreme Court decision in ***Gasso Transport Services Limited v Martin Adala Obene SCCA 4 of 1994***. These are:

- (i) The amendment should not work injustice to the other side. An injury that can be compensated for by way of costs is not treated as an injustice.
- (ii) The multiplicity of proceedings should be avoided as far as possible and all amendments, which avoid such multiplicity, should be allowed.
- (iii) An application which is made mala fide should not be granted.

- (iv) No amendment should be allowed where it is expressly or impliedly prohibited by any law (Limitation of Action).

Amendments are premised on the need for courts to determine the real questions in controversy between the parties and to avoid multiplicity of pleadings. Where it appears that the way in which a party has framed his case will not lead to a decision on the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right.

However, it should be noted that the Court cannot amend pleadings under the above provisions where to do so would be tantamount to exonerating a party from complying with statutory provisions (*Biiso v Tibamwenda [1991] HCB 92*).

The amendment also ought to be pursued at the earliest available opportunity that is as soon as the issue which requires amendment is brought to the Court or parties' attention. A party therefore, should not leave their application to a stage so late in the proceedings that to allow an amendment then would be unjust to his opponent (*Eastern Bakery v Castelino [1958] EA 461*).

Further, *Odgers on Pleadings and Practice 20th Edition at page 170* states that where the amendment is necessary to enable justice to be done between the parties, it will be allowed even at a late stage.

Application of the above principles to the facts

In 2021, the Respondent assessed the Applicant PAYE in the amount of Shs. 222,356,987. The assessment was on the grounds that allowances paid to workers formed part of their salaries and were therefore subject to PAYE. The Applicant objected to the assessment on the grounds that the payments were used to facilitate travel, meals and as such are not subject to PAYE. The Respondent disallowed the objection.

On 14 September 2022, the Applicant applied to this Tribunal to review the Respondent's objection decision.

In their application, they framed the following issues:

- "1. Whether the site allowances are exempt under section 19(2) (d) of the Income Tax Act
2. What is the actual amount of site allowances the Applicant paid to its employees.

3. *Whether the Respondent's assessment is lawful*

4. *Whether the Applicant is liable to pay the tax assessed."*

We have perused the record of proceedings and have established that on 16 May 2023, when the matter came up for scheduling, the parties framed the following agreed upon issues:

"1. Whether the Applicant is liable to pay the tax assessed?

2. What remedies are available?"

The Applicant would like to substitute the issues listed in their application with the following issue:

"Whether the Applicant is liable to pay the tax as assessed."

The Respondent argues that re-framing the issue as requested by the Applicant will result in a change in the cause of action. Specifically, the Respondent contends that the issue as to whether the Applicant is liable to pay PAYE for employees who are no longer employed by it or during periods when they were not paying salaries was never pleaded.

We do not agree with the Respondent. From the very beginning, this dispute has been about the Applicant's PAYE declarations. The Respondent raised an additional PAYE assessment against the Applicant. There is no change in the cause of action. The substantive question for determination by the Tribunal is whether the Applicant is liable to pay the PAYE as assessed by the Respondent.

Further, there will be no injustice occasioned to the Respondent if the application is granted. Moreover, when the matter came up for scheduling, the parties jointly agreed to frame the issue in the same manner as that currently proposed by the Applicant.

It should also be noted that at scheduling, one of the agreed facts was stated as follows:

"The Applicant objected inter alia on the ground that some of the employees had been laid off due to COVID 19."

Having agreed to the above fact, the Respondent cannot now argue that employees who are no longer employed by the Applicant or during periods when the Applicant was not paying salaries was never pleaded.

While the issues as framed by the Applicant in their application were four, at scheduling, these were condensed to into one issue, namely, whether the Applicant is liable to pay the tax assessed. The purpose of scheduling/conferencing is for parties to agree on the issues for disagreement between them.

Since the controversy between the parties is whether the applicant was correctly or wrongly assessed PAYE, framing the issue along these lines will enable the Tribunal to make a determination based on the true substantive merits of the case.

Therefore, the application is hereby allowed and the Tribunal makes the following orders:

- i. The Applicant is granted leave to amend the issues in TAT Application No. 227 of 2022.
- ii. The Applicant should file and serve its amended application within seven (7) working days from the date of this ruling.
- iii. Each party should bear their own costs

Dated at Kampala this 26th day of March 2025.



CRYSTAL KABAJWARA
CHAIRPERSON



SIRAJ ALI
MEMBER



CHRISTINE KATWE
MEMBER

