

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)  
CIVIL APPEAL NO. 0058 OF 2022  
ARISING OUT OF MISC. CAUSE NO. 93 OF 2022**

**AFRICA RENEWAL MINISTRIES LIMITED::::::::::::::::::APPELLANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY::::::::::::::::::RESPONDENT**

**Before Hon. Lady Justice Patricia Kahigi Asiimwe**

**Judgment**

Introduction

1. This is an appeal from the Ruling of the Tax Appeals Tribunal in TAT Cause No.93 of 2022. In that Ruling, the Tribunal denied the Appellant an extension of time to file its application for review of the Respondent's objection decision.

Background

2. The facts as ascertained from the record of appeal are that the Appellant is a non-government organization and a company limited by guarantee incorporated in Uganda. The company carries out child sponsorship, and evangelism and relies on donations and gifts to carry out its activities.
3. On 17<sup>th</sup> June 2019, by a resolution, Howie Christian Charitable Trust transferred land comprised in LRV 3026 Folio 8 Plot 120, Main Street Iganga to the Appellant for no monetary consideration. On 7<sup>th</sup> July 2020, the Appellant received an assessment of 6% withholding tax (WHT) amounting to UGX

54,000,000 from the Uganda Revenue Authority, the Respondent in respect to the land.

4. On 10<sup>th</sup> July 2020, the Appellant objected to the assessment on the grounds that the land was given to them as a gift and was not purchased. On 7<sup>th</sup> October 2020, the Respondent communicated the objection decision stating that the objection had been allowed in part and disallowed without stating which part had been allowed and which part had been disallowed.
5. The Appellant appealed to the Respondent against the objection decision for lack of clarity. On 15<sup>th</sup> December 2021, an email was sent to the Appellant by the Respondent maintaining the assessment.
6. The Appellant alleges that it did not see the email until 11<sup>th</sup> March 2022 after a visit to the Respondent's office to complain about the delay in delivery of the appeal decision and discuss the possibility of alternative dispute resolution.
7. On 11<sup>th</sup> March 2022, the Appellant wrote to the Respondent requesting that the dispute be handled through an alternative dispute resolution process. On 26<sup>th</sup> May 2022, the Respondent responded to the said letter stating that alternative dispute resolution was not applicable in tax matters because the Regulations concerning Alternative Dispute Resolution in tax matters had not yet been published. The Respondent advised the Appellant to apply for review of the decision to the Tax Appeals Tribunal or High Court.
8. Following the Respondent's guidance, on 15<sup>th</sup> June 2022, the Appellant filed an application before the Tribunal requesting for extension of time to file an application for review of the objection

decision since the 30 days within which to apply for review of the assessment/decision had lapsed.

### The Application before the Tribunal

9. The Appellant argued that upon their objection to the 6% withholding tax assessment on the purported purchase of the subject property, they received an unclear decision from the Respondent which contravened section 24 (5) Tax Procedures Code Act, 2014.
10. The Appellant argued that they had to seek clarity from the Respondent through an appeal. The clarification was made on the 15<sup>th</sup> December 2021 however the Appellant claims that it only found out about it on the 11<sup>th</sup> March 2021 after they visited the Respondent's office and made inquiries. They also argued that the decision issued on 7<sup>th</sup> October 2020 was not a tax decision since it disallowed and allowed the objection at the same time.
11. In the alternative, the Appellant argued that their application for extension of time was filed before the expiry of six months from the date of the objection decision since they considered the clarification of 15<sup>th</sup> December 2021 as the objection decision. They further argued that the law does not prescribe a six months statutory limitation period within which an Application for extension of time must be filed. The prescribed six months under *Section 16 (7) of the Tax Appeals Tribunals Act* is in respect to an application for review of a tax decision and not an application for extension of time. They relied on the Learned Justice Stephen Mubiru's decision in **Farid Meghani versus Uganda Revenue Authority, Civil Appeal No. 6 of 2021.**

12. The Respondent argued that the Appellant purchased property and was liable to pay the 6% withholding tax that was assessed. They argued that the Appellant did not have sufficient cause to warrant an extension of time. They stated that the application for extension of time had been made after a period of over one year from the date of the objection decision and prayed that it be dismissed.

### Decision of the Tribunal

13. In its Ruling delivered on 21<sup>st</sup> September 2022, the Tribunal dismissed the Appellant's application for an extension of time to file an application for review against the objection decision.
14. The Tribunal held that the decision of 7<sup>th</sup> October 2020 satisfied the requirements for a valid tax decision whether it was unclear or not. The Tribunal noted that the communication of 15<sup>th</sup> December 2020 was not a tax decision because it merely confirmed the previous assessment and did not review it. The Tribunal relied on S. 1(g) of the Tax Appeals Tribunal Act and the case of *Cable Corporation Ltd versus Uganda Revenue Authority Civil Appeal No. 1 of 2011* that defined a tax decision to mean a decision made in respect of a tax objection against a notice of assessment.
15. The Tribunal held that the time to file an application for extension of time started running from 7<sup>th</sup> October 2020, not 15<sup>th</sup> December 2021 as argued by the Appellant. The Tribunal held that the length of delay to file the application was over a year and it was unexplainable and an inexcusable delay that does not warrant an extension of time.
16. The Tribunal also ruled that the right procedure that the Appellant ought to have taken when they obtained the decision of 7<sup>th</sup> October 2020 was to apply for review to the Tax Appeals

Tribunal. The Tribunal stated that once the Respondent makes a decision, it becomes *functus officio* and cannot review its own decision.

17. The Tribunal also delved into what its decision would have been if the Appellant had applied for review of the objection decision. The Tribunal relied on Section 68 of the Tax Procedure Code Act that provides for the validity of a tax decision. The Tribunal stated that an objection decision which is not clear is defective in form and cannot be quashed or made voidable.
18. In his dissenting ruling, Siraj Ali stated that the decision of 7<sup>th</sup> October 2020 did not amount to an objection decision. He noted that the decision allowed and disallowed the assessment at the same time. He stated the taxpayer was placed in an impossible situation because of an unclear decision. He further stated that the Appellant sought clarity in form of an appeal under the belief that the appeal would provide clarity on the decision the Respondent had made. He found that it would be unjust for the Appellant to be held liable for an omission arising from an omission on the part of the Respondent. He concluded that justice demands that the Appellant be allowed time to file its application and that the dispute be determined on its merits.

#### Grounds of Appeal

19. The Appellant being dissatisfied with the decision of the Tax Appeals Tribunal appealed to this Honourable Court on the following grounds:
  - I. That the Learned members of the Tribunal erred in law when they misconstrued and misapplied the provisions of Sections 3 and 24(5) of the Tax Appeals Tribunal Act and Section 68 of the Tax Procedure Code Act, thereby arriving at a wrong conclusion that the Respondent's

decision of 7<sup>th</sup> October 2020 was a valid objection decision.

- II. That the Learned members of the Tribunal erred in law when they found that the delay in filing an application for extension of time, occasioned by the mistake of the Respondent is not sufficient ground for extension of time.
- III. That the Learned members of the Tribunal erred in law when they failed to properly evaluate and interpret the provisions of Section 16(1)(c), (2), and (7) of the Tax Appeals Tribunal Act in respect of time within which to apply for extension of time.
- IV. That the Learned members of the Tribunal erred in law when they failed to evaluate all the evidence on record while determining the grounds for the grant of an application for extension of time.
- V. That the learned members of the Tribunal erred in law when they failed to make a determination on whether the Appellant's application for extension of time was time barred.

### Representation

20. The Appellant was represented by Roger Mugabi of Gems Advocates, and the Respondent was represented by Donald Bakashaba, Hoseku Samuel, and Joan Agasha from the Legal and Board Affairs Department of the Respondent. Both parties filed written submissions.

Resolution:

*Preliminary objection*

21. The Respondent raised two preliminary objections in their submissions. The first preliminary objection is that the appeal is incompetent because it raises issues of mixed law and fact. The Respondent referred to Section 27(2) of the Tax Appeal Tribunal Act, 2014 that provides that an appeal to the High Court shall be made on questions of law only.
22. In response to this preliminary objection, the Appellant submitted that a point of law in an appeal arises when a court made the finding but got the relevant law wrong or applied it wrongly in arriving at a finding. The Appellant relied on the case of *Lubanga versus Dr. Dbumba Edward Civil Appeal No 12 of 2010*. The Appellant highlighted each of the grounds of appeal and the various legal controversies that are to be addressed in each ground.
23. I have read the five grounds of Appeal raised and note that each of those grounds raises points of law. Counsel for the Respondent cited the case of **Uganda Revenue Authority versus Tembo Steels, Civil Appeal No. 09 of 2006** where the court explained that a point of law by nature involves a controversy about the law. The said case stated that for a ground to be regarded as a point of law there must be misdirection on the part of the Tribunal or an error of law which must be stated in the grounds contained in the notice of Appeal. In the instant case, I find that the grounds of Appeal point out the areas the Appellants believe the Tribunal misdirected itself on points of law.
24. The second preliminary objection raised by the Respondent is that Grounds 2, 4, and 5 laid down in the Notice of Appeal are

general and argumentative hence contravening Order 43 Rule 1 and 4 of the Civil Procedure Rules. In the case of **Banya Tonny versus Opio Charles Civil Appeal No.36 of 2018**, cited by Counsel for the Appellant, Mubiru J defined an argumentative ground of Appeal as one that contains evaluative averments and inferences suggesting a desired conclusion. Court finds that the grounds of Appeal do not contain evaluative averments or inferences and are not general or argumentative. The objection is therefore dismissed.

### Resolution of Grounds

*Ground 1: Whether the Learned members of the Tribunal erred in law when they misconstrued and misapplied the provisions of Sections 3 and 24(5) of the Tax Appeals Tribunal Act and Section 68 of the Tax Procedure Code Act, thereby arriving at a wrong conclusion*

25. The Appellant submitted that the decision of 7<sup>th</sup> October 2020 was not a tax decision in law because it was both ambiguous and contradictory. The Appellant submitted that section 3, of the Tax Procedures Code Act, 2014 defines a decision to mean a decision within the meaning of section 24(5) of the Tax Procedure Code Act. They submitted that under Section 24(5) Tax Procedure Code Act, the commissioner may make a decision on an objection to a tax assessment affirming, varying, reducing, increasing, or setting aside the decision.
26. The Appellant relied on the case of **Cable Corporation versus Uganda Revenue Authority Civil Appeal No. 1 of 2011** where it was stated that the Commissioner General had power to either allow the objection in whole or part or disallow the objection. The Appellant submitted that it is clear that an objection decision cannot allow and disallow at the same time.

27. The Appellant further submitted that Section 68 of the Tax Procedure Code Act, 2014 which provides that the validity of a tax decision cannot be quashed or deemed to be void or voidable for want of form, did not apply to the tax decision of 7<sup>th</sup> October 2020.
28. The Appellant averred that the defect in the objection decision of 7<sup>th</sup> October 2020 was not one of form but was one of substance in as far as it went to the root of the decision since it was impossible to ascertain what the commissioner's decision was. The Appellant explained that the Commissioner's decision stated on one hand that the Appellant's objection was "allowed in part" and then that "it was disallowed". The part that was allowed and what was disallowed were not stated and the reasons for either were not given. They concluded by stating that such a decision was a clear contradiction because it spoke of opposites that were diametrically opposed to one another such as one would speak of '*cold fire, hot ice, loving hate*'.
29. The Appellant submitted that whereas section 68 of the Tax Procedure Code Act can be invoked to cure a defect in a tax decision, it is not a magic wand to be waved by the Respondent whenever they fail to make a proper or valid decision.
30. The Respondent defended the Tribunal's ruling and stated that the decision of 7<sup>th</sup> October 2020 issued an additional assessment which was varying the earlier assessment issued hence it amounted to a tax decision. They further submitted that there is no express provision in the Tax Appeal Tribunal Act and Tax Procedure Code Act that requires an objection decision to be clear.

*Analysis*

31. Court finds it necessary to reproduce the relevant part of the decision in question dated 7<sup>th</sup> October 2020 which is as follows:

**Section B- Objection Decision details**

<i>Reference is made to your Notice of objection mentioned above. I hereby give you notice that the objection has been</i>	<i>Allowed in Part</i>
<i>Reasons for Decision</i>	<i>Objection disallowed as Taxpayers grounds could not be justified</i>
<i>The objection has been settled partially in favour of the taxpayer. The submitted return has been accepted however an additional assessment has been issued.</i>	
<i>“You are advised to clear the liability in respect to the additional assessment and any other outstanding liability to avoid further accrual of interest.”</i>	

Emphasis added

32. In the above decision, the Respondent stated that the notice of objection was “Allowed in part” and again stated that it was “disallowed as Taxpayers grounds could not be justified”. It is further stated that “The objection has been settled partially in favour of the taxpayer.” The Appellant was further advised to clear the liability with respect to the additional assessment of any other outstanding liability. The decision did not state which part of the objection was allowed and which part was disallowed.
33. The question then is whether the decision amounts to an objection decision under Section 24(5) of the Tax Procedure Act, 2014.

34. Section 24(5) of the Tax Procedure Code Act, 2014 states that:

*The Commissioner may make a decision on an objection—*

*a) to a tax assessment, affirming, reducing, increasing, or otherwise varying the assessment to which the objection relates; or*

*b) to any other tax decision, affirming, varying, or setting aside the decision.*

35. In the case cited by the Appellant of **Cable Corporation Versus Uganda Revenue Authority Civil Appeal No. 1 of 2011** Madrama J (as he then was) gave some insight on what amounts to an objection decision. The Learned Judge stated that “The objection decision is not an exposition of tax law but does the following: It may allow the objection in whole; or in part wherein when allowed in part, the Commissioner amends the assessment accordingly. The Commissioner may also disallow the objection in whole which means that the assessment remains as it is.” (Emphasis added)

36. *Section 1 subsection (k) of the Tax Appeals Tribunals Act* defines a "taxation decision" as an assessment, determination, decision, or notice.

37. A decision is defined in **The Black's Law Dictionary 8<sup>th</sup> Edition page 1227** as a judicial or agency determination after consideration of the facts and the law.

38. The Appellant's objection was to the assessment of the tax of UGX. 54,000,000. On review of the decision of the Respondent, court finds that it raises several questions. Was the decision with respect to section 24 (5) of the Tax Procedure Code Act “affirming, reducing, increasing, or otherwise varying the

assessment” of UGX. 54,000,000? Which part of the objection to the assessment of UGX. 54,000,000 was allowed and which part was disallowed? How much was the Appellant required to pay and how much was the Appellant exempted from paying? The decision of the Respondent is ambiguous. The purpose of an objection decision is to communicate the final decision of the Respondent on the tax objection made by a taxpayer. The objection decision should guide the taxpayer on what next to do. That is, whether to go ahead and pay the tax as assessed or appeal to the Tribunal against the objection decision. The Appellant was at a loss on what to do with such a communication from the Respondent.

39. Court finds that the decision was ambiguous and therefore does not meet the requirements of section 25 (4) of the Tax Appeals Tribunal Act.
40. Court notes that the Respondent submitted that neither the Tax Appeals Act nor the Tax Procedure Code Act requires the Respondent to give clear decisions. Court finds such a submission rather unfortunate for a body that is responsible for collecting taxes in Uganda. It should be obvious that a decision on an objection should be clear. Parliament cannot legislate on something so obvious. The decision of the commissioner is an administrative decision that has a legal effect and therefore cannot be handled casually by the Respondent. Issuing ambiguous decisions is not only unjust to taxpayers but results in further delays and protracted court battles as the taxpayer attempts to obtain clarity in regard to the import of the Respondent’s ambiguous decisions.
41. Court notes with concern that the Tribunal stated in its decision that the Respondent “is notorious for making objection decisions that are not clear”. The Respondent owes a duty to

the taxpayers to communicate tax assessments in a clear and unambiguous manner in order to enable taxpayers to decide what course of action to take.

42. The Tribunal went ahead to advise the parties on what would have happened if the Appellant had challenged the objection decision. The Tribunal cited section 68 of the Tax Procedure Code Act that stated that “an objection decision which is not clear goes to want of form or has a defect. It cannot be quashed or made voidable.”
43. Section 68 of the Tax Procedure Code Act provides as follows:  
*The validity of a tax decision, a notice of a tax decision, or any other document purporting to be made or executed under a tax law is not—*
- a) affected by reason that any of the provisions of the tax law under which it is made have not been complied with;*
  - b) quashed or deemed to be void or voidable for want of form; or*
  - c) affected by reason of any mistake, defect, omission, or commission in it.*
44. As already found above the decision in question was not a decision envisaged under section 24 (5). The drafters of section 68 of the Tax Procedure Act did not envisage a decision that is ambiguous. The defect in the decision in question is not one of form it is one of substance.
45. In conclusion therefore the decision of 7<sup>th</sup> October 2020 did not meet the requirements of Section 24 (5) of the Tax Procedure Act. Therefore, it is not an objection decision. This ground therefore succeeds.

*Ground 2: That the Learned members of the Tribunal erred in law when they found that the delay in filing an application for extension of time, occasioned by the mistake of the Respondent is not sufficient ground for extension of time*

*Ground 4: That the Learned members of the Tribunal erred in law when they failed to evaluate all the evidence on record while determining the grounds for the grant of an application for extension of time*

46. I will handle Grounds 2 and 4 together. The Appellant argued that the reasons for granting extension of time are specified in rule 11(6) of the Tax Appeals Tribunal (Procedure) Rules and they include absence from Uganda, illness, and any other reasonable cause. The Appellant submitted that they demonstrated any other reasonable cause/sufficient cause to warrant an extension of time.

47. The Appellant submitted that it demonstrated reasonable cause for the grant of extension of time since the delay in filing its application was occasioned by the mistake or omission of the Respondent and the substantive Application for review has a high likelihood of success if considered on its merits. The Appellant argued that the merits of its case are that the property was donated to the Appellant on 17<sup>th</sup> June 2019 and as such withholding tax would not be applicable. The law the Respondent is using to assess the 6% withholding tax came into force on 1<sup>st</sup> July 2019 hence it cannot act retrospectively.

48. The Tribunal held that:

*The email of 15<sup>th</sup> December 2021 did not review the assessment. It merely confirmed the assessment the respondent made. Therefore, the email of 15<sup>th</sup> December 2021 would not be considered as an objection decision. The*

*length of delay between when the respondent made its objection decision on 7<sup>th</sup> October 2020 and when the email of 11<sup>th</sup> December 2021 was made, over a year is not explained nor is it excusable. The applicant deliberately does not state when it purportedly appealed to the respondent to review its unclear decision of 7<sup>th</sup> October 2020.*

49. It is clear that the Tribunal made its decision on the wrong assumption that the decision of 7<sup>th</sup> October 2020 was indeed an objection decision under section 24 (5) of the Tax Procedure Code.
50. In the case of **Nakato Margaret V Housing Finance Bank LTD & Anor Civil Appeal No.0687 of 2021**, Mubiru J held as follows:

*It is trite that an appellate court is not to interfere with the exercise of discretion by a court below unless satisfied that in exercising that discretion, the court below misdirected itself in some matter and as a result came to the wrong decision, or unless manifest from the case as whole, the court below was clearly wrong in the exercise of discretion and injustice resulted.*

51. Court finds that the Tribunal misdirected itself when it found that the communication from the Respondent dated 7<sup>th</sup> October 2020 was an objection decision thus dismissing the application.
52. Under *Regulation 11(6) of the Tax Appeals Tribunal (Procedure) Rules*, the Tribunal may grant the extension of time if it is satisfied that the taxpayer was unable to file the application because of absence from Uganda; illness; or any other

reasonable cause. The Appellant's application was based on the ground of reasonable cause.

53. The terms reasonable cause, sufficient cause, reasonable grounds, and probable cause are used interchangeably. (see The Black's Law Dictionary 8<sup>th</sup> Edition page 3800)

54. In the Indian case of **Anantnag v. Mst Katiji, 1987 SCR (2) 387 the Supreme Court** held that:

*The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts.*

55. The Appellant's case is that the decision of 7<sup>th</sup> October 2020 was not clear and therefore they could not apply for review of the said decision. I have already found that indeed the said decision was not a decision within the meaning of section 24 (5) of the Tax Procedure Act. Court finds that the Appellant had reasonable cause for applying for the extension of time within which to apply for review of an objection decision. The two grounds of Appeal succeed.

*Ground 3: That the Learned members of the Tribunal erred in law when they failed to properly evaluate and interpret the provisions of Section 16(1) (c), (2), and (7) of the Tax Appeals Tribunal Act in respect of time within which to apply for extension of time*

*Ground 5: That the learned members of the Tribunal erred in law when they failed to make a determination on whether the Appellant's application for extension of time was time barred.*

56. I will handle Ground 3 and Ground 5 together. The Appellant submitted that there is no prescribed timeline in which one can

bring an application for extension of time. The Appellant relied on the case of **Farid Meghani Versus Uganda Revenue Authority Civil Appeal No. 6 of 2021 Mubiru J**, interpreted section 16(7), and addressed the question of whether the powers of the Tribunal to extend time within which to apply for review are limited to applications filed within six months. In the said case, the court clarified that the 6 months period applies to extension of time to file an application for review of a tax decision and not an application for extension of time.

57. In reply, the Respondent concurred with the position established in **Farid Meghani** (supra) acknowledging that there is no limit to the time within which to file an application for extension of time. However, they highlighted the court's duty when interfering with the exercise of discretion, asserting that the court has to be satisfied that the judge in exercising its discretion misdirected himself in some matter and arrived at a wrong decision. They relied on the case of **Mbogo versus Shah (1968) E.A 93**.

58. The Tribunal's decision on this issue was as follows:

*The applicant submitted that since the application for extension of time was filed on 15<sup>th</sup> June 2022, the six-month period alluded to by the respondent had not yet lapsed. If we were to believe the applicant's contention that the six months period does not apply to applications for extension of time, the applicant would still have been in time to file a substantive or main application. Therefore, if the six month period had not elapsed this application to extend time would be premature and uncalled for.*

59. Court finds that the Tribunal did not evaluate and interpret the provisions of Section 16(1) (c), (2), and (7) of the Tax Appeals

Tribunal Act, nor did it make a determination on whether the Appellant's application for extension of time was time barred. Grounds 3 and 5 are therefore upheld.

60. In the final analysis the appeal succeeds. The decision of the Tribunal is hereby set aside and the Appellant is granted costs.

**Dated this 15<sup>th</sup> day of November 2023.**



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**Patricia Kahigi Asiimwe**

**Judge**

**Delivered on ECCMIS**