

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NO. 10 OF 2024.

AKCHOM LIMITED APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE: Ms. KABAKUMBA MASIKO, Ms. ROSEMARY NAJJEMBA, Mr. WILLY NANGOSYAH,

RULING

This ruling is in respect of an application to extend time within which to file an application for review of the objection decision. The application was brought under S. 16 (2) of the Tax Appeals Tribunal Act, S. 98 of the CPA, Rule 30 & 31 of the Tax Appeals Tribunal (Procedure Rules) 2012, & Order 51 Rule 6 & Order 52 Rules 1 & 3 of the Civil Procedure Rules.

The brief facts of the case as stated in the affidavit of Ms. Caroline Tanga Ikure who deponed to the facts stated. On 9th August 2022, the Respondent commenced an audit for financial years 2020 to 2021 and issued income tax assessments of Shs. 197,341,956 and Shs. 4,034,569 respectively based on unrealized exchange losses and undeclared sales on account of re-export products. The Applicant objected and the Respondent disallowed the objection. On 29th February 2024, the Applicant filed an application before the Tax Appeals Tribunal.

Issues:

- 1) Whether time should be extended to file this application?
- 2) Whether the Tax Appeals Tribunal has power to validate an application filed out of time?
- 3) What remedies are available?

The Applicant submitted that Rule 11 (6) of the Tax Appeals Tribunal (Procedure) Rules provides that the Tribunal may grant the extension of time if it is satisfied that the tax payer was unable to file the application for the following reasons-

- I. Absence from Uganda;
- II. Illness; or
- III. Any other reasonable cause.

The Applicant submitted that she was prevented from making the application within the stipulated 30 days period (by the 21st day of October 2023) due to the director's absence. The director was in India preparing to travel to Kenya where she works. Her travel schedule constrained decision making process regarding how to proceed with the objection decision. The Applicant's directors finally had a meeting and decided to proceed with filling an application to the Tax Appeals Tribunal. The Applicant's tax advisors were later given instructions to file the application for review of the objection decision which was filed on the 26th day of October 2023.

The Applicant contended that that the application was brought within the six months period from the issuance of the objection decision. The application has high chances of success once heard on its merits. The Applicant argued that the Respondent will not in any way be prejudiced by the grant of this application. The Applicant shall suffer substantial loss if this application is not granted as it will be forced to pay tax which it is in fact not payable. The Applicant further argued that Tribunal should exercise its discretion to grant the application for extension of time in accordance with S.16 (7) of the TAT Act.

The Applicant further contended that Article.126 (2) of the 1995 Constitution of the Republic of Uganda provides that justice is to be administered without undue regard to technicalities. Learned counsel for the Applicant submitted that in light of S. 22 (2) of the Tax Appeals Tribunal Act which enjoins the Tribunal to conduct its proceedings with as little formality and technicality as possible, and not to be bound by the rules of

The Respondent submitted that the grounds for extension of time are laid out under Rule 11(1) of the Tax Appeals Tribunal Rules which states that;

"Where an application is not filed within 45 days from the date of service of the objection decision, the Tribunal may grant the same if satisfied that the taxpayer was unable to file the application due to; absence from Uganda, illness or any other reasonable cause".

The Respondent further cited *Farid Meghani v Uganda Revenue Authority* Civil Appeal No. 006 of 2021 where in Justice Mubiru stated that;

"A motion to extend 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 argued that there was inordinate delay in making the application. The allegation that the Applicant's directors were based in India is unfounded. In *Farid Meghan* (supra), it was stated that mere conclusory allegations lacking in factual detail are not sufficient to warrant the grant of an extension of time. The respondent argued that the Applicant has not discharge its burden of proof.

The Respondent further contended that a supplementary affidavit filed before the Tribunal on 9th April 2024 should be struck off the record because it was filed without leave of the Tribunal. In *Bazaar v Kagimu*, High Court Miscellaneous Application No. 1138 of 2016, Court stated as follows:

"Under Order 8 Rule 18 (2) of the Civil Procedure Rules, parties are given mandate to seek leave where pleadings are deemed closed and this leave is discretionary, as such the supplementary affidavit in support of the application filed by the Applicant after the Respondent submitting into Court, is found irregular and is thereby stuck off the record of proceedings if it does exist".

time as long as there are sufficient reasons. S.16 (2) TAT Act provides that a Tribunal may, upon application in writing, extend the time for the making of an application to the Tribunal for a review of a taxation decision.

Furthermore S. 16 (7) of the TAT Act provides that an application for review of a taxation decision shall be made within six months after the date of the taxation decision.

The tax payer must have sufficient or reasonable grounds as to why the application was not filed in time and why time should be extended. Rule 11(2) (6) of the Tax Appeals Tribunal(Procedure) Rules provides that an application for extension of time shall be in writing supported by an affidavit stating reasons why the Applicant was unable to file an application against the Commissioner General in time. Subsection (6) The Tribunal may grant the extension of time if it is satisfied that the taxpayer was unable to file the application for the following reasons; absence from Uganda, illness and or any other reasonable cause.

In *Tight Security Limited v Chartis Uganda Insurance Co. Limited Misc. App No.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 Phase ‘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 the instant case the Tribunal notes that the affidavit by Ms. Caroline Tanga Ikure in support the application in paragraphs 8, 9 and 10 states the reasons why the Applicant was prevented from filing the main application.


In *Tesco Industries Ltd v Uganda Revenue Authority Miscellaneous Cause NO. 16 of 2024*, the Tribunal noted that;

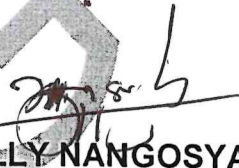
Tribunal holds that Application No. 179 of 2023 was improperly filed therefore, it cannot validate it. The TAT Act only empowers the Tribunal to exercise discretion to extend time.

Taking the above into account, this application is allowed with no orders to costs.

Dated at Kampala this 13th day of May 2024.


KABAKUMBA MASIKO
CHAIRPERSON


ROSEMARY NAJJEMBA
MEMBER


WILLY NANGOSYAH
MEMBER

RULING