

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO.103 OF 2023

ALNOOR TILES AND CERAMICSLTD..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

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

RULING

This ruling is in respect of a preliminary objection brought under Section 16 (1) (c) of the Tax Appeals Tribunal Act (TAT Act), Section 25 (1) of the Tax Procedures Code Act (TPCA) and Order 6 Rule 28 of the Civil Procedure Rules for a declaration that TAT Application No. 22 of 2023 was filed out of time.

At the end of the term of the last tribunal, this matter had been partly heard. Mr. Mugerwa, who was a member of the panel ceased to be a member of the tribunal. The parties elected for the proceedings to continue with the remaining members of the panel in accordance with S. 13(3) of the Tax Appeals Tribunals Act.

1. Background Facts

The Applicant deals in ceramics. The Respondent carried out an Administrative VAT Assessment amounting to Shs. 32,837,818 due to under declared sales made to final Customers without Tax Identification Numbers (TINs).

- i. On 5 December 2022, the Applicant objected to the Administrative additional VAT assessments. On the 2nd of March 2023, the Respondent issued its objection

decision disallowing the Applicants objection on grounds that the Applicant could not provide supporting documentation. This application was filed on the 21st of June 2023.

2. Representation

At the hearing of the Application, the Applicant was represented by Mr. Peter Mulongo Lameka and the Respondent was Represented by Mr. Allan Nkoyoyo.

Mr. Allan Nkoyoyo raised a preliminary objection stating that the Applicant had filed the instant application out of time. The Tribunal directed both parties to file written submissions in respect of the preliminary objection raised by the Respondent.

3. Submissions of the Respondent

The Respondent submitted that S.16 (1)(c) of The Tax Appeals Tribunal Act provides that, a person dissatisfied with an objection decision may, within 30 days after being served with notice of objection, lodge an application with the Tax Appeals Tribunal for review of the Objection decision.

The Respondent submitted that in the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd Court of Appeal. Civil Appeal No.75***, the Court of Appeal held that: *"Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with"*. The Court of Appeal held that the Application of the Respondent to the Tax Appeals Tribunal was properly rejected by the Tribunal as being time barred.

The Respondent submitted that the Applicant was issued with an objection decision on 2nd of March 2023, and it had up to 3 April 2023 to institute an Application before the Tribunal for review of the Respondent's objection decision. The Respondent submitted that the Applicant instead lodged the instant Application on 21st of June 2023, which was way out of time and should be rejected.

The Respondent submitted that even if the Applicant argues that it applied for Alternative Dispute Resolution (ADR) upon issuance of the objection decision, the Application for ADR does not have effect of freezing time within which to lodge an Application for review

not to raise VAT additional assessment and not to conduct an audit. The Applicant contended that in the hearing the officer was tasked to justify the additional assessment based on the lawful method of assessment and he failed to justify assessments and it was found that the assessment was made as a result of the refusal by the applicant to offer the bribe but not in accordance with the requirement of Section 23 of the Tax Appeals Tribunal Act.

The Applicant submitted on the authority of ***Oneti Vincent v Commissioner Land Registration & Others, Misc. Cause No. 255 of 2021***, where Justice Duncan Gaswaga while ignoring all the technicalities raised against the procedure through which the complainant was brought to court held in the interest of justice that; *“ if it were a criminal case, one would liken it to a complainant who reports to police the theft of their car and instead of police arresting and detaining the suspect in whose possession the car is, they place the complainant in police custody and charge him for stealing the very car. A court of law cannot sanction that which is illegal, and illegality once brought to the attention of court overrides all questions of leading including any admissions made thereon”*.

The Applicant cited the case of ***Feed the Children Uganda Limited v Jessy Olukutukei, Misc. Application No.0943 of 2019*** Justice Henry I. Kaweesa held:

“There are glaring irregularities that were committed by the different players and such illegalities once brought to the attention of court cannot be allowed to stand”.

The Applicant submitted that from the background of this matter, there were numerous aspects of the dispute which were handled by the Respondent and all the aspects relate to the tax decision. The Applicant contends that there is a process under compliance department of the Respondent and the process was undertaken, the Applicant was invited for hearing and a decision was officially communicated to the Applicant on the 22 February 2024 stating the findings of the Respondent.

The Applicant contended that the decision taken in the management letter of 22 February 2024 directly affects the matter before the Tribunal. From the foregoing, it cannot be submitted on the face of it that the instant application is time barred. The matter before

at the Tribunal as per Rule 4 (4) of The Tax Procedure Code (Alternative Dispute Resolution Procedure) Regulations, 2023.

The Respondent prayed to the Tribunal for the Application to be dismissed because it was filed out of time and contended that the Applicant has not paid the mandatory 30% of the tax in dispute.

4. Submissions of the Applicant

In reply, the Applicant submitted on the basis of S.2 (a) of the Anti-Corruption Act of 2009 that a person commits the offence of corruption if he or she commits the act of solicitation or acceptance, directly or indirectly, by a public official, any goods of monetary value, or benefits, such as a gift, favor, promise, advantage or any other form of gratification for himself or herself or for another person or entity, in the exchange for any act or omission in the performance of his or her public functions; and an act of solicitation is an illegality.

The Applicant submitted that the law does not give room for an illegality. The Applicant cited the Latin maxim "*Ex dolomalo non oritur action*" which means that "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act". The Applicant submitted that this maxim is applicable to the instant case because no one should profit from one's own wrong.

The Applicant contended that the Respondent's officer visited the applicant for a stock spot check and the applicant was found to be compliant. The Applicant submitted that the Respondent's officer later contacted the Applicant's director over its affairs and solicited for a bribe to issue a formal okay report failing which an audit would be conducted.

The Applicant opted for an audit which was not carried out. Arising from the refusal to offer the inducement, the Respondent's officer generated additional tax assessment against the Applicant. The Applicant complained to the compliance department of the Respondent which advised the applicant to object to the assessment with reason "the officer solicited for a bribe".

The Applicant contended that the Compliance Department investigated the matter and found that the officer of the Respondent had solicited an inducement of Shs.3,000,000

the Tribunal is beyond an objection decision as defined under Section 1 (g) of the Tax Appeals Tribunal Act and can only be considered under Section 1 (k) of the TAT Act.

The Applicant submitted that there was no report of the visit, there was no report from the Tax Investigations Department after the investigation nor was there a management letter indicating the finding of the Respondent from the investigations. This case remained unclosed, and no formal engagements happened between the Respondent and the Applicant at the point of objections and as such it was hard to determine the cutoff date.

On the issue of the 30% payment, the Applicant relied on the authority of *Oneti Vincent v Commissioner Land Registration & Others* where the court disregarded the requirement for the deposit of 30% due to the illegalities that had come to its attention.

The Applicant submitted that it has paid the undisputed tax for the period in question to the tune of Shs.10,606,045 which is over and above the 30% of tax in dispute. The Applicant prayed that this Tribunal finds it fit to entertain this application.

5. The Respondent's submission in rejoinder

The Respondent submitted that the Applicant's response that the assessment was raised illegally was diversionary and outrageous as it does not respond to the preliminary objection as raised.

The Respondent submitted that the basis of the assessment is included in the assessment and the assessment notes as can be seen on pages 1 to 8 of the joint trial bundle. The Respondent submitted that the basis of the assessment was undeclared sales made to final customers without tax identification numbers.

The Respondent submitted that even if the Applicant were to argue the assessment was imposed without a basis, the Applicant lodged an objection which was handled by an independent team and even an application for ADR which reviewed the matter and still upheld the assessments. The Respondent further submitted that it is not true that the assessment was raised merely because the Applicant failed to offer a bribe to the Respondent's officer who raised the Assessment.

The Respondent submitted that under paragraph 3.9 of the Applicant's submissions, it states that it has paid Shs.10, 605,045 of the tax not in dispute.

Further the Respondent submitted that the Respondent's officer who raised the assessment was terminated from service due to misconduct. The Respondent stated that the disciplinary issues of the Respondent's affairs should not be mixed up with the instant application. The Respondent maintained that this application was lodged outside the statutory timelines and must therefore be struck off.

6. Determination of the Preliminary objection by the tribunal

Having read the submissions of both parties, this is the ruling of the Tribunal:

On 5 December 2022, the Applicant objected to the Administrative additional VAT assessments. On 2 March 2023, the Respondent issued its objection decision disallowing the Applicant's objection decision on grounds that the Applicant could not provide supporting documentation. This application was filed on the 21 June 2023.

We note that the issue relating to the solicitation of a bribe by the Respondent's officer was handled and resolved by the Respondent. The tribunal will therefore focus on the issue as to whether this Application is time barred.

We note from the Respondent's letter to the Applicant dated 5th June 2023, that the Applicant wrote to the Respondent on 1st April 2023, seeking to avail itself of the Respondent's Alternative Dispute Resolution scheme (ADR). This request was rejected by the Respondent on 5th June 2023. We note further that it took the Respondent a period of two months before it responded to the Applicant's request for ADR. Having received the Applicant's request for ADR on 1st April 2023, the Respondent ought to have informed the Applicant within a reasonable time that its application had been rejected. Most importantly however, the Respondent ought to have informed the Applicant that an application for ADR does not have the effect of freezing the time within which an application for review to the tribunal can be filed.

In **Sogea Satom Uganda vs. Uganda Revenue Authority, TAT No. 22 of 2023**, the tribunal found that the Respondent's Client Service Charter, placed a duty on the

Respondent to inform the Applicant that an application for ADR did not affect the time within which the taxpayer is required to file an application with the tribunal.

Paragraph 2.5 of the charter is reproduced below for ease of reference.

“Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the law and URA procedures in all tax forms, instructions, publication, notices and correspondence. They have the right to be informed of the URA decisions about their tax accounts and to receive clear explanations of the outcomes”.

The Applicant was issued with an Objection decision on 2nd March 2023, and it had until 3rd April 2023, to file an application for review before the tribunal. If the Respondent had acted timeously in either rejecting the Applicant’s request for ADR or informing the Applicant that an application for ADR did not affect the time within which the taxpayer is required to file an application with the tribunal, the Applicant would in all likelihood have filed its application for review within the requisite time. By responding to the Applicant’s request for ADR after a period of two months, the Respondent failed to comply with the requirements of its own Client’s Service Charter. It would be unfair under these circumstances for the instant application to be dismissed.

For the reasons above the preliminary objection is overruled.

The Application will be fixed for hearing on its merits. The question relating to the payment of 30% of the tax in dispute will be resolved before the commencement of the hearing.

Date at Kampala this 6th day of September 2024.



SIRAJ ALI
CHAIRPERSON



CHRISTINE KATWE
MEMBER

