THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

MISCELLANEOUS APPLICATION NO. 213 OF 2024

(ARISING OUT OF TAT APPLICATION NO 246 OF 2024)

AMULE SAMUEL .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

RULING

BEFORE: MS. STELLA NYAPENDI, MR WILLY NANGOSYAH, MS KABAKUMBA MASIKO.

This ruling is in respect of an application brought under Section 26(4) of the Tax Appeals Tribunal Act Cap 341, Section 98 Of the Civil Procedure Act Cap 282, Order 9 r 23, Order 52 rule 1 and 3 of the Civil Procedure Rules, Section 37 Of the Judicature Act Cap 16 where the Applicant seeks orders that;

1) The order dismissing TAT Application No.246 of 2024, Amule Samuel v Uganda Revenue Authority be set aside and the said application be re-instated and heard on its merits.
2) Costs of this application be provided for.

1. Background facts

On May 16, 2024, the Applicant lodged a taxation objection with the Respondent regarding a tax assessment of rental liability amounting to UGX 38,502,600. After review, the Respondent made a partial objection decision reducing the tax assessment to UGX 29,982,600.

The Applicant being dissatisfied with the Respondent's partial objection decision, instituted TAT application no. 246 of 2023 seeking a review of the objection decision. The matter was referred for mediation vide mediation no. 247 of 2024 and a mediator was appointed. The first mediation session was held on the 18 of November 2024 but it was adjourned to 29th November 2024 as agreed by both parties. This mediation

was attended by the Applicant and his counsel and the matter was subsequently adjourned to the16 of December 2024.

The main suit TAT application no. 246 of 2024 was scheduled for 29th November 2024 and it was attended by the Respondent's counsel who misled the tribunal that the mediation had failed. Consequently, the main suit was dismissed for non-payment of 30% and non-appearance of the Applicant. The non-appearance of the Applicant was occasioned by the mix-up between the mediation and the main application both having been fixed on the same day of 29 November 2024 while the mediation was still ongoing.

2. Representation

At the hearing of this Application, Mr. Musede John appeared for the Applicant while Ms. Doreen Amutuhaire and Ms. Christine Mpumwire appeared for the Respondent.

3. Submissions of the Applicant

Counsel for the Applicant submitted that the Applicant has sufficient cause for reinstatement and quoted ***Section 25(4) of the Tax Appeals Tribunal Act*** which provides that;

"Where the tribunal has dismissed an application under subsection (2) or (3), the Applicant may, within thirty days after receiving notification that the application has been dismissed, apply to the tribunal for reinstatement of the application, and the tribunal may, if it considers it appropriate to do so, reinstate the application and give such directions as appear to be appropriate in the circumstances."

The Applicant cited the case of ***Banco Arabe Espanol v Bank of Uganda SCCA No.9/1993*** where it was held that court must be satisfied as to the reasons or explanations provided and the sufficiency of grounds should relate to an inadvertence, inability, failure or bona fide to take proactive, necessary, or mandatory measures or steps to one's case timely, which would exonerate the litigant from the presumption or assertion of dilatory conduct, indolence, negligence, or inaction which in the first place led to the negative outcome which the litigant now seeks to have remedied.

The Applicant went ahead to submit that the Tribunal was misled by the Respondent's counsel who stated that the Applicant had not paid the 30% before lodging the said application when it came up on 29th November 2024 and that the mediation was unsuccessful.

The Applicant quoted **Section *15 of the Tax Appeals Tribunal Act*** in respect of the deposit of a portion of tax pending the determination of objection which reads that:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater".

This provision was re-echoed in the case of ***Airtel Uganda Limited v Uganda Revenue Authority C.A No.40 of 2013***.

The Applicant submitted that the Respondent made a tax assessment of Shs. 38,502,600 against the Applicant in March 2024 and the Applicant's objection was heard by the Respondent's officials where a decision was made. The Applicant's objection was partially allowed by reducing the initial assessment of Shs. 38,502,600 to Shs. 29,982,600. During the objection proceedings at the Respondent's offices, the Respondent acknowledged receipt of payment totaling to a sum of Shs.12,619,429 paid in installments of Shs. 5,153,106, Shs. 2,904,894, and Shs. 4,561,430 for the respective assessment and the said receipts are as per annexures A1, A2, A3.

The Applicant submitted that the Respondent cannot raise the question of 30% because their own correspondences on record show that the Respondent acknowledges the non-disputed amounts totaling UGX 12,619,429 which is already paid and over above the 30%.

The Applicant further submits that TAT Application No. 246 of 2024 was dismissed prematurely and it will occasion an injustice to the Applicant if the application is not re-instated and heard on its merits because. According to the record of proceedings, the Respondent's counsel misled the tribunal about the fact that mediation had closed yet it was still ongoing and the non-appearance of the Applicant was occasioned by the mix-up of the mediation and main application having been fixed for the same day on 29th November, 2024.

The Applicant and his counsel both attended the mediation meetings but the same was adjourned to 16 December 2024 and as such the mediation was not in any way unsuccessful as alleged by the Respondent's counsel as there was no mediation report in that regard to show that the said mediation had been concluded and the same was unsuccessful. The Applicant further contends that the Respondent deliberately concealed the fact that the Applicant had paid the undisputed tax which is higher than the 30% of the assessed tax.

In summary, it is the Applicant's submission that the 30% argument in this case is not valid and misplaced and that the Tribunal should not condone such acts of professional misconduct to occasion injustice and prayed that the application is granted as the Applicant has shown sufficient cause to render the same granted.

4. Submissions of the Respondent

The Respondent did not file submissions however, in their affidavit in reply to this application deponed by Aruho Kenan on 16 December 2024, the Respondent submitted that the Applicant filed Miscellaneous Application No. 213 of 2024 before this Tribunal seeking to set aside the order dismissing TAT Application No. 246/2024, which came up on 29th November 2024.

The Respondent submitted that the Applicant was not represented despite knowing the schedule and this was admitted by the Applicant in paragraph 5 and 7 of their affidavit in support of this application. The Respondent further argues that this application was also dismissed for non-payment of 30%. The Respondent therefore prayed that this application seeking to set aside TAT order No. 246/2024 be dismissed with costs.

5. The Determination by The Tribunal.

We have carefully read and considered the submissions of the Applicant and the Respondent's affidavit in reply.

The Applicant seeks the reinstatement of TAT Application No. 246/2024 which was dismissed on 29th November 2024 for non-payment of 30% and non-appearance. The

Respondent argues that the dismissal was justified as the Applicant was aware of the schedule and failed to comply with the requirements.

The Power to Reinstate

Section 25(4) of the Tax Appeals Tribunal Act outlines the law on reinstatement. It states:

"Where the Tribunal has dismissed an application under subsection (2) or (3), the Applicant may, within thirty days after receiving notification that the application has been dismissed, apply to the Tribunal for reinstatement of the application. The Tribunal may, if it considers it appropriate to do so, reinstate the application and give such directions as appear to be appropriate in the circumstances."

This section empowers the Tribunal to reinstate the application if the above conditions are met, specifically if the Applicant applies for reinstatement within 30 days of receiving the dismissal notification.

From the court records, TAT Application No. 246/2024 came up for hearing on the 29th of November 2024. On that date, both the Applicant and their counsel were absent. The Respondent sought a dismissal, and the Tribunal proceeded to dismiss the matter for want of prosecution, as reflected in the proceedings.

On December 4th 2024, the Applicant filed this application, praying for the reinstatement of their matter to be heard and determined on its merits. The Applicant brought this application within five days from the date of the dismissal of the main application. Thus, concerning the 30-day threshold, the Applicant meets this condition.

The Tribunal therefore establishes that this application was brought in time and consequently has the authority to consider it since the application meets the conditions in Section 25(4), we will delve into the grounds.

Non-Appearance

Order 9 Rule 23(1) of the Civil Procedure Rules, under which this application was brought provides:

"Where a suit is wholly or partly dismissed under Rule 19 of this Order, the Plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. However, the Plaintiff may apply for an order to set the dismissal aside, and, if he satisfies the Court that there was sufficient cause for non-appearance when the case was called on for hearing, the Court may make an order setting aside the dismissal, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit."

From the above provision, in an application for the restoration of a dismissed suit under Rule 23, the Applicant needs to satisfy the Court that there was sufficient cause for non-appearance. That is to say, that they had an honest intention to attend the hearing, did their best to do so, and were diligent in applying. While the law does not define 'sufficient cause', this has been explained in various authorities.

In the case ***of Rosette Kizito v Administrator General and Others (Supreme Court Civil Application No. 9/86, reported in Kampala Law Report Volume 5 of 1993, page 4),*** it was held that "sufficient reason" must relate to the inability or failure to take the particular step in time.

In the case of ***The Registered Trustees of the Archdiocese of Dar-es-Salaam v The Chairman Bunju Village Government & Others (Civil Appeal No 147 of 2006***), it was stated:

"Sufficient cause is proven if a party and their advocate show that neither acted negligently and more importantly there was a want of bona fide on their part in view of the facts and circumstances of the case. The Applicant cannot be aligned to have been not acting negligently' or 'remaining inactive'."

In National Insurance Corporation v Mugenyi and Co. Advocates [1987] HCB 28, the court observed:

"In considering whether there was sufficient cause why Counsel for the Applicant did not appear in court on the date the application was dismissed, the test to be applied in cases of that nature was whether under the circumstances the party applying honestly intended to be present at the hearing and did their best to attend."

Upon reviewing the record of proceedings, it is evident that the Applicant continuously attended court, except for the day the case was dismissed. According to paragraph 6

of the affidavit in support of the application, the non-appearance was occasioned by a mix-up of both the mediation and the main application which were fixed for the same day of 29th November 2024.

The Applicant and their counsel attended the ongoing mediation while the Respondent attended the hearing. This conduct suggests that the Applicant had an honest intention to attend the hearing and their non-appearance was due to the simultaneous scheduling of the mediation and hearing of the application on the same day.

Non-Payment of 30%

Section 15(1) of the Tax Appeals Tribunal Act states:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

In ***Samuel Mayanja v Uganda Revenue Authority HCNC 17 of 2005*** the court decided that the above section obliges a taxpayer to pay at least 30% of the tax in dispute. There is no doubt that the requirement to pay 30% of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater is mandatory.

In ***Vivo Energy v Uganda Revenue Authority Misc Application No. 78 of 2024,*** the Tribunal relied on ***Uganda Projects Implementation and Management Centre v Uganda Revenue Authority, SCCA No. 2 of 2009***, and held that while the requirement to pay 30% of the tax in dispute would occasion hardships on taxpayers, Article 17 of the Constitution of the Republic of Uganda imposes a duty on citizens to pay taxes and do so promptly so that government business can continue.

The Applicant submitted that the Respondent acknowledged the non-disputed amounts totaling to a sum of Shs. 12,619,429 which is more than 30% of the assessed tax of Shs. 29,982,600. The Applicant argued that the Respondent cannot raise the question of 30% because their own correspondences on record show that the Respondent acknowledges the non-disputed amounts which have already been paid and is above the required 30%.

On the 7th day of March 2024, the Applicant was issued with administrative additional income tax assessments amounting to Shs. 38,502,600 which was later revised to Shs. 29,982,600. During the objection proceedings at the Respondent's offices, the Respondent confirmed the receipt of Shs. 12,619,429 in installments of Shs. 5,153,106, Shs. 2,904,894, and Shs. 4,561,430 for the respective assessments as shown under paragraph 9 of the Applicant's affidavit in rejoinder. These receipts are provided as Annexures A1, A2, A3.

Thorough perusal of this evidence, we note that the payments made by the Applicant amounting to a tune of Shs. 12,619,429 were made in 2021 long before the assessment was issued in 2024. Although these payments pertain to the rental liability for the period of 2020-2023, these payments were made prior to the assessment issued in March 2024. For instance, receipt A1 of Shs. 5,153,106 was acknowledged on September 30th, 2021, and receipt A2's acknowledgment is dated September 16, 2022. You cannot claim to have paid 30% of the tax assessed in 2024 yet the receipts are from 2021.

Based on the above, the payments made by the Applicant amounting to Shs. 12,619,429 were made in 2021 and 2022 which is long before the assessment was issued in 2024. The requirement by law is to pay 30% of the assessed tax or the non-disputed amount at the time of lodging an objection and the Applicant did not fulfill this requirement in 2024.

In conclusion to this issue of non-payment of the 30%, the tax assessed or the part of the tax assessed not in dispute was not paid by the Applicant as mandated by Section 15 of the Tax Appeals Tribunal Act.

Professional Conduct

The Tribunal would like to address the conduct of the Respondent's counsel. According to the proceedings dated November 29th 2024, counsel for the Respondent intimated to this Tribunal that the mediation was unsuccessful yet she had full knowledge that it was still ongoing and even had a session slated for that same day which the Applicant attended. The Respondent's counsel misled this Tribunal on the mediation's status.

The Tribunal notes that professional conduct and integrity are paramount in legal proceedings and misleading the Tribunal constitutes professional misconduct.

In determining this matter, this Tribunal must balance the interests of justice, the rule of law, and the need to uphold procedural compliance. The key issues here revolve around the justifiability of the Applicant's non-appearance and failure to make the required 30% payment.

Reinstatement of a suit is at the discretion of the court, which should be exercised in a just manner, as held in ***Bilha Ngonyo Isaac vs. Kembu Farm Ltd & Another [2018] eKLR (JN. Mulwa J),*** echoing the decision in ***Shah vs. Mbogo & Another (1967) EA 116 (Harris J).*** The court in Shah vs. Mbogo stated on the matter of discretion:

"The discretion is intended to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice."

One of the issues that typically confront the courts regarding the dismissal of suits for delays and subsequent applications for reinstatement is the need for expeditious conclusion of suits. ***In Mobile Kitale Service Station vs. Mobil Oil Kenya Limited & Another [2004] eKLR (Warsame J),*** it was held:

"I must say that the Courts are under a lot of pressure from backlogs and increased litigation; therefore, it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously."

The Tribunal is entirely convinced by the arguments put forward by the Applicant to explain his non-attendance on 29th November 2024. However, the statutory requirement of 30% has not been met by the Applicant. To give the Applicant a second chance, the Tribunal will allow the application and reinstate the suit on the condition that the 30% of the assessed tax amounting to Shs. 29,982,600 is paid before the main suit is fixed for hearing. Failure to meet this condition will result in the reinstatement order lapsing. On this premise, the Tribunal would then consider reinstatement to hear the matter on its merits.

As rightly pointed out in the ***Makerere University Business School vs. Amolo Beatrice and 19 others LDR 134/2017 case***, denying a subject a hearing should be the court's last resort. This dictum aligns with the constitutional prescription under ***Article 126(2)(e) of the 1995 Constitution,*** enjoining the Courts to administer justice without undue regard to technicalities.

In consideration of the foregoing, the application succeeds with the following orders:

(i) The dismissal order in TAT Application 246 of 2024 is hereby set aside;

(ii) TAT Application 246 of 2024 is hereby reinstated to be disposed on merit upon fulfilment of the following conditions;

(iii) The Applicant shall pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater before this matter is fixed for hearing;

(iv) If the Applicant does not comply with any of the above orders, the matter shall be liable to dismissal.

(v) No orders as to costs.

Dated at Kampala this.....day of February 2025.

STELLA NYAPENDI	**WILLY NANGOSYAH**	**KABAKUMBA MASIKO.**
CHAIRPERSON	**MEMBER**	**MEMBER**