

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 128 of 2022

CESVI-COOPERAZIONE SVILUPPO – UGANDA.....APPLICANT
VERSUS
UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application seeking orders for the extension of time within which the applicant may file an application for a review.

This application was brought under S. 16(2) of the Tax Appeals Tribunal Act, Rule 12 of the Tax Appeals (Procedure) Rules, and Order 52 Rule 1 of the Civil Procedure Rules.

The facts of the application are that. On 5th February 2020, the applicant received an administrative assessment of Shs. 28,421,870. It objected. On 29th May 2020, the respondent made an objection decision. On 22nd June 2020, the applicant supplied evidence in respect of its landlord details. On 24th June 2020, the applicant's administrator fell ill. On 19th August 2022, the applicant filed an application for extension of time.

The applicant was represented by Mr. Gerald Agaba Kakima while the respondent by Ms. Ritah Nabirye.

The application is supported by the affidavit of Ms. Flavia Birungi the applicant's country administrator. She states that on 5th February 2020, the applicant received an administrative assessment of Shs. 28,421,870. The applicant promptly objected to the assessment. On 29th May 2020, the respondent made an objection decision disallowing the applicant's objection. On 22nd June 2020, the applicant supplied evidence to the respondent after the lockdown had been eased. On 24th June 2020, the deponent fell ill and was diagnosed with cancer. Upon her return from treatment on 8th June 2022, she

wrote to the Commissioner reminding him of the request of 22nd June 2020. On 21st June 2022, the respondent replied that the request was time barred.

In reply, Mr. Barnabas Nuwaha, a legal officer working with the respondent deponed that the applicant was served with an objection decision on 29th May 2020. It ought to have filed an application for review of the taxation decision by 28th June 2020. He stated that Uganda eased the COVID lockdown restrictions on 2nd June 2020 before the lapse of the 30 days which the applicant ought to have lodged its application for review. He stated that the applicant has not filed its application for over two years.

The applicant submitted that S. 16(1)(c) of the Tax Appeals Tribunal Act provides that an application to review a taxation decision ought to be lodged within 30 days from the day of service of the objection decision. It submitted that the objection decision was made on 27th March 2021 in line with S. 25(1) of the Tax Procedure Code Act. It submitted that S. 16(7) of the Tax Appeals Tribunal Act provides that an application for review of a taxation decision has to be made within six months after the date of the decision. It cited *Cable Corporation v Uganda Revenue Authority* HCCA 1 of 2011 where the Court states that S. 16(7) caters for situations where the tax payer was not served with the taxation decision. The applicant also cited *Farid Meghani v Uganda Revenue Authority* Civil Appeal 6 of 2021 where the court stated that the Tribunal misdirected itself when it construed that S. 16(7) of the Tax Appeals Tribunal Act as limiting the period within which an application for extension of time maybe filed.

The applicant submitted that Rule 11(6) of the Tax Appeals Tribunal (Procedure) Rules state the considerations for extension of time include (a) absence from Uganda (b) illness or (c) any other reasonable cause. The applicant also cited *Farid Meghan v Uganda Revenue Authority* (supra) where the court stated 'sufficient cause' must relate to the inability or failure to take a particular step in time. It submitted that it did not declare its landlord details for rental expenditure in its income tax return. The request for the information was made in May 2020 during the national lockdown during the COVID pandemic. The respondent made an objection decision on 29th May 2020 during the lockdown. The information was provided on 22nd June 2020 after the lockdown. It was supposed to file its application by 28th June 2020. The applicant submitted that its country administrator Ms. Flavia Birungi was ill around 23rd June 2020. She was taken

to hospital on 24th June 2020. It was not until August 2022 that the country director regained her normalcy. The applicant submitted that under Rule 11(6) of the Tax Appeals Tribunal (Procedure) Rules the COVID lockdown and the illness of the applicant's principal officer are justifiable reasons to warrant extension of time.

In reply, the respondent submitted that the applicant for extension of time should not be allowed because it was brought after the 6 months statutory limit for extension of time. The respondent also submitted that COVID- 19 restrictions were lifted on 2nd June 2020 by the Public Health (Control of COVID-19) Amendment Rules.

The respondent submitted that S. 16(2) of the Tax Appeals Tribunal Act provide that a tribunal may extend the time for making an application for review of a taxation decision. S. 16(7) of the Tax Appeals Tribunal Act provides that an application for review shall be made within 6 months from the date of the taxation decision. The respondent cited *Stanbic Bank Uganda Limited and another v The Commissioner General of URA* MA 28 of 2018 where the Tribunal dismissed an application for extension of time with costs that had been brought after 6 months from the date of the taxation decision.

The respondent submitted further that applicant ought to have filed an application for review of the taxation decision instead of submitting its record to the respondent. The applicant has therefore not explained the reasons for the delay from 2nd to 22nd June 2020. It has not given reasonable cause. The respondent submitted that filing an application within the prescribed time does not require a specific director/administrator. The respondent contended that tax matters require urgency. The applicant has waited for 2 years to bring this application. The respondent cited *Uganda Revenue Authority v Uganda Consolidated Properties Limited* Civil Appeal 75 of 2000 where the Court of Appeal stated that "Timelines set by statutes are matters of substantive justice and not mere technicalities and must be strictly complied with." The respondent contended that the applicant has not provided reasonable cause to warrant extension of time.

In rejoinder, the applicant contended that S. 16(7) of the Tax Appeals Tribunal Act does not apply because the application before the Tribunal was for extension of time and not for review of a taxation decision. The applicant also reiterated its submission that COVID restriction disrupted international travel.

Having read the application and the submissions of the parties, the following is the ruling of the tribunal.

On 5th February 2020, the applicant received an assessment of Shs. 28,421,870. It objected to the assessment. On 29th May 2020, the respondent made an objection decision disallowing the applicant's objection on grounds that details of the landlord's TIN has not been supplied. On 22nd June 2020 the applicant supplied the evidence to the respondent after the lockdown had been eased. On 24th June 2020, the applicant's administrator fell ill and was diagnosed with cancer. Upon her return from treatment on 8th June 2022, she wrote to the Commissioner reminding him of the request of 22nd June 2020. On 21st June 2022 the respondent replied that the request was time barred.

In *Uganda Revenue Authority v Consolidated Properties Limited* Civil Appeal 31 of 2000 the Court of Appeal held that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. S. 25 of the Tax Procedure Code Act which is similar to S. 16 of the Tax Appeals Tribunal Act states that

“(1) A person dissatisfied with an objection decision may, within 30 days after being served with a notice of the objection decision lodge an application with the Tax Appeals Tribunal for review of the objection decision.”

The applicant did not file its application within time after the objection decision. It merely sent the information required to the respondent.

The applicant filed an application for extension of time. S. 16(2) of the Tax Appeals Tribunal Act allows for a party to apply for an extension of time. Rule 11 of the Tax Appeals Tribunals (Procedures) Rules provides that an application which is not filed within time, the tribunal may, in its discretion upon the application in writing, extend the time for making an application. The applicant has to show sufficient grounds or good cause as to why she was not able to file its application in time. In *Tight Security Limited v Chartis Uganda Insurance Co. Limited* Misc. Application 8 of 2014, the court held that.

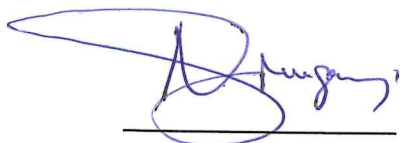
“Good Cause relate to and include the factors which caused inability to file within the prescribed period of 30 days. The Phrase ‘good cause’ is however wider and includes other causes other than causes of delay such as the public importance of an appeal and the court should not restrict the meaning 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 *Mulindwa George William v Kisubika Joseph* Civil Appeal 12 of 2014 the Supreme Court of Uganda set out the following factors that should be considered in an application for extension of time. I) The Length of delay, ii) The reason for the delay, iii) The possibility or chances of success, iv) The degree of prejudice to the other party. Therefore, the Tribunal has to determine whether there are sufficient reasons as to why it should extend time.

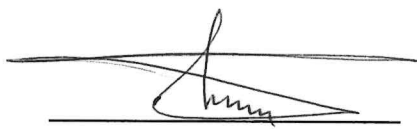
Rule 11 of the Tax Appeals Tribunals (Procedure) Rules requires the tribunal to exercise its discretion. When the applicant was served with an objection decision, the respondent ceased being functus officio. Therefore, supplying the respondent with further evidence was an exercise in futility. The applicant ought to have first provided the details of the landlord in its return. On failure to do so it ought to have provided the information at the time of making the objection and not after the objection decision. Having failed to provide the information at the time of objection it ought to have applied to the Tribunal for a review of the taxation decision and provided that information to the Tribunal. Therefore, the administrator being ill does not help the fact that applicant used the wrong procedure by sending the details to the respondent when it was functus officio. Without prejudice, the administrator is an employee of the applicant and should be able to delegate her duties and functions when not in office. There is no evidence that business ceased to operate during her absence. The failure to apply for a review of the taxation decision shows the applicant did not treat the objection decision as a matter of urgency. Further though the administrator was ill around 24th June 2020, there is no evidence that she was sick up 8th June 2022. The delay of 2 years from the date of the objection decision to the time the applicant filed this application is inordinate. It does not warrant an extension of time.

In the circumstance this application is dismissed with costs.

Dated at Kampala this 14th day of October 2022.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MS. CHRISTINE KATWE
MEMBER