

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 275 OF 2022

CIC AFRICA (UGANDA) LIMITED APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE DR. ASA MUGENYI, MR. GEORGE MUGERWA, MR. SIRAJ ALI

RULING

This ruling is in respect of a preliminary objection by the respondent that this application is time barred.

The applicant is a holding company with 10% shareholding in CIC General Insurance (U) Limited and CIC life Insurance (U) Ltd. In 2019, the respondent conducted an audit on it. The respondent disallowed loans acquired by the applicant in its parent companies, CIC Insurance Group Limited for purposes of capitalizing its subsidiaries, CIC General Insurance (U) Limited and CIC life Insurance (U) Ltd on ground that they were not supported.

On 11th December 2019, the respondent issued an income tax administrative additional assessment of Shs 2,551,630,452 on the applicant for unsupported loans for the period from 1st January 2018 to 31st December 2018. The applicant objected to the assessment. On 24th September 2021, the respondent issued an objection decision partially allowing the objection and reducing the tax liability to Shs 732,430,452. The applicant being dissatisfied with the objection decision, sought a review of the respondent's objection decision under an Alternative Dispute Resolution (ADR) mechanism. In a letter dated 21st October 2022 the respondent revised the applicant's tax liability to Shs 456,545,967.

On 25th November 2022 the applicant further objected to the revised tax liability of Shs 456,545,967 following the ADR review. On 14th December 2022, the respondent communicated to the applicant that it was unable to further review its decision and that the decision communicated on 21st October 2022 was final. On 19th December 2022, the applicant lodged this application seeking review of the respondent's decision.

During the trial, the respondent raised a preliminary objection that the application before the Tribunal is time barred as it was filed outside the mandated 30 days period within which to lodge an appeal against a tax decision provided under S. 16(1)(c) of the Tax Appeals Tribunals Act.

The issues before the Tribunal are.

1. Whether the application is time barred?
2. What are the remedies available to the parties?

The applicant is represented by Ms. Jenifer Ruth Mugisha while the respondent by Mr. Kenan Aruho.

The respondent cited Order 6 Rule 28 of the Civil Procedure Rules which provides that a party shall be entitled to raise by his or her pleadings any point of law and any point so raised shall be disposed of by the court or after the hearing. It submitted that S. 14(1) of the Tax Appeals Tribunal Act provides that any person who is aggrieved by a decision made under a taxing Act to apply to the Tribunal for review of the said decision. S. 25 of the Tax Procedures Code Act also provides for review of an objection decision. S. 24(11) of the Tax Procedures Code Act mandates a tax payer dissatisfied with a decision to apply for Alternative Dispute Resolution (ADR) mechanism pursuant to an objection decision.

The respondent submitted that it issued an objection decision on 24th September 2022. The applicant had 30 days within which to file an application to the Tribunal under S. 25 of the Tax Procedures Code Act. It submitted further that the fact that the applicant opted for ADR did not bar it from applying to the Tribunal to review the objection decision.

According to the respondent, the applicant sat on its rights when it failed to make an application to the Tribunal. The respondent submitted that an ADR review decision does not amount to a tax decision and the applicant wrongly objected to it. The respondent cited S. 3 of the Tax Procedures Code Act which defines a tax decision to mean a tax assessment or a decision left to the discretion of the Commissioner other than a decision made in relating to a tax assessment.

The respondent submitted further that the applicant is relying on an amended assessment. The respondent did not issue a fresh tax assessment. The notes to the assessments indicate that they were amended as per ADR findings and recommendations. These amended assessments were therefore a decision related to the initial assessments and not a decision amenable to an objection as they fell under the exception to the definition of a tax decision. The respondent quoted Justice Madrama in *Cable Corporation v URA* Civil Appeal 1 of 2011 where he stated that,

“A taxation decision does not arise out of an objection but an objection decision arises from an objection to a taxation decision other than a decision arising from an objection decision.”

The respondent submitted that the application for review was lodged out of the statutory 30-days period under S. 16(1)(c) of the Tax Appeals Tribunal Act.

In reply, the applicant responded that when the respondent issues an amended additional assessment notice, it is a tax assessment which gives rise to a new cause of action against the latter. It submitted that the effect of an amendment is to replace or substitute the original. The applicant argued that the respondent issued an administrative amended assessment of Shs 456,545,967 on 2nd November 2022 which had the effect of substituting the earlier one of Shs. 732,430,452 and this gave rise to a new tax liability and cause of action to which the applicant had a right to object under S. 24 of the Tax Procedures Code Act. The applicant cited *Cable Corporation (U) Ltd v URA* (supra) where Justice Madrama stated that;

“If the respondent heeds to the request of the tax payers to review objection decisions, they could contend that the objection decision is nullified and therefore a new cause of action had arisen. Looking at the flip side, a new cause of action by necessary implication means that the old decision does not stand and a new decision should be made.”

In addressing whether the respondent's ADR Review decision amounted to a tax decision, the applicant cited S. 3 of the Tax Procedures Code Act. The applicant also cited S. 1(k) of the Tax Appeals Tribunal Act which provides that; "A taxation decision means any assessment, determination, decision or notice;" It further cited S. 2(d) of the Income Tax Act as amended in a bid to define an assessment as, "any decision of the Commissioner which, under this Act, is subject to objection and appeal."

The applicant submitted that its application is not time barred since it was filed within the statutory 30 days from the date it was served with the objection decision. It notes that the objection decision was communicated to it by letter dated 14th December 2022. It lodged its application for review before the Tribunal on 19th December 2022. The applicant extracted a portion from the respondent's letter for which a decision which states that "In light of the above facts, URA is unable to review its decision any further. In case your client is not satisfied with our decision, they still have a right to apply for review with the Tax Appeals Tribunal in accordance with Section 25 of the Tax Procedures Code Act."

The applicant contends that it complied with Sections 25(1) and 14(1) of the Tax Procedures Code Act and the Tax Appeals Tribunal Act respectively as well as the respondent's command.

Having perused the evidence and read the submissions of the parties, the following is the ruling of the Tribunal.

On 11th December 2019, the respondent issued an additional income tax assessment of Shs 2,551,630,452 on the applicant for 1st January 2018 to 31st December 2018. The applicant objected to the assessment. On 24th September 2021 the respondent issued its objection decision partially allowing the objection and reducing the tax liability to Shs 732,430,452. The applicant being dissatisfied with the objection decision, sought a further review of the respondent's objection decision under the Alternative Dispute Resolution (ADR) mechanism. In a letter dated 21st October 2022 the respondent revised the

applicant's tax liability to Shs 456,545,967. On 25th November 2022, the applicant further objected to the revised tax liability of Shs 456,545,967. On 14th December 2022, the respondent communicated to the applicant that it is was unable to further review its decision and that the decision communicated on 21st October 2022 was final. On 19th December 2022, the applicant lodged this application seeking review of the respondent's decision. The respondent raised a preliminary objection that the main application was time barred.

The law relating to a party's entitlement to raise preliminary objections is set out as under Order 6 rule 28 of the Civil Procedure Rules. It states that

"Any party shall be entitled to raise by his or her pleadings any point of law and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing".

In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Limited* [1996] EA 696 Charles Newbold stated that;

"A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit."

The Tribunal will therefore dispose of the preliminary objection.

S. 25 of the Tax Procedure Code Act provides that;

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

S. 16(1) (c) of the Tax Appeals Tribunal Act provides that;

"An application to the Tribunal for review shall be made within 30 days of being served with a Notice of Objection".

In *Uganda Revenue Authority v Consolidated Properties Ltd* Civil Appeal 75 of 1999 the Court of Appeal held that "Timelines set by statutes are a matter of substantive law and not mere technicalities and must be strictly complied with".

S. 16(2) of the Tax Appeals Tribunal Act provides that “The Tribunal may, upon application in writing extend the time for making an application of the Tribunal for review of a tax decision”. S. 16 (7) of the Tax Appeals Tribunal Act provides that “An application for review of the taxation decision shall be made within six (6) months after the date of the taxation decision.” Rule 11(1) of the Tax Appeals Tribunal (Procedure) Rules provides that;

“Where an application is not filed with the Registrar within forty-five days from the date the applicant was served with a notice of the taxation decision, the Tribunal may, in its discretion, upon the application of the applicant in writing, extend the time for making an application”.

Rule 11(2) 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.”

Rule 11 (6) provided that

“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—

- (a) absence from Uganda;
- (b) illness; or
- (c) any other reasonable cause”.

The applicant did not file an application for extension of time. It merely filed the main application.

The applicant contended that it was pursuing Alternative Dispute Resolution. S. 24(11) of the Tax Procedure Code Act provides that.

“A tax payer who is dissatisfied with a decision of the Commissioner may apply to the Commissioner to resolve the dispute using alternative dispute resolution procedure, as may be prescribed.”

S. 24(12) of the Act further provides that

“For the purposes of subsection (11), the Minister may make regulations to provide for alternative dispute resolution for tax purposes.”

In line with the said Section, the minister made Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations to govern ADR. Regulation 4(3) of the Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations states.

"Where an alternative dispute resolution procedure is commenced between a taxpayer and the Commissioner, the time within which the Taxpayer is required to file an application with the Tribunal, or a suit with Court shall not be affected by the alternative dispute resolution procedure."

Regulation 4(4) states that;

"For the avoidance of doubt, the alternative dispute resolution procedure under these Regulations shall not have any effect or negate the rights of the Commissioner or Taxpayer to file an application with or the suit with the court or have an effect on the rules and procedures of the Tribunal or Court."

The effect of the Regulations is to make ADR before the respondent as an administrative mechanism that does not affect dispute resolution before the Tribunal.

In this application the respondent issued its objection decision on 24th September 2021. The applicant being dissatisfied with the objection decision sought further review of the respondent's objection under the Alternative Dispute Resolution mechanism to which the applicant's tax liability was revised to Shs 456,545,967 in a letter dated 21st October 2022. An assessment of the said amount was issued on 2nd November 2022.

The Tribunal notes that the Regulations are clear. Regulation 4(3) of the Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations states.

"Where an alternative dispute resolution procedure is commenced between a taxpayer and the Commissioner, the time within which the Taxpayer is required to file an application with the Tribunal, or a suit with Court shall not be affected by the alternative dispute resolution procedure."

Therefore, the applicant ought to have filed an application in the Tribunal as it pursued Alternative Dispute Resolution. The Tribunal cannot amend the Regulations as the Tax Procedure Code Act empowered the Minister to make Regulations. The objection decision was made on 24th September 2021. This meant that the applicant ought to have filed its

application by 24th October 2021, which it did not do. Therefore, its application filed on 19th November 2022 is time barred.

Without prejudice if the Tribunal was to consider the decision revising the assessment to Shs 456,545,967 as a new tax decision. The said decision was issued on 21st October 2022. In its application the applicant admitted it was served on 2nd November 2022. Therefore, it would mean that the applicant would be required to file an application for review on 2nd December 2022. However, the applicant filed its application on 19th December 2022. This would mean that its application is still time barred. This is not the position of the law. The respondent issuing an amended assessment was superfluous as the revised assessment of Shs. 456,545,967 arose from ADR. Once a decision or an award has been reached as a result of Alternative Dispute Resolution, it means it is agreeable to both parties. It is debatable as to whether a party dissatisfied can challenge it in the Tribunal when it was party to the ADR. It has to follow the procedure on how to set aside such a decision. It is like an arbitral award.

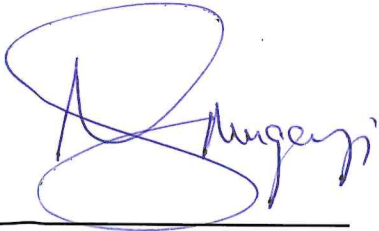
The Tribunal in *Conta Plast Ventures Limited v Uganda Revenue Authority* Application 275 of 2022 held that

“Where a statute of subsidiary legislature is clear, the words have to be given their ordinary meaning. The Regulations clearly spell out that the time within which to file an application before the Tribunal shall not be affected by ADR. Therefore, the attempt by the applicant to use ADR as a ground for extension of time to file an application for review does not amount to sufficient ground.”

Where a party seeks ADR, there is nothing that precludes it from filing an application within time before the Tribunal. A party who is not satisfied to a decision in ADR cannot keep on objecting. There has to be an end to alternative dispute resolution. It cannot continue in perpetuity. Where an objection decision has been made by the respondent, it becomes functus officio. ADR was set up as a mechanism to resolve disputes arising from an objection decision where a party may opt to seek further review from the Tribunal or may opt not to do so. In the event a party does not seek review from the Tribunal or does so outside the prescribed time it can be deemed to have sat on its rights in the event ADR is not successful.

In light of the above, the Tribunal upholds the preliminary objection. The main application is dismissed with costs to the respondent.

Dated at Kampala this *6th* day of *October* 2023.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MR. SIRAJ ALI
MEMBER

RULING