

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 11 of 2023

CONTA PLAST VENTURES LIMITED APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

This ruling is in respect an application to extend time to file an application for review before the tribunal.

The applicant deals in the manufacture of plastics. The respondent issued it with an additional Value Added Tax (VAT) assessment of Shs. 758,451.42 and penal tax of Shs. 66,005,085 for the period June 2022. The respondent disallowed input VAT claimed by the applicant on ground of purported fictitious invoices. On 12th September 2022, the applicant objected to VAT assessment of Shs. 33,002,543 and a penal tax one of Shs. 66,005,085 on the grounds that the assessments were unjust and unfair. On 6th December 2022 the respondent made its objection decision. The applicant has filed an application for an extension of time to make an application for review of the taxation decision. The applicant contended that the delay in filing the application for review was because it was pursuing Alternative Dispute Resolution (ADR).

Issues 1.

- 1) Whether the application for an extension of time to file the main application to review the taxation decision should be granted?
- 2) What are the remedies available to the parties?

The applicant was represented by Mr. Ishwar Kumar while the respondent by Mr. Simon Kemigisha.

The applicant submitted that S. 16(1)(c) of The Tax Appeals Tribunals Act states an application to a tribunal for review of a taxation decision must be lodged with the tribunal

within (30) days after the person making the application has been served with notice of the decision. Similarly, S. 25 (1) of The Tax Procedures Code Act provides that; a person dissatisfied with an objection decision may, within 30 days after being served with the objection decision lodge an application with the Tax Appeals Tribunal.

The applicant submitted that S. 16(2) of the Tax Appeals Tribunal states 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; absence from Uganda, illness or any other reasonable cause".

It cited *Meghani v Uganda Revenue Authority* Civil Appeal 6 of 2021 where the court stated that.

"Any other reasonable cause' as a consideration for extension of time like 'sufficient reason' must relate to the failure or inability to take a particular step in time".

The applicant submitted that its delay in filing the application to the Tribunal was due to his attempts to resolve the matter amicably through the Alternative Dispute Resolution (ADR) process. It submitted that the respondent failed to provide a timely response within the stipulated timeframe for the ADR proceedings.

In reply, the respondent submitted that S. 14(1) of the Tax Appeals Tribunal Act grants a person aggrieved by a decision made by the respondent the right to apply to the Tax Appeals Tribunal for review of the said decision. S. 25(1) of the Tax Procedures 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. Similarly, S. 16(1)(c) of the Tax Appeals Tribunal Act provides that an application to the Tribunal for review of a tax decision shall be made within 30 days of being served with notice of the decision. The respondent cited *Uganda Revenue Authority v Uganda Consolidated Properties Limited*, Court of Appeal Civil 75 of 1999 where 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". Consequently, 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 had up to 30 days from the date of receipt of an objection decision to lodge an application for review of the objection decision.

However, this was not done. Under S. 16(2) of the Tax Appeals Tribunal Act grant the Tribunal may use its discretion to extend the time within which to file an application for review of an objection decision upon receipt of an application in writing. The applicant has to obtaining leave. The respondent submitted that Rule 11(1) of the Tax Appeals Tribunal Procedure Rules provides that the tribunal may grant an extension of time if it is satisfied that the taxpayer was unable to file the application for the following reasons; absence from Uganda, illness or any other reasonable cause

The respondent submitted that the applicant contended that its delay in filing an application before the Tribunal was due to attempts to resolve the matter through ADR. It submitted S. 24(11) of the Tax Procedures Code Act, avails taxpayers a platform to apply for ADR. The respondent contended that the applicant's application for ADR does not suffice as reasonable cause. The respondent cited Regulation 4(3) of the Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations which 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 of 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 respondent submitted that the law envisaged situations where parties may use ADR as an excuse for their delay in applying for review before the Tax Appeals Tribunal. The respondent contended that in the objection decision it is clearly stated that a taxpayer dissatisfied with the decision, is "entitled to apply for a review of the decision to the Tax Appeals Tribunal." It is submitted that this is the standard procedure of information included in all objection decision notices.

The respondent submitted that the applicant has paid 30% of the tax assessed as required by law. It cited *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority Constitutional Appeal 2 of 1999* where the Supreme Court ruled that; "the requirement to pay 30% of the tax assessed, or that which is not in

dispute, whichever is greater, is constitutional and did not infringe on the right to a fair hearing." The Supreme Court was following with approval the South African case of *Metchash Trading Co. Ltd. v Commissioner for South African Revenue Services and another* where it was held "that a taxpayer has to pay his taxes and argue later". The respondent prayed that this Tribunal finds that the entire dispute is not properly before it and should be dismissed with costs.

In rejoinder, the applicant submitted that this application was filed on the 25th May 2023. The applicant stressed that it was delayed by the prolonged ADR process. The ADR decision was made after six months since it was filed. The ADR decision notice is dated 6th June 2023. The applicant filed this application within the six months provided for under S. 16(7) of the Tax Appeals Tribunal Act.

The applicant submitted that the respondent's objection that it has not paid 30% under S. 15(1) of the Tax Appeals Tribunal Act is not applicable because the former is claiming input tax credit from the latter which is intact in the latter's accounts, as evidenced by the attached VAT returns.

Having read the application, perused the evidence of both parties, this is the ruling of the tribunal;

On 12th September 2022, the applicant objected to a VAT assessment of Shs. 33,002,543 and penal tax one of Shs. 66,005,085 on the grounds that they were unjust and unfair. On 6th December 2022, the respondent made its objection decision disallowing the objections. On 25th May 2023, the applicant filed an application for an extension of time to make an application for review of a taxation decision. It contended that the delay in filing the main application was because it was pursuing ADR.

The respondent raised a preliminary objection that the applicant has not paid 30% of the tax in dispute. It submitted that the law relating to preliminary objections is provided for under Order 6 Rule 28 of the Civil Procedure Rules which 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 a or after the hearing; except that by

consent of the parties, or by order of court on the application of either party, appointment of law may be set down for hearing and disposed of at any time before the hearing”.

In *Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1996] EA 696 Sir 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 shall dispose of the preliminary objection first.

The law regarding payment of 30% of the tax in dispute is found in S.15(1) of the Tax Appeals Tribunal Act which states that.

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

The Tribunal notes that the applicant has not filed an application for review of the taxation decision before it. It has merely filed an application for extension of time. Without an application for review, it is difficult to ascertain the tax the applicant is disputing. It is important to know the amount the applicant is disputing which can only be stated in its application for review. Therefore, this preliminary objection is premature. It cannot be sustained. It is overruled. The Tribunal will listen to the application on merit.

S. 16(1)(c) of the Tax Appeals Tribunal Act provides that an application for review of a taxation decision shall be lodged with the tribunal within thirty (30) days after the person making the application has been served with notice of the decision. This is similar to S. 25(1) of the Tax Procedures Code Act which provides that;

“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”.

In *Uganda Revenue Authority v Uganda Consolidated properties Ltd*, Court of Appeal Civil Appeal 75 of 1999 it was stated that “Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with”.

S. 16 (2) of the Tax Appeals Tribunal Act provides that “a tribunal may upon application in writing, extend time for the making of an application to the tribunal for a review of a

taxation 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 swore an affidavit that it was unable to file its application due to ADR.

So, the question the Tribunal has to ask itself, is whether pursuing ADR is sufficient ground for extension of time. 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."

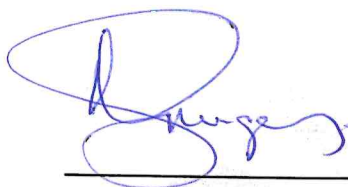
Regulation 4(4) states that;

"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."

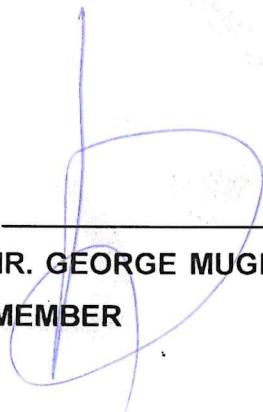
Where a statute of subsidiary legislature is clear, the words have to be given their ordinary meaning. The Regulations clearly spell out that the time within which to file an application before the Tribunal shall not be affected by ADR. Therefore, the attempt by the applicant to use ADR as a ground for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

In the circumstance, this application does not have merit. It is dismissed with costs to the respondent.

Dated at Kampala this *3rd* day of *August* 2023.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MS. CHRISTINE KATWE
MEMBER