

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS CAUSE NO. 65 OF 2024

EQUATORIAL REAL ESTATES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. PROSCOVIA R. NAMBI, MR. SIRAJ ALI, MS. GRACE SAFI.

RULING

This ruling is in respect of an application brought under Article 44 (c) of the Constitution of the Republic of Uganda as amended, Section 14, 16, 17, 18,19, 20, 21, 22, 23, and 24 of the Tax Appeals Tribunal Act, Cap 345 and other enabling laws seeking the following reliefs:

- (i) Leave be granted to the Applicant to file a review application against the Respondent's Objection Notice decisions dated 29 June 2019 for the years 2015 and 2016
- (ii) Costs of this application be provided for.

1. Background Facts

This Application was brought by a notice of motion and is supported by an affidavit deponed by Mr. Richard Mugera, the Applicant's Director, sworn on 14 October 2024. The Applicant claims that in 2019, the Respondent issued administrative additional assessments amounting to Shs. 648,398,588 and Shs. 779,103,935 for the years 2015 and 2016 respectively.

On 08 August 2019, the Applicant objected to both assessments and on 05 November 2019, the Respondent made an objection decision upholding the assessments. The Applicant argues that they had previously instructed the late Counsel Wameli Anthony of Wameli and Co. Advocates to seek a review from this Tribunal within 45 days and this was not done. Sadly, Counsel Wameli Anthony became ill and passed away without filing the review application or requesting an extension.

The Respondent filed an affidavit in reply deposed by Kenan Aruho, an Officer in the Respondent's Legal Department, sworn on 5 November 2024 opposing the application on grounds that:

- (i) It has been five years since the Respondent issued the objection decision and the Applicant has not shown adequate reason for failing to file within the given time frame.
- (ii) The illness and passing of Counsel Wameli Anthony do not excuse the Applicant's delay, as the law firm had multiple advocates who could have handled the review.
- (iii) The Applicant has not paid 30% of the disputed tax and argued that the Applicant's application is legally barred and should be dismissed with costs.

2. Representation

The Applicant was represented by Mr. Emma Wabwire while the Respondent was represented by Ms. Mpumwire Christine and Ms. Amutuhaire Doreen.

3. Issue for Determination

The issue for determination by the Tribunal is whether the Applicant should be granted leave to file an application for review of the Respondent's objection decision despite the lapse in statutory filing deadlines.

The parties were invited to make oral submissions.

4. Submissions of the Applicant

Counsel for the Applicant submitted that the application for review ought to have been brought within 30 days and in any case within reasonable time. He referred the Tribunal to Mr. Richard Mugeru's affidavit highlighting that the delay was due to the demise of their previous advocate, the late Anthony Wameli. Consequently, the Applicant was unable to access their documents and information that were necessary for filing an application for review before this Tribunal. The Applicant's advocate

submitted that he only got instructions in September 2024 and expeditiously filed an application for extension of time in October 2024. He referred the Tribunal to Article 44 of the Constitution of the Republic of Uganda and argued that for the purposes of justice, this application for leave to file out of time ought to be granted and the Applicant's case be heard on its merits as the assessments were excessive.

5. Submissions of the Respondent

The Respondent opposed the granting of this application based on the arguments presented by Kenan Aruho specifically in paragraphs 8, 9, and 10 of the affidavit in reply. The Respondent stated that they issued an objection decision on 5 November 2019, and the Applicant was required to file an application for review within 30 days.

The Respondent submitted that the Applicant failed to file in a timely manner and has not demonstrated sufficient cause for the inordinate delay. Specifically, the illness and subsequent death of the late Anthony Wameli do not excuse the Applicant's delay in submitting the review of the application. The Applicant ought to have followed up with Counsel to ensure the application was filed. Moreover, the instructions provided to the late Counsel Wameli were received by a one Mafabi Ronald on behalf of Counsel Wameli, indicating that the late Counsel Wameli was not a sole practitioner.

The Respondent maintained that it was the responsibility of the Applicant to ensure that the application was filed. The necessary documents were accessible to the Applicant, as the assessments are available on the Respondent's online platform, which the Applicant can access. Furthermore, the Respondent submitted that the Applicant has not paid the required 30% of the disputed taxes. Based on these grounds, the Respondent prayed that the application be dismissed with costs to the Respondent.

6. The Applicant's Submissions in Rejoinder

In rejoinder, the Applicant reiterated that the delay was due to the demise of the Late Wameli who operated the firm as sole proprietor. Further, Mr. Ronald Mafabi, who had been referred to by the Respondent as having received instructions was merely a clerk in the Late Wameli's law firm. The Applicant's documents were in the Late Wameli's chambers and upon his demise, the documents could not be accessed.

The Applicant prayed that the mistake of Counsel should not be vested on the Applicant and that the Applicant be granted leave to file the application for review.

7. Determination by the Tribunal

Having listened to the submissions of both parties, this is the ruling of the Tribunal.

The Respondent issued an objection decision on 5 November 2019, which the Applicant was required to contest within thirty (30) days. However, the Applicant failed to file an application for review within this period and did not seek to file an extension of time immediately thereafter. The delay has now extended to five years.

The Applicant attributes this delay to the prolonged illness and eventual death of their advocate, the late Wameli Anthony. The Tribunal is tasked with determining whether these circumstances constitute a strong and compelling reason to grant an extension to file the application for review out of time.

We reference the applicable provisions regarding the timelines for filing of applications for review in the Tribunal, which are as follows:

Section 16 (1) (c) of the Tax Appeals Tribunal Act states:

“(1) An application to a Tribunal 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.”

Section 25 (1) of the Tax Procedures Code Act also states:

“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.”

Section 16 (2) of the Tax Appeals Tribunal Act allows that:

“A Tribunal may, upon application in writing, extend the time for making an application to the tribunal for a review of a taxation decision.”

Rule 12 of the Tax Appeals Tribunal (Procedure) Rules specifies:

“Where an application is not filed with the registrar within 30 days from the date the applicant

was served with notice of the decision, the tribunal may, in its discretion, upon application of the applicant in writing, extend the time for making an application.”

Rule 11 of the Tax Appeals Tribunal Procedure Rules provides:

“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:

- *Absence from Uganda*
- *Illness*
- *Any other reasonable cause.”*

Section 16 (7) of the Tax Appeals Tribunal Act states:

“An application for review of the taxation decision shall be made within six (6) months after the date of the taxation decision.”

Typically, an application for review must be filed within thirty (30) days after being served with the notice of the objection decision, as stipulated in Section 25 (1) of the Tax Procedures Code Act and Section 16 (1) (c) of the Tax Appeals Tribunal Act.

However, the law allows for a six-month filing window: Section 16 (7) specifies that an application for review must be made within six (6) months after the date of the taxation decision. An application filed significantly beyond this period may not be eligible for consideration.

Section 16 (2) TAT Act and Rule 12 of the Tax Appeals Tribunal Procedure Rules provide the Tribunal with the authority to extend the time for filing an application upon receipt of a written request. However, extensions are typically intended for situations where Applicants may be a matter of weeks or months late, rather than several years.

Extensions can be granted based on reasonable causes, as outlined in Rule 11. However, the acceptance of reasons such as illness, absence from the country, or other reasonable grounds must be compelling. A five-year delay would require substantial justification that aligns closely with the permissible grounds.

In the case of ***Kalyesubula v Bank of Africa & Another (Miscellaneous Application 944 of 2022) [2024] UGCommC 41***, Hon. Justice Thomas Ocaya held:

“Where a party takes an inordinate delay in seeking relief, the court may refuse to grant that relief.... A delay of even more than a few weeks is, in most cases where a

corrective remedy such as setting aside, review or appeal is sought is an inordinate delay, especially where a very compelling reason for such delay cannot be provided. A litigant who seeks corrective remedies should be vigilant, diligent and act expeditiously, and should commence proceedings to obtain the sought reliefs as soon as possible”.

Upon reviewing the arguments and evidence presented, the Tribunal notes that while the illness and eventual death of the Applicant's advocate represent significant challenges, the Applicant must establish that these circumstances directly impeded their ability to file within the required timeframe.

The evidence presented does not adequately demonstrate that there were no alternative legal representatives available within the firm of Wameli & Co. Advocates who could have filed the application during Counsel Wameli's illness. Besides, filing an application for review in the Tribunal does not require legal counsel as the process is quite simplified. The argument that all the information and documentation required to file the application for review was in absolute custody of Counsel is not convincing. The Applicant had access to the URA portal from where he could access the information necessary to file an appeal in the Tax Appeals Tribunal. The Applicant's account on the URA portal has a password which should be known by the taxpayer, not only their representative and can be easily reset where it is forgotten.

In the case ***Kalyesubula v Bank of Africa & Another (Supra)*** the court stated:

“It is now settled law that inordinate delay and negligence to observe or ascertain plain requirements of the law are not mistakes of an advocate from which a client can be excused.”

The Tribunal acknowledges the emotional and practical difficulties faced by the Applicant; however, the strict timelines set forth in the legislation and the necessity for timely adjudication compel the Tribunal to consider the integrity of the judicial process as a whole.

We make reference to the case of ***Uganda Revenue Authority versus Uganda Consolidated properties Ltd, Court of Appeal Civil No. 75*** where it was held that *“Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with”.*

The lapse of five years without action taken to remedy the delay raises concerns regarding the Applicant's diligence and commitment to pursue this matter.

In light of the above considerations and the substantial delay of five years in filing the application for review, the Tribunal finds that the reasons presented by the Applicant do not constitute a strong and compelling case for granting an extension under the provisions of the Tax Appeals Tribunal Act.

The application for leave to file the application for review is out of time and is hereby dismissed.

The Applicant is ordered to bear the costs of this application.

Dated at Kampala this 20th day of January 2025.



MS. PROSCOVIA R. NAMBI
CHAIRPERSON



MR. SIRAJ ALI
MEMBER



MS. GRACE SAFI.
MEMBER

RUW

