

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION NO. 004 OF 2025

FARMINPUTS CARE CENTRE (FICA) LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. KABAKUMBA MASIKO, MS. CHRISTINE KATWE,
MR. WILLY NANGOSYAH

RULING

This ruling is in respect of preliminary objections raised by the Respondent that the present application is time barred and that the Applicant has not paid 30% percent of the tax in dispute or that part of the assessed tax not in dispute, whichever is greater.

1. Background Facts

The Applicant deals in agriculture, forestry and fishing. It filed an application before this Honourable Tribunal seeking to review a Value Added Tax (VAT) assessment of Shs. 118,951,614 for the period of 2022. On 25 April 2024 and 15 May 2024, the Respondent issued the Applicant with VAT Assessment of Shs.118,951,614 based on unjustified movement in non-current assets and additional Income Tax Assessment disallowing unsupported expenses.

The Applicant lodged two objections - one for VAT Assessment vide Ref no. DO022400390870 for the period 2022 on ground that the Applicant's obsolete assets were erroneously removed from the asset register, not in line with International Financial Reporting Standards (IFRS) 5 and the assets are still held at the company premises. The second objection was in respect of the income tax assessment Ref no.

DO022400389235 for the period of 2021 on ground that the Applicant's returns were not aligned to include balances brought down from different periods.

The Respondent issued two objection decisions on 21 August 2024 for VAT upholding the Assessment of Shs.118,951,614/= on ground that the assets reduced and were not accounted for disposal as per the accounting principles and on 28th November 2024 for Income Tax partially allowing the objection on ground that the asset movement related to obsolete assets which was erroneously omitted from the return.

On 14 January 2025 the Applicant lodged this application for review of the objection decision on Value Added Tax (VAT) assessment of She. 118,951,614.

2. Issues for determination

The issues for determination by the Tribunal are:

- (i) Whether this application is out of time?
- (ii) Whether the Applicant has paid the 30% of the tax in dispute or that part assessed not in dispute, whichever is greater as required by S.15 of the Tax Appeals Tribunal Act?
- (iii) What remedies are available to the parties?

3. Representation

The Applicant was represented by Mr. Noah Kirabo while the Respondent was represented by Mr. Agaba Edmond.

4. Submissions of the Respondent

The Respondent cited the case of ***Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd EA 696***, where Sir Charles Newbold, summarised the law on preliminary points of law as follows;

"...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. Examples are an objection to the jurisdiction of the court, or a plea in limitation..."

The Respondent argued that a taxpayer aggrieved by an assessment is required to lodge an objection to the impugned assessment with the commissioner. Thereafter, Commissioner then issues an objection decision which must be communicated to the taxpayer. If the taxpayer is dissatisfied with the objection decision, they can apply for review of the objection decision.

The Respondent contended that S. 14 (1) of the Tax Appeals Tribunal Act Cap 341 provides for any person who is aggrieved by a decision made under a taxing Act administered by Uganda Revenue Authority to apply to the Tribunal for review of the said decision. S. 27 (1) of the Tax Procedures Code Act, provides that a person dissatisfied with an objection decision may lodge an application with the Tribunal for review of the objection decision within 30 days after being served with a notice of objection. The Respondent submitted that 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 lodged within 30 days of being served with notice of the decision. Counsel for the Respondent further argued that pursuant to the above provisions of the law, it is evident that the law sets mandatory timelines for persons dissatisfied with the decision of the Commissioner to file an application in the Tribunal within thirty days.

The Respondent submitted that to determine when the decision of the Commissioner was issued, certain questions must be asked and addressed that will ultimately aid in this determination.

a) *When was the decision of the Respondent issued?*

The Respondent submitted that in this case, the Applicant objected to the tax assessment. Subsequently, the Respondent issued its objection decision on the 21 August 2024. However, the Application for review was filed in the Tax Appeals Tribunal Registry on 14 January 2025, five (5) months after the objection decision was made and communicated to the Applicant, well beyond the mandatory 30 days period for lodging an application for review.

The Respondent submitted that in light of the above provisions of the law, the Applicant was mandated to lodge an application for review of the objection decision latest by 21st September 2024. However, this was not done.

The Respondent further submitted that S. 16(2) of the Tax Procedures Code Act grants this the Tribunal discretion to extend time for filing an application for review of an objection decision upon receipt of an application in writing. Rule 11(2)(6) of the Tax Appeals Tribunal (Procedure) Rules provide 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 in time.

The Respondent further submitted that after 21 September 2024, the Applicant could still have filed its application for review of the objection decision by first obtaining leave to file the same out of time. Regrettably, the Applicant failed to file an application for extension of time before lodging this application for review of the objection decision. As a result, the dispute subject to this Application is time barred.

In the case of ***Uganda Revenue Authority vs. Uganda Consolidated Properties Ltd Court of Appeal. Civil Appeal No. 75***, 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."*

In the case of ***Ahmed Said Ali vs. Uganda Revenue Authority, Application No.241 of 2022***, the Tribunal held that the application was time barred, the same having been lodged after 30 days from service of the notice of the decision on the Applicant. The Respondent argued that, it is trite law that issues of timelines should be strictly enforced.

In ***Hilton Sutton Steam Landry (1946) 1 KB 61 at P.81***, Lord Green MR stated:

"The Statute of limitations is not concerned with merits. Once the axe falls, it falls and a Defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled to insist on his strict rights."

The Respondent prayed that the Tribunal finds that the Applicant's Application is not tenable and should be dismissed with costs.

b) *Whether the Applicant has paid the 30% of the tax in dispute or that part not in dispute, whichever is greater.*

The Respondent submitted that Section 15 of the Tax Appeals Tribunal Act provides that a taxpayer who has lodged a notice of objection pending final resolution of the objection must pay 30 percent of the tax assessed or that part not in dispute, whichever is greater.

The Respondent cited ***Uganda Projects Implementation and Management Centre vs Uganda Revenue Authority Constitutional Appeal 2 of 1999*** where the Supreme Court decided:

"...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 importance of prompt payment of tax was emphasized in the case of ***Commissioner General Uganda Revenue Authority v Meera Investments Ltd. Civil Appeal 22 of 2007*** where Justice Kanyeihamba stated:

"... the government needs taxes paid expeditiously, in the national interest."

Further, in the case of ***Elgon Electronic v Uganda Revenue Authority HCCA 11 of 2007***, Justice Geoffrey Kiryabwire held:

"the provisions of S. 15(1) of the Tax Appeals Tribunal Act are mandatory".

Also, in the case of ***Samuel Mayanja v Uganda Revenue Authority HCT 0017 of 2005***, Justice Egonda Ntende held:

"...once a taxpayer has lodged an application for review under S. 15 of the Tax Appeals Tribunal Act, he is obliged to deposit at least 30% of the tax assessed."

The Respondent contended that the tax in dispute is Shs. 118,951,614 as affirmed in Paragraph 2(1) of the Applicant's application for review of the objection decision. Therefore, the Applicant ought to have paid 30% of the amount in dispute which translates to Shs. 35,685,484.

The Respondent prayed that this application be dismissed.

5. Submissions of the Applicant in reply

(a) Whether the Application was filed out of time

In reply the learned counsel for the Applicant submitted that S. 16(7) of the Tax Appeals Tribunal Act, Cap 341 provides that an application for review of a taxation decision shall be made within six months after the date of the taxation decision. The

Applicant submitted that a taxation decision is defined under S. 1 of the Tax Appeals Tribunal Act, to mean *any assessment, determination decision or notice*. The Applicant submitted that it filed two objection applications namely for VAT vide Ref No. DO022400390870 and Income tax DO022400389235 respectively. The objection decision on VAT was issued on 21st August 2024 wherein the objection was disallowed on grounds that the assets reduced and were not accounted for disposal as per the accounting principles.

The Applicant submitted that the objection decision on Income tax was communicated to the Applicant on 28th November 2024 where the objection was partially allowed on grounds that the asset movement relates to obsolete asset which was erroneously omitted from the return.

The objection was partially settled in favour of the Applicant and an amended additional assessment issued to that effect which removed the VAT element. The Applicant further submitted that the objection decision greatly affected the VAT assessment since the same related to the assets that the Respondent had treated as disposed of hence the assessment yet they were merely erroneously omitted from the asset register which the income tax decision reinstated.

The Applicant submitted that the computation of time with in which to file this Application started running from 29 November, 2024 when the last objection decision dated 28 November 2024 was communicated to the Applicant. The Applicant filed this Application for review on 14 January 2025 within the statutory period of six months from the date of the taxation decision. The Applicant submitted that counsel for the Respondent considered the decision taken on 21 August 2024 in isolation of the decision taken on 28 November 2024.

The Applicant relied on Rule 31(1) of the Tax Appeals Tribunal (Procedure) Rules, 2012 which provides that in any matter relating to the proceedings of the Tribunal for which these rules do not provide, the rules of practice and procedure of the High court shall apply. The Applicant submitted that Order 51 rule 4 of the Civil procedure Rules provides that the period between the 24 December and the 15 day of January shall be reckoned in the computation of the time appointed or allowed for amending, delivering or filing any pleading or for doing any act.

The Applicant submitted that it was communicated a decision dated 28 November 2024 to the Applicant on 29 November 2024. Thus the 30 days provided for in Section 27 (1) of Tax Procedure Code Act and section 16(1) c of the Tax Appeals Tribunal Act would lapse on 28 December 2024. However, the days between 24 December and 15 January, cannot be taken into consideration while computing time. The Applicant filed this Application on 15 January 2025 which date was still with the 30days of filing the review. From the Application in 2 (g) it is clearly stated that the date of service of the taxation decision was 29 November 2024. From the above the Applicant submitted that the application was brought within time provided for under the taxation rules.

(b) *Whether the Applicant has paid the 30% of the tax in dispute or that part not in dispute, whichever is greater.*

The Applicant conceded that the 30% has not yet been paid but is ready and willing to pay the same as required by the law.

6. Submissions of the Respondent in rejoinder

In rejoinder, the Respondent submitted that even if the Tribunal were to consider the alleged objection decision issued on 28 November 2024, the Application for review would still be time-barred, as it was not filed within the required thirty (30) days under the applicable law.

The Respondent further submitted that the Applicant seeks to rely on Order 51 Rule 4 of the *Civil Procedure Rules (CPR)* to argue that the period between 24th December and 15th January should be excluded in computing time, yet the clear reading of the provision shows that it applies only to timelines prescribed under the *Civil Procedure Rules* and not to limitation periods established under substantive legislation, such as the *Tax Appeals Tribunal Act* and the *Tax Procedure Code Act*. Further, procedural rules cannot over ride or modify statutory limitations. The Respondent cited the case of ***Madhvan International S.A V Attorney General SCCA No. 23 of 2010***, where the Supreme Court noted:

“Limitations under statute are strict in nature and inflexible and is not concerned with merits of the case. Non-compliance with the limitation period renders that suit a nullity”.

He prayed for dismissal of the application with costs to the Respondent on grounds of it being time barred.

7. Determination by the Tribunal

Having read the submissions of the parties, this is the ruling of the Tribunal.

In this application there are two preliminary objections. The first one was raised by the Respondent in respect of the legality of the application while the second one was in respect of non-payment of 30%. A question remains as to what then is the fate of the application? Counsel for the Respondent submitted that this Application was filed out of time and secondly, the Applicant did not formally apply to the Tribunal for leave for extension of time to file an application for review in accordance with the TAT Act and Rules of procedure.

The Tribunal notes that there is a procedural challenge in this matter. *In Mukula International Limited v Cardinal Nsubuga Civil Appeal 14 of 1982* it was stated that once an illegality is brought to the attention of court, it takes precedence over all pleadings. It has been brought to the attention of the Tribunal that the Application filed by the Applicant is time barred. The Respondent noted that the application for review of the VAT assessment for the period of 2021 was filed out of time as the objection decision was issued on 21 August 2024, yet the Applicant filed the present application for review on 14 January 2025 implying the applicant was late by a period of five months. This is an illegality that the tribunal cannot ignore.

The law on preliminary points of law 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 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".

S.16 of the Tax Appeals Tribunal Act provides:

"1) An application to a tribunal for review of a taxation decision shall
a) be in writing in the prescribed form;
b) include a statement of the reasons for the application; and
c) be lodged with the Tribunal within thirty days after the person making the application has been served with notice of the decision."

In ***Mulindwa George William v Kisubika Joseph Civil Appeal No.12 of 2014***, the Supreme Court of Uganda stated:

“It is important to bear in mind that time limits are there to be observed and justice may be defeated if there is laxity.”

The Applicant in its submissions indicated that it had filed two objections one for VAT Ref no DO022400390870 for the period of 2021 and another for Income tax number DO022400389235 for the period 2022. The Applicant further submitted that the objection decision on VAT was issued on 21 August, 2024 while that on Income tax was issued on 28 November, 2024. This was confirmed by the Respondent adding that having received the objection decision on VAT on the 21 August, 2024, the Applicant was mandated by statute to file an application for review of the same latest by 21 September 2024. Instead, the application for review was filed in the Tax Appeals Tribunal Registry on 14 January 2025, five months after the objection decision was communicated to the Applicant, way beyond the mandatory 30 days period for lodging an application.

The Applicant did not formerly seek for extension of time as required under the law. The Applicant argued that Order 51 rule 4 of the *Civil procedure Rules* provides that the period between the 24 December and the 15 day of January shall be reckoned in the computation of the time appointed or allowed for amending, delivering or filing any pleading or for doing any act. He further submitted that it was communicated a decision dated 28 November 2024 hence to the Applicant, time started running on 29 November 2024. Thus the 30 days provided for in Section 27 (1) of Tax Procedure Code Act and section 16(1) c of the Tax Appeals Tribunal would lapse on 28 December 2024. However, the days between 24 December and 15 January, cannot be taken into consideration while computing time. The Applicant filed this Application on 15 January 2025 which date was still with the 30 days of filing the review.

In ***Madhvan International S.A V Attorney General SCCA No. 23 of 2010***, the Supreme Court noted that;

“Limitations under statute are strict in nature and inflexible and is not concerned with merits of the case. Non-compliance with the limitation period renders that suit a nullity”.

The Tribunal notes that filing of application for review is governed by substantive statutory provisions. The statutory timelines are strict and must be complied with. Procedural rules cannot over ride or modify statutory limitations.

Section 31 (1) of the Tax Appeals Tribunals Act CAP 341 provides that *"In any matter relating to proceedings of the Tribunal for which these Rules do not provide, the rules of practice and procedure of the High Court shall apply"*.

In the instant case S. 16(1)(c) of the Tax Appeals Tribunal Act clearly provides that *"an application to the Tribunal for review of a tax decision shall be lodged within 30 days of being served with notice of the decision"*

In light of the above, the Tribunal agrees with the Respondent that Order 51 Rule 4 of the Civil Procedure Rules is not applicable as the limitation periods are clearly established under substantive legislation vide: Tax Appeals Tribunal Act. Section 16(2) of the Tax Appeals Tribunal Act allows the Tribunal to exercise discretion to extend time for filing an application for review of an objection decision.

The application for review must be formally sought by the Applicant. The procedure for applying for extension of time is by Notice of motion supported by an affidavit stating reasons why the Applicant was unable to file an application against the Commissioner General in time. The Applicant did not seek leave of the Tribunal.

In ***Hilton Sutton Steam Landry (1946) 1 KB 61 at P.81***, Lord Greene MR stated

"The Statute of limitations is not concerned with merits. Once the axe falls, it falls and a Defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled to insist on his strict rights."

Suffice to mention at this point is that there were two distinct objection applications to wit; for VAT and Income tax vide Ref nos. DO022400390870 and DO022400389235 respectively and two distinct objection decisions issued 21st August, 2024 for nos. DO022400390870 on VAT and on 28 November 2024 for nos. DO022400389235 on Income tax. But there was an attempt to use the date for the Income Tax objection decision (28 November 2024) to determine the 30 days for the objection decision for the VAT which we find irregular. The Applicant should have pursued the two distinct objection decisions separately within the timelines.

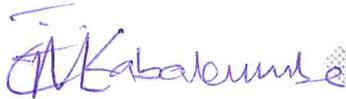
We therefore find that the application was filed out of time.

With regard to the non-payment of the 30% of the tax in dispute or that part not in dispute, whichever is greater, we shall not go into arguments as the Applicant conceded in its submissions that it had not yet paid the deposit and was willing to pay the same.

In light of the above, the Tribunal orders as follows;

- (1) The respondent's preliminary objections on the legality of the application and the non-payment of the 30% of the tax in dispute are sustained.
- (2) The main application for review that was filed without seeking leave is struck out for being time barred.
- (3) Costs are awarded to the Respondent.

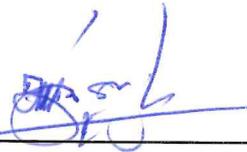
Dated at Kampala this 19th day of September 2025.



MS. KABAKUMBA MASIKO
CHAIRPERSON



MS. CHRISTINE KATWE
MEMBER



MR. WILLY NANGOSYAH
MEMBER