

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**MISCELLANEOUS CAUSE NO.67 OF 2024**

FRES UGANDA LIMITED ===== APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ===== RESPONDENT

BEFORE: MS. STELLA NYAPENDI CHOMBO, MS. ROSEMARY NAJJEMBA, MR. WILLY NANGOSYAH

**RULING**

This ruling is in respect of an application brought under Section 16(2) of the Tax Appeals Tribunal Act, Rule 11 and 30 of the Tax Appeals Tribunals (Procedure) Rules and Section 98 of the Civil Procedure Act and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules seeking orders that;

- a) The Applicant be granted an extension of time within which to file an application for review of the objection decision issued by the Respondent.
- b) Costs of the Application be provided for.

**1. Background facts**

- (i) The Applicant is a Ugandan incorporated Company engaged in the business of renewable /solar energy service.
- (ii) On 29 /04/ 2024 the Respondent issued an Income Tax Assessment for the period 1/1/2022 to 31/ 12/2022 indicating that the Applicant's chargeable income was assessed at Shs. 2,708,840,047.00 amounting to Shs. 812,652,014
- (iii) On 09/05/2024 the Applicant objected to the Respondent's assessment disputing all the amount of Shs. 812,652,014.00

- (iv) On 21/05/2024 the Respondent sent an email to the Applicant attaching the Objection Decision Notice, indicating that the Applicant's objection was disallowed hence this application.

## **2. Representation**

At the hearing of the Application for extension of time, Mr Ahimbisibwe Federico appeared for the Applicant together with Mr. Benjamin Emiau the Director and General Manager of the Applicant while Ms. Rita Nabirye appeared for the Respondent. Both parties made oral submissions.

## **3. Submissions of the Applicant.**

The Application was supported by the Affidavit of Mr. Benjamin Emiau, the Applicant's Director and General Manager which he deponed on 17/10/ 2024.

The Applicant submitted that on 14 /05/2024 the Respondent wrote to the Applicant that their objection notice has been "Valid" and requested the Applicant to provide documents to support the grounds of the objection and advised the Applicant to visit the Respondent's office at Mbarara for further clarification.

The Applicant submitted that on the 21/05/2024 the Applicant, represented by a one Mr.Ainamazima Albert the Applicant's Administration Assistant, visited the Respondent's offices at Mbarara and provided the extra documents requested for by the Respondent and from the above date the Applicant did not get any communication from the Respondent until the 19/08/2024 when the Respondent sent an email to the Applicant attaching an Objection Decision Notice indicating that the Applicant's objection was disallowed.

The Applicant submitted that on 21/08/2024 it wrote to Respondent's Supervisor Compliance -Southwestern Uganda at Mbarara and requested for an objection review.

That on 10 /10/2024 the Applicant on the advice of their tax agent a one Mr Kerathum Juma applied for alternative dispute resolution but has not received a response from the Respondent to date.

The Applicant went ahead to submit that because of the back-and-forth communication between the Applicant and the Respondent coupled by the fact that 3 out of 4 Directors of the Applicant work and reside outside Uganda hence the applicant's failure to file.

On 18 October 2024, the Applicant filed an application in the Tribunal for the grant of an extension of time within which to file an application. The Applicant contends that the Application has been without inordinate delay since it is less than 6 months late.

The Applicant prayed that the Tribunal allows the Applicant to file its application without payment of 30% since the company has only been in existence for a period 10 years and it is not obligated to pay.

The Applicant further submitted that costs of the Application be borne by the Respondent on account of the fact that the back and forth communication led to unnecessary delay and that this matter should have been resolved between the parties without the Applicant incurring costs of filing a matter before the Tribunal.

#### **4. Submissions of the Respondent**

In reply the Respondent submitted that it had no objection to the application for grant of extension of time on grounds that it had been brought within the six months' period. The Respondent however prayed that the Applicant pays 30% of the tax in dispute or that tax assessed not in dispute whichever is greater and that each party bears its own costs since the Applicant had not wasted courts time in opposing the application.

The Respondent further submitted that it did not cause any such delay and that the objection notice was served on the Applicant on 19 August 2024. The Applicant had

alternative ways in dealing with this issue and ought to have filed the Application while exploring ADR.

#### **5. The Applicant's submissions in rejoinder**

The Applicant in response to the Respondent, indicated that it is not obliged to pay any taxes since it is a company that was incorporated on 10 June 2010 and that the Respondent is aware that it has no resources.

The Applicant prayed that the Tribunal allows it to file its application without payment of the 30% under the circumstances.

The Applicant submitted that as a result of the back and forth communication within the parties, this matter should have been resolved without the Applicant incurring any costs of filing therefore the costs should be awarded to the Applicant.

#### **6. Determination of the application by the Tribunal**

Having read the application and heard the oral submissions as well as the authorities relied upon by the parties, this is the ruling of the Tribunal:

This application has been brought under **Section 16 (2) and 16 (7) of the Tax Appeals Tribunal Act, Rule 11 and 30 of the Tax Appeals Tribunal (Procedure) Rules and Section 98 of the Civil Procedure Act.**

Section 16 (1) (c) of the Tax Appeals Tribunals Act provides:

*“(1) An application to a Tribunal for review of a taxation decision shall-*

*(c) be lodged with the tribunal within 30 days after the person making the application has been served with notice of the decision”*

Section 16 (2) of the Tax Appeals Tribunals Act provides:

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

Section 16 (7) of the Tax Appeals Tribunals Act further provides:

*“An application for review of a taxation decision shall be made within six months after the date of the taxation decision”*

Section 25 (1) 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 the objection decision, lodge an application with the Tax Appeals Tribunal for review of the objection decision”*

The above provisions grant the Tribunal the discretion to extend time for the making of an application for review of an objection decision and obliges an aggrieved taxpayer to make an application for such an extension within a period of 30 days and not later than six months after the date of the objection decision.

The Applicant submitted that because of the back-and-forth communication between the Applicant and the Respondent coupled by the fact that 3 out of the 4 Directors of the Applicant work and reside outside Uganda, the Applicant was unable to file an application for review of the Respondent’s objection decision within the time frame prescribed by the law.

In the case of ***Farid Meghani V Uganda Revenue Authority Misc. App 185 of 2020 the Tribunal*** cited the case of ***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 Phase ‘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.

The Respondent served the Applicant with objection decisions between 19 August 2024. If we were to go by the date the Applicant received the last objection decision notice, it ought to have lodged its Application before the Tribunal on 18 September 2024 upon lapse of the 30-day statutory period. The Applicant filed the application on 18 October 2024 which is well within the ambit of the statutory six months' period prescribed by law.

In exercising its discretion as to whether to grant this Application or not, the Tribunal ought to do so judiciously. In the case of ***Farid Meghani v Uganda Revenue Authority HCCS No. 7 of 2011*** which espoused the principal of exercise of judicial discretion which made a determination as to whether URA's decision was justified and whether the Courts should exercise judicial discretion to grant relief to the Applicant. Both the Tribunal and the High Court underscore the importance of reasonableness, fairness, and adherence to legal standards in the exercise of discretionary powers by tax authorities.

In the interest of Justice, the Tribunal exercises its discretion to allow this Application to be heard on its own merit. In accordance with the law, the Applicant is required to pay the 30% which is mandatory as provided under Section 15 of the Tax Appeals Tribunal Act. In light of the above, the argument by the Applicant not to pay the 30% of the tax in dispute is not sustainable. This is substantiated in the case of ***Bullion Refinery Ltd V Uganda Revenue Authority TAT Application No.36 of 2021*** where this Tribunal held that “a

taxpayer who objects to an assessment and to a legal interpretation of a decision, the taxpayer will still be required to pay 30% of the tax assessed in the objection.”

The Applicant is advised to approach the Respondent regarding the modalities of paying the mandatory 30% of the tax in dispute or that tax assessed not in dispute whichever is greater.

Having analyzed the facts and the law above, this Application is granted.

Each party will bear its own costs.

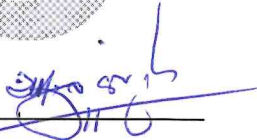
Dated at Kampala this.....<sup>30<sup>th</sup></sup>.....day of October 2024.



**MS. STELLA NYAPENDI**  
**CHAIRPERSON**



**MS. ROSEMARY NAJJEMBA**  
**MEMBER**



**MR. WILLY NANGOSYAH**  
**MEMBER**

**RULING**

