

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRINUNAL AT KAMPALA
APPLICATION No.165 OF 2024

JUST KNOW (JK) HOUSING ENTERPRISES LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. KABAKUMBA MASIKO, MS. GRACE SAFI, MR. WILLY
NANGOSYAH

RULING

This ruling is in respect of a preliminary objection raised by the Respondent that this application is time barred, and that the Applicant has not paid the 30% of the tax in dispute.

1. Background Facts

The Applicant is a private company dealing in real estate business. The Respondent issued the Applicant with an administrative additional income tax assessment of Shs. 193,311,930 for the period 2021/2022 bases on unsupported loans and undeclared rental income. On 17 January 2024, the Applicant objected to the assessment and on 15 April 2024, the Respondent made an objection decision disallowing the Applicant's objection.

On the 12 April 2024, the Applicant applied for Alternative Dispute Resolution (ADR) and on the 8 May 2024, the Respondent rejected the Applicant's application for ADR.

On the 4 July 2024, the Applicant lodged this application before the Tribunal challenging the Respondent's decision.

In its statement of reasons for the taxation decision, the Respondent indicated that it would raise preliminary objections on grounds that the application was time barred and failure to comply with the requirement to pay 30% of the tax in dispute.

2. Issues for Determination

The issues for determination by this Tribunal are whether the application was filed out of time and whether the application is properly before the Tribunal.

3. Representation

The Applicant was represented by Mr. Bernard Olok while the Respondent was represented by Ms. Christine Mpumwire.

4. Respondent's submission on Preliminary Objection

The Respondent submitted that the statutory procedure for a taxpayer dissatisfied with a tax assessment involves lodging an objection with the Commissioner, receiving an objection decision, and, if dissatisfied, applying to the Tribunal for review of the Respondent's objection decision.

The Respondent cited Section 14(1) of the Tax Appeals Tribunal Act (TATA) which allows any person who is aggrieved by a decision made under a taxing Act by Uganda Revenue Authority (URA) to apply to the Tribunal for review of the said decision.

Section 27(1) of the Tax Procedure Code Act (TPCA) 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 Tribunal for review of the objection decision.

The Respondent further cited Section 16 (1) (c) of the Tax Appeals Tribunals Act which provides that an application to a Tribunal for review of a taxation decision shall be made within 30 days after the person making the application has been served with notice of the decision".

Further, Section 16 (7) of the TATA provides:

"An application for review of a taxation decision shall be made within six months after the date of the taxation decision".

The Applicant objected to a tax assessment on 17 January 2024, and the objection decision was communicated on 15 April 2024. However, the application for review was filed 49 days later, on 4 July 2024, exceeding the 30-day limit, which closed on 14 May 2024.

The Respondent noted that the Applicant failed to seek an extension of time for filing the review application, as provided for under Section 16(2) of the Tax Procedures Code

Act. They emphasized the legal precedent reinforcing strict adherence to statutory timelines, citing ***Uganda Revenue Authority v. Uganda Consolidated Properties Ltd, The Court of Appeal held:***

"Timelines set by statutes are matters of substantive law and not mere technicalities and must strictly be complied with."

The Court of appeal held that the application of the Respondent to the Tribunal was properly rejected by The tribunal as being time barred.

The Respondent further cited the case of ***MC DE-AM (U) Ltd vs. Uganda Revenue Authority***, App No. 2 of 2009, where the Tribunal held that an application was time barred, the same having been lodged after 30 days from the service of notice of the decision of the Applicant.

The Respondent contended that following the objection decision 15 April 2024, the Applicant ought to have filed their application by 14 May 2024 or in the alternative, an application for extension of time by 15 October 2024. In light of the above, the Respondent prayed that the Tribunal finds that the Applicant's application is not tenable as it is time barred.

The Thirty Percent deposit of the tax in dispute

The Respondent submitted that the Applicant's application was not properly before the Tribunal as the Applicant had not complied with Section 15 of the TATA which provides:

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

The Respondent relied on the case of ***Uganda Projects and Management Centre v URA, Constitutional Appeal No. 2 of 1999***, where the Supreme court ruled: *"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 Respondent contended that the assessed tax is Shs. 193, 311, 930, the Applicant ought to have paid 30% of the tax which is Shs. 57, 993, 579 at the time of objecting to the assessment.

The Respondent submitted that there is no evidence to show that the Applicant paid the 30% of the tax in dispute. The Respondent averred that the application was filed out of time and that the Applicant had neither filed an application for extension of time nor adduced any evidence warrant the extension. The Respondent prayed that the application is dismissed with costs.

5. Applicant's Submission in Reply

In reply, the Applicant submitted that Section 26 (11) of the TPCA, provides:

"A taxpayer who is dissatisfied with a decision of the Commissioner General may apply to the Commissioner General to resolve the dispute using alternative dispute resolution procedure."

The Applicant submitted that on 12 April 2024, the Applicant applied for ADR with the Respondent. On 8 May 2024, the Respondent issued a notice rejecting the Applicant's application for ADR which the Applicant considered a taxation decision.

The Applicant submitted that Section 1 of the TAT Act defines a taxation decision as:

"To mean any assessment, determination, decision or notice".

The Applicant submitted that Section 16 (7) of the TATA provides that an application for review of a taxation decision shall be made within six months after the date of the taxation decision. The Application was within the legal timeframe, as it fell within six months from the Respondent's tax decision date, according to Section 16(7) of the Tax Appeals Tribunal Act.

Furthermore, the Applicant criticized the Respondent's misunderstanding of the case, asserting that the Respondent incorrectly classified their application as one for an objection decision instead of addressing it as a taxation decision.

The Applicant highlighted that the Respondent's assessment of a wrong taxpayer should not go unaddressed and cited case law asserting that illegality in the assessment process must be acknowledged by the court. Additionally, the Applicant raised several legal points, including:

- (i) The assessed property does not belong to the Applicant but to the registered proprietor Joseph Kamala.
- (ii) The issuance of administrative additional assessments are illegal instruments for assessing tax

(iii) The property assessed was not available for occupation in 2022.

(iv) The retrospective issuance of the objection decision was illegal.

The thirty percent deposit

The Applicant submitted that that they had paid a total of Shs. 69,900,000, exceeding the required 30% of Shs. 57, 993, 579. The Applicant stated that there was evidence of payment through the Payment Registration Numbers (PRNs).

6. Respondent's submissions in rejoinder

In rejoinder, the Respondent argued that the Applicant challenging the Alternative Dispute Resolution (ADR) decision is an afterthought and a departure from the Applicant's pleadings contained in their application.

In the alternative, the Respondent submitted that the Applicant had 30 days within which to file this application and from 8 May 2024 when the alleged ADR decision was issued. The 30 days fell on 7 June 2024. This application was filed on 4 July 2024, 56 days after the Respondents ADR decision of 8 May 2024.

The Respondent submitted that it is trite law that issues of timelines have always been strictly enforced, and the Applicant did not follow the legally set timelines or explore the alternative options of extending time that are afforded by the law. The Respondent prayed that the Application is dismissed with costs and the assessments upheld.

On the Assessment issued to the wrong party

The Respondent submitted that they issued assessments to the Applicant Just Know Enterprises Limited following their filed income tax returns claiming ownership of the rental properties on which the assessment arises.

The Respondent also noted that the Applicant did not raise the issue of property ownership during the objection process, where they only claimed that the tax liability was excessive since the company did not make such amount or revenue. The Respondent argued that ownership was only introduced at this stage and during mediation, but the Applicant failed to provide evidence proving true ownership, leaving the Respondent with only the Applicant's filed returns as proof.

On the Thirty Percent

The Respondent reiterated its earlier submissions that the Applicant has not paid the 30% which is Shs. 57, 993, 579. The PRN's referred to by the Applicant in their submissions are payments of a normal flow but not proof of payment of the 30% of the taxes in dispute before the Tribunal.

The Respondent reiterated that the application was filed out of time, no request for an extension was made, and there was insufficient proof of the mandatory 30% payment. They urged the Tribunal to dismiss the application with costs to the Respondent.

7. The determination by the Tribunal

The Respondent issued the Applicant with an administrative additional income tax assessment of Shs. 193, 311, 930. On the 17 January 2024, the Applicant objected and on 15 April 2024, the Respondent issued the objection decision. On 4 July 2024, the Applicant lodged this application challenging the objection decision. On the 12 April 2024, the Applicant applied for ADR and on the 8 May 2024, the Respondent rejected the Applicant's application for ADR. The Applicant filed this application on 4 July 2024. The Respondent raised two preliminary objections that:

- (i) The application was filed out of time.
- (ii) The Applicant has not paid the 30% of the tax in dispute.

Whether the application is time-barred?

The Respondent submitted that the Applicant objected to the assessment on the 17 January 2024, the Respondent issued an objection decision on 15 April 2024 and the Application for review was filed on the 4 July 2024, which is 49 days after the objection decision. The Applicant had up to 14 May 2024 to apply to the Tribunal or file an application for enlargement of time which the Applicant never did.

In reply, it was the Applicant's submission that on 12 April 2024, the Applicant applied for ADR which was rejected on the 8 May 2024. This Application was filed on the 4 July 2024, two months after the Respondent's tax decision.

Section 16 (1) (c) of the Tax Appeals Tribunals Act (TATA) 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”.

The Tribunal notes that, once an objection/taxation decision is issued, the Applicant has 30 days within which to appeal the said decision to the Tribunal. It is not disputed that the Respondent issued its objection decision on 15 April 2024 which means that the Applicant should have filed its application by 14 May 2024. However, the present application was filed on 4 July 2024, four (4) months later.

In the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal No. 31 of 2000) [2000]***, Twinomujuni JA stated:

“...Clearly, that application was filed after over 50 days from June 17, 1999, instead of within 30 days as required by the law. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with”.

In case, where a taxpayer is not able to file within 30 days due to unforeseen reasonable circumstances, the taxpayer may file an application for extension of time to file an application for review before the Tribunal. Section 16 (2) of the TATA 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 TATA provides:

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

Since the Applicant realised that it was out of time, the proper procedure to follow would have been, applying for an extension of time within which to apply for the review the Respondent’s decision. In this case, the Applicant did not seek an extension before filing this application. Accordingly, the Tribunal finds that this application is time-barred.

Application for Alternative Dispute Resolution (ADR)

The Applicant submitted that it applied for ADR on the 12 April 2024 and on the 8 May 2024, the Respondent rejected the Applicant’s application for ADR.

The Applicant contended that the Respondent's rejection to grant ADR amounted to a tax decision.

A taxation decision is defined in Section 1 of The TAT Act as:

"Any Assessment, Determination, Decision, Or Notice".

In the case of ***Asimwe Eunice v URA, Misc App No. 21 of 2025***, the Tribunal held:

"This ADR process involved meetings and the submission of additional information, including a loan agreement from the Applicant's, which the Respondent reviewed. The ADR decision therefore represents the conclusive determination of the tax liability dispute upon which the Applicant's right to appeal rests.... The Applicant's subsequent actions were directly influenced by the ADR outcome".

In the above decision, the Tribunal allowed the Applicant's application after relying on the ADR's decision. However, in this present case, no subsequent actions were influenced by a decision from ADR. The Applicant seeks to rely on an application rejection by the Respondent for ADR issued on May 8, 2024.

The Applicant merely applied for ADR which was rejected. No discussions or meetings took place hence no alteration in the first decision was made besides there was no determination regarding the tax liability in dispute. In the circumstances, the decision the Applicant seeks to rely on was not a taxation decision but a decision to reject an application for ADR.

On the Thirty Percent

The Applicant submitted that that they had paid a total of Shs. 69,900,000, which exceeds Shs 57,993,579, being 30% of the tax in dispute. The Applicant stated that they provided evidence of payment through attached Payment Registration Numbers (PRNs). The Respondent submitted that the PRN's referred to by the Applicant in their submissions are payments of a normal flow but not proof of payment of the 30% of the taxes in dispute before the Tribunal.

Section 15 of the Tax Appeals Tribunal Act, provides:

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

In the case of **Bullion Refinery limited v URA Application No. 36 of 2021**, the Tribunal ruled:

“The requirement to pay the 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a taxpayer files a matter in the Tax Appeals Tribunal. This means that by the time the matter is filed in the Tribunal, 30% ought to have been paid”.

The Taxpayer, in this case, attached annexure “A” to their submissions in reply that shows a list of PRNs for the periods of February to December 2024. However, it is prudent that the taxpayer attaches proof of payment such as a receipt or bank slip.

The Burden of proof in taxation matters lies on the Applicant and the Applicant cannot not transfer that duty to the Tribunal to reconcile that the PRN's in the Applicant's ledger to the payment of the 30% deposit.

The Tribunal finds that the Applicant did not provide proof of payment of the 30%.

In the circumstances, The Tribunal finds that:

- (i) The application was filed out of time and the Applicant did not seek for extension of time to file an application for review.
- (ii) The Applicant has not paid the 30%.
- (iii) The rejection of the Applicant's ADR application did not amount to a taxation decision.

This Application is dismissed with costs to the Respondent.

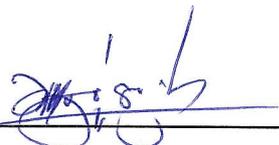
Dated at Kampala this 28th day of March 2025.



KABAKUMBA MASIKO
CHAIRPERSON



GRACE SAFI
MEMBER



WILLY NANGOSYAH
MEMBER