

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS CAUSE NO. 081 OF 2024

MANTAB ENGINEERING SERVICES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. STELLA NYAPENDI CHOMBO, MS. SAFI GRACE, MR. WILLY NANGOSYA.

RULING

This ruling is in respect of an application brought under Section 16 of the Tax Appeals Tribunal Act (TAT Act), 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.

1. Background Facts

The Applicant deals in electricity engineering and construction works. In December 2021 and March 2022, the Respondent issued assessments, and the Applicant objected. On 8 June 2022, the Respondent issued an objection decision disallowing the objection. On 21 February 2024, the Applicant through her former lawyers filed TAT Application No. 28 of 2024 against the Respondent, which matter is still before the Tribunal pending signing by the Applicant who declined to sign on grounds that the draft consent had omitted assessment for the period of December 2021.

On 6 September 2024 the Applicant instructed her current lawyers to take up the conduct of TAT Application No.28 of 2024 and upon proofreading of the draft, it was discovered the one of the disputed administrative assessment the period 1 December 2021 to 30 December 2021, had been omitted by the previous lawyers during reconciliation, resulting in a VAT tax liability of shs.190,190,874.60 which would have equally been vacated. Hence, the Applicant's decision to file this application on 23

December 2024 seeking leave to file an application for review for the assessment period that was omitted.

The grounds of this application are laid out in the affidavit in support of notice of motion deponed by Mr. Kiyimba Feshary Fahad. He contended as follows:

- i. That the Applicant objected the assessments and appealed to the Respondent for review of the said assessment.
- ii. On 8 June 2022, the Respondent issued an objection decision disallowing the objection on grounds that the evidence provided could not substantiate grounds of objection.
- iii. On 21 February 2024, the Applicant, through her former lawyers filed App No. 28 of 2024 in the Tribunal against the Respondent.
- iv. On 6 September 2024 upon receipt of instructions, the Applicant's new lawyers discovered that the administrative assessment which was also under dispute for the period of 1 December 2021 to 30 December 2021 was omitted.
- v. That the Applicants failure to file an application to review administrative assessment for the period of 1 December 2021 up to 31 December 2021 was occasioned by the Applicant's former lawyers who omitted to include this disputed assessment which is now out of time to file before the Tribunal.

The Respondent filed an affidavit in reply deponed by Ms. Diana Mulira an employee of the Respondent in the Legal Services and Board Affairs Department, which stated as follows:

- i. On 10 March 2022, the Respondent issued the Applicant with a VAT Assessment for the period 01/12/2021-31/12/2021 on grounds of disallowed input claim from fictitious suppliers.
- ii. That on 11 March 2022, the Applicant objected and on 8 June 2022, the Respondent disallowed the Objection.
- iii. That whereas the Applicant's lawyers discovered that the Administrative Assessment for the period December 2021 had been omitted in September 2024 they still did nothing until after four (4) months which is an indication counsel is guilty of dilatory conduct.

- iv. That the consent vide App No. 28 of 2024 was duly signed by the Respondent and given to the Applicant's lawyers who have deliberately ignored signing the same.
- v. That this Application has been filed two and half years after issuance of the Objection Decision which is too long and failed to show sufficient grounds for failure to file on time.

2. Issues

The issue for determination is whether the Tribunal should grant the Applicant an extension of time within which to file their application for review of the Respondent's tax decision.

3. Representation

The Applicant was represented by Mr. Musa Magala while the Respondent was represented by Mr. George Ssenyomo.

4. Submissions of the Applicant

The Applicant submitted that Section 16 (2) of the Tax Appeals Tribunal Act provides that a tribunal may extend the time for making an application. Section 16 (7) of the Act further provides that the Application shall be made within 6 months after the date of the taxation decision. Rule 12 of the tax Appeals Tribunal (Procedure) Rules provides that the Tribunal may in its discretion extend the time.

The Applicant submitted that in the case of *Prompt Supply 2011 Ltd versus URA MA 91 of 2019*, it was held that the Applicant must show that it has reasonable cause as to why the application was not filed in time. The Applicant ably demonstrated sufficient cause by stating that failure to file an application to review of the Respondents administrative assessment for the period of 1 December 2021 to 31 December 2021 was occasioned by the Applicants former lawyers who omitted to include this assessment in dispute at the time of filing the first application.

The Applicant further submitted that having issued clear instructions, the Applicant believed that all assessments with disputes were included in the first application only to discover that the administrative assessment under dispute was not included in App No. 28 of 2024.

The Applicant submitted that the negligent act of deliberately omitting to include assessment for the period of 1 December 2021 to 31 December 2021 in App No. 28 of 2024 by the Applicant's former counsel constitutes mistake of counsel and amounts to sufficient cause.

The Applicant submitted that refusing this application will inevitably result into an injustice of exposing the Applicant to unsubstantiated gross financial loss of over Shs. 190,000,000. The Applicant submitted that they demonstrated sufficient cause and it's on that basis they prayed that this application be allowed to extend time within which to file an appeal to review the tax decision and costs provided in the main cause.

5. Respondent's Submissions

In reply, the Respondent submitted that an application for extension of time to review a taxation decision cannot be granted where there are no sufficient grounds and especially when the length of delay is long and there is no explanation why it did not take any step until after two years and three months.

The Respondents cited Section 27 (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 for review of the objection decision.

Section 16 (1) (c) of the Tax Appeals Tribunal Act provides: *"An application to the Tribunal for review shall be made within 30 days of being served with notice of the decision"*. Section 16 (7) of the same provides:

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

The Respondent submitted that in the case of ***Uganda Revenue Authority Vs Consolidated Properties Ltd Court of Appeal. Civil Appeal No. 31 of 2000*** the Court of Appeal held:

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

The Respondent submitted that in Rule 11 (6) provides that the Tribunal may extend time if satisfied that the taxpayer was unable to file the application because of illness,

absence from Uganda or any other reasonable cause. In the case of ***Safari Clothing (Uganda) limited Versus Uganda Revenue Authority Miscellaneous Application No.1 of 2020*** in this application wherein the Applicant had sought for extension of time within which to file an application to review the Respondent's objection decision the Tribunal held that;

"In order to qualify for an extension of time there is need for the Applicant to show that it has reasonable cause as to why the Application was not filed in time".

The Respondent submitted that the Applicant is guilty of dilatory conduct. This Application has been filed two years and 3 months after the objection decision issued on 8 June 2022. The first lawyer filed an application for review after two years and 3 months which would still have been out of time for review of the Objection which was issued on 8 June 2022 vide TAT App No. 28 of 2024. There is no indication of the steps taken by the Applicant to ensure that either a substantive Application or an Application for extension of time was filed within time. The Respondent contended that the Applicant did not act swiftly to preserve its rights and cannot rely on mistake of counsel as a ground for this application to be granted.

The Respondent submitted that the Applicant's new lawyers got instructions in September 2024 and discovered that the Administrative Assessment for the period December 2021 had been omitted. They still did nothing until after four (4) months which is an indication counsel is also guilty of dilatory conduct. There is no essential step taken to file the Application to remedy the error.

It was the Respondents submission that the objection decision was issued on 8 June 2022. The Applicant should have filed an application for extension of time by 8 December 2022. Having failed to do so the Tribunal cannot exercise its discretion to extend the time for an application brought outside the statutory six-month period. The Applicant has not demonstrated reasonable cause for which the time to file a review on a taxation decision should be extended. The Respondent prayed that this application is dismissed with costs.

6. Applicant's submissions in Rejoinder

In Rejoinder, the Applicant submitted that it instructed its new lawyers on 6 September 2024 to take up the conduct of App No. 28 of 2024. It was at the time of proofreading

the consent prepared by the Respondent that the Lawyers and the managing Director in December 2024 realized that the assessments for the period December 2021 and March 2022 were omitted in the said application. Having noticed this omission, the Respondent instructed its new lawyers to challenge the assessment for the period December 2021 and March 2022. The Applicant filed the present application on 28 December 2024.

The Applicant submitted that being vigilant it should not be penalized for the mistakes of counsel on whose actions he has no control. The Applicant averted that it is not guilty of dilatory conduct and the lapses of former Counsel. The Applicant submitted that sufficient cause has been shown and therefore it is in the interest of justice that this application for extension of time is granted.

7. Determination of the Tribunal

The issue before this Tribunal is that the Applicant instructed its new lawyers M/s Rwabwogo & Co. Advocates on 6 September 2024 to take up the conduct of TAT Application No. 28 of 2024 and upon receipt of instructions, the Applicants' lawyers discovered that the assessment period of December 2021 was omitted in the said application as per the affidavit of Mr. Kiyumba Feshary Fahad. Having noticed this omission, the Applicant declined to sign the consent and filed an application for extension of time to be able to include the disputed assessment. Suffice it to note, the Applicant in their submission instead states that the omission was noticed while proofreading the consent in December 2024.

The Applicant alleges they filed the present application No .87 of 2024 on 28 December 2024 after several attempts to have the disputed assessment included in the consent was denied by the Respondent.

It is not disputed that the Respondent issued the objection decision in respect to the said assessment on 8 June 2022. This means that the Applicant had up to 8 July 2022 to file an application for review of the taxation decisions.

The power of this court to exercise its discretion to grant an extension of time for an application is not in dispute. What is important to demonstrate to court is whether the Applicant has sufficient cause to warrant the extension of time.

We also note that the parties submitted that the consent of TAT App No. 28 of 2024 was underway for signature by the Applicant. There is nothing that bars the parties from settling the said application by way of consent. The present Miscellaneous Application No.87 of 2024 before the Tribunal is a separate Application with different assessment number P012200307510 for a different period 01/12/2021 to 31/12/2021. Therefore, this shouldn't in anyway hinder settlement and final endorsement of application No.28 of 2024.

We shall proceed to resolve Misc App No. 87 of 2024 on its own merit as follows:

The law relating to filing an application before the Tribunal, in Section 16 (1) (c) of the TAT Act requires that:

*"(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".*

Furthermore, Section 16 (2) of the TAT Act states:

"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 provides:

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

In the case of **Mulindwa George William v Kisubuka Joseph Civil Appeal no.12 of 2024, the Supreme Court of Uganda** court stated:

"Each application must be viewed by reference to the criterion of justice, and 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 factors to be considered in an application for extension of time are;

- (i) The length of delay*
- (ii) The reason for delay*
- (iii) The possibility or chances of success*
- (iv) The degree of prejudice to the other party.*

Once the delay is not accounted for it does not matter the length of the delay. There must be an explanation for the delay."

It was the Applicant's submission that the negligent act of deliberately omitting to include the assessment for the period 1 December 2021 to 31 December 2021 in App No. 28 of 2024 by former Counsel constituted mistake of counsel and amounted to sufficient cause.

The Tribunal notes that the objection decision in respect of the assessment that the Applicant alleges was omitted was issued on the 8 June 2022. The Applicant filed this application for extension of time within which to file an application for review the objection decision on 23 December 2024. This is two years and six months from the date of the decision.

The Tribunal further noted that it is not in dispute that the objection decision was issued on the 8 June 2022, the Applicant filed App No 28 of 2024 on 21 February 2024 which was also about a year out of time. However, we are determining the legality of the Misc App No. 87 of 2024 in respect of assessment period December 2021 with total VAT Tax Liability of shs.190,190,874 with a taxation decision dated 8 June 2022 filed on the 23 December 2024.

In the case of ***Boney Katatumba versus Waheed Karim SCCA No. 27 of 2007***, the Court held:

"What constitutes 'sufficient reason' is left to the Court's unfettered discretion. In this context, the Court will accept either a reason that prevented an applicant from taking the essential step in time, or other reasons why the intended appeal should be allowed to proceed though out of time. For example, an application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay".

The Tribunal finds that the Applicant was not vigilant as he should have followed up his own tax affairs even if he had representation or given instructions. The Applicant has not exhausted the burden to prove sufficient reasons. The maxim equity aids the vigilant comes into play as the Applicant ought to have pursued his application.

Furthermore, the Tribunal noted that the Applicant did not provide substantive evidence to prove the mistake of former Counsel that it alluded to. It took them four (4) months to file this instant application having noticed the omission upon receipt of the

instruction in September 2024. Having realized the mistake and understood the consequences thereof, it shouldn't have taken them that long to file this application. Therefore, this application was brought with unreasonable inordinate delay by the Applicant.

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

"That is why the Respondent filed a second application dated August 12, 1999, which was thrown out by the Tribunal for being time barred. 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 line with the above decision, we find that this application for extension of time is two years and six months late, hence time barred. In the circumstances, this application is dismissed with costs to the Respondent.

Dated at Kampala this ^{12th} day of ^{February} 2025.



STELLA NYAPENDI CHOMBO
CHAIRPERSON



GRACE SAFI
MEMBER



WILLY NANGOSYAH
MEMBER

