

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA
TAT APPLICATION NO. 25 OF 2024

MITYANA FOODS & BEVERAGES LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. GRACE SAFI
MS. CHRISTINE KATWE

RULING

This ruling is in respect of a preliminary objection that the application is time-barred.

1. Background facts

The Applicant manufactures alcoholic beverages .On 21 June 2022, the Respondent issued the Applicant with two Administrative Additional Local Excise Duty (LED) and VAT Assessments for the period of May 2022 worth Shs 74,653,058 and Shs 74,850,127 respectively. This was in the grounds of under declaration of production volumes and bottles purchased. The Applicant objected to the assessment on 29 June 2022 and the Respondent issued an objection decision dated 22 November 2022 upholding its assessment.

On 6 February 2024, the Applicant applied for a Tax Clearance Certificate and the Respondent rejected it due to the outstanding liability of LED shs.41,487,557 and VAT Shs 40,142,460 which the Applicant did not object to. However, on 19 February 2024, the Applicant filed TAT Application No. 25 of 2024 for review of the Respondent's objection decision. On 19 March 2024 the Respondent lodged the material documents which included statements of Reasons, copies of assessments dated 21 June 2022 and the objection decision notice dated 22 November 2022.

The matter was first referred for mediation wherein the Respondent objected to the same on basis the Application was filed out of time. During the course of the conferencing on 23 July 2024, the Respondent raised a preliminary objection challenging the application on grounds that it was filed out of time.

2. Representation

The Applicant was represented by Mr. Kato Wilson and Ms. Mwesigwa Mary while the Respondent by Mr. Kenan Aruho. and Ms. Doreen Amutuhaire. Both parties made written submissions.

3. Issues for determination

The main issue for determination is whether the Application is proper before the Tribunal

4. Submissions of the Respondent on the preliminary objection

The Respondent submitted that an application for extension time to review a taxation decision cannot be granted where there are no sufficient grounds to justify such extension especially when the length of the delay is excessive. In the present case, the delay is two years and three months without any reasonable explanation.

The Respondent asserted that the Applicant was guilty of dilatory conduct and failed to file the application within the statutory period of six months. The Respondent relied on sections 27(1) of the Tax Procedures Code Act Cap 343 (TPCA) which provides that a person dissatisfied with an objection decision may, within thirty days after being served with a notice of the objection decision, lodge an application with the Tribunal for review of the objection decision.

The Respondent also cited section 16 (1)(c) of the Tax Appeals Tribunal Act which provides that an application for review of a taxation decision must be lodged with the Tribunal within 30 days after being served with the notice of the Respondent's objection decision.

Section 16(2) of the Tax Appeals Tribunal Act (TAT Act) of the same Act provides a tribunal may, upon application in writing, extend the time for the making of an application to the tribunal for a review of a taxation decision.

The Respondent referred the Tribunal to the decision in *Uganda Revenue Authority v. Uganda Consolidated Properties Ltd, Court of Appeal Civil Appeal No. 31 of 2000*, where it was held that timelines set by statutes are matters of substantive law and must be strictly complied with. Consequently, the application should be dismissed as being out of time since the Applicant filed on 19 February 2024 two years after the issuance and service of the objection decision notice of 22 November 2022.

Further, the Respondent asserted that objection decision in this case was issued on 22 November 2022, a fact which the Applicant does not dispute and the Applicant had until 22 December 2022 to file an application which was never done.

The Respondent submitted that the applicant is guilty of dilatory conduct and lacks diligence as evidenced from the following facts:

- (i) The objection decision was issued on 22 November 2022;
- (ii) The Applicant only filed this application on 19 February 2024.
- (iii) The Applicant did not act swiftly to preserve its right neither did they file for extension of time; and
- (iv) The failure to file within the prescribed time is attributable to the Applicant's negligence.

The Respondent contented that too long a time had elapsed from 22 November 2022 when the objection decisions were issued and served on the Applicant. The Respondent also submitted that the objection decisions in question are those issued on 22 November 2022 since they are the ones that relate to the assessments in dispute as per the applicant's Application on page 2. (*Reference is made to the applicant's Application and to the Reference Numbers on the objection decisions Attached*).

The Applicant further stated that as established above, it is an undisputed fact that the notice of objection decisions were served on the Applicant, thus the Applicant was

aware of the objection decision or should have been aware of the objection decision with the exercise of reasonable diligence and had full control and access of all the necessary documents required in filing such an Application challenging the decision of the Respondent as in this Application.

The Respondent noted this application is an abuse of court process intended to excuse the applicant's lackadaisical conduct and that is trite that there should be an end to litigation and one of the tools used by the law to achieve this is by placing timelines within which actions should be taken. (*Matovu Charles Kidimbo Vs Lukwata Yusuf & 3 Ors HCMA No.40 OF 2017*).

The Respondent submitted that whereas Section 16(2) grants the Tribunal discretion to extend time within which to file an Application for review of an objection decision, the Tribunal can only exercise its discretion even when it disregards technicalities where the Applicant has sought for it and the Applicant in the instant case never sought for extension of time. In *Mulindwa Goerge v Kisubika, Supreme Court Civil Appeal no.12 of 2014*, the court ruled there must be a limit beyond which courts can bend backwards to accommodate the litigant without compromising the rights of the opposite party.

Regarding whether remedies are available for the parties, the Respondent submitted that the Application is out of time and should be dismissed with costs to the Respondent as remedy for defending this overdue application.

5. Submissions of the Applicant in reply to the preliminary objection

The Applicant submitted that on 6 February 2024, the Applicant applied for Tax Clearance Certificate and the Respondent rejected the same basing on the outstanding VAT liability of Shs.40,142,460 and LED of Shs.41,487,557 which fact the Respondent in their Statement of Reason did not dispute nor attach the documents relating to the above taxation decision.

The Applicant cited Rule 13 (1) of the Tax Appeals Tribunal (Procedure), 2012 which provides that the Commissioner General shall, not later than thirty days after being

served with an application under Rule 12, cause to be lodged with the Registrar in Form TAT 2 in Schedule 2 to the Rules, two copies of—

“(a). the notice of the decision;

(b). a statement giving reasons for the decision; and

(c). all documents in the Commissioner General’s possession or under his or her control which are necessary to enable the Tribunal to review the decision.”

The Applicant submitted that it is within the knowledge of the Respondent that on 06 February 2024 they rendered a decision wherein they rejected the issuance of Tax Clearance Certificate to the Applicant on the ground there was an outstanding tax liability. This is the decision which the current application seeks to review and the same was filed on 19 February 2024 within the stipulated time as required by the law. The Applicant cited Sections 27(1) of the TPCA and Section 16(1) (c) of the TAT Act which both require such an application to be lodged within 30 days of receiving the notice of the tax decision (*MTN Uganda v URA App no. of 2018*).

The Applicant argued that the rejection of the issuance of the Tax Clearance Certificate to the Applicant by the Respondent on 6 February 2024 is a taxation decision and as it is appealable to the Tribunal. The Applicant cited the case of *Ndugu Benson & Isingoma Edgar (KPMG) v URA TAT App No.141 of 2023* in which Tribunal relied on the decision in *Alpha Woolen Uganda Limited v URA App No. 40 of 2023* wherein it was held that:

“While invoking the literal rule of statutory interpretation, it is apparent that the Respondent’s rejection of the Applicant’s application for a TCC constitutes a taxation decision. This is because whilst not amounting to an assessment, it constitutes a determination or decision within the meaning of Section 1 of the TATA. In addition, it is a decision that is left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the Commissioner within the meaning of Section 1 of the TPCA.”

Accordingly, the Applicant added that it lodged this application for review of the said decision on 19 February 2024 and Section 2 of the TPC Act defines of a “tax decision” to include:

*“(a) a tax assessment; or
(b) a decision on any matter left to the discretion, judgment direction, opinion, approval, satisfaction or determination of the Commissioner General other than—
(i) a decision made in relation to a tax assessment;
(ii) a decision to refuse, issue or revoke a practice note or an omission to issue or revoke a practice note;
(iii) a decision or omission that affects a tax officer or employee or agent of the Authority;
(iv) the compoundment of an offence under any tax law; or
(v) a decision to refuse, issue or revoke a private ruling or an omission to issue or revoke a private ruling;”*

The Applicant submitted Section 1 (1) (k) of the TATA defines a taxation decision as:
“Any assessment, determination, decision, or notice.”

The Applicant submitted Section 3 of the TPCA defines an objection decision to mean:
“A decision within the meaning of Section 24.”

The Applicant cited Section 24 (5) of the TPCA which provides:

“The Commissioner may make a decision on an objection:

- a) To a tax assessment, affirming, reducing, increasing, or otherwise varying the assessment to which the objection relates; or*
- b) To any other tax decision, affirming, varying or setting aside the decision.”*

The Applicant cited Section 1 (1) (g) of the TAT Act defines an objection decision to mean:

“A taxation decision made in respect of a taxation objection”.

The Applicant argued that it received the Respondent's objection decision on 22 November 2022 and the same was served to the Applicant electronically, yet they objected on 29 June 2022 which was after the expiration of the ninety days statutory requirement under Section 26(6) of TPC. The Applicant added that there is no evidence on record that the Respondent has ever issued a notice requesting for any record from the taxpayer which will waive the ninety days statutory requirement under Section 26(9) for the Respondent to render the decision in the objection.

In conclusion on issue one, the Applicant asserted that it based its application on the Respondent denial or rejection of the Applicant's Application for issuance of a tax clearance certificate which application is properly before this Honourable Tribunal. The applicant further submitted the administration of justice requires that all substances of the dispute should be heard and decided on merit

Regarding what remedies are available, the Applicant submitted that the Respondent did not render a decision within the required statutory days with respect to the Applicant's objection dated 21 June 2022 and that the Applicant is seeking to review the Respondents decision for the rejection of issuance of a tax clearance certificate dated 6 February 2024 which was filed on 19 February 2024.

6. The determination of the Tribunal

Having carefully considered the representations, evidence, submissions & all the cited cases therein presented by both parties, this is decision of the Tribunal.

A preliminary point of law was raised by the Respondent that this Application was time barred based on objection decision issued on 22 November 2022 in respect of LED and VAT Assessments.

On the other hand, the Applicant argues that the rejection of the issuance of the tax clearance certificate to the Applicant by the Respondent on 6 February 2024 basing on the outstanding VAT liability of Shs.40,142,460 and LED of Shs.41, 487, 557 is the appropriate taxation decision that is appealable to the Tribunal. Since the same was filed on 19 February 2024 within the stipulated time as required by the law, then the application is within time.

The Respondent argued that the Applicant did not give sufficient grounds to justify an extension of time to review a taxation decision under Rule 11(1) of TAT Procedure Rules. Consequently, the Applicant is guilty of dilatory conduct due to the Applicant's lengthy delay having filed on 19 February 2024 for the objection decision issued on

19 November 2022 and the Applicant's failure to file for an extension of time within the statutory timelines.

The Applicant on the other hand claimed that the Respondent rendered its objection decision after the expiration of the ninety days statutory requirement under Section 26(6) of TPC Act. Having received the Respondent's objection decision on 22 November 2022 electronically yet they objected on 29 June 2022 with no evidence on record to necessitate waiver of the ninety days statutory requirement for the Respondent to render the decision in the objection.

It should be noted that **S. 16 (1) (c) of the Tax Appeals Tribunal Act Cap 341** an application to a Tribunal for review of a taxation decision shall be lodged within thirty days after the person making the application has been served with notice of the decision. **S. 16 (2) of the Tax Appeals Tribunal Act Cap 341** provides that a Tribunal may upon application in writing extend the time for making an application to the Tribunal for review of a taxation decision. (*See Justice Stephen Mubiru in Farid Meghani v URA, Civil Appeal No. 0006 of 2021*)

Rule 11 of the Tax Appeals Tribunal (Procedure) Rules provides that The Tribunal may grant the extension of time if it is satisfied that the tax payer was unable to file the application for the following reasons;

- a) *Absence from Uganda*
- b) *Illness*
- c) *Any other reasonable cause.*

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

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

"The applicant seeking for extension of time has the burden of proving to the Court's satisfaction that, for sufficient reasons, it was not possible to lodge the appeal in the prescribed time. The Supreme Court went on to state that each application must be viewed by reference

to the criterion of justice and that 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."

In the present case, the Respondent issued their objection decision in November 2022. The Applicant filed their application before this Tribunal two years after the objection decision. Further, the Applicant has not provided any plausible reason for the delay. They have instead laid the blame at the Respondent's feet, arguing that the Respondent was late in making the objection decision and that they didn't exercise their right to elect. However, once the Applicant failed to elect, the subsequent objection decision bound the Applicant. The only remedy that was available to the Applicant was to immediately file an application for review before this Tribunal the minute they were served with the objection decision, at most, within 30 days.

The Applicant instead waited for two years. The two-year delay is not only unreasonable, it is irresponsible.

The Applicant now seeks to hide behind the Respondent's subsequent denial of their TCC application. They now argue that the rejection of the TCC application is the taxation decision is the basis for audience before this Tribunal.

While a rejection of a TCC application is a taxation decision as indeed was held in the case in Alpha Woolen (*supra*), the facts in Alpha Woolen can be distinguished from the present facts. In Alpha Woolen, the rejection of the TCC was not preceded by an objection decision concerning the same tax liability which formed the reason for the rejection of the TCC. In the present case, the denial of the TCC was as a direct consequence of the Applicant's failure to either appeal the Respondent's objection decision or a failure to pay the taxes assessed. This is because a taxpayer who does

not appeal the Respondent's objection decision within the statutory timelines is taken to have accepted the decision.

Therefore, this Tribunal will not sympathise with a taxpayer who slumbers on their rights for eternity and then comes to the Tribunal expecting it to wave a magic wand.

In light of the above, we find that the matter is time barred and we hereby dismiss it with costs to the Respondent.

Dated at Kampala this 26th day of June 2025.



**CRYSTAL KABAJWARA
CHAIRPERSON**



**SAFI GRACE
MEMBER**



**CHRISTINE KATWE
MEMBER**