

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 82 OF 2023

MOBI-TEX ENGINEERING COMPANY WORKS LTD APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MRS. CHRISTINE KATWE, MS. KABAKUMBA
MASIKO

RULING

This ruling is in respect of a preliminary objection raised by the Respondent under Section 16 (1) (c) of the Tax Appeals Tribunal Act seeking:

- a) A declaration that this application be dismissed with costs to the Respondent for being time barred and for failure to comply with the mandatory statutory requirement of paying 30% of the tax in dispute.

1. Background Facts

The ground upon which this application is premised are;

- i. On 12th June 2018, the Respondent issued an administrative additional income tax assessment for the period July 2016 to June 2017 amounting to Shs. 347,011,782 which arose as a result of disallowed direct expenses of Shs. 1,158,406,168.
- ii. On 9th August 2018, the Applicant objected to the assessment on grounds that the direct costs were sub-contract works and the company uses casual laborers whose salaries and wages do not attract PAYE.

- iii. On 1st November 2018, the Respondent requested the Applicant to provide documents to support the grounds of objection that is; payroll registers for the period under objection which the Applicant failed to do thus the objection decision on 5th November, 2018.
- iv. On 23rd May, 2023, the Applicant lodged this application for review at the Tax Appeals Tribunal.

2. Representation

At the hearing of this application, Mr. Jimmy Olet appeared for the Applicant while Mr. Sam Kwerit and Ms. Rita Nabirye appeared for the Respondent.

3. Submissions by the Respondent

Counsel for the Respondent submitted that the Application is time barred. Section 16(1)(c) of the Tax Appeals Tribunal 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.

The Respondent cited the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd, Court of Appeal Civil Appeal No.75 of 1999***, where the Court of Appeal held:

"Times 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

The Respondent went ahead to submit that, in the instant case, the Applicant was issued with an objection decision on 5th November 2018 and it had up to 4th December, 2018 to institute an Application before the Tax Appeals Tribunal for review of the Respondent's Objection decision.

The Respondent submitted that by lodging this application on 23rd May 2023, the application was way out of time and should be rejected for being lodged out of time.

The Respondent also prayed that this application be dismissed with costs to the Respondent for being time barred and for failure to comply with the statutory requirement since the Applicant had also not paid the mandatory 30% of the tax in dispute pursuant to section 15 of the Tax Appeals Tribunal Act.

4. Submissions in reply by the Applicant

The Applicant submitted that Section 16(1) (c) of the Tax Appeal Tribunal Act provides the timeline of within 30 days for the review of the objection decision. In addition, that the Applicant seeks leniency from this court with consideration that the taxpayers and the personnel by then were not so knowledgeable about the provisions in the law, the taxpayers in the effort to try and resolve the matter were duped by several personnel who claimed they could solve the matter and this has been a common precedence with several taxpayers due to limited dissemination of information by URA to the taxpayers. The right to information is a fundamental taxpayer right in the Tax Appeals Tribunal Act.

The Applicant further submitted that by lodging this application on 23rd May 2023, they had exploited all the available provisions with the Uganda Revenue Authority including seeking the attention of the Alternative Dispute Resolution Department and we were shut out quoting the timeline. The Applicant went ahead to pray that as provided for in Section 16(2) of the Tax Appeal Tribunal Act, this Tribunal considers this application and direct a review of this matter under ADR.

The Applicant submitted that on the mandatory 30% payment as per Section 15 of the Tax Appeals Tribunal Act, they were seeking the mercy of the Tribunal since the company hadn't been able to trade due to the challenges of obtaining a tax clearance certificate.

The Applicant prays that the concern, just like that for many other taxpayers out there can be considered and given a listening ear.

5. Determination the application by the Tribunal

We have carefully read and considered the submissions of the Applicant and Respondent. We have also perused the authorities provided by the parties.

With regard to the non-payment of 30% of the tax in dispute, Section 15 of the Tax Appeals Tribunal states as follows:

“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 assessed not in dispute, whichever is greater.”

In ***Vivo Energy Uganda Ltd v The Uganda Revenue Authority, Misc. Application No.78 of 2024***, the Tribunal relied on the case of ***Uganda Projects Implementation and Management Centre v Uganda Revenue Authority, Constitutional Appeal No. 29 of 2009***, where the supreme court unanimously held that while the requirement to pay 30% of the tax in dispute would occasion hardship on taxpayers, Article 17 of the Constitution imposed a duty on citizens to pay taxes and to do so promptly so that Government business can go on.

A preliminary point of law was raised by the Respondent that the Applicant's application is time barred. The law on preliminary points of law is provided for under Order 6 Rule 28 of the Civil Procedure Rules which states:

“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”.

In ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd, [1969] EA 696***, **Sir Charles Newbold**, stated:

“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.”

The Respondent raised a preliminary objection that the matter was filed out of time as the assessments for the period July 2016 to June 2017 were issued in 2018 while this application was filed on 23rd May 2024 six years later. In ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (supra)***, the Court of Appeal stated that

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

S. 16 of the Tax Appeals Tribunal Act provides that.

“(1) An application to a tribunal for review of a taxation decision shall- ...

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

S. 25 (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 the objection decision, lodge an application with the Tax Appeals Tribunal for review of the objection decision”.

In Essential Auto Parts Ltd v Uganda Revenue Authority, Application No. 180 of 2022, the Tribunal stated:

“Tax decisions were issued by the respondent in 2018. The Applicant had up to 30 days to file its application but instead filed it in June 2022. If the applicant was not able to file within 30 days, it would still have a right to apply for extension of time by writing to the Tribunal. S. 16 (2) of the Tax Appeals Tribunal Act provides that “a tribunal may upon application in writing, extend time for the making of an application to the tribunal for a review of a taxation decision”.

Section 16(2) of the Tax Appeals Tribunal Act allows for extension of time where the Applicant was unable to file within the 30 days although, the Applicant must submit an application to that effect.

In the present case, the Applicant exceedingly delayed filing this application and neither did they apply for extension of time to file the application when they still could. The Applicant sat on their rights for six years - the objection decision notices were served in 2018 and the Applicant filed this application in 2023. It is mind-boggling that a taxpayer can wait this long to seek redress. This kind of conduct points to indolence and indifference. It is impudent for the Applicant to even entertain the idea that this Tribunal would excuse such conduct. Delay defeats justice and equity aids the vigilant and not the indolent.

In the circumstances, this application fails with costs to the Respondent.

Dated this 24 day of JULY 2024

C. Kabajwara

Ms. C. KABAJWARA

CHAIRPERSON

Christine Katwe

Mrs. C. KATWE

MEMBER

K. Masiko

Ms. K. MASIKO

MEMBER

RULING