

**THE REPUBLIC OF UGANDA**

**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**

**MISCELLANEOUS CAUSE NO.44 OF 2024**

**MOUNT MERU MILLERS UGANDA LIMITED ===== APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY ===== RESPONDENT**

**BEFORE: MS. STELLA NYAPENDI CHOMBO, MS. REBECCA NAMBI, MR. WILLY NANGOSYAH**

**RULING**

This ruling is in respect of an application brought under Section 16(2) of the Tax Appeals Tribunal Act, Rule 12 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 limited liability Company engaged in the business of soya milling among others.
- (ii) On 5<sup>th</sup> of April 2023, the Respondent gave the Applicant notice that it was scheduled to be audited.
- (iii) On 30<sup>th</sup> November 2023, the Respondent completed the audit of the Applicant Company and consequently, several administrative assessments were issued in respect of Income Tax, Excise duty, Valued Added Tax (VAT), Withholding Tax, Pay As You Earn (PAYE) to a tune of UGX 8,256,822,580.
- (iv) On 18<sup>th</sup> December 2023, the Applicant objected to the assessments on grounds that they were excessive.

- (v) Between 14<sup>th</sup> February 2024 to 21<sup>st</sup> February 2024, the Respondent dis allowed the Applicants objection for failure to submit sufficient documents to support its objection and failure to provide proper grounds of objection. The Respondent consequently upheld the assessments.
- (vi) The Applicant sought the guidance on the way forward from its consultants and were advised to resolve the matter through Alternative Dispute Resolution (ADR), being the Respondents administrative process. The consultant advised the Applicant that the ADR process would suspend the timelines within which to file an application for review before the Tribunal.
- (vii) The Applicant as a result followed this advice and henceforth applied for ADR with the Respondent.
- (viii) The Applicant consulted with Katende, Sempebwa and Co. Advocates on 28<sup>th</sup> June, 2024 who advised that the ADR process would not halt the timelines for filing an application for review before the Tax Appeals Tribunal.
- (ix) On 18<sup>th</sup> July 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 unreasonable delay given the circumstances.
- (x) The Applicant wishes to challenge the Respondent's objection decisions through a review by this Honorable Tribunal.

## **2. Representation**

At the hearing of the application, Ms. Sophia Nampijja and Mr. Arnold Ojakol appeared for the Applicant while Ms. Ritah Nabirye appeared for the Respondent. Both parties made oral submissions.

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

Counsel for the Applicant submitted that the Applicant has justifiable grounds for extension of time in accordance with Section 16 of the Tax Appeals Tribunal Act and Rules 11 and 30 of the Tax Appeals Tribunal (Procedure) Rules. The Applicant contended that the said Rules, lay out grounds for extension of time within which to apply for review of the objection decisions namely;

- i. Absence from Uganda,

- ii. Sickness or
- iii. Any other reasonable cause

Learned Counsel for the Applicant submitted that the Applicant is incorporated in Uganda with its directorship based out of Uganda where it was resolved that the Applicant seeks a second opinion from legal advisors on this matter. The majority of the Board of Directors of the Applicant were out of the Uganda and were only able to discuss the matter during a quarterly meeting convened on 26<sup>th</sup> June, 2024.

The Applicant made reference to paragraph 11 of its affidavit in support of the Notice of Motion deponed by Rajiv Chan, the CFO of the Applicant in emphasis of the same.

The Applicant further submitted that the application for review of the assessment raises serious grounds such as the Respondent arbitrarily exercising its discretion against the Applicant in disregard of its duty to take into account all documents prior to raising the assessments in issue.

The Applicant submitted that at the time of filing the application, the ADR process was still underway and the Respondent is not bound to suffer substantial loss if this application is granted.

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

In reply, the Respondent opposed the Application on grounds that among the justifications cited by the Applicant for delay in filing the Application for the review of the taxation decision was that the ADR process was still underway. The Respondent contended that Rule 4 of the Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations, 2023 stipulates that the ADR process does not affect the timelines within which to file an Application before the Tribunal. The Respondent argued that Section 16 (2) and 16 (7) of the Tax Appeals Tribunals Act allows for extension of time within which to file an application. She submitted that if the Tribunal is inclined to grant the extension of time, the Applicant should deposit 30% of the tax in dispute.

#### **Applicant's submissions in rejoinder**

In rejoinder, the Applicant re-echoed its justification for delay in filing an application before the Tribunal being that the Applicant was undergoing ADR and was mis- advised by its

tax Consultants that the time to file in the Tribunal would be halted on account of the ADR process. That, upon receiving the correct advice from its legal advisors Ms Katende, Sempebwa and Co. Advocates, the Applicant filed the application for extension of time before the Tribunal without delay. The Applicant consequently indicated its willingness to deposit the 30% tax in dispute if this Application is allowed. The Applicant contends that it is within the discretion of the Tribunal to grant this Application and prays for grant of the same.

## **5. 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 tax payer 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 under the said rules, the grounds for extension of time within which to apply for review of the objection decisions are three-fold, however, for purposes of this Application, the Applicant relied on two rules:-

- i. Absence from Uganda
- ii. Any other reasonable cause

The Respondent submitted that the Applicant has no justifiable reason to warrant a grant of this application since the ADR process does not halt the timelines within which to file an application before the Tribunal.

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 14<sup>th</sup> February 2024 and 21<sup>st</sup> February 2024 respectively. If we were to go by the date the Applicant received the last objection decision notice i.e. 21<sup>st</sup> February 2024, the Applicant ought to have lodged its application before the Tribunal before 21<sup>st</sup> March 2024 upon lapse of the 30-day statutory period. The Applicant filed the application on 18<sup>th</sup> July 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.

**Regulation 4(3) of the Tax Procedures Code (Alternative Dispute Resolution) Regulations, 2023**, provides that; *"Where an Alternative Dispute Resolution procedure is commenced between a tax payer and the commissioner, the time within which the tax payer is required to file an Application with the Tribunal, or a suit with court shall not be affected by the Alternative Dispute Resolution procedure."*

**Regulation 4(4)** further provides that; *"for avoidance of doubt, Alternative Dispute Resolution procedure under these regulations shall not have any effect or negate the rights of the commissioner or tax payer to file an application with or the suit with court or have an effect on the rules of procedures of the Tribunal or Court."*

It is not in dispute that upon receipt of the objection decision the applicant applied for ADR which is still ongoing. The Respondent ought to have informed the Applicant that ADR proceedings do not suspend the time within which to file an application for review of an objection decision before the tribunal.

**Para 2.5 of the Respondent's Client Service Charter** provides as follows:

*"Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the law and URA procedures in all tax forms, instructions, publication, notices and correspondence. They have the right to be informed of the URA decisions about their tax accounts and to receive clear explanations of the outcomes."*

The Tribunal in its recent case of **Sogea Satcom Uganda v Uganda Revenue Authority Application No. 22 of 2023** ruled that the respondent's Client Service Charter places a duty upon the respondent to inform the applicant that where ADR is commenced between a taxpayer and the Commissioner, the time within which the taxpayer is required to file an application with the Tribunal shall not be affected by the ADR procedure. The Tribunal also stated that proof of such information should be included in the minutes of the ADR proceedings between the Applicant and the Respondent.

Therefore, having analyzed the facts and the law as above, this Application is granted. Each party will bear its own costs.

We note that whereas the Respondents Objection Decision Notice specifies under Section C, the appeals process against the Respondent's decisions to include recourse to fora such as the Tax Appeals Tribunal and the High Court, it does not clearly guide on ADR as an appeals option available to the tax payers and its impact on appeals to the Tribunal. It would be prudent for the Respondent to amend the form of its Objection Decision Notice to reflect ADR as an option and the fact that ADR proceedings do not affect the timelines within which an application for review to the Tribunal should be made in accordance with Regulation 4(3) of the Tax Procedure Code (Alternative Dispute Resolution) Regulations, 2023.

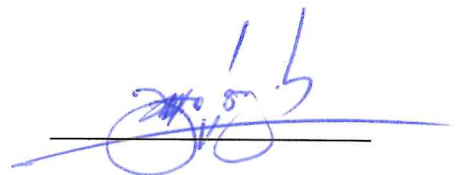
Dated at Kampala this...<sup>stm</sup>.....day of <sup>August</sup>..... 2024.



**STELLA NYAPENDI**  
**CHAIRPERSON**



**REBECCA P. NAMBI**  
**MEMBER**



**WILLY NANGOSYAH**  
**MEMBER**

