

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NO. 27 OF 2024

NAKAWUKA ENTERPRISES LIMITED.....APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT

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

RULING

This ruling is about an application for extension of time to file an application for review of the objection decision.

1. Background Facts

The Respondent issued an assessment for VAT to the Applicant to which the Applicant objected. On 30 August 2023, the Respondent issued the Applicant with an objection decision. Subsequently, the Applicant commenced alternative dispute resolution proceedings with the Respondent which took over seven months and was unsuccessful. The Applicant delayed lodging an application to the Tax Appeals Tribunal ("the Tribunal") and filed this application for extension of time on 9 May 2024. The Respondent filed an affidavit in reply opposing this application because it was brought out of time, contrary to the statutory timelines.

2. The issue

The issue for determination is whether the Tribunal should grant the application to extend the time within which to file an application to review the Respondent's objection decision.

The Applicant was represented by Mr. William Were, while the Respondent was represented by Mr. Tonny Kalungi and Ms. Doreen Atuhaire.

"...reasonable cause must relate to the inability or failure to take a particular step in time. A motion to extend must set forth with particularity, the facts said to constitute reasonable cause for the requested extension."

Hon. Justice Mubiru further stated that;

"The Tribunal may properly extend the time limit even where the Applicant has not acted with all due diligence, if the Applicant's failure is not itself a cause for the required extension. The most persuasive reason that he can show is that the delay has not been caused or contributed to by dilatory conduct on his own part, but there are other reasons, and these are all matters of degree."

The Applicant further submitted that it was its honest belief that this matter could have been settled through alternative dispute resolution which caused the delay. Their request for settlement through ADR was kept unresolved for about seven (7) months hence the delay in filing with the Tribunal.

The Applicant submitted that this application raises a serious question of law that warrants being resolved at trial, which would occasion injustice on the Applicant if the Application were not granted, thus satisfying 'the reasonable cause principle. The Applicant prayed that this application is allowed and the time to file for review of an objection decision is extended and each party bears its own costs.

4. The Respondent's Reply

The Respondent submitted that Section 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 objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision"*.

In the same regard, Section 16 (1) (c) of the Tax Appeals Tribunal Act provides that: *"an application to the Tribunal for review of a tax decision shall be made within 30 days of being served with notice of the decision"*.

5. The ruling

Having studied the submissions of both parties, this is the ruling of the tribunal.

Section 16 (1) (c) of the Tax Appeals Tribunal Act (TAT Act) provides that an application to the Tribunal for the review of a taxation decision must be lodged with the Tribunal within thirty (30) days after the person making the application has been served with the notice of the decision. A similar provision is contained in Section 25 (1) of the Tax Procedures Code Act.

In the case of ***Uganda Revenue Authority Vs Consolidated Properties Ltd, Court of Appeal. Civil Appeal No. 75***, the Court of Appeal held that timelines set by statute are matters of substantive law and not mere technicalities. Consequently, such timelines must strictly be complied with.

In the present case, the Respondent notified the Applicant of its objection decision on 30 August 2023. The notification was sent to the Applicant's email address that the Applicant registered with the Respondent. Therefore, as per the requirements of Section 16 (1) of the TAT Act, the Applicant ought to have lodged their application for review of the Respondent's objection decision by 30 September 2023. Despite the above, the tax law envisages situations where a taxpayer may not be able to comply with the above timelines due to extraneous circumstances which are beyond the taxpayer's control.

The Tribunal is bound by the decision of the High Court in ***Farid Meghani (supra)*** where Justice Mubiru held that there is no time limit within which an application for extension to time may be filed. Therefore, whether the application for extension should have been made within six (6) months is immaterial as it is now settled that an application for extension can be filed at any time. We shall instead focus on whether the Applicant has reasonable cause for the delay.

To this end, Section 16 (2) of the TAT Act provides that the Tribunal may, upon application in writing, extend the time for the making of an application for the review of a taxation decision. Further, Rule 11 (1) of the TAT Procedure Rules provides that the Tribunal may, in its discretion, upon the application of the applicant in writing, extend the time for making an application.

As with the first reason advanced by the Applicant, nothing rendered the Applicant unable to file an application before the Tribunal within the stipulated time frame.

It should be noted that Regulation 4 (3) of the Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations, 2023 (ADR Rules) states that;

"Where an alternative dispute resolution procedure is commenced between a taxpayer and the Commissioner, the time within which the Taxpayer is required to file an application with the Tribunal, or a suit with Court shall not be affected by the alternative dispute resolution procedure".

Therefore, the ADR process does not stop the clock regarding the timelines for lodging an application before the Tribunal.

The Applicant had up to 30 September 2023 to lodge an application before the Tribunal but slumbered over their rights for over 8 months without a justifiable cause. The Applicant has failed to show any reasonable cause for the delay. Therefore, we find that this application is time barred. In the circumstances, this application is dismissed with costs to the Respondent.

Dated at Kampala this 20th day of June 2024.

		
CRYSTAL KABAJWARA CHAIRPERSON	CHRISTINE KATWE MEMBER	KABAKUMBA MASIKO MEMBER