

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO.141 OF 2023**

NDUGU BENSON & ISINGOMA EDGAR (KPMG).....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**RULING**

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

This ruling is in respect of a preliminary objection raised by the Respondent under Section 16 (1) (c) of the Tax Appeals Tribunal Act (TAT Act) that this application is time barred.

**1. Background Facts**

The Applicants are a firm of accountants carrying on the business of audit, tax and advisory services in Uganda. The Respondent conducted a tax audit on the Applicants for the period 2013 to 2016 covering VAT and income tax, wherein it disallowed Group Life Accident (GLA) and Group personal Accident (GPA) premiums.

The Respondent disallowed the Applicant's payments on the premise of Section 22 (2) (1) of the Income Tax Act that they are payments made in respect of life insurance. The premiums disallowed for GPA were Shs. 301,990,344 and GLA of Shs. 301,990,344 on 11 January 2019 and 17 January 2019 a total of Shs. 603,980,688. The Applicant objected to the assessments on the grounds that the premiums paid by the Applicant on behalf of its employees should be allowed as business expenses.

On the Applicant's request, the Respondent through ADR reviewed its objection decisions and allowed half of the Applicants insurance premiums paid for GPA and disallowed Shs. 301,990,344 in respect of GLA. The Applicant alleged that the Respondent served the

the ADR procedure, as may be prescribed. Regulation 4(3) of the TPC (Alternative Dispute Resolution Procedure) Regulations states;

*"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 the court, shall not be affected by the Alternative Dispute Resolution procedure"*

Regulation 4 (4) of TPC (Alternative Dispute Resolution Procedure) Regulations No. 28 of 2023 clarifies that: *"For avoidance of doubt, the Alternative Dispute Resolution procedure under these regulations shall not have any effect or negate the rights of the Commissioner or taxpayer to file an application with the Tribunal or a suit with the court, nor affect the rules of the Tribunal or court."*

The Respondent issued its objection decisions on January 11, 2019, and January 17, 2019. The Applicant, dissatisfied with these objection decisions, sought further review through ADR. The Applicant then filed a new Application No. 141 of 2023 on August 18, 2023, concerning the same assessments that had previously been withdrawn, which is also time-barred.

The Respondent relied on ***Uganda Revenue Authority versus Uganda Consolidated Properties Limited, Court of Appeal Civil No. 75***, 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 ADR decision does not constitute an objection decision and does not confer locus standi upon the Applicant to file an application for review in the Tax Appeals Tribunal. An objection decision is a prerequisite for lodging an application for review before the Tax Appeals Tribunal.

The Respondent submitted that Section 14 of the TAT Act clearly states that a taxpayer aggrieved by a decision made under a taxing Act may appeal to the Tribunal. Section 1 of the TAT Act defines a taxation decision as *"any assessment or determination by notice."*

The Applicant submitted that Section 25 (1) of the TPCA provides:

*"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 Applicant submitted that an aggrieved taxpayer with either a tax decision or an objection decision may lodge an application for review of either decision with the Tax Appeals Tribunal. Section 3 of the TPCA defines a "tax decision" to mean:

- 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 other than-

(i) a decision made in relation to a tax assessment....".

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 relied on ***Cable Corporation v Uganda Revenue Authority Civil Appeal 1 of 2011***, where Justice Madrama noted: "An objection decision is a decision in respect to a taxation objection made to the Commissioner against a notice of assessment while a "taxation decision" means any assessment, determination, decision or notice."

the Applicant had applied for Alternative Dispute Resolution through the Section 24 (11) of the Tax Procedure Code Act.

The Applicant submitted that Section 17 (1) of the Interpretations Act, states:

*"Subject to this section- (a) the commencement of a statutory instrument shall be such date as is provided in or under the instrument or, where no date is so provided, the date of its publication as notified in the Gazette; (b) every statutory instrument shall be deemed to come into force immediately on the expiration of the day next preceding its commencement."*

The Applicant submitted that the commencement date of the Tax Procedure Code (Alternative Dispute Resolution Procedure) Regulations according to Section 17 of the Interpretation Act was 24 March 2023. The Applicant could not have applied Regulations which were not in place by the date it filed its application for alternative dispute resolution.

The Applicant submitted that Respondent made an appeal decision through alternative dispute resolution allowing the GPA expense of Shs. 301,990,161 and issued new Administrative Amended Additional Assessments and reduced the tax in dispute this amounted to a tax decision which can be reviewed by the Tax Appeals Tribunal.

The Applicant relied on ***Stanbic Bank Holding Limited Vs Uganda Revenue Authority App No.14 of 2018***, where the Tribunal noted:

*"...whenever the respondent issues an assessment or makes a decision, an aggrieved party has the option of objecting to the said decision. It is irrelevant whether a demand or an assessment is made or not, but it is a decision. The said assessment or decision creates a fresh cause of action. Taxation is like trespass."*

The Applicant submitted that in ***Game Discount World (Uganda) Limited Vs Uganda Revenue Authority App No. 025 of 2020***, the Tribunal noted:

*"The law is silent on where the Respondent usually makes more than one decision, which may be out of sheer ignorance that once it has made a decision it cannot review it, or as a result of over zealousness on the Respondent's part that it is obliged to reply all communications by aggrieved parties. At times the taxpayer, as noted, goes back to the Respondent with the hope of influencing a decision. This is because the law allows an aggrieved party to file an application*

respect of the premiums paid and upheld their audit positions dated 11/01/2019,17/01/2019.

The Applicant then wrote to the Respondent in a letter dated 16 January 2023 in respect of the income tax assessment for one of their former partners Mr. Ndugu Benson contending that the decision to disallow the premiums paid to insurance companies was not the correct tax treatment.

The Respondent disallowed Group personal accident premiums. i.e. Shs. 193,634,593 in 2014, Shs. 236,358,858 in 2015 and Shs. 173,986,872 in 2016 making a total of Shs. 603,980,688. The Respondent in a letter dated 30 June 2023 informed the Applicant that half of the premiums expense of Shs. 301,990,344 relating to Workman's Compensations which falls under general insurance is a statutory requirement under the employment law has been treated as an allowable deduction and the balance of Shs. 301,990,344 has been disallowed since it relates to Group Life Accident premium which is a non-allowable deduction under the Income Tax Act.

In paragraph 4 of the above letter, the appeal was partially allowed, and the assessment had been amended accordingly. This being a new amended assessment, it meant that there was now a new assessment which changed from Shs. 603,980,688 to Shs. 301,990,344. In this case which had been already objected to by the Applicant. The Applicant need not to object the second time rather than appeal to the Tax Appeals Tribunal.

Section 1 of the TAT Act defines a taxation decision to mean;

*"Any assessment, determination, decision or notice".*

Section 2 of the TPCA defines a tax decision as;

- 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 other than-*
- (i) *a decision made in relation to a tax assessment..."*

According to attachment F of the Applicant's submissions, the Applicant was served with the decision on 21 July 2023. The Respondent has not disputed this fact. The Applicant filed this application on the 18 August 2023 and was still within the 30 days statutory period of filing an application before the Tax Appeals Tribunal.

We also agree with the Applicants' submission that at the time that they applied for ADR on 16 January 2023, the ADR Regulations had not been gazetted. The Regulations came into force in 24 March 2023. The ADR regulations cannot be applied retrospectively to the Applicants and as a result, the Applicants could not have been expected to apply Regulations which were not in place by the date they filed their application for alternative dispute resolution.

In the circumstances, we find that the Applicants filed this application within time. This preliminary objection is overruled with costs to the Applicant.

Dated at Kampala this 30<sup>th</sup> day of September 2024.

*Crystal Kabajwara*

**CRYSTAL KABAJWARA**  
**CHAIRPERSON**

*Christine Katwe*

**CHRISTINE KATWE**  
**MEMBER**

*Kabakumba Masiko*

**KABAKUMBA MASIKO**  
**MEMBER**