

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

above appeal decision on 21 July 2023. Being dissatisfied, the Applicant filed this application on 18 August 2023.

2. Issues

- i. Whether the Application is time barred?
- ii. What remedies are available?

3. Representation

The Applicant was represented by Mr. Charles Bethel Muwanguzi, Ms. Lucy Kemigisha and Ms. Daniela Khanani while the Respondent was Represented by Mr. Stuart Aheebwa.

4. The Respondent's Submissions

The Respondent submitted that in paragraph 17 of the Respondent's statement of reasons, a preliminary objection was raised to the effect that the application is time barred and was lodged after 30 days from the date of receipt the notice of objection decision dated 11 January 2019.

The Respondent cited Section 27(1) of the Tax Procedures Code Act (TPCA) which provides for any person who is dissatisfied by an objection decision made under a taxing Act by Uganda Revenue Authority to apply to the Tribunal for review of the said objection decision.

The Respondent submitted that Section 27 of the TPCA, provides: "*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 further submitted that Section 16(1) (c) of the TAT 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.

The Respondent submitted that the Applicant contended that it was pursuing Alternative Dispute Resolution (ADR). Section 26 (11) of the TPCA, provides that a taxpayer who is dissatisfied with a decision of the Commissioner may apply to resolve the dispute using

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 Respondent cited Section 2 of the TPCA defines a tax decision to mean:

"(a) a tax assessment; or (b) a decision made on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction, or determination of the Commissioner, other than a decision made in relation to a tax assessment". Further, an objection decision in Section 1 of the TATA as *"a taxation decision made in respect of a taxation objection."*

The Respondent cited the case of ***Royal Van Zanten Limited V Uganda Revenue Authority Application No. 35 of 2022***, where Court stated: *"The Tax Appeals Tribunal can only review cases with a Proper Objection Decision from the Commissioner. In the absence of an objection decision, the Tax Appeals Tribunal would have nothing to review."*

The Respondent submitted that the Tribunal can only entertain this application if there was an objection decision to be reviewed under Section 26 of the TPCA and Section 16 of the TAT Act. The Commissioner General issued decisions on 11 January 2019 and 17 January 2019. The Applicant was required to file the applications by 11 February 2019 and 17 February 2019, respectively, in the due course of the ongoing Alternative Dispute Resolution. The application was filed on 18 August 2023, is time-barred. The Respondent prayed that App No. 141 of 2023 is dismissed with costs to the Respondent.

5. The Applicant's Submissions in Reply

In reply, the Applicant submitted that the application was filed within the timelines required under the law and is properly before the Tax Appeals Tribunal. The Applicant relied on the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Limited, Civil Appeal 31 of 2000***, where the Court of Appeal stated:

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

The Applicant submitted that Section 16 (1) (c) of the TATA provides:

"An application to a tribunal for review of a taxation decision shall be lodged with the Tribunal within 30 days after the person making the application has been served with notice of the decision".

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 contended that it is appealing from the taxation decision of the Respondent dated 30 June 2023 but served on 21 July 2023. It is a tax decision because it is a decision on a matter left to the discretion, judgment, direction, opinion, approval, satisfaction, or determination of the Commissioner in line with Section 3 of the TPCA. It is also a taxation decision in line with Section 1 (1) (k) of the TAT Act.

The Applicant cited the case of ***Cable Corporation v Uganda Revenue Authority (supra)***, where Justice Madrama noted:

"As far as the limitation period is concerned the distinction between an objection decision and a taxation decision is not important because both have a limitation period of 30 days for purposes of applications for review. Further distinctions would be niceties showing that save for original suits, an appeal to the High Court can only be made pursuant to an objection decision under section 100 of the Income Tax Act, whereas taxation decisions other than objections decisions can only be initially reviewed by the Tax Appeals Tribunal under the Tax Appeals Tribunal Act within the context of the Income Tax Act."

The Applicant submitted that from the above, taxation decisions are appealable to the Tribunal. The taxation decision was made on 30 June 2023 and served on 21 July 2023. The Applicant lodged an application for review of this decision on 18 August 2023.

The Applicant submitted that the appeal decision of the Respondent is a tax decision and for all intents and purposes meets the definition of a tax decision from which an application for review can be lodged in the Tax Appeals Tribunal in line with Section 3 (b) of the TPCA, Sections 1 (1) (k) and 16 (1) (c) of the TATA.

The Applicant submitted that Section 24 (11) of the TPCA provides:

"A taxpayer who is dissatisfied with a decision of the Commissioner may apply to the Commissioner to resolve the dispute using alternative dispute resolution procedure, as may be prescribed."

The Applicant submitted that it filed an application for review of the Respondents' objection decision through ADR in line with Section 24 (11) of the TPCA on 16 January 2023. The Tax Procedure Code (ADR) Regulations were gazetted on 24 March 2023 after

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

where there is a taxation decision. As a result, the Tribunal is at times faced with multiple decisions from the Respondent and has to choose from them the final decision. Where the taxes have been reduced, it reduces the complexity of the dispute before the Tribunal. Therefore, we take the last decision made as the one that counts”.

The Applicant submitted that the Respondent made an appeal decision on 30 June 2023 and served on 21 July 2023. This amounted to tax decision which the Tax Appeals Tribunal can review as it reduced the taxes in dispute. The Applicant prayed that the Tribunal overrules the Respondent's preliminary objection with costs to the Applicant.

6. Respondent's submissions in rejoinder

In Rejoinder, the Respondent submitted that the ADR process does not affect or extend the statutory deadlines for lodging applications with the Tribunal. The Respondent submitted that while the Applicant asserts that the application is based on the appeal decision dated 30 June 2024 and served on 21 July 2023, it is important to emphasize that the objection decisions at issue were made much earlier on 11 January 2019. The reliance on this decision fails on the fact that the application is tied to the earlier objection decisions.

The Respondent submitted that the Tribunal lacks jurisdiction to entertain this application based on the 30 June 2023 decision as it does not constitute a valid objection decision. The Respondent submitted that this application is time barred and should be dismissed with costs to the Respondent.

7. Determination of the Tribunal

Having read the submissions of both parties, this is the ruling of the Tribunal:

The Respondent raised a preliminary objection that this application is time barred. It is not disputed that the application which was filed on 11 July 2019, was withdrawn with the consent of both parties and went for ADR. Following ADR, the Respondent on 30 June 2023, revised its earlier objection decision and allowed half of the premium for GPA and disallowed Shs. 301,990,344 in respect of GLA. This application was filed on 18 August 2023, according to the Applicant, the respondent rejected all the Applicants objections in

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..."*

In the case of **Cable Corporation (U) Ltd Vs. Uganda Revenue Authority, High Court Civil Appeal No.1 of 2011**, held:

"A taxation decision means any assessment, determination, decision or notice. In this case the question is whether there is an objection and a decision, whether this application is properly before this tribunal and whether the tribunal has powers to entertain this application".

In determining whether the applicant is rightly before this tribunal, we relied on the case of **Alpha Woolen Uganda Limited V URA App No. 40 of 2023** where this Tribunal noted:

"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."

We noted that although the Respondent contended that according to Reg 4 (3) of the ADR Rules, ADR does not affect the statutory timelines for filing applications before the Tribunal, following the ADR process, the Respondent pronounced itself and reached a different decision.

In **MTN Uganda v URA App No 15 of 2018** the Tribunal stated;

"Matters before the Tribunal involve reviewing the decisions of the Respondent and or the Commissioner General".

In this case, the letter that communicated the amended assessment constituted a determination, decision or notice within the meaning of Section 1 of the TAT Act. The Applicant in this case is rightly before this Tribunal as there is a tax decision issued by the Respondent dated 30 June 2023.

Section 14 of the TAT Act states:

(1) *A person who is aggrieved by a decision made under a taxing act by the Uganda Revenue Authority may apply to the Tribunal for a review of the decision".*

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 30th day of September 2024.

Crystal Kabajwara

CRYSTAL KABAJWARA
CHAIRPERSON

Christine Katwe

CHRISTINE KATWE
MEMBER

Kabakumba Masiko

KABAKUMBA MASIKO
MEMBER

