

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS CAUSE NO.19 OF 2024

ROSMONIC ENTERPRISES LIMITED..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. KABAKUMBA MASIKO, MS. GRACE SAFI, MR. WILLY NANGOSYAH

RULING

This ruling is in respect of an application for extension of time within which the Applicant can seek for review of the Respondent's tax decisions

The Application is supported by an affidavit deponed by Mr. Henry Okello Ogwal, the Director in the company.

1. Background facts

The grounds upon which this application is based are laid out in the notice of motion and the affidavit in support by Mr. Henry Okello Ogwal. The grounds are briefly that;

- i) On 20 June 2020, the Respondent raised administrative default assessments against the Applicant for income tax on rent for the period 01/02/2015 to 30/06/2015, 2015/2016, 2016/2017, 2017/2018 and 2018/2019. The total amount assessed was in the sum of Shs. 29,400,000.
- ii) The assessments were raised during the COVID-19 pandemic and given the circumstances at the time, which included a total lockdown and limited movement of all persons, the Applicant was unable to object to the said assessments. This resulted from a constraint to retrieve all the documents required to file the objections to the issued assessments at the time.
- iii) On 30 August 2023, the Applicant applied to the Respondent for an extension of time to file its objections to the assessments which was granted on the 31 August 2023 up to 13 days.

- iv) On 12 September 2023, the Applicant filed its objection and filed its returns to justify the correct position. The grounds for objection were that the assessed tax on rental income was already declared on the individual account of the Late Hon. Cecilia Barbara Atim Ogwal who was also the Managing Director of the Applicant at the time.
- v) On the 20 November 2023, the Respondent issued its objection decisions and raised Administrative Additional Assessments totaling a sum of Shs. 51,300,000.
- vi) The Applicant's director engaged the Respondent's Domestic Taxes Office in Lira district to have the tax account reconciled in accordance with the evidence adduced at the objection stage wherein part of the taxes due had been accounted for in the late Hon. Cecilia 's TIN account.
- vii) As the reconciliation with the Respondent's officers was being undertaken, the Managing Director of the Applicant, Hon. Cecilia Barbara Atim Ogwal became indisposed and any process to have the liability reconciled was put on hold to focus on her treatment and palliative care and all efforts were put on hold as it included travelling in and out of the country which activity went on up until her demise in January 2024.
- viii) Between the periods of 26 February 2024 and 9 March 2024, the bankers, DFCU Bank notified the Applicant that the Respondent had instituted enforcement measures and issued Agency Notices on our accounts to recover an outstanding liability of Shs.51,300,000 which to the best of the Applicant's knowledge was over and above liability due to the Respondent.
- ix) The Applicant was advised that the agency notice could only be lifted upon the Applicant filing an application for review of the objection decision with the Tribunal.
- x) After the payment of the uncontested liability that was made on 5 and 7 March 2023, the Applicant was advised by counsel to seek leave of the Tribunal to file the application for review of the objection decision outside of the prescribed 30-day period so that the application could be heard on its merit.
- xi) That it is fair and within the interest of justice that the Applicant is granted an extension of time to file its application for review of the objection decision.

The Respondent filed an affidavit in reply deponed by Hildah Atusimiire sworn on 8 May 2024 opposing the application on grounds that;

- i) The Respondent issued the Applicant Administrative Additional Assessments for January 2015 to June 2019.
- ii) The Applicant objected to the assessments on 12 September 2023.
- iii) The Respondent issued objection decisions disallowing the Applicants objection on 20 November 2023.
- iv) The Applicant ought to have lodged its application for review of the Respondent's taxation decision by the 20 day of December 2023.
- v) That there must be sufficient cause before an application to extend time to file application for review of the Respondent's objection decision.
- vi) The Applicant has a number of directors, including the deponent, any of whom could have instituted an application in the Tribunal in a timely manner.
- vii) The Respondent prayed that the application be dismissed with costs.

In their affidavit in rejoinder, the Applicant reiterated all the averments and prayers in the application and affidavit in support.

2. Representation

At the hearing of the application, Ms. Damalie Izaula appeared for the Applicant while Ms. Patricia Ndagire and Ms. Eseza Sendegeye appeared for the Respondent. Both parties filed written submissions that were adopted as their legal arguments.

3. Submissions of the Applicant

Counsel for the Applicant submitted that the law governing review of tax decisions is provided for under Section 14 (1) of the Tax Appeals Tribunal Act which gives a right to any person aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority to apply to the tribunal for review of the decision.

The Applicant submitted that Section 16 (1)(c) of the Tax Appeals Tribunal Act provides as follows:

"An application to this tribunal for review of a taxation decision is required to be lodged within thirty days after the person making the application has been served with notice of the decision".

However, Section 16 (2) of the Tax Appeals Tribunal Act empowers this Tribunal to extend the time for the making of an application for review of a taxation decision upon request by a taxpayer in writing.

The Applicant submitted that the above provision is operationalised by Rule 11(1) of the Tax Appeals Tribunal (Procedure) Rules which provides that where an application is not filed with the Registrar within forty-five days from the date the applicant was served with a notice of the taxation decision the Tribunal may in its discretion, upon the application of the applicant in writing, extend the time for making an application. In the exercise of its discretion, the tribunal guided by Rule 11(6) of the Tax Appeals Tribunal (Procedure) rules provides that the tribunal may grant the extension of time if it is satisfied that the taxpayer was unable to file the application for the following reasons;

- a) Absence from Uganda
- b) Illness; or
- c) Any other reasonable cause.

The Applicant submitted that the Rule 11 of the Tax Appeals Tribunal (Procedure) Rules empowers the Tribunal to exercise its discretion and grant an extension of time to an aggrieved taxpayer to apply for review of the objection decision provided the Applicant demonstrates sufficient cause for which the extension of time should be granted. Section 16(2) of the Tax Appeals Tribunal Act and Rule 11 of the Tax Appeals Tribunal (Procedure) Rules provides for leave to seek an extension of time to apply for review of the taxation decisions.

The Applicant submitted that from November 2023 when the objection decision was issued the late Hon. Cecilia Ogwal was ill and absent from Uganda as she had travelled to India for her palliative care until the time of her demise in January 2024. The Applicant as a family –owned entity, the Late Hon. Cecilia Ogwal was the ultimate decision-maker which at the time of her indisposition made it difficult to obtain the decision to file the Application within the requisite time frame.

The Applicant submitted that its affairs were being attended to by the deceased and her son Mr. Ogwal who upon his mother's indisposition, temporarily halted any efforts to have the Applicant's tax account reconciled in line with the Respondent's Tax decisions. Unfortunately, during that same time, Hon. Cecilia Ogwal passed on 18 January 2024.

The Applicant submitted that this Application for extension of time was brought without undue delay relying on the case of ***Mulindwa George William v Kisubika Joseph Civil Appeal 12 of 2014***, the Supreme Court of Uganda stated that factors to be considered in an *application for an extension of time* are;

- i. The length of the delay.
- ii. The reason for the delay
- iii. The possibility or chances of success.
- iv. The degree of prejudice to the other party.

The Applicant further submitted that following the demise of the Applicant's managing Director and completion of her last funeral rites, the Applicant underwent reorganization of its affairs to allow for Mr. Henry Ogwal to take over the leadership of the Applicant which process was completed in February 2024. The Application for extension of time was filed on 26 March 2024 following a failed reconciliation with the Respondent. The provisions of Section 16(7) of the Tax Appeals Tribunal Act provide that an application for review of a decision be brought within six months from the date of the taxation decision. The applicant submitted that the application for extension of time was timely filed.

The Applicant submitted that the grant of the extension of time will not prejudice the Respondent. The applicant prayed that this application is granted and that the matter is heard on its merits.

4. Submissions of the Respondent

In reply, the Respondent submitted Section 16 (1) (c) of the Tax Appeals Tribunal Act provides that: "*an application to the tribunal for review shall be made within thirty days of being served with notice of the decision*". The Objection decisions were issued on 20 November 2023, the Applicant ought to have filed an application for review by 20 December 2023.

The Respondent submitted that the Tribunal considers the decision of the Court of Appeal in **Uganda Revenue Authority V Consolidated Properties Ltd Court of Appeal. Civil Appeal No.75** where it was held that: *"Timeless set by the statutes are matters of substantive law and not mere technicalities and must be strictly complied with"*.

The Respondent further submitted Section 16 (2) of the Tax Appeals Tribunal Act provides that: *"the Tribunal may, upon application in writing, extend the time for the making of an application to the Tribunal for review of a taxation decision"*. Rule 11(1) of the Tax Appeals Tribunal Rules provides that where an application is not filed within 45 days from the date of service of the objection decision, the Tribunal may grant the same if satisfied that the taxpayer was unable to file the application due to absence from Uganda, illness or any other reasonable cause. The respondent cited the case of **George Mulindwa v Kisubika Joseph Civil Appeal No. 12 of 2014** where it was held that;

"The applicant seeking for extension of time has the burden of proving to the courts satisfaction that for sufficient reasons was not possible to lodge the appeal within the prescribed time."

The Respondent submitted that it is the Applicant's submission that it was prevented by illness and demise of its managing Director from filing an appeal to the Tax Appeals Tribunal against the objection decision. The Applicant had not availed before the Tribunal any evidence or proof of the Managing Director's sickness or that the said sickness occurred when the Applicant was required to file an application in the Tax Appeals Tribunal. In **Tushabe Chris v Co-operative Bank Ltd Supreme Court Civil Application No.8 of 2018**, the court stated:

"It was observed that sickness constitutes sufficient cause. However, there must be evidence and such sickness should fall within the time that the party was mandated to perform an act required by law not after".

The Respondent submitted that the Applicant as an incorporated company is an entity separate from the individuals who own manage and support its operations. This includes its directors. The principle of a company's corporate personality was laid out in the case of **Salmon v Salmon & Co. Ltd [1897] AC 22**.

The respondent contended that the Applicant has several Directors including Henry Okello Ogwal. According to Section 198 (b) of the Companies Act 2012, directors of a company have a duty to exercise a degree of skill and care as a reasonable person would do looking after their own business. This section read together with Section 198 (d) of the Companies Act which tasks directors with a duty to ensure compliance with the Companies Act and any other law means that any of the other directors of the Applicant should have been in position to apply to the Tribunal for review of the Respondent's objection decision.

The Respondent submitted that the application for extension of time should not be allowed because the Applicant has not demonstrated a sufficient cause as to why the Application should be granted. The Respondent prayed that this Application is dismissed with costs to the Respondent.

5. Rejoinder of the Applicant

In rejoinder, the applicant submitted that the evidence of illness of the Applicant's managing Director, Hon Cecilia Barbra Atim Ogwal and subsequent demise is an affidavit issued on oath and is also within public knowledge for which they invited the tribunal to take judicial notice. The applicant cited the case of **Buryahika Stephen & 2 others Hoima Sugar Ltd & 7 others, Civil Suit No. LD 0020 of 2015** where court held:

"It is trite law that judicial notice is the process by which courts take cognizance or notice of matters which are notorious or clearly established that formal evidence of their existence is not necessary as well as matters of common knowledge and everyday life....Judicial Notice therefore means the acceptance by a tribunal of the truth of a fact without proof because it is in the tribunal's own knowledge. It is an exception to the rule that all facts in issue or relevant facts must be proved by evidence."

The Applicant submitted that they had demonstrated sufficient cause for the grant of an extension of time to review the taxation decision of the respondent. The Applicant prayed that the application is granted with costs to the applicant.

6. Determination of the application by the Tribunal

The Applicant was served with an objection decision on 20 November 2023 and filed this application on 26 March 2024. The Applicant alleged that its focus shifted from reconciliation to paying attention to the treatment of their Managing Director, the late Cecilia Ogwal which entailed traveling in and out of the country until her demise in January 2024. However, the Respondent objected to the application contending that the applicant had a number of directors who could file on time for the Applicant in line with the Companies Act. The guiding factor for the tribunal in cases like these is sufficient cause. The tribunal addressed it as follows;

Section 16 (1) (c) of the Tax Appeals Tribunal Act provides that an application to a tribunal for review of a taxation decision shall be lodged with the tribunal within thirty (30) days after the person making the application has been served with notice of the decision.

Rule 11(6) of the Tax Appeals Procedure Rules provides that the Tribunal may extend time if satisfied that the taxpayer was unable to file the application because of illness, absence from Uganda or any other reasonable cause. *In Tight Security Limited v Chartis Uganda Insurance Co. Limited, Misc. Application 8 of 2014*, the court held:

"Good Cause relates to and includes the factors which caused inability to file within the prescribed period of 30 days. The phrase '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"

The Applicant in paragraph 4 of their affidavit in support of application, stated that the length of delay was the fact that the said assessments were raised during COVID -19 pandemic. Given the circumstances at that time of a total lockdown and limited movement of all persons, the Applicant was unable to object to the said assessments and to retrieve all the documents required to file the objections to the assessments. After being granted the extension of time on 31st August 2023 for 13 days to file its objections, the Applicant went ahead to file the objections on 12th September 2023 challenging the administrative default assessment and filed its returns to justify the correct position.

On the 20 November 2023, the Respondent issued its objection decisions and the Applicant's director engaged the Respondent's Domestic Taxes Office in Lira district to have the tax account reconciled. As the reconciliation with the Respondent's officers was being undertaken, the Managing Director of the Applicant, Hon. Cecilia Barbara Atim Ogwal became indisposed and subsequently passed away in January 2024.

It's important to note that the Applicant was unable to file within the prescribed timelines due to unforeseeable circumstances, to wit, the illness and demise of their Managing Director.


Rule 11 (6) provides of the Tax Appeals (Procedure) Rules empower the Tribunal to grant an extension of time if the Tribunal is satisfied that the taxpayer was unable to file the application for the following reasons:

- a) absence from Uganda;
- b) illness; or
- c) Any other reasonable cause.

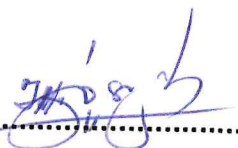
The Applicant explained that they were unable to file within the prescribed timelines due to their Managing Director's illness and subsequent demise. Further, it is not necessary for the Applicant to adduce evidence to this effect as these facts are within the Tribunal's knowledge.

The Tribunal therefore finds that the Applicant had sufficient reasons for grant of leave to extend time. In the circumstances, this application is granted. Each party bears its costs.

Dated at Kampala this 18th day of July 2024.


.....
KABAKUMBA MASIKO
CHAIRPERSON


.....
GRACE SAFI
MEMBER


.....
WILLY NANGOSYAH
MEMBER

