

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 22 OF 2023

SOGEA SATOM UGANDA.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MS. CHRISTINE KATWE

RULING

This ruling is in respect of a preliminary objection brought under Section 16 (1) (c) of the Tax Appeals Tribunal Act, Section 25 (1) of the Tax Procedures Code Act and Order 6, Rule 28 of the Civil Procedure Rules seeking:

- a) A declaration that TAT Application 22 / 2023 was filed out of time.
- b) Cost of the Application be provided for.

1. Background Facts

The Applicant is the Ugandan branch of Sogea-Satom, a company headquartered in France. Sogea-Satom offers engineering services, earthworks, road construction, hydraulics projects, urban infrastructure, water treatment plants, airways bridges, viaducts, commercial ports and public facilities.

On the 24 October 2022, the Respondent issued an Administrative Additional VAT Assessment for the period 2020 amounting to Shs.1,525,576,110.66 on imported services from its head office.

On 29 October 2022, the Applicant objected to the assessment on grounds that their head office is not a separate entity from its branch and therefore there was no VAT chargeable on the imported services.

On 21 December 2022, the Respondent disallowed the Applicant's objection on grounds that the taxpayer was rightly assessed for VAT on imported services in respect of charges on taxable foreign services supplied to and consumed by Sogea- Satom Uganda.

Dissatisfied with the Respondent's objection decision, the Applicant filed TAT application No. 22/2023 before the Tax Appeals Tribunal ("the Tribunal") on 31 January 2023, 10 days after the 30 day timeline for filing applications before the Tribunal.

2. Representation

At the hearing of the application, Ms. Mary Anne Kasule and Ms. Mary Goretti Ajwang appeared for the Applicant while Mr. Tony Kalungi appeared for the Respondent.

Counsel for the Respondent raised a preliminary objection to the effect that the Applicant had filed the application out of time and both parties were asked by the Tribunal to file written submissions.

3. Submissions of the Respondent

The Respondent submitted that the application was filed 10 days out of time. The objection decision was made and served on the 21 December 2022 and an application was filed on 31 January 2023. The application ought to have been filed on 20 January 2023 and was thus 10 days outside the prescribed time of 30 days without any extension of time granted by the Tribunal. The Respondent submitted that Order 15 Rule 2 of the Civil Procedure Rules provides that the court may try issues of law if it thinks that the case or any part of it may be disposed of on the issues of law only. The Respondent cited the case of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696***, where Sir Charles Newbold stated that; *"a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit."*

The Respondent further submitted on Section 25 (1) of the Tax Procedure Code Act 2014 which 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"*. Section 16 (1) (c) of the Tax Appeals Tribunal Act provides:

“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 relied on the case of ***Uganda Revenue Authority v Consolidated Properties Ltd, Court of Appeal Civil Appeal No. 31 of 2000*** where 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 contended that TAT Application Form 1 indicated that it was filed on 31 January 2023 but the date of service of the taxation decision is 21 December. Paragraph 1.6 of the application states that the objection decision was made on the 21 December 2022. Paragraph 5 of the statement of reasons indicates that the objection decision was made on the 1 December 2022. The Respondent further contended that on 13 April 2023, when the matter came up for scheduling, it was agreed that the Respondent made an objection decision on 21 December 2022. The Respondent submitted that the foregoing is proof that the application was filed on the 31 January 2023 when the objection decision was made and served on the 21 December 2022. Therefore, the application was filed 10 days outside the prescribed time of 30 days without any extension of time granted by the Tribunal. The Respondent prayed that the preliminary objection is upheld, and this application dismissed with costs.

4. Submissions of the Applicant

In reply, the Applicant submitted that they filed within the 30 days which 30 days started running after the date of the arbitration decision and as such the application was delayed by the action of the respondent inviting them for arbitration and urging them not to file any matter at the Tribunal.

The Applicant contended that the Respondent invited them to participate in Alternative Dispute Resolution (ADR) and that the Respondent is barred from raising the technicality of time having participated in the ADR meeting and delayed the decision until 1 March 2023, which decision was served on the 9 March 2023. The Applicant contended that the 30 days would run from the 9 March 2023 being the date of service of the decision from

the Commissioner, Legal Service and Board affairs and not 21 December 2022 since the objection decision was not conclusive.

The Applicant relied on Article 126 (2) (e) of the Constitution of Uganda which provides that substantive justice must be administered without undue regard to technicalities.

The Applicant further submitted that the tax in dispute is Shs.1,525,576,110.66 which amount if not reviewed by the honorable Tribunal, will crystallize the tax liability on the Applicant to their prejudice, injustice and unfairness.

In the alternative, the Applicant submitted that the 10-day delay was not inordinate and also caused by the Respondent's actions in delaying the ADR decision. Further, that the delay was too minimal to allow a limitation to be used as a bar to the Applicant's application which has a high likelihood of success.

The Applicant implored court to put in consideration (i) the length of the delay (ii) the reason of the delay (iii) the possibility or chances of success of the application and (iv) the degree of prejudice to the party. The applicant submitted that the Respondent would not be prejudiced if the application is entertained on its merit.

In reply to paragraph 6 and 7 of the respondent's submission, the applicant contended that the provisions of the law on timelines are not mandatory but rather directory and therefore interpreting it as a mandatory command would lead to absurdity or to inconsistency with the constitution or statute or would cause injustice, to be an unreliable formula, which is not supported by precedent or any other authority.

The Applicant prayed to the Tribunal to overrule the preliminary objection and hear the application on its merit.

5. The Respondent's submission in rejoinder

In rejoinder, the Respondent submitted on Regulation 4(3) of the Tax Procedure Code (Alternative Dispute Resolution Procedure) Regulations, 2023 which provides:

"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".

Regulation 4(4) of the Tax Procedure Code (Alternative Dispute Resolution Procedure) Regulations 2023, provides 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 tax payer to file an application with or the suit with the court or have an effect on the rules and procedures of the Tribunal”*.

The Respondent cited ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd, Court of Appeal Civil Appeal No.31 of 2000*** where the Court of Appeal held:

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

Consequently, the Court of Appeal held that the application of the Respondent to the Tax Appeals Tribunal was properly rejected by the Tribunal as being time barred. The Respondent contended that Article 126(2) (e) of The Constitution does not aid the Applicant since timelines are not a mere technicality.

6. Determination of the Application by the Tribunal

Having read and considered the submission of both parties as well as the authorities relied upon, this is the ruling of the Tribunal.

The main question to be determined by the Tribunal in this matter is whether TAT Application No. 22 of 2023 should be dismissed on grounds that the Applicant filed the application out of time. This follows a preliminary objection raised by the Respondent to that effect.

The Respondent raised a preliminary objection that this application was filed 10 days outside the prescribed 30-day timelines.

In ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd, Court of Appeal Civil No.31 of 2000***, the Court of Appeal stated:

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

S.16 of the Tax Appeals Tribunal 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”

S.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”.

However, the Applicant contends that they filed within the 30 days, which started after the date of the arbitration decision, and as such, the Applicant was delayed by the Respondent inviting them for arbitration.

According to Regulation 4(3) of the Tax Procedure Code (Alternative Dispute Resolution) Regulations, 2023 provides 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”.*

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 taxpayer to file an application with or the suit with the court or have an effect on the rules and procedures of the Tribunal or Court”.*

It should be noted that the Applicant in their submissions, alleged that the Respondent advised against filing the matter before the Tribunal and invited the Applicant to ADR. This fact was not denied by the Respondent in their rejoinder.

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 above charter placed a duty upon the Respondent to inform the Applicant 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, shall not be affected by the alternative dispute resolution procedure. Proof of such information should be included in the minutes of the arbitration proceedings between the Applicant and the Respondent.


It was inappropriate for the Respondent to apply for the application to be dismissed on the grounds that it was filed out of time, after having urged the Applicant not to file the matter before the Tribunal during the pendency of the arbitration proceedings. The Respondent knew fully well that its actions in restraining the Applicant from filing the said Application would disadvantage the Applicant. The Respondent's actions amounted to misinformation and were calculated to mislead the Applicant into thinking that the time within which the application ought to be filed with the Tribunal would only begin to run upon the conclusion of the arbitration.

Under these circumstances, the preliminary objection is accordingly dismissed. Each party will bear its own costs.

Dated at Kampala this 19th day of July 2024.


CRYSTAL KABAJWARA
CHAIRPERSON


SIRAJ ALI
MEMBER


CHRISTINE KATWE
MEMBER

