

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 16 OF 2024.

TASCO INDUSTRIES LTD:.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY:.....RESPONDENT

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

RULING

This ruling is in respect of an application for an extension of time within which to file an application for review.

The application was brought under S. 16(2) and 28(1) of the Tax Appeals Tribunals Act Cap.345, Rules 11 and 30 of the Tax Appeals Tribunals (Procedure) Rules, 2012, S. 98 of the Civil Procedure Act Cap. 71.

The respondent issued to the applicant a consolidated administrative assessments in respect of Value Added Tax for the periods, June 2018, July 2018, June 2019, December 2019, June 2020 and June 2021 totaling to Shs. 396,122,134.51. The applicant objected. The respondent requested for documents which the applicant availed. On 12th November 2023, the respondent made its objection decision, allowing Shs. 58, 772, 745.19 and disallowed Shs. 337,349,389.32.

On 15th February 2024, the applicant filed this application seeking for more time to review the application.

At the hearing, applicant was represented by Mr. Francis Turyamuhebwa and Mr. James Yeka while the respondent by Ms. Shallot Katuutu.

In submissions, learned Counsel for the applicant submitted that S. 16(1) (c) of the Tax Appeals Tribunals Act requires an application for review of a tax decision to be filed within 30 days from the date of service of the tax decision. The 30 days from the time the objection decision ended on 12th day of December 2023. The applicant cited the cases of *Farid Meghani v Uganda Revenue Authority Miscellaneous Application. No 185 of 2020* and *Mulindwa George William V Kasubika Joseph Civil Appeal No 12 of 2014* where Court listed four factors to be considered in granting applications of this nature namely:

- a) Length of time,
- b) Reason of the delay,
- c) Possibility of success, and
- d) Degree of prejudice to the other party

The applicant further submitted that S. 16 (7) of the Tax Appeals Tribunals Act, requires an application for review to be made within six (6) months from the date of the tax decision. Counsel for the applicant argued that the current application is brought within time, from the date the decision notice was issued to the applicant that is only three (3) months and 3 days.

The applicant submitted that in *Farid Meghani v Uganda Revenue Authority Miscellaneous Application. No 185 of 2020*;

“... The tribunal considered the fact that for the tribunal to exercises its discretion to extend time, the application should be filed within a period of 6 months which was done in this case...”

The applicant contented that Rule 11 (6) of the Tax Appeals Tribunals (Procedure) Rules, 2012, 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 under Paragraph 10 and 11 of the affidavits in support of the application dated 15th February 2024 deponed by Mr. Bhavik Nayee states that;

“The applicant being dissatisfied with the objection sought advice from its tax consultant who advised it to pursue negotiations with the respondent which in fact went on until the end of November”

“That it was due to the hope and expectation extended by the respondent that this matter would be settled amicably that the applicant omitted to apply to this Honorable Tribunal for review of the Respondent's objection decisions within the stipulated time”.

The applicant argued that respondent in his affidavit in reply actually admits to the fact that the said negotiations were conducted during the said period.

The applicant submitted that in *Tight Security Limited v Chartis Uganda Insurance Co. Limited* Miscellaneous Application. No. 8 of 2014 where court stated that;

"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 to good cause."

In *Farid Meghani V Uganda Revenue Authority Civil Appeal No 06 of 2021* Justice Mubiru stated;

“When a litigant misses a deadline, it might seem obvious that it resulted from "negligence," by reason of the fact that little or no attention was given to the matter or it was left undone or unattended through carelessness. Where a decision not to act is made, there is no negligence, but there is a range of possible explanations for a failure to comply with a filing deadline, from being prevented from doing so by forces beyond a party's control to cases where a party may choose to miss a deadline for a very good reason due to inadvertence, miscalculation or negligence in between”.

The focus in the procedural context of an extension of time to file a pleading is on the reason for delay and whether it was within the control of the applicant as outweighing the

other considerations. A finding of excusable delay involves an equitable determination that should incorporate all relevant factors, including: - (i) the length of delay and its potential impact on the proceedings; (ii) the reasons for the delay, including whether it was within the reasonable control of the applicant; and (iii) the danger of prejudice to the other party (see *Phelps v. Button* [2016] EWHC 3185. The application will not be granted where, from lapse of time or other cause, the exercise of that discretion would involve serious hardship or prejudice to the other party.

The applicant submitted that it failed to file within time due to honest belief that the respondent had made them believe that the matter would be settled amicably. Upon the applicant realizing that the matter could not be settled amicably, the applicant immediately instructed a law firm to take appropriate steps. Refer to paragraph 12 and 15 of the affidavits in support. Counsel for the applicant submitted that the applicant should be given a chance to present its case to the tribunal.

In reply, the respondent submitted that S. 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.”

The respondent submitted that S. 16 (1) of the Tax Appeals Tribunal Act provides that an application for review shall be made within 30 days of the tax payer being notified of the taxation decision and S.16 (2) of the same 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. The respondent submitted that S. 16 (7) of the Tax Appeals Tribunal Act provides that an application for review has to be made within 6 months from the date of the taxation decision.

The respondent cited the case of *Cable Corporation (U) Ltd v Uganda Revenue Authority*, High Court Civil Appeal No. 1 of 2011, Court upheld the decision of the tribunal declining to grant leave to Cable Corporation Ltd to file an application out of time and stated that;

"The 30 days laid down in S. 16 of the Tax Appeals Tribunal Act, start to run on receipt of the letter communicating the decision from the respondent".

The respondent submitted *that Uganda Revenue Authority v Uganda Consolidated Properties Ltd* Court of Appeal Civil Appeal No. 75/1999, the court of appeal held that:

"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 argued that the applicant did not provide any justifiable reason to warrant a grant of an extension of time to file an application for review of the taxation decision. In Affidavit of Mr. Bhavik Nayee, where he stated that he was pursuing negotiations with the Respondent with hope and expectation that the matter would be settled amicably, it omitted to file an application for Review before the Tax Appeals Tribunal.

The respondent cited Rule 11 (6) which provides that the tribunal may extend time if satisfied that the tax payer was unable to file the application because of illness, absence from Uganda or any other reasonable cause. The grounds raised by the applicant are not ones envisaged under Rule 11 (6) of the Tax Appeals Tribunal (Procedure) Rules, 2012. The phrase "reasonable cause" should be interpreted to mean such other occurrences of the same kind that would incapacitate or restrict an applicant from filing the review application. Ignorance is not a reason that is of the same kind as illness and absence from Uganda. Negotiations with the respondent cannot be deemed as a factor which were outside the applicant's control.

In the case of *Uganda Communications Commission v Uganda Revenue Authority* Miscellaneous Application No. 6 of 2012, this Tribunal held that;

"Meetings and correspondences between a tax payer and the respondent following a tax decision did not provide a taxpayer with a lawful excuse for not filing an application to review the respondent's taxation decision within the time stipulated by the law. The applicant's failure to file the application within the stipulated time constituted dilatory conduct

on his part. The respondent submitted that the applicant has not proved the conditions necessary for the grant of the prayers sought in this application and they prayed that the same is disallowed with costs to the respondent”

The respondent contended that the applicant has not advanced sufficient grounds to warrant extension of time and prayed that the application should be dismissed with costs.

In rejoinder, the applicant relied on *Andrew Bamanya v Shamsherali Zaver*, SCCA No. 70 of 2001 where the Supreme Court held that

“Mistakes, faults and lapses should not be visited on the litigant and that disputes should be investigated on merits. That administration of justice normally requires the substance of all disputes to be investigated and decided on their merits and that errors and lapses not necessarily debar a litigant from pursuit of his rights”.

The applicant further contended that the tribunal should look at the above decision that looks at investigating disputes and deciding cases based on their merits. The applicant submitted that it cannot be accused of dilatory conduct. The application for extension of time was made within six months period as provided by law.

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

The law governing extension of time within which to apply for review of taxation decision before the Tax Appeals Tribunal is provided for under S. 16 (1) (c) and (2) of the Tax Appeals Tribunal Act provides that;

“An application for review of a taxation decision shall be lodged with the tribunal within thirty days after the person making the application has been served with notice of the decision”.

S. 16(2) of the Tax Appeals Tribunal Act provides that;

“A tribunal may upon the application in writing, extend the time for the making of an application for a review of a taxation decision”

S. 25 of the Tax Procedure Code Act which states that;

“(1) 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.”

In *Uganda Revenue Authority v Consolidated Properties* Civil Appeal 31 of 2000 the Court of Appeal held that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

From the said law, the time for one to file an application for review is set. The applicant ought to have lodged the application within 30 days from the date of service. However, S. 16(2) of the Tax Appeals Tribunal Act allows for a party to apply for an extension of time. Rule 11 of the Tax Appeals Tribunals (Procedures) Rules provides that an application which is not filed within time, the tribunal may, in its discretion upon an application in writing, extend the time for making an application. The applicant has to show sufficient grounds or good cause as to why the application was not filed in time.

In *Tight Security Limited v Chartis Uganda Insurance Co. Limited* Misc. Application 8 of 2014, the court held that.

“Good Cause relate to and include 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.”

In *Mulindwa George William v Kisubika Joseph* Civil Appeal 12 of 2014, the Supreme Court of Uganda set out the following factors that should be considered in an application for extension of time.

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


Therefore, the Tribunal has to determine whether there are sufficient reasons as to why it should extend time. Rule 11 of the Tax Appeals Tribunals (Procedure) Rules requires the tribunal to exercise its discretion. . S. 98 of the Civil Procedure Act provides that:


“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.

The tribunal finds there is nothing that disentitles the applicant from getting an extension of time. The tribunal grants this application on the balance of convenience to allow the main application be heard on its own merit. The respondent will not suffer any prejudice in granting this application.

Taking the above into consideration, this application is allowed and each party shall bear its own costs.

Dated at Kampala this 25th day of April 2024.


MRS. KABAKUMBA MASIKO
CHAIRPERSON


MR. WILLY NANGOSYAH,
MEMBER


MS. GRACE SAFI
MEMBER