

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS CAUSE NO. 081 OF 2024

TWO MOTHERS ENTERPRISES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. PROSCOVIA R. NAMBI, MS. CHRISTINE KATWE, MR. WILLY
NANGOSYAH

RULING

This ruling is in respect of an application brought under Section 16 (2) of the Tax Appeals Tribunal Act, Rule 11 and 30 of the Tax Appeals Tribunals (Procedure) Rules, Section 98 of the Civil Procedure Act and Order 52 Rules 1,2, and 3 of the Civil Procedure Rules seeking orders that:

- (a) The Applicant be granted an extension of time within which to file an application for review of the objection decision issued by the Respondent.
- (b) An Injunction preventing the collection of the assessed tax until the filing of the anticipated application for review of the decision.
- (c) Costs of the Application be provided for.

1. Background facts

The Applicant deals in rentals within Kira Municipality Wakiso District. On 7th November 2019, the Respondent issued an additional Income Tax Assessment of Shs. 70,170,000 for the period 2017-2018 indicating that the Applicant had an unsupported loan of Shs. 223,900,000 from a related party. The Respondent recharacterized the loan as income

hence the additional assessment. On 30th November 2019, the Applicant objected to the assessment and on 14th February 2020 the Respondent made the objection decision disallowing the Applicant's objection. On the 11th December 2024, the Applicant filed an application seeking an extension of time within which to apply for review of the Respondent's objection decision.

The Grounds of this Application are stated in the affidavit in support of the application deponed by Mr. Cula Philemon.

- (i) That the Applicant is engaged in the business of renting properties. The Applicant objected to the said assessment of Shs. 70,170,000. The Respondent via a letter dated 6 May 2024 rejected the Applicant's request to review the tax assessment.
- (ii) That the Applicant is willing to pay the 30% of the tax in dispute.
- (iii) That the Applicant's Managing Director, Ms. Rose Kabachope, was posted as the Immigration Attaché Ministry of internal Affairs attached to London in the United Kingdom for the last 4 years and was unable to give full instructions to commence the current legal proceedings.
- (iv) That the Applicant's Accountant who would have advised the Applicant Managing Director about the next course of action retired and the Applicant's Managing Director being abroad had no one to advise the Applicant company.

In the affidavit in reply sworn by Mr. Kenan Aruho, a Legal officer in the Respondent's legal services and Board Affairs Department, the Respondent contended as follows:

- (i) He stated that he is aware that an Application to the Tribunal must be lodged within 30 days after an objection decision is issued and there must be just cause.
- (ii) That physical absence as purported, if any, does not preclude any other directors or officers of the company or a lawyer on his instructions accessing all the documents required to file an application for review.
- (iii) That there is not a justifiable reason to warrant a grant of an extension of time to file an application for review of the taxation decision.
- (iv) That the Respondent prays that this application be dismissed with costs.

2. Representation

The Applicant was represented by Mr. Paul Baguma while the Respondent was represented by Mr. Barnabus Nuwaha.

Both parties made both oral and written submissions.

3. Submissions of the Applicant

The Applicant submitted that the Respondent issued the Applicant with an assessment of Shs. 70,170,000 1 July 2017 to 30 June 2018 which it claimed was unsupported party loans.

The Applicant submitted that it objected on 3 July 2019 and the Respondent disallowed the objection on 30 November 2023 maintaining the assessments. The Applicant contended that Mr. Kaboyo Enock a licensed tax practitioner was engaged to object to the assessments and pursue the application before the Tribunal. He objected to the assessment but fell sick and retired from office and went back to his home village in Rakai before making an application to this Tribunal. Owing to the above, the Applicant could not file the application for review within the statutory time frame and seeks the grace, clemency and indulgence of the Tribunal by granting it leave to file the said application out of time.

The Applicant submitted that Mr. Cula tried to engage the Respondent in ADR whose communication was made in June 2024 declining the Applicant's request. The Applicant contended that the Covid 19 Virus and total lock down of the country, sickness of one Directors, transfer of the Director and sudden sickness and retirement of the Applicant's representative who did not inform the Applicant to watch out for the pending objection decision or share the Applicant's portal logins to enable any other person to check for the decision, caused the delay in filling of the application before the Tribunal.

The Applicant submitted that the failure to file an application for review by Midas Advocates in time constituted mistake of counsel for the Applicant who were retained as

Counsel for the Applicant. The Applicant prayed that mistake of Counsel ought not to be imputed on the Applicant who has demonstrated good cause.

During the hearing of this application, the Applicant submitted that they did not know about the technicalities within which to file this Application before the Tribunal for review. The Accountant Mr. Enock Kabogo who would have advised the Applicant on the next course of action retired and went to Rakai.

The Applicant submitted that Ms. Rose Kabachope the Managing Director of the Applicant, is a lay person and does not know anything concerning the technicalities of the next course of action and that she has been out of the country. The Applicant prayed that the Tribunal grants the application for extension of time. The Applicant submitted that the Applicant is willing to pay the statutory 30%.

Injunction

Secondly, the Applicant prayed for an Injunction preventing collection of the assessed tax until filing the anticipated application for review of the objection decision. The Applicant submitted that Rule 30 of the TAT Rules and order 41 of the Civil Procedure rules empowers this Tribunal to grant an injunction in the nature sought by the Applicant.

The Applicant submitted that if this Tribunal grants the extension of time, the Respondent not being barred not being barred by any order could still collect the tax assessed but the Applicant will not be able to file for an injunction as it would not have filed an application for review yet. The Applicant prayed that if the extension of time is granted, this Tribunal should issue an injunction maintaining the status quo and both parties bear their own costs.

4. Submissions of the Respondent

The Respondent submitted that this Application has no merit and that the same ought to be dismissed with costs. Section 14 (1) of the Tax Appeals Tribunal Act provides that any person who is aggrieved by a decision made under a taxing Act by Uganda Revenue Authority (URA) to apply to the Tribunal for review of the said decision. In the case of

Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd Court of Appeal. Civil Appeal No. 75, 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 submitted that the time within which to file an application challenging the Respondent's decision ran out on Friday, 14 August 2020. This Application is not tenable and fails on ground that it is incurably time barred.

The Respondent submitted that Section 16 (7) of the Tax Appeals Tribunal Act Cap provides:

"An application for review of a taxation decision shall be made within six months after the date of the taxation decision."

On the above premise, there is no discretion to be exercised given that the law does not allow for the same after 6 months have lapsed. The Respondent prayed that this Application is dismissed with costs to the Respondent.

The Respondent submitted that it would not have any problem with the Applicant's reasons for Application of extension of time, but the application is over six months. The Respondent submitted that the application for extension of time does not fall within the six months where the Tax Appeals Tribunal is allowed to grant this application for extension of time.

5. Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant submitted that a layman cannot easily operate the portal and determine whether an objection decision has been issued or not. The Applicant acted dutifully and engaged Mr. Kaboyo a registered tax expert to act on behalf of the Applicant in pursuing the objection and file an application before the Tribunal.

The Applicant averred that the cause of the delay was failure to identify the objection decision in time due to sickness and retirement of the Applicant's representative who

could not see the notification, covid19 lockdown and being out of the country for official duty. The mistake could only be made by persons who do not have capacity and responsibility to discharge the task. It was the Applicant's submission that it was prevented from filing in time by sufficient cause, which was sickness, being out of the country for official duty and mistake of Applicant's representative which cannot be vested on them.

The Applicant submitted that they have taken corrective measures considering the mistake and are committed to litigating this application. The Applicant invited the Tribunal to grant the extension of time, issue and injunction and each party to bear its own costs.

6. Determination by the Tribunal

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

The Applicant explains that the delay in filing resulted from a series of unfortunate events. These included the illness and retirement of their tax advisor Mr. Kaboyo Enock, the COVID-19 pandemic, and out-of-country duty of the Managing Director. Consequently, they were unable to file their application within the statutory timeframe. The Applicant maintains that these factors constitute sufficient cause to warrant an extension and requests the Tribunal's understanding and leniency. Additionally, the Applicant seeks an injunction to prevent Respondent from taking any tax collection action until its application for review is submitted and heard.

The Respondent contends that the application lacks merit and is legally untenable as it is substantially time-barred. The Respondent emphasizes that statutory timelines are substantive law and are to be strictly adhered to, as supported by precedents. The Respondent further asserts that there is no legal provision allowing the Tribunal to extend the application period beyond six months.

We rely on the legal provisions on the timelines. Section 16 (1) (c) of the Tax Appeals Tribunals 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".*

Where the Applicant has not filed within 30 days, Section 16 (2) of the Tax Appeals Tribunals Act allows for an application for extension of time. It states:

"A Tribunal may, upon application in writing, extend time for the making of application to the Tribunal for a review of the taxation decision".

Further, Section 16 (7) of the Tax Appeals Tribunals Act provides:

"An application for review of a taxation decision shall be made within six months after the date of the taxation decision"

We also refer to the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd (Civil Appeal No. 31 of 2000) [2000]***, where Justice Twinomujuni JA stated:

"That is why the Respondent filed a second application dated August 12, 1999, which was thrown out by the Tribunal for being time barred. Clearly, that application was filed after over 50 days from June 17, 1999, instead of within 30 days as required by the law. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with."

The Tribunal concurs with the Respondent that statutory deadlines are indeed substantive and must be adhered to. In the present case, the established timeline from the objection decision was not met, having elapsed on 14th August 2020, while the application for extension of time was lodged on 11th December 2024 - significantly beyond that deadline.

The Applicant presents several reasons for the delay, notably absence from the Country on official duties, health issues, a national lockdown, and unavailability of their representative. Although these circumstances are unfortunate, they do not provide grounds for bypassing the clear statutory limits set within which an application must be filed.

While the Tribunal has the discretion to extend time for the making of an application for review of an objection decision, this discretion must be exercised with the statutory timelines. Section 16(7) of the Tax Appeals Tribunal Act is clear and provides no discretionary allowance beyond the prescribed period.

Given the absence of legal grounds to extend the application period, the Tribunal must dismiss the Applicant's request for an extension of time. Consequently, without an application for review being filed within the required timeframe, the application for an injunction becomes moot. The Tribunal orders as follows:

1. The Applicant's request for an extension of time is dismissed.
2. The request for an injunction to restrain the tax collection process is denied.
3. Each party shall bear its own costs.

Dated at Kampala this 10th day of February 2025.



PROSCOVIA R. NAMBI
CHAIRPERSON



CHRISTINE KATWE
MEMBER



WILLY NANGOSYAH
MEMBER