

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 27 OF 2023

WATER FOR PEOPLE.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. GRACE SAFI, Mr. WILLY NANGOSYAH.

RULING

This ruling is in respect of an application for extension of time to file an application for review and for a temporary injunction.

1. Background facts

The Applicant is a registered and licensed non-profit organization that helps people in rural parts of developing countries achieve greater access to drinkable and potable water and sanitation facilities. On 11 May 2023, the Respondent issued the Applicant with an assessment for Shs.417,819,038 for the period 1 October 2019 to 30 September 2020 and an assessment of Shs.748,315,710 for the period 1 October 2020 to 30 September 2021. The Respondent claimed that the assessments were in respect of unpaid income tax, penalties and interest.

The Applicant objected to both on 3 July 2023. The Respondent issued an objection decision on 4 October 2023 and overruled the Applicant's objection. The Applicant alleges that the objection decision was issued while the Applicant's representative who was heavily pregnant, was hospitalized battling an illness. As a result, the applicant's tax representatives and advocates, M/s TASLAF Advocates, were unable to obtain notification of the Respondent's objection decision until 6 November 2023. The Applicant filed this application seeking to:

- a) Extend/enlarge time for the Applicant to file an application for review of the Respondent's taxation decision.
- b) A Temporary injunction against the Respondent and/or its employees, servants, assignees, representatives and/or any person acting on its behalf or claiming under it from collecting or attempting to collect the tax assessed until the disposal of the application for review sought to be filed by the Applicant; and
- c) Both parties bear their own costs.

2. The issues for determination

The issues for determination are as follows:

- (i) Whether the application for extension of time to file the application should be granted?
- (ii) Whether a temporary injunction should be granted?

The Applicant was represented by Mr. Begumya Rushongoza while the Respondent was represented by Ms. Eseza Victoria Ssendege and Ms. Patricia Ndagire.

Issue 1: Whether the extension of time to file the application should be granted?

The Applicant's Submission

The Applicant submitted that S.16 (2) of the Tax Appeals Tribunal Act empowers the Tribunal to extend upon application, the time for the making of an application for the Tribunal for the review of a taxation decision.

The Applicant submitted that S.16 (7) provides that an application for review of a taxation decision shall be made within six months after the date of the taxation decision, in this case from 6 November 2023. The Applicant also relied on Rule 11(6) of the Tax Appeals Tribunal (Procedure) Rules ("TAT Rules") which grants the Tribunal the discretion to extend the time if satisfied that the taxpayer was unable to file their application because of illness, absence from Uganda or any other good cause.

The Applicant submitted that their advocate, Juliet Namirembe suddenly fell ill on 2

October 2023 and returned to work on 6 November 2023. The only person who would have assisted her, Ms. Elizabeth Akoth was away on study leave and did not return to work until much later.

The Applicant submitted that their advocates were made aware of the decision on 6 November 2023 when Ms. Juliet Namirembe, accessed the portal. The applicant filed this application on 14 November 2023, eight (8) days later. The Applicant complied with the provisions of S.16 (7) and this application is competently before the Tribunal.

The Applicant relied on the *Canadian case of Armonikos Corporation Ltd v Saskatchewan Wheat Pool, 2002 FCT 526* where the court dealt with an application for extension of time to serve a crucial item of evidence in a case where an advocate handling a matter had suddenly fallen ill, to the surprise of his partners. The court found that illness which is not anticipated is sufficient ground for extension of time and duly extended it. The Applicant also referred to *Khusbu Sharma vs The State of Bihar & Ors, Civil Writ Jurisdiction Case No.18454 of 2018* where the Indian Court found that pregnancy affecting ability to undertake an act was sufficient reason for extension of time.

The Applicant also submitted that in *Farid Meghanj v URA, Application No 185 of 2020*, the Tribunal identified the following factors in establishing the existence of good cause for grant of an extension:

- (a) The length of delay,*
- (b) The reason for the delay,*
- (c) The possibility or chances of success,*
- (d) The degree of prejudice to the other party”.*

The Applicant submitted that intended application has high chances of success and preventing it from challenging an undue tax assessment would cripple or shut down its operations and thereby irreparably harm the organization and its beneficiaries.

The Applicant also submitted that in *National Forestry Authority v URA, Application 4/2021*, the Tribunal ruled that the mistake of counsel constitutes good cause to extend time and that the mistakes of outside counsel cannot be imputed on the client. The failure to file an application for review of a tax decision by TASLAF Advocates in time constituted

a mistake on the part of TASLAF Advocates, who were retained as counsel for the Applicant. This failure should not be imputed on the Applicant who should be given an opportunity to put forward their case without being hamstrung by the mistakes of the advocate.

The Respondent's reply

In reply, the Respondent submitted that the Application for extension of time should not be allowed because the Applicant has not demonstrated a sufficient cause why the application should be granted. The Respondent submitted that the objection decision is delivered by the Respondent in the Applicant's account on the Respondent's portal, it is not delivered to counsel in personal conduct. The absence of counsel from work is immaterial. The Applicant had their TIN and password and was able to log into its account on the Respondent's portal despite their advocate's absence from work.

The Respondent submitted that they issued their objection decision on 4 October 2023. The Applicant should have taken the initiative to notify the advocates of the Respondent's decision. The Applicant's failure or negligence to do so should not be overlooked.

The respondents submitted that Justice Tadeo Asiimwe in the case of ***Okurut Joseph v Okwi Julius, HCCA 46/2018*** held that;

"...this position (that mistake of counsel should not be vested on the litigant) has confined lest it give the litigants and their lawyers an escape route to their laxity which would in turn be an abuse of the court process."

The above case cited with approval the case of ***Eternal Church of God v Kasoke, HCMA 001/2016*** where court held that litigants ought to be vigilant and follow up their cases. The Respondent also referred to the case of ***Uganda Revenue Authority versus Uganda Consolidated Properties Limited, Court of Appeal Civil 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.

The Respondent submitted that the mistake of counsel is not sufficient cause to allow the application and that the Applicant should not be allowed to rely on the same. S. 16 (1) (c)

of the Tax Appeals Tribunal Act provides that an application to the Tribunal for review shall be made within 30 days of being served with notice of the decision. The Respondent submitted that 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 Rule 11(1) of the TAT Rules with regards to extension of time for filing an application 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 under Rule 11 (6) of the of the Tax Appeals Tribunal Rules.

The Respondent submitted that in **George Mulindwa v Kisubika Joseph, Civil Appeal No 12 of 2014**, the court held that; "the Applicant seeking for extension of time has the burden of proving to the court's satisfaction that it was not possible to lodge the appeal within the prescribed time". The Respondent also relied on the case of **Tight Security Limited V Chartis Uganda Insurance Co. Limited, Misc Application No.8 of 2014**, the court held that;

"...good cause must relate to and include the factors which caused inability to file the appeal within the prescribed period of 30 days. The phrase good cause is 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 Respondent submitted that the reason fronted by the Applicant cannot suffice because their advocate's absence from the office owing to illness in no way prevented the Applicant from accessing their account on the Respondent's portal. The Respondent maintained that the Applicant has neither demonstrated nor proved reasonable cause for which the time to file an application before this Tribunal should be extended.

The Respondent invited the Tribunal to note that that the Applicant ably applied for alternative dispute resolution within the stipulated 7 days after receipt of the objection decision. It is the Respondent's submission that following the Applicant's failure to register

success in the ADR process, the Applicant then brought this application to the Tribunal as an afterthought. The Respondent invited this Tribunal to determine issue 1 in the negative and find that the application for extension of time is not allowed.

The Applicant's rejoinder

In rejoinder, the Applicant submitted that the Respondent contended that the objection decision was delivered in the Applicant's user portal and accordingly, the Applicant should have taken note of the same.

The Applicant submitted that a layperson cannot easily operate the same portal and determine whether an objection decision has been issued or not. A lay person would require legal training to assess the next steps and proceed to draft an application for review of an objection decision. Experts like the Applicant's advocates act on behalf of a lay person and represent them in their tax matters against the Respondent.

The Applicant submitted that they dutifully engaged M/s TASLAF Advocates to act for and on their behalf in pursuing the objection and, where necessary, lodge an application before the Tribunal for review of the objection decision. The Applicant's advocate handling the matter was away and did not notify her colleagues to look out for the objection decision owing to the sudden manner of her illness and hospitalization. Ms. Elizabeth Akoth who was supporting her in the tax department, had earlier gone on academic leave and could not be recalled back, as she was sitting exams.

Regarding the Respondent's submission of the Applicant's pursuit of ADR, this did not arise in the Respondent's evidence and the Respondent's submissions are being made at the bar. Had it arisen in the evidence, the Applicant would have responded to the submissions with evidence of its own.

The Applicant submitted that they were prevented from filing in time by sufficient cause, and that, alternatively, there is good cause for grant of the application owing to the mistake of the applicant's advocates which cannot be visited on the Applicant. The Applicant prayed that the Tribunal extends the time for the Applicant to file an application for review of the taxation decision issued by the Respondent.

(i) Issue 2: Whether a temporary injunction should be granted

If the Tribunal allows the Applicants application for an extension of time, the Applicant also seeks an injunction preventing the collection of the assessed tax until the filing of the anticipated application for review of the objection decision.

The Applicant's submission

The Applicant submitted that Rule 30 of the TAT Rules, read together with Order 41 of the Civil Procedure Rules empower the Tribunal to grant an injunction in the nature sought by the Applicant. If the Tribunal grants the applicant an extension of time within which to file, the Respondent, not being barred by any order, could still seek to collect the tax assessed and the Applicant will not be able to apply for an injunction as it would not have filed an application for review yet.

The Applicant submitted that if the Applicant's application for extension of time is allowed, this tribunal should issue an injunction maintaining the status quo until the filing of the application for review for which the Tribunal would have extended it, and in which proceedings for a fresh injunction can be sought.

The Applicant submitted that as noted in paragraphs 24-28 of the affidavit in support of the notice of motion, there are already demands from the Respondent to the Applicant to pay the sums assessed.

The Applicant submitted that in the intervening period for which an extension would have been granted, the Applicant would not be able to pursue interim reliefs as it would not have yet filed its application. The prayer for the injunction is therefore to cover the period between the grant of the extension of time and the filing of an application for review, wherein interim and temporary injunctions can be pursued. The Applicant submitted that the prayer for the injunction is related to the prayer for the extension of time and is one which this tribunal is clearly empowered to issue and both sides bear their own costs.

The Respondent's reply.

The Respondent submitted that the Applicant is seeking an injunction stopping the respondent from collecting tax until disposal of the application that it intends to file should

leave to extend time be granted. The Respondent submitted that the guidelines for grant of injunctions as set out in the case of *Robert Kavuma Vs M/S Hotel International, SCCA No.8 of 1990* are as follows;

- (i) The Applicant must show that he has a prima facie case with a probability of success in the main suit;
- (ii) The Applicant must show that he is likely to suffer irreparable damage if the injunction is denied; and
- (iii) If the court is in doubt as to the above considerations, it should decide the application on the balance of convenience.

The Respondent submitted that there is no main application pending by the Applicant before this Tribunal yet. The Applicant merely avers that it intends to file one if this application for extension of time is granted. The respondent submitted that it would be unfortunate for the Tribunal to prohibit the respondent from performing its statutory mandate.

The Respondent further submitted that even if the present application were to be granted, the Tribunal can only be satisfied that there is a pending application once the filing has been done. It is then that the Applicant should be able to seek an injunction pending disposal of the application. The Respondent averred that the Applicant's prayer for an injunction is disregarded, and that the application should be dismissed with costs to the respondent.

3. The Ruling

Having studied the evidence and submissions made by both parties, the following is the ruling of the Tribunal.

The assessment was issued on 11 May 2023, the Applicant objected on 3 July 2023, and the objection decision was issued on 4 October 2023. The Tribunal's purpose in this matter is to determine if this application is time barred or if the Applicant can be granted leave to extend the time within which to file the application.

The Applicant submitted that their advocates, M/S TASLAF, were made aware of the decision on 6 November 2023 when Ms. Juliet Namirembe, TASLAF's staff accessed the portal. The Applicant filed this application on 14 November 2023, eight (8) days later.

The Applicant's grounds for the delay are premised on the illness of Ms. Juliet Namirembe, their advocate.

However, the Respondent submitted that they issued their objection decision on 4 October 2023 and that the Applicant should have taken the initiative to notify their advocates of the Respondent's decision. The Applicant's failure or negligence to do so should not be overlooked. The Respondent submitted that the reason fronted by the Applicant cannot suffice because the absence of the Applicant's advocate from the office owing to her illness in no way prevented the Applicant from accessing its account on the Respondent's portal.

The Tribunal addresses the above as follows:

Section 16 (1) (c) provides that an application to the 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 a notice of the decision.

Section 16 (2) of the TAT Act however grants the Tribunal discretionary powers to extend the time within which an application for review of a tax decision may be lodged.

On the other hand, Section 16 (7) provides that applications for review of tax decisions should be made within six months after the date of the taxation decision.

Section 16 (7) restricts the time within which the Tribunal may exercise the discretionary powers granted to it by Section 16(2). In effect, while the Tribunal may consider for extension before the expiry of the six months, it does not have the powers to entertain matters brought after six months.

For matters such as this, brought within the six-month period, the Tribunal in exercising its discretion to grant an extension, must be guided by the considerations laid out in Rule 11 of the TAT Rules. Specifically, Rule 11 (6) provides as follows:

"The Tribunal may grant the extension of time if it is satisfied that the taxpayer (emphasis added) was unable to file the application for the following reasons-

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

The Applicant's case is premised on the illness of their advocate. Grounds (a) and (b) are specific to the taxpayer's circumstances and therefore, the issue of the advocate's illness would not succeed under these two grounds.

However, ground (c) deals with any other reasonable cause. This is sufficiently wide to cover issues such as the advocate's illness. Further, in the case of **Mulindwa George William v Kisubika Joseph** Civil Appeal No. 12 of 2014, the Supreme Court stated;

"Each application must be viewed by reference to the criterion of justice, and it is important to bear in mind that time limits are there to be observed, and justice may be defeated if there is laxity.

Factors to be considered for extension of time are;

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

Once a delay is not accounted for, it does not matter the length of the delay. There must be an explanation for the period of delay".

In the present case, the Applicant's explanation is that their advocate was ill, and the Applicant was not able to file the application by themselves.

The Applicant adduced evidence to support both the illness of the first advocate and study leave of the second advocate. This was through a medical report from Kampala Hospital and a study leave approval form. Therefore, the Applicant has ably explained the cause for the delay, which the Tribunal finds reasonable.

The Tribunal also believes that allowing this application will not prejudice the Respondent.

In view of the above, the Tribunal allows this application so that the matter can be determined on its merits.

We now turn to the matter of the temporary injunction.

A Temporary injunction is an interlocutory remedy that directs a party to the proceedings to restrain from doing a particular act until the final determination of the matter in controversy. In the case of *Daniel Mukwanga v AG HCCS 630/1993*, it was noted that the applicant has to satisfy the court that there is a serious question to be investigated and that he has a reasonable chance of succeeding in the main suit (emphasis added).

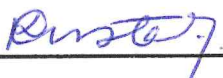
The application for an injunction must show that there exists a triable issue between the parties. There must be a main suit. In the present case, the Applicant is applying for leave to be allowed to extend the time to file her main application. Therefore, there is currently no main application from which to grant a temporary injunction as there is no main suit. The Applicant can apply for a temporary injunction after filling the main suit.

Therefore, the temporary injunction is denied.

This application is partially allowed and we order that;

1. The application for extension of time is granted;
2. The temporary injunction denied; and
3. Each party should bear its own costs.

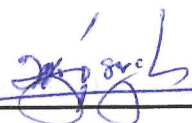
Dated at Kampala this 23rd day of May 2024.



CRYSTAL KABAJWARA
CHAIRPERSON



SAFI GRACE
MEMBER



WILLY NANGOSYAH
MEMBER

RULING