

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISC.APPLICATION NO.28 OF 2023

ECO BUS COMPANY LIMITED APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE; DR.ASA MUGENYI, MS. CHRISTINE KATWE, MR. MUGERWA GEORGE.

RULING

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

The applicant instituted Application 137 of 2020 which was dismissed by the Tribunal on 11th May 2021 on account of failure to pay 30% of the tax in dispute. The applicant was aggrieved and appealed to the High court which appeal was allowed. The applicant at the time of hearing the appeal, had paid 30% of the tax in dispute. The applicant wrote a letter requesting that Application 137 of 2020 be reinstated. It later filed an application seeking reinstatement, which it withdrew. Then it filed this application.

ISSUES

1. Whether the applicant maybe granted extension of time which to appeal against the decision of the respondent?
2. What remedies are available?

The applicant was represented by Mr. Innocent Okony while the respondent by Ms. Charlotte Katutu and Ms. Patricia Ndagire.

In an affidavit in support of the application sworn by Mr. Maluel Deng Chier, for the applicant stated that the respondent conducted a compliance audit on its returns for the

periods of 2014 to 2015 and 2017 to 2018. The applicant was not in agreement with the audit as the respondent established loans of Shs 1,823,021,273 and 1,917,993,645.

In reply, Ms. Sheba Tayahwe, a legal officer of the respondent deponed that it was aware that the Tribunal dismissed Application 137 of 2020 for failure to pay 30% of the tax assessed. She stated that an application to the tribunal for review of a taxation decision must be lodged within 30 days after the person making the application has been served with notice of the taxation/objection decision. She stated that she was aware that there must be a just cause before an application to extend time to file an application for review of the taxation decision is granted. She contended that since the dismissal of the application, the Tribunal is functus officio. She also contended that on the dismissal of the application, the applicant ought to settle all outstanding tax. The deponent concluded by stating that there is no justifiable reason to grant an extension of time to file an application for review of the respondent's taxation decision.

The applicant submitted that it instituted Application 137 of 2020 against the respondent which was dismissed by the Tribunal for failure to pay 30% of the tax assessed on the 11th May 2021. It thereafter filed Civil Appeal 35 of 2021 in the High Court appealing against the decision of the Tax Appeals Tribunal which was heard and granted with orders that the Tribunal reinstates the application. The applicant through its lawyers wrote to the Tribunal on 7th October 2022 requesting that Application 137 of 2021 be reinstated. However, it came to the knowledge of the applicant that the proper procedure was to file a fresh application since the former had been dismissed for failure to pay 30%. The applicant has since paid 30% of the tax assessed.

The applicant cited S. 14(1) of the Tax Appeals Tribunal Act, which states that any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may appeal to the Tribunal for a review of the decision. The Tribunal has power to review any taxation decision in respect of which an application is properly made.

The applicant submitted that when an application is made for extension of time, good cause for such an extension must be proved before court can exercise its discretionary

powers and grant the extension. It cited *Nicholas Roussos v Gulam Hussein Habib Virani & Nazmudin Habib Verani* Civil Appeal 9 of 1993, in which it was decided that a mistake by an advocate, though negligent maybe accepted as a sufficient cause. It submitted that it was a mistake or error of the applicant's former lawyers who failed to inform it of the legal requirement to pay 30% before an appeal is lodged before the Tribunal. According to the applicant, it has shown just/sufficient cause for grant of an extension of time.

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 the notice of objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision. 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. S. 16(2) provides that the Tribunal may, upon application in writing, extend the time for making an application to the Tribunal for review of a taxation decision. S. 16(7) further provides that an application for review has to be made within 6 months from the date of the taxation decision.

The respondent cited *Cable Corporation (U) Ltd v Uganda Revenue Authority* High Court Civil Appeal 1 of 2011, where court upheld the decision of the Tribunal declining to grant leave to file an application out of time stating 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 also cited *Stanbic Bank Uganda Limited & Anor v The Commissioner General of Uganda Revenue Authority* Misc. Application 28 of 2018, where the Tribunal held that a party is given 6 months from the date of the taxation decision within which it can apply to extend time for a review. The respondent stated that whereas the applicant did not attach the objection decision for which it seeks extension of time, the first application challenging the objection decision was filed in 2020. This inevitably meant that it is at least 3 years since the objection was issued. The application for review having been made outside the 6 months should be dismissed with costs to the respondent.

The respondent further cited *Uganda Revenue Authority v Uganda Consolidated Properties Ltd* Court of Appeal Civil Appeal 75 of 1999, where 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 stated that the application for extension of time was made more than 6 months from the date of the objection and ought to be dismissed.

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

The applicant instituted Application 137 of 2020 which was dismissed by the tribunal on 11th May 2021 on account of failure to pay 30% of the tax in dispute. The applicant appealed to the High court which appeal was allowed for the reason that the applicant had at the time of hearing the appeal paid 30% of the tax in dispute. The applicant wrote a letter requesting its application be reinstated. It later filed an application seeking extension of time within which to file an application for review

The Tribunal notes that the date of the taxation decision is 19th February 2020. The date of the application to extend time was 22nd November 2023. These are three years and almost nine months since the taxation or objection decision. 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 in the taxation decision. S. 16(2) provides that the Tribunal may, upon application in writing extend the time for making of an application to the Tribunal for review of the taxation decision. S. 16(7) provides that an application for review has to be made within six months from the date of the taxation decision.

S. 96 of the Civil Procedure Act provides that where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may in its discretion, from time to time, enlarge that period, even though the period originally fixed or granted may have expired. Order 51 Rule 6 of the Civil Procedure Rules provides that where a limited time has been fixed for doing any act or taking any proceedings under these rules or by order of the court, the court shall have power to enlarge the time upon such terms, if any, as the justice of the case may require, and the enlargement may be

ordered although the application for it is not made until after the expiration of the time appointed or allowed; except that the costs of any application to extend the time and of any order made on the application shall be borne by the parties making the application, unless the court shall otherwise order.

It is well established by the Court of Appeal in *Uganda Revenue Authority v Consolidated Properties Limited*, Court of Appeal Civil Appeal 31 of 2000 that; "Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with."

In the present case, we note that the first application challenging the objection decision was filed in 2020 insinuating that it's been 3 years or more since the objection decision was issued and the present application for extension of time. It is more than 6 months from the date of the objection decision. Whereas it is trite law that mistake or misunderstanding of counsel ought not be visited upon his or her client as was cited *Administrator General v Isaac Kasiba Lule* CACA No. 124 of 2011, equity requires that a person who has been wronged must act swiftly to preserve its rights. The Tribunal finds that the applicant has failed to prove sufficient reasons to warrant an extension of time and that ignorance of the law is no defense.

Furthermore, from the time the High Court ordered the reinstatement to the date when this application was filed a long period passed. The applicant has not been diligent. It did not pay the 30% of the tax in dispute in time. It has also not filed its application in time

The application is dismissed with costs to the Respondent.

Dated at Kampala this 22nd day of December

2023



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



M/S CHRISTINE KATWE
MEMBER