THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT)

HCCS NO. 403 OF 2016

J.P PROPERTIES LIMITED:: PLAINTIFF

VERSUS

THE COMMISSIONER,

UGANDA REVENUE AUTHORITY::::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON JUSTICE DAVID WANGUTUSI

RULING

This suit is between J.P Properties Limited referred to as the Plaintiff and Uganda Revenue Authority hereinafter referred to as the Defendant.

In the suit the Plaintiff seeks a declaration that the Defendant a tax authority failed to make an objection decision within 90 days and for that reason the Plaintiff by written notice elected to treat the objection that she had earlier made as allowed by the Commissioner General under S.99 (7) of the Income Tax Act.

That because of the delay to make the decision, the subsequent decision made on 27th May 2016 was out of time and that therefore what had been disallowed as expenses by the Defendant should be allowed.

The Plaintiff further sought declarations by the Court that the assessment of the Plaintiff made by the Defendant in respect of the year 2011 was out of time. Furthermore that the Plaintiff wasn't to pay withholding tax as assessed by the Defendant.

The Plaintiff also sought general damages and costs of the suit.

The background of the suit was that on 10th September 2015, the Defendant made an assessment from the Income Tax Audit carried out for the years 2011 to 2014 amounting to UGX 937,512,553/=. The Plaintiff objected to this assessment on 14th September 2015. She based her objection on the grounds that assessment of 2011 was statute barred, the interest accruing under S.136 (1) was wrongly included and that the director's remuneration which should have been disallowed were included in the individual directors' returns filed with the Defendant.
The Plaintiff sought a review of the computation and in that line availed documentations that had not been availed to the Defendant because the Managing Director of the Plaintiff was at the time of the audit not around.

On receipt of this objection, the Defendant on 5th October 2015 advised the Plaintiff to file their objections on line which the Plaintiff did.
On 27th November 2015, the Defendant replied stating that some of the expenses had been proved while others remained unproved.
On 30th November 2015 the parties held a meeting and discussed the contents of the objection which was followed by further explanation by the Plaintiff in a letter dated 1st December 2015.

The Defendant replied on 21st December 2015 partly allowing the objection and rejecting the rest.

It is this decision of 21st December 2015 which forms the subject of the suit.
The Plaintiff did not treat the decision of 21st December 2015 as an objection decision and so on 17th May 2016 notified the Defendants that since they had not made an objection decision within 90 days from the date of objection she would treat their objection as allowed by the Commissioner General.
The letter Exhibit P20 read in part;

"We refer to our letter of objection dated 6th January 2016 which was lodged with URA on the same date. After receiving that letter we were invited for a reconciliation with the officers of URA on 14th January 2016.

During that meeting we were requested to provide additional information which would enable URA make an informed decision. The information was provided through a letter 16th January 2016 and was lodged with URA on the same date. As at the date of this letter today 16th May 2016, it is 119 days from 18th January 2016 when we provided information sought by URA during the meeting which was held on 16th January 2016. Since no objection decision was communicated by URA within the statutory period of 90 days from 18th January 2016 we elect to treat the Commissioner General as having made a decision to allow the objection."

It is the Plaintiff's submission that when the Defendant wrote to the Plaintiff on 6th January 2016, the Defendant's invitation for discussion and reconciliation meant that the objection decision had been deferred. It also according to the Plaintiff meant that period within which a decision was to be made was still running from 6th January 2016 until the expiration of 90 days.

The Defendant in their preliminary objection submitted that the objection decision was made on 21st December 2015 by Exhibit P12. That any computation of time as to when the Plaintiff would file an appeal began running as of that date.

The Defendant relied on Section 100 of the Income Tax Act namely that the Plaintiff's Appeal of the objection decision should have taken place within 45 days after service of notice of the objection decision and that since the

objection decision was communicated on 21st December 2015 the Plaintiff should have filed the Appeal within 45 days from that date.

Section 100 of the Act before it was repealed provided as follows;

> *"(1) A tax payer dissatisfied with an objection decision may, at the election of the tax payer;*
>
> a) *Appeal the decision to the High Court or apply for review of the decision to a tax tribunal established by Parliament by law for purpose of settling tax disputes in accordance with Article 152 (3) of the Constitution."*

From the foregoing provisions it is noted that the tax payer had the option either to appeal the objection decision to the High Court or apply for review of the decision to the Tax Tribunal.

Under subsection (2) the person who opted to appeal to the High Court was required to lodge a notice of appeal with the Registrar of the High Court within 45 days after the service of the notice of the objection decision.

The Plaintiff did not dispute this position. She fully agreed that that was the existing law in respect of time and venue of appeal.
The Plaintiff however disagreed that the filing of the suit in the High Court was out of time.

Counsel for the Plaintiff submitted that the Defendant never made a decision and that what she claimed to be a decision was merely a process towards decision making. She submitted that what showed that it was a process to the decision making was the invitation by the Defendant for further particulars and documentations that would show that whatever was communicated in Exhibit P12 on 21st December 2015 was based on wrong information and therefore resulted into wrong decision.

Counsel for the Plaintiff submitted further that because the Defendant was willing to review the assessment whatever was in the letter of 21st December 2015 was a partial decision and did not amount to a final decision.

The issue here therefore seems to be whether the decisions in Exhibit P12 dated 21st December 2015 amounted to an objection decision, as to trigger off the computation of 45 days within which an Appeal would be lodged as provided for under Section 100 of the Income Tax Act before it was amended.

As to whether a decision had been issued by the Defendant can be discerned from the wording of the letter dated 23rd December 2015. It in part reads;

> *"Reference is made to your client's objection made on the 5th October 2015 and the several interactions held with you on the subject matter. The grounds of your objections have been reviewed and we have made further adjustments to our computations as below."*

Under heading foreign exchange rates the Defendant wrote;

> *"We have maintained our decision to disallow these losses considering the fact that these were merely result of end year adjustments."*

On directors health insurance the Defendant wrote;

> *"The premium payments on the directors health insurance has been allowed as per the provision S.19 (8) (b) of the Income Tax Act."*

And on travelling the Defendant wrote;

> *"In your letter dated 10th December 2015, you indicated that the travel expenses is partially to the travel to the UK for medical attention and also acquiring tenants for the building. You are requested to provide expenses related*

to the medical travel and those related to acquiring tenants together with the supporting documents to enable us make a conclusive decision. Also provide copies of passports for the directors who claimed medical travel."

Lastly on commissions the Defendant wrote;

"The commissions have been allowed but we have assessed 6% withholding tax on the commissions as per provisions of Section 118 (a) of the Income Tax Act. Based on the above, the objection has been partly allowed and find below a summary of the revised liability."

The Defendant included a matrix showing the total tax due. It then without prejudice wrote;

"Without prejudice to the decision made above and arising out of the need to a harmonized position, we request that you arrange to attend a final reconciliation meeting on Monday 28th December 2015 as you present the additional information requested for."

The words *"without prejudice"* clearly indicate that what they had written before was the decision that had been made. The Defendant seems to suggest by those words that should there be anything to convince them to the contrary they might alter to create what they referred to as the *"harmonized position."*

To further indicate that this was their objection decision, they advised the Plaintiff to pay. The Defendant wrote;

"Please advise your client to clear the outstanding tax of UGX 253,041,187/= immediately to avoid further accumulation of interest."

They must have advised them to pay this sum because the letter Exhibit P12 was the objection decision.

In my view the Plaintiff herself was aware that a decision had been made. In a sworn statement dated 7th May 2018 by Godfrey Nagenda a certified public accountant, deposed as follows;

> *"On the 21st December 2015 the Defendant partly allowed the objection in regard to the Directors Health and Commissions and maintained the decision on foreign exchange loss and in addition allowed 6% on withholding tax commission."*

In this paragraph, the deponent Godfrey Nagenda described Exhibit P12 as the *decision.*

In a letter Exhibit P19 the Plaintiff also refers to the decision in Exhibit P12 in these words;

> *"During the meeting, it was agreed that Nagenda and Company makes a formal summary in writing outlining issues that require consideration for the review decision of the objection decision made by URA in respect of the above years of income."*

Again these words indicate that the Defendant had issued the objection decision and the Plaintiff was aware of the communication of the decision on 21st December 2015. Moreover seeking a review meant that a decision had already been made and it's that decision the Plaintiff required to be reviewed.

Lastly Exhibit P12 itself is headed *objection decision* and all communication between the parties refers to the letter of 21st December 2015 as the objection decision. Indeed there were errors here and there as admitted by

the parties but those were things which would constitute grounds of an appeal filed within the prescribed period.

In my view the foregoing makes it clear that an objection decision had been issued and that the next step by way of appeal to the High Court had to be done within 45 days from 21st December 2015 as provided for under Sections 100 of the Income Tax Act 2013.
This suit was filed on the 10th June 2016 much after the expiration of the 45 days. It can therefore only be declared to have been time barred.

It is clear that having been time barred, the Plaintiff was out of time and could not go to the tax tribunal where he would be expected to file within 30 days from date of the decision.

Before leaving this matter I would like to look at the avenue that was open to the Plaintiff at the time she filed her suit.
Section 14 of Tax Appeals Tribunal Act provides for review of tax decisions.
Section 14(1) provided that;

> *"Any person aggrieved by a decision made under the taxing Act by the URA may apply to the tribunal for review of the decision."*

It further provided under Section 27 that;

> *"It is the decisions made by the tribunal which would then be appealed to the High Court."*

Section 27 (1) provides;

> *"A party to a proceeding before a tribunal may, within 30 days after being notified of the decision or within such further time as the High Court may allow, lodge a notice of Appeal with the Registrar of the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the tribunal."*

Counsel for the Plaintiff submitted that the word used was "may" and that therefore the Plaintiff had the option of choosing between the High Court and the tribunal.

Ir my view if that was to happen then whoever came to the High Court at the first instance would lose the chance of appeal provided in Section 27 of the Tax Appeals Tribunal Act.

It would also make the High Court a court of first instance as well as an Appellate Court on the same matter.

Her Lordship Ekirikubinza Tibatemwa in ***Uganda Revenue Authority vrs Rabco (U) Enterprises Ltd and Mount Elgon Hardwares Ltd*** faced with such a situation had this to say;

> *"I also respectfully disagree with the holding of the Court of Appeal that a litigant can choose whether to take a tax matter to High Court as a Court of first instance or to the Tax Appeals Tribunal.*
>
> *It must be noted that under Section 3 of the Tax Appeals Tribunal Act a person isn't entitled to be appointed chairperson of the tribunal unless he/she is qualified to be appointed a Judge of the High Court. Furthermore under Section 30 a person can't be appointed Registrar of the Tax Tribunal if he/she isn't qualified to be the Registrar of the High Court. I opine that it would be bizarre that our legal regime give power an individual to choose where to lodge a complaint between institutions equally qualified to handle the matter."*

Having considered all the matters she said;

"The proper procedure there is that all tax disputes must be first lodged with tax tribunals and only taken before the High Court on appeal."

This decision did not create law, it simply put an existing law which had been circumvented many times before into reality.

It follows that an aggrieved Plaintiff in a matter that had received a tax decision could only commence the Appeal in the Tax Tribunal.

In a situation such as this one, this court would have referred the matter to the Tax Tribunal for consideration. However the Court will not do so because it has found that the filing of the suit in the High Court was time barred in the first place. It is also the finding of this court that even if the Plaintiff had gone to the Tax Tribunal at the time she filed the suit in court, she would still be time barred.

Having found that this matter was filed out of time, I find that it cannot be allowed to continue and is hereby dismissed with costs.

Dated at Kampala this 17th **day of** Sept **2021**

HON. JUSTICE WANGUTUSI DAVID

JUDGE