THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL No. 0037 of 2021

(Arising from Tax Application No. 0037 of 2021)

KANSAI PLASCON UGANDA LIMITED …… APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY …… RESPONDENT

Before: Hon Justice Stephen Mubiru.

JUDGMENT

a) The procedural history;

The appellant is a private limited liability company incorporated and carrying on business in Uganda as a manufacturer of and distributor of paint. By a management letter dated 26th February, 2020 the appellant was assessed as liable to tax, interest and penalties totalling shs. 68,927,551,086/= By a letter dated 20th March, 2020 the appellant undertook to pay the principal tax assessed and sought a waiver of penalties and interest pursuant to section 66 (1) of *The Tax Procedures Code Act, 14 of 2014*. The appellant on 14th April, 2020 paid shs. 14,229,295,922/= being the principal tax component, leaving the sum of shs. 54,638,596,596/= outstanding as interest and penalties. Subsequently on 13th and 14th May, 2020 the appellant applied to the Commissioner for extension of time within which to object to the assessment. The appellant contended that it needed time to reconcile the taxes paid against the assessments issued, at the end of which process there was likely to be a substantial reduction of up to shs. 4,266,695,456/= The documentation required to support that contention was in possession of the appellant's previous shareholders from whom the current shareholders had purchased shares during the year, 2017. The Commissioner on 14th May, 2020 rejected the application on grounds that it had been submitted after expiry of the period allowed for making objections, the principal tax had already been paid, the grounds upon which the application had been made were invalid and the voluntary disclosure was rejected. The appellant was dissatisfied with that decision and on 24th June, 2020 objected to it, which objection the commissioner dismissed on 18th August, 2020 on ground that the power of

extension was discretionary to be exercised for good reason, payment in good faith of the principal amount of the tax assessed was not a good reason for granting an extension. The appellant then applied to the Tribunal for review of that decision.

The appellant's submissions before the Tax Appeals Tribunal;

Counsel for the appellant submitted that when the appellant changed management after new shareholders had acquired its shares, a number of past tax anomalies were discovered in its operations. The appellant made a voluntary disclosure of the tax anomalies to the respondent. The respondent then issued the appellant with a management letter dated 26th February, 2020 demanding shs. 68,927,551,086/= in tax, interest and penalties. Despite disputing part of the principal sum assessed, the appellant nevertheless paid it on 14th April, 2020. The appellant subsequently on 13th and 14th May, 2020 applied for extension of time with a view to filing an objection to the assessment. By its letter of 20th March, 2020 the appellant indicated its dissatisfaction with assessments relating to tax due on inflated material used in the construction of the Namanve factory premises, but required information contained in documents kept by the previous shareholders, to substantiate that contention. The process of collating the documents was interrupted by the nationwide lockdown as part of the Covid19 related restrictions. This required some additional time. By notices dated 14th and 15th May, 2020 the Commissioner rejected the application. On 24th June, 2020 the appellant filed an objection against that dismissal. By a letter dated 18th August, 2020 the objection too was dismissed.

It was erroneous of the Commissioner to have rejected the application for extension of time on ground that it had been filed out of time yet there is no statutory limit. The appellant has plausible grounds for challenging the assessment including; incorrect computation of withholding tax, unlawful imposition of penalties, duplication of capitals gains tax, failure to allow a deduction for the costs of land purchased, wrongful application of withholding tax on the costs of construction, and so on. A reconciliation of records would result in substantial reduction of up to shs. 4,266,695,456/= Compilation of the documentation necessary for backing that computation would require time yet new shareholders took over the appellant during the year, 2017. The process of collating the documents was delayed by the Covid19 restrictions. The delay was not caused by or

contributed to by dilatory conduct on the part of the appellant. The delay in this case was for only 33 days. The pursuit of justice should prevail over technicalities. When rejecting the application, the Commissioner did not elucidate the grounds for doing so. The dismissal was made in general sweeping statements. The appellant was treated unfairly by the Commissioner.

b) <u>The respondent's submissions before the Tax Appeals Tribunal;</u>

Counsel for the respondent submitted that it is on 20th February, 2020 that the respondent raised a demand of shs. 68,927,551,084/= as additional value added tax, withholding tax, pay as you earn tax, income tax and the attendant penalties and interest due from the appellant. The appellant did not raise any objection to that tax during the prescribed time, and instead paid the principal amount. The Commissioner exercised that discretionary power judiciously, reasonably, in good faith and on basis of relevant considerations. The appellant did not provide any evidence to support the grounds raised as a justification for the extension. The appellant did not offer an explanation for its failure to lodge an abjection to the assessment within the prescribed time. When the appellant paid the principal amount, it only sought a waiver of the penalties and interest assessed contending that it had made a voluntary disclosure. It never sought to challenge the assessment. It is after the waiver was denied that it then sought to challenge the assessment, by first seeking an extension of time. The application is only intended to arm-twist the respondent. It its letter f 20th May, 2020 the appellant never sought an extension of time for purposes of gathering documents; it only committed itself to payment of the principal amount, unless it found documents contradicting the assessment, but requested to be permitted to pay in instalments. Payment of the tax later on 14th April, 2020 was an indication that it had not found documents to contradict the assessment. It was incumbent upon the appellant to adduce evidence of the impact of Covid19 upon its operations. There was no evidence furnished of contact made with the previous shareholders. Despite the lockdown, the former shareholders had initiated litigation of their own, that was still pending before the Tribunal. The Commissioner was justified in rejecting that ground. The period of delay began to run from the time the assessment was communicated not from the time the application for extension was rejected, hence 77 days and not 33 days as contended by the appellant. The appellant cannot rely on reasons given when rejecting the application for extension as grounds for reviewing the dismissal of the objection. The application ought to be dismissed.

c) Ruling of the Tax Appeals Tribunal.

In its ruling delivered on 18th May, 2021 the Tax Appeals Tribunal found that by its letter of 20th March, 2020 the appellant not only admitted liability to the tax assessed but also admitted that it had committed an offence. Having received the assessment on 26th February, 2020 the appellant had up to 12th April, 2020 to lodge an objection. The nationwide lockdown took effect on 31st March, 2020. The commissioner communicated the decision rejecting the application for extension of time on 14th May, 2020. Under section 16 of *The Tax Appeals Tribunal Act* the appellant had 30 days within which to apply for a review of that decision, which expired on 14th June, 2020. Instead the appellant filed the application on 18th September, 2020. Whereas section 19 (1) (c) of *The Tax Appeals Tribunal Act* empowers the Tribunal to step into the shoes of the decision maker, it will only do so when the decision maker acts illegally or does not act justifiably. The power exercised by the Tribunal is that of judicial review. It will intervene only when the Commissioner acted illegally, irrationally or with procedural irregularity. The Commissioner misdirected herself when she stated that the application had been made outside the prescribed time, yet no statute regulates the time for making such applications. Despite the misdirection, the commissioner actually considered the grounds advanced and found all of them unsatisfactory. The reasons stated by the commissioner are not irrational. By its letter of 20th March, 2020 the appellant sought to pay the principal tax and benefit from the voluntary tax disclosure scheme under section 66 (1) of *The Tax Procedures Code Act, 14 of 2014*. It never expressed an intention to contest the assessment, which contention first arose in the submissions of counsel without supportive evidence or facts.

The effect of the nationwide lockdown on the appellant required supportive evidence, in light of the fact that some businesses and establishments were exempted and only scaled down, including manufacturers. The fact that the appellant as a manufacturer was able to pay tax during the lockdown is inconsistent with its claimed inability to lodge an objection at or around the same time. The objection ought to have been filed by 13th April, 2020. The appellant paid the principal tax on 14th April, 2020 yet it filed the application for extension of time on 13th and 14th May, 2020. There is no explanation as to why the appellant did not seek an extension of time on the day it paid the tax. It ought to have made the application within the time allowed for objection or soon

thereafter as it sought later to gather evidence from the former shareholders. There is no convincing reason as to why it took the appellant 33 days to file an application for extension of time, from the date it ought to have filed an objection. The delay is attributable to its ambivalence exhibited at the time of payment of the principal tax. It started with an intention to benefit from the voluntary tax disclosure scheme and later may have changed its mind. Companies ordinarily keep their business documentation with management and not with shareholders. There is no disclosure as to when and the circumstances under which the new shareholders acquired the appellant, why their due diligence before the acquisition omitted the tax liabilities and related documentation of the appellant, and the nature of documentation kept by the previous shareholders. The appellant id not discharge its burden of proof. There is nothing to show that the Commissioner acted with procedural impropriety. The application was accordingly dismissed.

d) <u>The grounds of appeal;</u>

The appellant was dissatisfied with the decision and appealed to this court on the following grounds, namely;

1. The Tribunal erred in law in disregarding and / or failing to consider and determine the applicant's ground of review that the Commissioner General failed to accord the applicant fair and just treatment before an administrative tribunal as required by article 42 of the Constitution and thereby arrived at a wrong decision.
2. The Tribunal erred in law in failing to find that the Commissioner General acted illegally in rejecting the application on ground that it was brought after the expiry of the statutory period for filing objections. That finding by the Tribunal failed to take into account section 34 (3) of *The Interpretation Act* (Cap 4), which was a highly relevant factor, and was in the circumstances, erroneous.
3. The Tribunal erred in law in failing to properly consider the law relating to an application for extension of time.
4. The Tribunal misdirected itself by misapprehending and / or misapplying the principles for extension of time and as a result arrived at a wrong decision.

5. The Tribunal erred in law and fact when it mixed up the applicant's voluntary disclosure and consequential commitments with the applicant's statutory right to elect to object to a tax assessment. By so doing, the Tribunal took into account an irrelevant factor.
6. The Tribunal erred in law when it failed to exercise its powers under section 19 (1) (c) of the TAT Act to step into the shoes of the Commissioner General and determine the application for extension of time.
7. The Tribunal erred in law in disregarding and / or failing to consider and determine the applicant's ground of review that the Commissioner General acted unreasonably and irrationally in rejecting the application for extension of time which was only 33 days late.
8. The Tribunal erred in law and fact in its finding that a delay of more than 5 days in applying for an extension of time to object was unreasonable.
9. The Tribunal erred in failing to consider all the grounds advanced by the applicant for extension of time as stated in the objection letter dated 24th June, 2020.
10. The Tribunal erred in law in failing to find that the Commissioner General was under a duty to give reasons for his finding that the grounds for extension were not valid.
11. The Tribunal erred in failing to exercise its discretion in accordance with the law and in consequence, its decision resulted in a miscarriage of justice.
12. By its decision, the Tribunal improperly fettered its powers and discretion under the TAT Act by failing to extend the time for filing the objection.
13. The Tribunal erred in applying the facts and the law in this matter and as a result, its decision is plainly wrong and ought to be set aside.

e) <u>The submissions of counsel for the appellant;</u>

Counsel for the appellant M/s ENSafrica Advocates submitted that the appellant was not accorded fair treatment in light of the fact that its application for extension of time was disposed of in a day, and the period of delay of 33 days was not inordinate in light of the amount over four billion shillings assessed as tax. Despite there being no express provisions restricting the time within which applications for extension of time may be made, the Tribunal found that it had been filed more than five days outside the statutory period. The Tribunal was not guided by the proper considerations in applications of this nature; the length of the delay, the reason for the delay, the

possibility of success and the prejudice occasioned to the other party. Delay of 33 days was neither inexcusable nor inordinate on the facts of the case. It was erroneous of the tribunal to have faulted the appellant for failure to adduce evidence regarding the impact on its business operations, of the nationwide lockdown as part of the Covid19 restrictions. It ought instead to have taken judicial notice of that phenomenon. The Tribunal disregarded the appellant's high chances of success on the merits of its intended objection. It also failed to take into account the fact that the respondent would not suffer any prejudice due to the belated appeal.

Considering that the appellant had already paid the tax and only sought an opportunity to persuade the Tribunal to direct a partial refund based on error of computation, rejecting the application was a violation of the principle of proportionality. Considering further that the tax assessed was in billions of shillings, the Tribunal ought to have allowed the application. Voluntary disclosure and payment of the tax did not preclude the appellant from subsequently objecting to the default tax assessment. The errors in the tax assessment were discovered after the period allowed for filing objection had elapsed. The Tribunal erroneously declined to exercise its appellate powers but instead chose to exercise powers of review for illegality, procedural impropriety or irrationality. In doing so, the Tribunal took into account a number of irrelevant factors, including; failure to call evidence of change of mind or the tax having been paid under protest, the effect of the Covid19 restrictions required proof, that the Tribunal had previously allowed numerous applications for extension of time due to the lockdown required proof, and that he respondent did not have access to tax related information in respect of other parties. The Tribunal erred when it failed to find that by the respondent merely stating that the grounds advanced by the appellant were invalid, the respondent had breached its duty to give reason for rejecting the application. They prayed that the appeal be allowed with costs.

f) <u>The submissions of counsel for the respondent;</u>

Counsel for the respondent from the respondent's Legal Services and Board Affairs Department, submitted that upon being served with the tax assessment on 26th February, 2020 the appellant did not object but instead on 30th March, 2020 undertook to pay the principal tax, and seek a waiver of the attendant interest and penalty assessed. The 45 day period within which the appellant ought

to have filed an objection expired on 12th April, 2020. Having paid the principal tax on 14th May, 2020 the appellant on the same day sought an extension of time within which to file an objection to the assessment. Although the application was rejected that very day, the appellant did not file an appeal to the Tribunal until 8th September, 2020 yet the time for filing the appeal had lapsed on 15th June, 2020. The Tribunal adverted to and correctly applied the principles guiding the exercise of discretion in applications for extension of time. The applicant paid the principal tax assessed without any reservation. It undertook to furnish evidence later to support a possible contestation of the interest and penalties charged, which it never furnished.

g) The decision;

Whereas according to section 25 (2) of *The Tax Procedures Code Act, 14 of 2014* a person dissatisfied with a decision of the Tribunal may, within 30 days after being served with a notice of the decision, lodge an application with the High Court for review of the decision, on the other hand, section 27 (1) and (2) of *The Tax Appeals Tribunals Act,* provides that a party to a proceeding before a tribunal may, within thirty days after being notified of the decision or within such further time as the High Court may allow, lodge a notice of appeal. Such appeal to the High Court may be made on questions of law only, and the notice of appeal should state the question or questions of law that will be raised on the appeal.

The decision appealed in the instant case was delivered on 18th May, 2021 and the notice of appeal was filed on 16th June, 2021 within the prescribed time. Grounds 5, 8 and 13 which fault the Tribunal for having erred in fact, though are struck out for contravening section 27 (2) of *The Tax Appeals Tribunals Act.* The rest of the grounds raise four major errors in law relating to; the Tribunal's having fettered its powers of review / appeal, unfair treatment of the appellant by the Commissioner, failure by the Commissioner to give reasons for the decision denying the appellant an extension of time and improper exercise of discretion by the Tribunal in denying the appellant an extension of time. For reasons of avoidance of repetition in light of the overlapping nature of the majority of the grounds, this court opts to deal with the grounds raised by way of issues gravitating around the four areas abovementioned.

a. Whether the Tribunal misdirected itself on the scope of its powers of review.

It is incumbent on a Tribunal to determine at the commencement of every proceedings whether or not it is seized with jurisdiction to grant the reliefs sought by the parties. The Tribunal had to determine whether its powers are those of appeal, judicial review or administrative merits review. In doing so, it stated that;

> Whereas section 19 (1) (c) of *The Tax Appeals Tribunal Act* empowers the Tribunal to step into the shoes of the decision maker, it will only do so when the decision maker acts illegally or does not act justifiably. The power exercised by the Tribunal is that of judicial review. It will intervene only when the Commissioner acted illegally, irrationally or with procedural irregularity.

The Tribunal therefore construed its jurisdiction as that of judicial review rather than administrative merits review. Unlike judicial review which holds public officials accountable for the correct exercise of their powers, rather than the fairness of their decision with reference to the merits of the case, administrative merits review concerns the reconsideration of both the factual basis and the lawfulness of a decision, and is thus wider than judicial review, which is limited to the latter. Administrative merits review of a decision involves a consideration of whether, on the available facts, the decision made was a correct one, including issues such as whether the actions or decisions made may be unlawful, unreasonable, unfair or improperly discriminatory.

Administrative merits review is the process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the correct decision, if there is only one, or the preferable decision, if there is more than one correct decision. Merits review involves standing in the shoes of the original decision maker, reconsidering the facts, law and policy aspects of the original decision. In a merits review, the whole decision is made again on the facts. The objective of merits review is to ensure that administrative decisions are correct or preferable, that is to say, that they are made according to law, or if there is a range of decisions that are correct in law, the best on the relevant facts. It is directed to ensuring fair treatment of all persons affected by a decision, and improving the quality

and consistency of primary decision making. The correct decision is made in a non-discretionary matter where only one decision is possible on either the facts or the law.

However, where a decision requires the exercise of discretion or a selection between possible outcomes, judgment is required to assess which decision is preferable. Merits review concerns the review of both the factual basis and the lawfulness of a decision. It allows all aspects of an administrative decision to be reviewed, including the findings of facts and the exercise of any discretions conferred upon the decision-maker (see Dr David Bennett AO QC, *"Balancing Judicial Review and Merits Review,"* (2000) 53 Admin Review 3).

At the level of internal administrative review, the merits review process involves reconsideration of the decision by a more senior person within the same entity in which the decision was made. An internal merits review process involves a determination whether the right decision was made and is not a complaints handling system dealing only with complaints about the way in which the decision was made. Apart from providing a quick, simple and cost effective way to address an incorrect decision, internal review provides the entity with an opportunity to quickly correct its own errors, while at the same time enabling more senior decision-makers to monitor the quality of the original primary decision making. This can then be dealt with by directly addressing the issue with the decision maker. The internal review undertaken by the entity in response to the application ought to be thorough. This should include obtaining and placing on the record a full statement as to what occurred from any officer within the entity who may have direct knowledge. This is important for the efficacy of any external review that may take place thereafter, in which event access to precise evidence of what might have occurred, may not be readily available.

Judicial review is different from administrative merits review because the court cannot look at the substance of the decision maker's assessment of the facts, only the process by which that decision was made. The courts cannot remake the decision, so typically the remedies available from judicial review involve remitting the decision to the original decision maker with an order to remake the decision according to law. A court engaging in judicial review will generally not disturb factual findings, the assessment of credibility, the attribution of weight to pieces of evidence or the exercise of discretion, since this would be to intrude into the "merits" of the decision.

Unlike external administrative merits review tribunals, courts are not entitled to re-visit the substance of the challenged decision. Judicial review is a constitutional supervision of public authorities involving a challenge to the legal and procedural validity of the decision. It does not allow the court of review to examine the evidence with a view of forming its own view about the substantial merits of the case. In other words, judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached. Within the adversarial system, the function of the courts is not to pursue the truth but to decide on the cases presented by the parties. Administrative merits review tribunals, resources permitting, may inquire more widely than courts, and may adopt a function closer to that of pursuing the truth than that which a court may adopt. As a statutory agency, the Tribunal's and the applicant's interests lie in the correct and preferable application of the relevant legislation and policy to tax decisions, rather than on the procedural limitations of pleadings and arguments as found in courts of law. Administrative merits review allows for examination of the evidence with a view of reviewing agency forming its own view about the substantial merits of the case. Conduct of proceedings by both external administrative review agencies ought to be more of an inquiry than adjudication.

In the instant case, section 14 (1) of *The Tax Appeals Tribunals Act* provides that any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision. Section 21 (1) (a) of the Act which provides that for the purpose of a proceeding before the tribunal, the tribunal may take evidence on oath, allows all aspects of an administrative decision to be reviewed, including the findings of facts and the exercise of any discretions conferred upon the decision-maker. The Tribunal in performing its administrative review role, functions more like a court at first instance. It is not an Appeals Tribunal whose powers may be limited by law or restricted to questions of law and, only with the Appeal Panel's leave, which may be extended to the merits. The Tribunal has the mandate to consider both the lawfulness of the decision it is reviewing and the facts going to the exercise of discretion. It generally has wide powers to set aside the original decision and substitute a new decision of its own. Merits review tribunals typically have powers to affirm a decision, vary it, set it aside and make a substitute decision, or set it aside and remit it to the original decision-maker for reconsideration (see section 19 (1) of *The Tax Appeals Tribunals Act* which categorically states that "a tribunal may exercise all the powers and discretions that are conferred by the relevant taxing

Act on the decision maker). The ability to make a substitute decision is one of the defining characteristics of merits review. The jurisdiction conferred upon the Tax Appeals Tribunal is thus one of administrative merits review rather than judicial review.

The tax regime has an administrative review structure, comprising both internal and external review options, providing a mechanism by which a person can seek redress against a tax decision made by the respondent that affects them. It also provides a mechanism for an inexpensive and expeditious rectification of such decisions if they are wrong. It is comprised of two tiers; at the lowest rank are the primary decision makers; the tax assessment officers. A person aggrieved by decisions taken at that level has recourse to the next tier which is that of the Commissioner. That level marks the end of the internal administrative review process. Internal review is easy for applicants to access, and enables a quicker and more inexpensive means of re-examining decisions where applicants believe a mistake has been made. Internal remedies are ways of correcting, reviewing or appealing administrative decisions using the administration itself. The difference between internal remedies and the remedy of external merits review is that the latter is review by the Tax Appeals Tribunal, which is independent from the revenue authority. A person aggrieved by the internal review mechanisms, then has recourse to the single tier of external review constituted by an application to the Tax Appeals Tribunal.

Therefore the Tax Appeals Tribunal lies at the apex of the administrative merits review structures in the area of Tax Appeals. External administrative merits review is not in the nature of an appeal. An External merits review involves fresh consideration of a primary decision by an external body, in this case by the Tax Appeals Tribunal as the final external administrative review agency. External administrative merits reviewers exercise the power of the original entity's decision maker. Merits review concerns the review of both the factual basis and the lawfulness of a decision, and is thus more challenging than judicial review, which is limited to the latter.

While external administrative merits review tribunals share many of the features of a court, including adherence to the rules of procedural fairness, impartial decision-making and the provision of written reasons, the inquisitorial function allows such tribunals to better investigate the truth and the merits of a matter, and to take a wider variety of considerations into account when

making decisions. Such tribunals are ideally served by cooperative, helpful parties, providing them with relevant material, and eschewing an adversarial approach to their opponents. The aim of achieving the correct or preferable decision is a far more attractive one than the more constrained goal of courts to determine the correct decision, irrespective of administrative justice. That notwithstanding, although external administrative merits review decision makers may take an inquisitorial function in the sense that they may obtain information outside what the applicant places before them, this does not mean that they have a general duty to undertake their own inquiries in addition to information provided to them by the applicant and otherwise.

The most common metaphor to describe the functions of an external administrative review tribunal engaging in merits review is that it stands in the shoes of the decision-maker (see *Minister for Immigration and Ethnic Affairs v. Pochi (1980) 31 ALR 666 at 671*). The power to set aside the original decision and substitute it with a new decision of its own requires the Tribunal to stand in the shoes of the original decision maker, reconsider the facts, law and policy aspects of the original decision. It is authorised to exercise all the powers and discretions that are conferred on the person who made the decision under review based on the material that was before and that which ought to have been before that person, whether or not that person took all that material into account or not, provided that it is material which ought to have been reasonably taken into account.

The metaphor by Smithers J in *Minister for Immigration and Ethnic Affairs v. Pochi (1980) 31 ALR 666 at* 671 that; "in reviewing a decision the Tribunal is to be considered as being in the shoes of the person whose decision is in question," conveys the notion that the external administrative merits review tribunal may re-make a decision, as if it were the original decision-maker. The Tribunal does not have to find legal error first. The question for the determination of the Tribunal is not whether the decision which the original decision maker made was the correct or preferable one on the material before it. The question for the determination of the Tribunal is whether that decision was the correct or preferable one on the material before the Tribunal (see *Drake v. Minister for Immigration and Ethnic Affairs (1979) 2 ALD 60*). This includes material that was before the primary decision maker, including that which ought to have been before it.

The Tax Appeals Tribunal is required to determine the substantive issues raised by the material and evidence advanced before it and, in doing so, it is obliged not to limit its determination to the "case" articulated by an applicant if the evidence and material which it accepts, or does not reject, raises a case on a basis not articulated by the applicant. In doing so, it may frame the case differently from how it has been framed by the parties. In some cases, failure to make an obvious inquiry about a critical fact, the existence of which is easily ascertained, or to take into account an obvious fact or point of law, could constitute a failure to review.

The Tax Appeals Tribunal, as a reviewing tribunal, is also required to make what is the correct and / or preferable decision as at the time of the review. This means that circumstances may have changed in an applicant's favour (or to the applicant's detriment) since the original decision was made, and the tribunal must generally make its decision in the context of those new circumstances. The Tax Appeals Tribunal therefore erred when it construed its jurisdiction as that of judicial review. While judicial review is only concerned with the lawfulness of the challenged decision, where the relevant question is about the decision-maker's processes, not its actual decision, in merits review the tribunal is entitled to re-visit the substance of the challenged decision.

In its decision, the Tax Appeals Tribunal expressed an awareness that it had the duty to step into the shoes of the original decision maker and make its own decision based on the facts, it however misdirected itself when it stated that it would only do so when the decision maker acts illegally or does not act justifiably. The Tribunal erroneously declined to exercise its wide administrative merits review powers but instead chose to limit it to occasions of illegality, procedural impropriety or irrationality in the impugned decision.

Despite that misdirection, it is one of the cardinal principles of appellate processes that any error, defect, misdirection, imperfection, irregularity, or variance in the proceedings below that does not affect substantial rights must be disregarded. To grant relief, this court in exercise of its appellate jurisdiction must find that the error affected the outcome of the case. If the error would not have changed the outcome, it is considered harmless, and the decision will stand. I find in this case, for reasons explained in more detail in the process of resolving the last issue, that the error did not affect the outcome of the case.

b. Whether the Tribunal erred by its failure to find that the Commissioner treated the appellant unfairly.

Counsel for the appellant submitted that the Tribunal erred when it failed to find that the appellant was not accorded fair treatment in light of the fact that its application for extension of time was disposed of in a day, the Commissioner's failure to find that the period of delay being only 33 days was neither inexcusable nor inordinate in light of the amount over four billion shillings assessed as tax that the appellant sought to challenge, and hence rejection of the application was a violation of the principle of proportionality. This submission is made in light of the fact that article 42 of *The Constitution of the Republic of Uganda, 1995* provides that any person appearing before any administrative official or body has a right to be treated justly and fairly.

The duty to act fairly is specifically applicable to decisions that are likely to have serious adverse effects on someone's rights, interests or status. What is "fair" though is highly context-specific. In *Regina v. Secretary of State for the Home Department ex parte Doody and Others [1993] 3 All ER 92; [1994] 1 AC 531; [1993] 3 WLR 154* six principles of fairness in public law decisions were suggested, thus;

> (1) Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.

This duty to act fairly is flexible and changes from situation to situation, depending upon: the nature of the function being exercised, the nature of the decision to be made, the relationship between the body and the individual, the effects of that decision on the individual's rights and the legitimate expectations of the person challenging the decision (see *Baker v. Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (S.C.C.*). The measure of fairness is what is reasonable according to the facts of the case, and not what a court may regard as fair, moral or reasonable in the abstract or general notions of fairness or morality.

All that is required is for the decision-maker to have done his or her best to act justly, and to reach just ends by just means, i.e. acting honestly and by honest means. In some situations, decision-makers may be required to observe a high standard of participatory rights to ensure the decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. The nature of this standard may involve giving the tax-payer a fair opportunity to make any relevant statement which he or she may desire to bring forward regarding the proposed decision, but this is not a legal requirement.

The right to fair treatment in administrative action is a guarantee that tax-payers have the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. It may also include the right to be given reasons for any administrative action or decision that is taken against them, where such administrative action or decision is likely to adversely affect their rights or fundamental freedoms. Fairness requires openness or transparency in the making of administrative decisions (see *Doody v. Secretary of State for the Home Department [1993] 3 All E.R. 92; Reg. v. City of London, Exp. Matson [1997] 1 W.L.R. 765* and *Reg. v. Secretary of State for the Home Department, Exp. McAvoy [1998] 1 W.L.R. 790*). Fairness and natural justice require that administrative decisions should not be allowed to go unexplained.

The Court is concerned with evaluating fairness as Lord Hailsham L. C. ably puts it in *Chief Constable of North Wales Police v. Evans, [1982] 1 W. L. R. 1155 at 1160*;

> It is important to remember in every case that the purpose ... is to ensure that the individual is given fair treatment by the authority to which he has been subjected and

that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that authority constituted by law to decide the matters in question.

The court will not intervene in decisions that are fair and reasonable. Decisions are seen as "fair" when they are perceived to be morally right, e.g. ethical, dictated by conscience, honest, uncorrupted and free from prejudice, favouritism or self-interest, balanced, etc. (the focus is primarily internal and subjective). Conduct is seen as "reasonable" if it is perceived to be administratively just, e.g. lawful, in accordance with accepted standards of conduct, in good faith and for legitimate reasons, unbiased, rational, consistent, what is appropriate for a particular situation, etc. (the focus is primarily external and objective). Fairness can be seen as one of the criteria for assessing reasonableness, and vice versa, and some of the criteria that can be used to assess fairness can also be used to assess reasonableness, for example honesty, legality, regularity, provision of a fair hearing, etc.

One option when reviewing the reasonableness of a decision is the standard of a "reasonable person." The concept of the "reasonable person" is the standard used by the courts to assess conduct in a range of contexts. However, depending to a degree on the context there are a number of variations in the formulation or description of this standard, for example: the "reasonable person,'' the "reasonable or fair minded observer," the "fair-minded observer," the "fair-minded and informed observer," what "fair-minded people reasonably apprehend or suspect," a "hypothetical fair-minded lay observer," or "right-minded people." It is generally agreed that this test, however expressed, focuses on what the court believes the public would be likely to think about the issue in question. Alternatively, the court may review administrative conduct primarily from the perspective of whether or not the framework of policies, procedures and processes supporting decision-making were fair and reasonable, within that framework that the conduct itself was reasonable, and the decisions / outcomes were reasonable in the circumstances.

The focus of the court in making such assessments can be expected to include;- whether the conduct was unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations, contrary to law (amongst other things). When assessing whether conduct meets a reasonable standard, the focus of the court will be on such considerations as;- that the conduct was made or done in good faith

(i.e. honestly, for the proper purpose, on relevant grounds and within power); whether conduct has an evident and intelligible justification (was justified on the facts); whether the reasoning that led to the conduct was valid, logical and rational; whether the response was proportionate and appropriate weight given to relevant factors; whether a decision-maker was impartial or influenced by a conflict of interest; consistency – compared to decisions or actions in similar circumstances.

A decision will fail the test of reasonableness and thus be found to be unlawful only if it is one to which no reasonable authority could have come in the circumstances, for example by being; - an obviously disproportionate response, one arrived at by giving disproportionate weight to some factor, one affected by a particular error of reasoning of a fundamental nature, one arrived at by reasoning illogically or irrationally, or a decision lacking an evident and intelligible justification. Such decisions may readily support a finding of unreasonableness. The approach I have taken is to review the framework of policies, procedures and processes supporting the decision-making and determine whether they were fair and reasonable. Then within that framework, determine whether the decision itself was reasonable, and the outcome was reasonable in the circumstances.

Section 24 (4) of *The Tax Procedures Code Act, 14 of 2014* confers a discretionary power. The court must constantly bear in mind that it is to the decision-maker, not the court, that Parliament has entrusted not only the making of the decision but also the choice as to how the decision is made. The presumption in statutory interpretation is that the Legislature is taken to intend that a statutory discretionary power will be exercised reasonably. Therefore when assessing whether a discretionary power has been exercised reasonably, the focus of the court is on determining whether the power was exercised unreasonably (on the assumption that if the exercise was not unreasonable then it must be taken to be reasonable). A decision or the process leading to it is seen as "reasonable" if it is perceived to be administratively just, e.g. lawful, in accordance with accepted standards of conduct, in good faith and for legitimate reasons, unbiased, rational, consistent, etc. There is no evidence to show that the decision or the process leading to it was not ethical, dictated by conscience, honest, uncorrupted and free from prejudice, favouritism or self-interest, balanced, etc. The grounds advanced by the appellant do not render the decision unreasonable. I therefore have not found any evidence of unfair treatment.

c. Whether the Tribunal erred by its failure to find that it was erroneous of the Commissioner not to have given reasons for his decisions.

The Commissioner made two decisions; the first being that of 14th May, 2020 when he rejected the application for extension of time on grounds that it had been submitted after expiry of the period allowed for making objections, the principal tax had already been paid, and the grounds upon which the application had been made were invalid. The second decision was that made on 18th August, 2020 dismissing the objection to the earlier one, on grounds that the power of extension was discretionary to be exercised for good reason, and that payment in good faith of the principal amount of the tax assessed was not a good reason for granting an extension. It is argued by counsel for the appellant that by stating that "the grounds are invalid" in the decision of 14th May, 2020 the Commissioner failed in his duty to give reasons for rejecting the application.

There is no express general statutory duty to give reasons in administrative decision making. However, in order to ensure that power is not abused or arbitrarily exercised and in order to facilitate appeals and assist the Courts in performing their supervisory functions to know whether the decision-maker or body took into account relevant considerations or acted properly, the administrative decision-maker must give reasons for the decision. To give reasons for an administrative decision is to invite accountability and transparency and to expose oneself to criticism; this helps to ensure that power is not abused or arbitrarily exercised. This in turn promotes public confidence in the system. The knowledge that the decision will be open to scrutiny encourages the decision-maker to focus more carefully on the decision and minimise whim and caprice; "having to give reasons concentrates the mind wonderfully" (see Donaldson, J in *Tramountana Annadora SA v. Atlantic Shipping Co. [1978] 2 All E.R. 870 at 872*). To not give reasons is the very essence of arbitrariness. A refusal to give reasons might thus amount to a denial of natural justice (see *R v. Crown Court at Harrow, exp. Dave, [1994] 1 All E.R. 315* and *Reg. v. City of London Corporation, Exp. Matson [1997] 1 W.L.R. 765 at 776 G-H*).

In the instant case, the Commissioner gave reasons for both decisions. Although there is no specific style required when giving reasons for administrative decisions, the decision must be such that it enables the applicant to understand on what grounds the application has been decided and be made

in sufficient detail to enable him or her to know what conclusions the decision-maker has reached on the principal important controversial issues. The reasons must be proper and adequate and not only intelligible, but must deal with the substantial issues raised (see *Re Poyser and Mill's Arbitration [1963] 1 All E.R. 612* and *Westminster City Council v. Great Portland Estates [1984] 3 All E.R. 744*). If the reasons given are unintelligible, this will be equivalent to giving no reasons at all (see *Save Britain's Heritage v. Secretary of State for the Environment, [1991] 2 All E.R. 10*).

By reasons is meant the giving of a rational explanation for the conclusion to which the decision-maker is arriving. There needs to be something between the facts and the conclusion which is the reasoning. The reasons given need be no more than a concise statement of the way in which the decision was arrived at (see *R v. Civil Service Appeal Board, exp. Cunningham [1991] 4 All E.R. 310*). When the Commissioner stated that the reasons advanced were not valid, he is understood to have meant that they had no sound basis in logic or fact, alternatively that they were not well-grounded or justifiable. That he made a concise statement is not reason enough to fault the decision. I therefore find in this case that the reasons given on both occasions were adequate, intelligible, and dealt with the substantial issues raised by the appellant.

d. Whether the Tribunal erred when it rejected the appeal from a decision dismissing the objection to the earlier one rejecting the application for extension of time.

According to section 24 (4) of *The Tax Procedures Code Act, 14 of 2014* a person may apply in writing to the Commissioner for an extension of time to lodge an objection and the Commissioner may, if satisfied with the grounds upon which the application is made, grant an extension for such period as the Commissioner determines. Each case must be examined in light of the particular facts, taking into account the credibility or good faith that may be ascribed to the justifications given by the taxpayer. The Commissioner on 14th May, 2020 rejected the application on grounds that it had been submitted after expiry of the period allowed for making objections, the principal tax had already been paid, and the grounds upon which the application had been made were invalid. The appellant was dissatisfied with that decision and on 24th June, 2020 objected to it, which objection the commissioner dismissed on 18th August, 2020 on ground that the power of extension

was discretionary to be exercised for good reason, and that payment in good faith of the principal amount of the tax assessed was not a good reason for granting an extension.

Since section 19 (1) of *The Tax Appeals Tribunals Act* empowers the Tax Appeals Tribunal to exercise all the powers and discretions that are conferred by the relevant taxing Act on the decision maker, the Commissioner, it could have exercised its discretion, upon the showing of good cause to grant an extension of time to file an objection to the tax assessment of 20th March, 2020 even though the Commissioner had been dissatisfied with the grounds. An application for enlargement of time is not to be granted as a matter of course. Grant of extension of time is discretionary and depends on proof of "sufficient reason," "good cause" or "justifiable reason" showing that the justice of the matter warrants such an extension. Such "sufficient reason," "good cause" or "justifiable reason" must relate to the inability or failure to take a particular step in time.

The Tribunal is required to carefully scrutinize the application to determine whether it presents proper grounds justifying the grant of such enlargement. The evidence in support of the application ought to be very carefully scrutinised, and if that evidence does not make it quite clear that the applicant comes within the terms of the established considerations, then the order ought to be refused. In order to enable the Tribunal to do this, the Tribunal must be apprised of the facts upon which the applicant relies with sufficient particularity and completeness. The facts should not be averred in a manner that appears to be needlessly bald, vague or sketchy. It is only if that evidence makes it absolutely plain that the applicant is entitled to leave that the application should be granted and the order made, for such an order may have the effect of depriving the respondent of a very valuable right to finality of litigation.

To satisfy the requirement of proof of "good cause" or "justifiable reason," an applicant has to go beyond a mere disclosure of the processes by which the omission arose, but also has to expose frankly, *inter alia*, all the conduct, knowledge, beliefs and mental processes (or, in the case of corporation aggregate, of the relevant officers and other agents) relevant to an understanding of the way the failure to do the act or take the step occurred, or relevant to an evaluation of the reasonableness of that conduct. To this end, the applicant cannot merely rely on conclusory statements (consisting of or relating to conclusions or assertions for which no supporting evidence

is offered) but rather must set out actual evidence explaining the delay. The applicant must show a state of facts which lead to the inference that he or she was prevented by conditions beyond his or her control from taking the necessary step in a timely manner. The "sufficient reason," "good cause" or "justifiable reason" must relate to the inability or failure to take a particular step in time (see *Mugo v. Wanjiri [1970] EA 481* and *Pinnacle Projects Limited v. Business In Motion Consultants Limited, H.C. Misc. Appl. No 362 of 2010*).

In making the appropriate decision, the Tribunal considers whether the applicant has "an acceptable explanation for the delay," and whether it would be "fair and equitable in the circumstances" to grant the extension. The Tribunal will consider: (a) the prospect of injustice; (b) the length of the delay; (c) the reason for the delay; (d) the degree of prejudice to the other party. All matters, including the adequacy of any reason for delay, must be considered, the one weighed against the other, in the exercise of the Tribunal's discretion. Although under the modern approach the first criterion (above) is the critical one, the merit or the prospect of the appeal (or application) succeeding and / or its intrinsic importance from the perspective of justice, is now the dominant consideration, as the overriding principle is that justice must be done without undue regard to technicalities. This does not mean though that the Tribunal must fully determine the issue: that in itself would be an injustice. In an application for an extension of time, it is sufficient for the Tribunal to determine that the applicant has an arguable case, one that has been brought in good faith and can credibly be presented when the substantive issues are determined.

The behaviour of the parties, the nature of the claim, and the consequences to the parties of the grant or refusal of the application for an extension of time should also be considered. This means that any prejudice to the opposing party as a result of the delay, as well as public considerations, must be taken into account. When the extension of time is required in relation to filing an appeal or application, it is necessary to consider the prospects of the applicant's success upon appeal. There must be material which will satisfy the Tribunal that refusing to grant the extension would cause injustice. The ultimate question is always whether, in all the circumstances and considering the factors referred to above, the justice of the case requires that an extension of time be granted.

In evaluating the circumstances that might justify the extension of a time limit, the Commissioner and / or the Tribunal may consider whether; a) the taxpayer has met all fiscal obligations in the past; b) the taxpayer knowingly allowed the lateness to exist that resulted in interest charges or penalties, or in a refundable tax credit not being granted; c) the taxpayer made all reasonable efforts to comply with the law and was not negligent or careless in managing his or her affairs; and d) the taxpayer acted with due diligence to remedy any lateness or omission. In assessing the good faith of a taxpayer, none of these elements alone can be considered determinant. All of them must be taken into account.

The Tribunal also needs to be mindful of the fact that tax law is geared at distributing the burden of public expenditure among taxable persons taking into account the principles of universality and equality of taxation. When infested with uncertainty in implementation, tax law is unable to perform the function of allocating the burden of public expenditure on the basis of the principles of justice, equality and universality. In this context, tax relations require the most precise regulation and control by the respondent. Effective functioning of the tax system is impossible when the will of the state aimed at regulating tax relations is not strictly defined and equally understood by all addressees of tax norms. In applications of this nature, priority is given to the common good while respecting a reasonable balance of public and private interests. For that reason extension of time will be granted in very exceptional or unusual circumstances, beyond the control of the applicant, justifying why it was not possible to file the objection within the 45 days prescribed by the law.

The balance of the relevant factors must favour the exercise of the discretion in favour of the applicant for an extension. The Commissioner and the Tribunal, in balancing these factors, is entitled to proceed on the basis that it is more important to consider the consequences of extending or refusing to extend time than to debate the reasons why the act was not done in time. It is axiomatic that the power must be exercised judiciously and not capriciously, least of all wantonly. Judiciously means done with sensible judgment and not on an unaccountable mood swing. An application for extension of time will be granted if the person proves to the Commissioner or the Tribunal that (a) it was impossible in fact for the person to act within the time specified for filing an objection; and (b) the person filed the application as soon as circumstances allowed.

In any event, this court is mindful of the fact that the Tribunal, just like the Commissioner, was exercising a discretion. Discretion is the faculty of determining in accordance with the circumstances what seems just, fair, right, equitable and reasonable. "Discretion" cases involve situations where the principle of law governing the case makes many factors relevant, and requires the decision-maker to weigh and balance them. Just as the factors for consideration could never be absolute, there could never be a gauge to measure the accuracy of such decisions. Unless the exercise of discretion is obviously perverse, an appellate court should be slow to set aside discretionary orders of the Tribunal.

Because these assessments call for value judgments in respect of which there is room for reasonable differences of opinion, no particular opinion being uniquely right, identification of error in the Tribunal's exercise of discretion is the basis upon which the court will uphold the appeal. It would be wrong to determine the parties' rights by reference to a mere preference for a different result over that favoured by the Tribunal, in the absence of error on its part. If the Tribunal acted upon a wrong principle, or allowed extraneous or irrelevant matters to guide or affect it, if it mistook the facts, if it did not take into account some material consideration, or where it not evident how it reached the result embodied in its order, or where upon the facts the order is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the Tribunal thus its determination should be reviewed.

An appeal of this nature requires the appellate court to exercise judgment as to the appropriateness of its intervention, while deferring to the exercise of discretion by the Tribunal, in light of the nature of the appeal, the issues of fact and law involved, the primary facts and inferences presented to the Tribunal, the level of satisfaction, the value judgments involved, rule-application, reasonableness of the decision, proportionality and rationality of the decision, in particular as to whether its decision will provide a more just outcome.

The general rules governing appeals from such orders seem well settled. Courts in Uganda have, as a matter of judicial policy, exercised considerable restraint in intervening in decisions characterised as involving the exercise of a discretion (see *Banco Arabe Espanol v. Bank of*

Uganda, S. C. Civil Appeal No. 8 of 1998). Where the decision challenged involves the exercise of a discretion, broadly described to include states of satisfaction and value judgments, the appellant must identify either specific error of fact or law or inferred error (e.g. where the decision is unreasonable or clearly unjust). The appellate court will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or failure to take into account a material consideration, or an error in principle. It should not interfere with the exercise of discretion unless it is satisfied that the Tribunal in exercising its discretion misdirected itself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the Tribunal has been clearly wrong in the exercise of its discretion and that as a result there has been injustice (see *Mbogo and another v. Shah [1968] 1 EA 93*).

It is trite that an appellate court is not to interfere with the exercise of discretion by the Tribunal unless satisfied that in exercising that discretion, the Tribunal misdirected itself in some matter and as a result came to wrong decision, or unless manifest from case as whole, the Tribunal was clearly wrong in exercise of discretion and injustice resulted (see *National Insurance Corporation v. Mugenyi and Company Advocates [1987] HCB 28; Wasswa J. Hannington and another v. Ochola Maria Onyango and three Others [1992-93] HCB 103; Devji v. Jinabhai (1934) 1 EACA 89; Mbogo and another v. Shah [1968' E.A. 93; H.K. Shah and another v. Osman Allu (1974) 14 EACA 45; Patel v. R. Gottifried (1963) 20 EACA, 81;* and *Haji Nadin Matovu v. Ben Kiwanuka, S. C. Civil Application No. 12 of 1991*). A Court on appeal should not interfere with the exercise of the discretion of a Tribunal merely because of a difference of opinion between it and the Tribunal as to the proper order to make. There must be shown to be an unjudicial exercise of discretion at which no Tribunal could reasonably arrive whereby injustice has been done to the party complaining.

The appellate court will intervene where the Tribunal acted un-judicially or on wrong principles; where there has been an error in principle (see *Sheikh Jama v. Dubat Farah [1959] 1 EA 789; Hussein Janmohamed and Sons v. Twentsche Overseas Trading Co Ltd [1967] 1 EA 287; Banco Arabe Espanol v. Bank of Uganda, S. C. Civil Appeal No. 8 of 1998* and *Thomas James Arthur v. Nyeri Electricity Undertaking [1961] 1 EA 492*). As such, the Tribunal is entitled to deference in the absence of an error in law or principle, a palpable and overriding error of fact, or unless the

decision is so clearly wrong as to amount to an injustice. Generally, appellate courts will only interfere with exercise of discretion by a Tribunal where the Tribunal has incorrectly applied a legal principle or the decision is so clearly wrong that it amounts to an injustice. Although there is a presumption in favour of discretion being rightly exercised, an appellate court may look at the facts to ascertain if discretion has been rightly exercised.

In the same vein the House of Lords, approving the decision of the English Court of Appeal in *Ward v. James [1966] 1 QB 273,* held to the same effect in *Birkett v. James [1978] AC 297, 317, 326 (at pp. 317, 326).* For good measure, I would refer to the felicitous expression of Goulding J in *Re Reed (a debtor) [1979] 2 All ER 22 at 25* on this point:

> The duties of an appellate court in such matter as this are, in my judgment, confined to those normally exercisable where the lower court has a discretion, that is to say, we are not justified in setting aside or varying an order simply because we may think we might have come to a different conclusion ourselves on similar material. We can only interfere if either we can see that the Tribunal has applied a wrong principle, or has taken into account matters that are in law irrelevant, or has excluded matters that it ought to have taken into account, or otherwise that no court, properly instructing itself in the law, could have come to the conclusion which in fact was arrived at.

It follows that here a discretion has been exercised honestly and fairly having regard to the underlying reasons and considerations and in accordance with an implied duty of good faith, the appellate court will not interfere. The appellate court will interfere where the discretion is exercised unreasonably, i.e. in a manner not connected to the underlying purposes for which the discretion is granted.

In the instant case, the appellant's letter dated 20th March, 2020 was captioned "Principal tax payment and application for waiver of interest and penalties." In that letter the appellant made an undertaking to pay the principal sum as assessed in three instalments, while at the same time making out a case for waiver of the accrued interest and penalties on grounds that; the assessment was based on a voluntary tax disclosure upon discovery of tax anomalies by the new shareholders following their acquisition of 3rd August, 2017 and the taking over of the appellant's management.

The issue of extension of time was never raised. The applicant contended that this knowledge was acquired after the period had elapsed, upon obtaining professional advice from tax consultants.

It is nearly two months later, by letters dated 13th and 14th May, 2020 that the appellant applied to the Commissioner for extension of time within which to object to the assessment communicated by the respondent in a letter dated 26th February, 2020. Since according to section 24 (1) of *The Tax Procedures Code Act, 14 of 2014* a person who is dissatisfied with a tax decision may lodge an objection with the Commissioner within forty five days after receiving notice of the tax decision, the time for lodging the objection elapsed on 17th March, 2020. The application for extension of time was thus made 57 days out of time. The justification for the application was that the appellant needed time to reconcile the taxes paid against the assessments issued, at the end of which process there was likely to be a substantial reduction of up to shs. 4,266,695,456/= The documentation required to support that contention was in possession of the appellant's previous shareholders from whom the current shareholders had purchased shares during the year, 2017. No explanation was offered for the 57 days' delay, but only by insinuation of difficulties related to locating relevant documents.

It has been explained earlier that "sufficient reason," "good cause" or "justifiable reason" for purposed of extension of time for taking a procedural step must relate to the impossibility, inability or failure to take a particular step in time. Impossibility in fact to act refers to any circumstance that can justify a reasonably well-informed person. It also refers to any instance in which a mandate was validly entrusted by a person to a professional (accountant, lawyer, etc.) or to any other person within the specified time for filing an objection and the failure to meet the deadline results from the actions of that intermediary. Such circumstances must, however, be the result of events that are beyond the person's control, and not the result of the person's failure to appropriately manage the person's affairs. It must be the result of constraints that personally affected the person and over which the person had no control during the time specified. Generally the application will not be granted if the failure to meet the deadline is the result of the person's inaction, negligence or inexcusable error.

It was rightly observed by the Tribunal that documentation relating to the management of a corporate body, including documents relating to its tax obligations, will ordinarily be kept at its

principal place of business, and not with its shareholders. The appellant's application neither described the types of documents in issue nor offered an explanation of this unusual occurrence. Neither was there evidence to show that indeed the shareholders were in possession of such documents. The appellant did not offer any explanation as to why the process of their recovery had not been undertaken earlier, in light of the fact that the new shareholders had come on board nearly over two years before, on 3rd August, 2017. The test of whether or not a cause is sufficient is whether it could have been avoided by the applicant by the exercise of due care and attention. With due care and attention, especially at the time of that purchase of the shares, this could have been avoided. The appellant was in effect relying on failure to appropriately manage its affairs as a ground for extension of time, which is not exceptional and hence not a sufficient ground.

Obtaining, after the deadline for filing an objection, knowledge of evidence that could lead to the disputed assessment being varied may be considered sufficient cause to extend the deadline, provided the applicant can, in good faith, prove either that it would have been impossible for the person to have had knowledge of the evidence before the deadline expired, or that the person had every reason to believe, during the time specified for filing an objection, that obtaining the required evidence would have been impossible. The fact that the applicant obtains a professional opinion or judgment favourable to the person's case after expiry of the time specified for filing an objection, of itself is not sufficient cause to grant an extension.

It was argued further that the application was premised on grounds that the appellant required more time in order to obtain the necessary documentation from the previous shareholders in order to support its contention that its tax liability had been wrongly assessed. That process was delayed by the nationwide lockdown due to Covid19 restrictions. In the meantime, the appellant had demonstrated good faith in paying the principal sum assessed. The Tribunal considered these grounds as advanced and rightly found them to be unsatisfactory. They were assertions for which no supporting evidence was offered demonstrating the manner and extent to which those restrictions affected the appellant's operations, particularly as regard assembling of documents. It appears to this court that the appellant was undertaking a fishing expedition for evidence as an afterthought following the rejection of the waiver it has sought.

Inordinate delay in filing an application for an extension of time, or in filing available relevant material in support of the application, is potentially detrimental to the public interest. The public interest lies in the efficient and orderly processing of tax issues, and can best be related to the question of delay. Inordinate delay in performing a relevant act creates uncertainty and is potentially detrimental to the public interest it tax collection.

Although the Commissioner on 14th May, 2020 erred when he misdirected himself in stating as one of the grounds for rejection of the application, that it had been submitted after expiry of the period allowed for making applications, and that the principal tax had already been paid, the conclusion that he came to cannot be assailed. Similarly although the Tribunal erred when it took into account an irrelevant factor, i.e. failure of the appellant to call evidence of change of mind or of the tax having been paid under protest, it at the same time considered the relevant factors such as the length of the delay, the reason for the delay, the possibility of success and the prejudice occasioned to the respondent. It has not been demonstrated that as a result of those incidents of misdirection, the Tribunal as a result came to wrong decision. The misdirection and errors highlighted by counsel for the appellant are insignificant since they did not affect the outcome.

It was not satisfactorily proved that (a) it was impossible in fact for the appellant to act within the time specified for filing an objection; and that (b) the appellant filed the application as soon as circumstances allowed. Having given the matter careful consideration, I am not persuaded that the Tribunal fell into such error as would have led to a different conclusion. On the contrary, I am of the view that on the evidence before it, the Tribunal was perfectly entitled to come to the conclusion that the appellant had not shown "sufficient reason," "good cause" or "justifiable reason," both before it and before the Commissioner, to justify an extension of time. The Tribunal therefore came to the correct conclusion, and consequently the appeal fails and is dismissed with costs to the respondent.

Delivered electronically this 27th day of January, 2022

……Stephen Mubiru……..
Stephen Mubiru
Judge,
27th January, 2022.