

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL APPEAL NO. 12 OF 2021
ARISING OUT OF TAT APPLICATION NO. 001 OF 2022

SAFARI CLOTHING (UGANDA) LIMITED:::::::::::::APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY:::::::::::::RESPONDENT

Before Hon. Lady Justice Patricia Kahigi Asiimwe

Judgment

Introduction

1. This is an appeal from the Ruling of the Tax Appeals Tribunal in TAT Cause No.001 of 2021. In that Ruling, the Tribunal denied the Appellant an extension of time to file its application for review of the Respondent's objection decision.

Background

2. In 2019, the Respondent issued a public notice providing a 14-day grace period from 14th November 2019 to 3rd December 2019 to enable affected taxpayers to rectify their income tax returns. The Appellant amended the tax returns during the said grace period.
3. Following the tax return amendment, the Respondent issued a further assessment against the Appellant. The Respondent issued a penal tax of UGX 7,586,089 against the Appellant and an assessment of UGX 60,935,171 as total income tax payable.

4. The Appellant instituted an objection against the administrative assessment of the commissioner, which objection was partially allowed. The penal tax was dropped by the commissioner however the objection against the tax payable was disallowed and an amended additional assessment was issued to that effect.
5. The Appellant being dissatisfied with the amended additional assessment lodged an Application for review with the Tax Appeals Tribunal however the application was time barred. In a bid to correct the irregularity, the Applicant applied for extension of time within which to file an Application for review before the Tax Appeals Tribunal.
6. In support of the Application, the Appellant submitted that the Public Health (Control of COVID-19) Rules that led to the closure of premises during the COVID lockdown affected its ability to file an objection since the records needed to support the objection were locked up in an arcade.

Decision of the Tribunal

7. In its ruling delivered on 18th February 2021, The Tax Appeals Tribunal found that the Appellant obtained its objection decision on 16th September 2020 when the lockdown by the government had already been lifted in June 2020. The Tax Appeals Tribunal held that the Applicant had ample time to file an application before the Tribunal. The Tribunal dismissed the Appellant's application for an extension of time to apply for review against the objection decision. The main Application was also dismissed as it was filed out of time.

Grounds of Appeal

8. The Appellant being dissatisfied with the above decision of the Tax Appeals Tribunal filed a Notice of Appeal dated 16th March 2021 which did not state any of the grounds of Appeal.



9. The Appellant also filed a Memorandum of Appeal which raised two grounds of Appeal which are:

- I. That the Chairman and Learned members of the Tribunal erred in law when they failed to properly evaluate the evidence on the court record, thereby reaching a wrong decision.
- II. That the Chairman and Learned members of the Tribunal erred in law in dismissing the Appellant's Application without analyzing and considering in full the different grounds presented by the Appellant, thereby reaching a wrong decision.

Representation

10. The Appellant was represented by Wante & Company Advocates, and the Respondent was represented by the Legal Services and Board Affairs Department of the Respondent. Both parties filed written submissions.

Resolution:

Preliminary Objection:

11. The Respondent raised a preliminary objection that the appeal is incompetent because the grounds of appeal raise issues of mixed law and fact. The Respondent referred to Section 27(2) of the Tax Appeal Tribunal Act, 2014 which provides that an appeal to the High Court shall be made on questions of law only.
12. An appeal is a creature of statute (see **Attorney General Vs Shah (No. 4) [1971] EA 52**). Section 27(2) of the Tax Appeal Tribunal Act 2014 provides for the right of Appeal to the High Court from decisions of the Tax Appeals Tribunal.

13. Section 27 of the Tax Appeal Tribunal Act 2014 provides as follows:

(1) 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 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.

(2) An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

[Emphasis added]

14. Under the above-cited provision, an appeal from the decision of the Tax Appeals Tribunal to the High Court is brought through a notice of appeal. Under section 27(2) of the Tax Appeals Tribunal Act, the notice of appeal shall state the questions of law that will be raised on the appeal. These questions of law are often referred to as the grounds of Appeal. The wording used in section 27(2) of the Tax Appeal Tribunal Act is “shall” and is therefore a mandatory provision.
15. The Respondent submitted that the grounds of appeal raised by the Appellant do not raise questions of law. However, Court notes that the Notice of Appeal filed by the Appellant does not state any grounds of Appeal or questions of law for the court to address. The Notice of Appeal states, “The Appellant is dissatisfied with the ruling in Miscellaneous Application No. 001 of 2021 arising from TAT Application on 18th February 2021, and intends to appeal to this court against the whole ruling/decision”.

16. Counsel for the Appellant appears to have filed this Appeal in the way appeals from the High Court to the Court of Appeal are filed. Counsel filed a Notice of Appeal that gave the Appellant's address of service and then filed a Memorandum of Appeal where he stated the grounds of appeal.
17. There is a difference between appeals from decisions from Magistrates' Courts or other Tribunals to the High Court and an appeal from the decision of the Tax Appeals Tribunal to the High Court. An Appeal from the Tax Appeals Tribunal's decision can only be made in accordance with section 27 of the Tax Appeal Tribunal Act. This difference was emphasized in the cases of **Uganda Revenue Authority Vs Toro & Mityana Tea Company Limited High Court Civil Appeal No. 4 of 2006** and **Uganda Revenue Authority Vs. Thembo Steels Civil Appeal No. 09 of 2006**.
18. In the case of **Uganda Revenue Authority versus Toro & Mityana Tea Co. Ltd (HCT-00-CC-CA 4 of 2006)**, the court clarified the procedure for general appeals and Tax Appeals. The court held that Rule 30 of the Tax Appeals Tribunal (Procedure) Rules only makes the Civil Procedure Rules applicable where the Tax Appeals Tribunal (Procedure) Rules are silent. The court stated that a tax appeal under section 27 of the Tax Appeals Tribunal Act is a specific type of appeal. The court further held that under section 27 of the Tax Appeals Tribunal Act, an appeal is commenced by lodging a notice of appeal with the Registrar of the High Court that states the questions of law to be raised. The Court further stated that section 27 of the Tax Appeals Tribunal Act does away with the requirement to file a memorandum of appeal under Order 43 of the Civil Procedure Rules.

19. In light of the above Court finds that the Notice of Appeal did not meet the requirements of section 27 of the Tax Appeals Tribunal Act as it did not state the questions of law to be raised. Consequently, the appeal is hereby dismissed.
20. Under Section 27 of the Civil Procedure Act, Cap 71 costs follow the event, and the successful party is entitled to costs unless the court or the judge shall for good reason otherwise order. Court notes that the dismissal of this appeal is a result of an error of counsel, in the circumstances, each party shall bear its own costs.

Dated this 30th day of January 2024


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Patricia Kahigi Asiimwe

Judge

Delivered on ECCMIS