THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

MISC APPLICATION NO. 1 OF 2019

ECOBANK UGANDA LIMITED ==========APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA

RULING

This ruling is in respect of an application to extend the time within which to file an application to review the respondent's objection decision.

This application is supported by the affidavit of Mr. Martin Mugisha, the applicant's Head of Credit, which states the facts of the matter as follows: In October 2017, the respondent issued an agency notice on the applicant to collect monies on the accounts of Isolux Ingenieria (hereinafter "Isolux") held with the applicant on account of unpaid taxes. The applicant objected by a letter dated 31st October 2017 on the ground that the monies on the said account were held by it on its own right as a guarantor under a bank guarantee issued in favour of Uganda Electricity Transmission Company Transmission Limited ("UETCL"). Johnston Group Limited (Johnston Group) obtained judgment against Isolux on account of breach of contract under civil suit no. 468 of 2017 and on that account obtained a garnishee order nisi against Isolux. The applicant in its objection brought to the attention of the respondent that there were other claims to the monies on the account. It advised the respondent to join the proceeding in the High Court. The respondent declined and made an objection decision dated 16th January 2018. The registrar of the High Court found that the applicant was the rightful claimant to the monies on the account. The objection proceedings and decree nisi were lifted. Johnstone Group filed an appeal and obtained an order barring the applicant from accessing the fund. The applicant wrote a letter to the respondent dated 22nd January 2018 imploring the respondent to revise its objection decision. The respondent by a letter dated 6th February 2018 declined to review

its decision. An appeal by Johnstone Group was dismissed. The applicant had earlier obtained an interim order against the respondent and filed an application seeking to join it in the proceeding before court so as to determine who was entitled to the monies on the account. The said application was not granted. Hence it filed this application for review which was not filed in time. The applicant could not file proceedings in the Tax Appeals Tribunal while contesting the same subject matter in High Court. It is now out of time. The respondent demanded for payment of the monies on the account totaling to Shs. 781,685,389 which were paid.

The applicant was represented by Mr. Tom Mbalinda while the respondent by Mr. Ronald Baluku and Mr. Alex Sali Aliddeki

The respondent raised a preliminary point of objection on the ground that this application was filed outside the 6 months statutory period. The applicant replied that the submissions of the respondent are premised on a misinterpretation of the law in particular S. 16(7) of the Tax Appeals Tribunal Act. The applicant contended that S. 16(7) of the Act should be read together with S. 16(1)(c). The applicant cited **Cable Corporation v URA** *Civil Appeal 1 of 2011* where from the interpretation of court S. 16(1)(c) refers to an objection decision while S.16(7) refers to a taxation decision. The applicant argued that a careful reading of a taxation decision in S. 1(k) of the Act shows that it is different from an objection decision in S. 1(g) of the Act. The applicant argued therefore that the reference to six months in S. 16(7) of the Act cannot be applied to the filing for an extension of time. Therefore the lack of a provision to cater for extension of time for applications under objection decision is cured by Rule 11 of the Tax Appeals Tribunal Procedure Rules which generally provides for extension of time. The applicant argued that if the intention of statute makers was to delimit the time for filing an application they would have clearly stated so.

In the alternative but without prejudice, the applicant contended that as long as it had filed an application in High Court it would not file a similar matter in the Tax Appeals Tribunal. This would be absurd where one would file an appeal from the decision of the Tribunal to the High Court. There would be a risk of getting two conflicting decisions. The applicant cited S. 6 of the Civil Procedure Act which provides that no court shall proceed with a trial

of any suit where the matter is directly and substantially in issue with a previous instituted suit or where the matter is pending in the same or other court having jurisdiction in Uganda to grant the relief claimed. The applicant contended that court should be interpreted to include the Tax Appeals Tribunal.

The applicant further contended that the High Court ruled that when the Registrar failed to join the respondent, it could not be done at the appeal stage. The court held that the matter ought to have been filed before the Tax Appeals Tribunal. The applicant contended that until the ruling of the court on 27th November 2018 time cannot be reckoned to have started to run. To the applicant, it would be an injustice for the Tribunal not to reopen the matter for its review. The applicant prayed for the Tribunal to dispense justice with undue regard to technicalities as provided for in Article 126(2) of the Constitution.

In its reply to submissions of the applicant and a rejoinder to the preliminary objection, the respondent contended that the Supreme Court in **Uganda Revenue Authority v Rabbo Enterprises and another** 12 of 2004 held that the Tax Appeals Tribunal was a court of first instance on 10th July 2017. The respondent delivered and served its taxation decision on the 16th January 2018. The applicant was aware of the decision but decided to go to the High Court contrary to the decision of the Supreme Court.

The respondent cited **Uganda Communications Commission v URA** *Misc. Application 6 of 2012* where the Tribunal held that having further meetings and correspondences between the taxing authority and a tax payer should not prevent the latter from filing an application before it in time. The respondent contended that since the applicant had the option of filing a matter in the Tribunal, he opted to do so in High Court. This was dilatory conduct on its behalf.

The respondent contended that under S. 16(7) of the Tax Appeals Tribunal Act an application for review of a taxation decision shall be made within six months after the date of the taxation decision. The respondent contended that the six months started to run from 29th January 2018. The Tax Appeals Tribunal Act does not have powers to extend

the time beyond the six months period. The respondent prayed that the application is dismissed with costs.

Having heard and read the submissions of the parties, this is the ruling of the Tribunal.

The applicant brought this application under S. 16 of the Tax Appeals Tribunal Act, Rules 10, 11, 30 and 31 of the Tax Appeals Tribunal Procedure Rules for leave to file an application challenging the taxation decision of the Commissioner General out of time. At the trial the respondent raised a preliminary objection that the application had been filed outside the prescribed period of six months in which it ought to have been filed.

In October 2017, the applicant was served an agency notice instructing it to collect monies from the bank account of Isolux. On 31st October 2017 the applicant objected to the respondent that the monies held on the said account were held by it in its own right as a guarantor of a bank guarantee issued in favour of Uganda Electricity Transmission Company Limited on behalf of Isolux. On 16th January 2018, the respondent wrote to the applicant's counsel refusing to withdraw the agency notice. The applicant was also involved in Civil Suit 468 of 2017 where Johnston Group Limited had filed a matter against Isolux and obtained judgment. Johnston Group Limited attempted to attach monies on the said account. On the 27th November 2017 the court ordered that the garnishee order attaching monies on the account be lifted. Johnston Group appealed against the said order to the High Court which was dismissed on the 12th December 2018. The applicant had applied that the respondent be added as a party to the garnishee application which application was dismissed on 27th November 2018. The court noted that applications to objection decisions of the respondent can only be brought by way of review of a decision of the Tax Appeals Tribunal. Secondly a third party cannot be joined in an appeal against a garnishee decision. The applicant having reached a dead end in the High Court opted to file an application on the 16th January 2019 before the Tax Appeals Tribunal seeking to extend time before it.

The respondent made its decision not to withdraw the agency notice on the 16th January 2018. The applicant filed the application to extend time on the 16th January 2019. There

is no doubt that the period between when the respondent made its decision and the time when the applicant made an application for extension of time is more than one year. S. 16(1)(c) of the Tax Appeals Tribunal Act provides that an application to a tribunal for review of a taxation decision shall be made within 30 days. . S. 16(2) reads that "A tribunal may, upon application in writing, extend the time for making of an application to the Tribunal." S. 16(7) states that an application for review of a taxation decision shall be made within six months after the date of the taxation decision. Rule 11(1) of the Tax Appeals Tribunal Procedure Rules, 2012, provides that the tribunal, may in its discretion and upon the application of the applicant, extend the time for making an application for review where it is not filed within 45 days from the date of service of the taxation decision. Rule 11(6) provides that the Tribunal may extend time if satisfied that the tax payer was unable to file the application because of illness, absence from Uganda or any other reasonable cause.

The applicant argued that S. 16(1)(c) of the Tax Appeals Tribunal Act refers to an objection decision while S. 16(7) refers to a taxation decision. A reading of S. 16(1)(c) reveals that it mentions taxation decision and not objection decision. S. 1 (k) defines a taxation decision to mean any assessment, determination, decision or notice. S. 1(g) defines an objection decision to mean a taxation decision made in respect of a taxation objection. S1. (2) provides that where a taxing Act provides that a person dissatisfied with a taxation objection may object against the decision, such an objection shall be referred to as a "taxation objection". From a reading of the Act an objection decision is a taxation though a taxation may not be an objection decision. Under S. 16(a)(c) an application for review of a taxation decision shall be made within 30 days.

The decision made by the respondent to the applicant dated 16th January 2018 was a taxation decision. Under S. 1(K) a taxation decision means any determination. It was not an objection decision. S.1.(g) defined an objection decision to mean one made in respect of a taxation objection. There was no objection made in respect of a taxation issue. What is in dispute was monies held by the applicant for Isolux. In **Cable Corporation v URA** His Lordship Madrama stated that "An objection decision is a decision in respect of a taxation objection made to the Commissioner against a notice of assessment while a taxation decision means any assessment, determination, decision or notice. Therefore the

applicant was applying for a review of a taxation and not an objection decision. Under. 16(1) (c) the applicant was required to file an application for review of the taxation decision within 30 days, which it did not. The applicant made an application of extension of time.

S. 16(7) of the Tax Appeals Tribunal Act provides that an application for review of a taxation decision shall be made within six months after the date of the taxation decision. This implicitly requires all applications for extension of time to be filed within six months of the taxation decision. In **Cable Corporation v URA** (supra) the date of the decision is the date when the decision is served on the applicant. The applicant does not state the date it was served the taxation decision. It is contented with the date the decision was made. The Tribunal will go by that date which is 16th January 2018. Therefore the applicant ought to have filed the application for extension of time with six months from 16th January 2018 i.e. 16th July 2018. The application for extension of time was filed on 16th January 2019. That was way out of time. Therefore this application is time barred. The applicant contended that Article 126 of the Constitution requires that substantive justice should be administered without regard to technicalities In **Uganda Revenue Authority v Uganda Consolidated Properties Limited** *Court of Appeal Civil Appeal 31 of 2000* where the Court held that "Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with". The Tribunal does not have any discretion to exercise when an application for extension of time is time barred.

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The applicant had prayed that the Tribunal should look at the merits of its application. Since the Tribunal has held that this application is time barred it can only give the applicant a peek into what it would have decided if the application had been filed in time through obita dicta. That is this per curiam and does not constitute the gist of the decision or the *ratio descendi*. The applicant is challenging a decision of the respondent where the latter issued an agency notice. Agency notices are issued under Taxing Acts and not under the Civil Procedure Act. Therefore the applicant attempting to challenge the Agency notice in the High Court or attempting to add the respondent to an application for garnishee nisi was were attempts in futility. As the judge noted in the application to add the respondent as a party that tax decisions of the respondent should be challenged in the Tax Appeals Tribunal as per the Supreme Court decision of **Rabbo Enterprises Limited v URA**

(supra). An attempt to challenge a tax decision in a wrong court cannot be considered as an excuse in an application to extend time. Ignorance of the law is no excuse.

Furthermore the applicant contended that it has a right of indemnity to the monies on the account of Isolux by virtue of guarantees it issued on behalf of the latter. We have already stated that the agency notices are issued under taxing acts and not the Civil Procedure Act. While the Civil Procedure Rules allow a garnishee to state its claim the Taxing Act does not. The law in respect of banking would come into play. When a bank customer opens an account, a debtor- creditor relationship is established. The bank becomes a debtor and the customer the creditor. The monies stated on a customer's account belong to the customer and not the bank. Where a bank offers guarantees on behalf of its customers, it is not entitled to the monies on the account until the guarantee is due or exercisable. Where a customer is indebted to the bank, the said monies should be removed from the account and not left there. Lastly, taxes due to government take precedence over other claims even in insolvency.

We accordingly dismiss this application with costs.

Dated at Kampala this 10th day of March 2020.

DR. ASA MUGENYI
CHAIRMAN

DR. STEPHEN AKABWAY,
MEMBER

MR. GEORGE MUGERWA
MEMBER