

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATIONS NO. 10 OF 2019**

**AIRTEL UGANDA LIMITED =====APPLICANT**

**VERSUS**

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

**BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. SIRAJ ALI**

**RULING**

This ruling is in respect of an application to add an additional ground for determination.

The applicant is a company that deals in telecommunication services. The applicant acquired Warid Telecom with effect from 1<sup>st</sup> February 2014. Sometime in 2018, the respondent carried out an audit on the applicant for the period July 2007 to June 2014 where it disallowed its input tax credit, adjusted withholding tax and issued an additional assessment of Shs. 208,817,971. The applicant being dissatisfied with the respondent's decision appealed to the Tribunal. At the scheduling of the matter the applicant applied to add an additional ground or issue for determination. The ground the applicant seeks to add is on time limits. The applicant contends that the assessments issued by the respondent were time barred.

The applicant was represented by Ms. Belinda Nakiganda and Ms. Lydia Namugoma while the respondent by Ms. Charlotte Katuntu.

The applicant submitted that S. 16(4) of the Tax Appeals Tribunal Act provides that an applicant is limited to the grounds in an objection decision unless the Tribunal orders otherwise. The applicant submitted that the Tribunal has the discretion to allow an additional ground to those in the objection. The applicant cited **Kasese Cobalt Company Limited v URA TAT 28 of 2018** where the Tribunal noted that to render

justice issues should be raised at the beginning of the trial and the necessary leave ought to be sought at the beginning of the trial and not at the end.

The applicant submitted that Article 152 of the Constitution provides that no tax shall be imposed except without the authority of Parliament. S. 23(2)(b) of the Tax Procedure Code Act provides that an additional assessment should be made within three years from the date of notice of the additional assessment or in any other case within three years after the date the taxpayer has furnished a self-assessment. The applicant argued that the period in issue is July 2007 to June 2014. However the assessment was issued outside the prescribed time in 2018.

The applicant cited **Makula International Limited v His Eminence Cardinal Emmanuel Nsubuga** CACA 4 of 1981 or 1982 HCB 11 where the court held that “a court of law cannot sanction what is illegal, an illegality once brought to the attention of court overrides all questions of pleading, including any admission, thereof and court cannot sanction an illegality.” The applicant also cited **Cable Corporation v Commissioner General Uganda Revenue Authority** Civil Appeal 1 of 2011 where the court noted that statutory time limits should be strictly adhered to. The applicant contended that in order to obtain a fair hearing the issue of time limit which is fundamental to this application should be considered.

In reply, the respondent contended that this is not a proper case for grant of leave to add an additional ground. The respondent argued that S. 16(4) of the Tax Appeals Tribunal Act requires that matters before it be confined to grounds raised in the objection notice. The framers of the law foresaw the raising of new grounds would be prejudicial to the opposite party. Though the Tribunal has the discretion to allow an additional ground it should not prejudice the respondent or lead to a miscarriage of justice. The respondent contended that the new ground would not serve any purpose but would result in a protracted litigation. The respondent also contended that S. 32(a) of Tax Procedure Code Act provides for grounds where an additional assessment may be issued for instance where there is fraud, or gross or willful neglect. The respondent

contended further that the applicant was aware of the circumstances the additional assessment was issued. The respondent averred that this application was brought in bad faith and should be disallowed.

In rejoinder, the applicant submitted that Order 6 Rule 28 of the Civil Procedure Rules allows any party to raise by its pleading any point of law and this shall be disposed of by court. Therefore it is proper for the applicant to add a ground for determination by the Tribunal. The applicant cited **Konde Mathias Zimula v Byarugaba Moses and Grace Nampijja** HCCS 66 of 2007 where the court held that “courts of justice will not allow a person to keep an advantage which he obtained in bad faith.” The applicant also cited **National Social Security Fund and another v Alcon International Ltd** SCCS 15 of 2009 to reiterate that a court cannot sanction that which is illegal. The applicant contended that an assessment made out of time is illegal. It is only fair and proper that such an issue should be put to trial.

The applicant contended that though S. 23(2)(a) of the Tax Procedure Code Act gives the Commissioner General wide discretion in issuing an additional assessment, it clearly stipulated the circumstances under which that discretion should be exercised. The discretion is not unqualified. The respondent does not point out which new information it relied on to issue an additional assessment.

Having read the submissions of the parties the Tribunal rules as hereunder.

In 2014, the applicant acquired Warid Telecom Limited. As a result, there were transactions of Warid Telecom carried forward to the applicant having tax implications involving withholding tax, Pay as You Earn, excise duty and Value Added Tax. Sometime in 2018, the respondent carried out an audit on the applicant to ascertain the business of Warid for the period July 2007 to June 2014. The respondent made an audit decision. The applicant being dissatisfied with the decision appealed to the Tribunal.



At the trial, the applicant applied to include an issue on time limit which was not in its objection notice. The respondent objected to the inclusion of the new ground as an issue.

S. 16(4) of the Tax Appeals Tribunal Act provides:

“Where an application for review relates to a taxation decision that is an objection decision, the applicant is, unless the tribunal orders otherwise, limited to the grounds stated in the taxation objection to which the decision relates.”

The Tribunal is limited to the grounds in the objection unless it so orders. In order for a Tribunal to grant an application to include a ground, it must exercise its discretion judiciously. The purpose of exercising discretion was stated in **Shah v Mbogo and another [1967] EA 116** is “to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error, but not to assist a person who has deliberately sought (whether) by evasion, or otherwise to obstruct or delay the cause of justice”. In order to exercise its discretion, a court may be required to apply the rules of natural justice.

Time limits in issuing assessments are set by the Tax Procedure Code Act. S. 32(2)(b) and (c) of the Act provides that in the case of an additional assessment it may be made within three years from the date of service of the notice of additional assessment or within three years after the tax payer furnished a self-assessment return or the commissioner served a notice of original assessment. The applicant was audited in 2018 for the period July 2007 to June 2014. It is not difficult to discern that the time period of three years has expired.

Issues of time period go to the merits of a case. There are issues of substantive law. In **Uganda Revenue Authority v Consolidated Properties** Civil Appeal 31 of 2000 the Court of Appeal held that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. This was affirmed also in **Uganda Revenue Authority v Toro Mityana Tea Company limited HCCS 4 of 2006**. Issues of substantive law or points of law can be raised at any time during a hearing or trial. One may not need to seek leave from a court or the Tribunal to raise them. It is

also within the interest of the Tribunal to know why a party did not comply with time limits set in a statute.

S. 32(2)(a) of the Tax Procedure Code Act provides that an additional assessment may be issued at any time, if fraud or any gross or wilful neglect has been committed or if any new information has been discovered. This section provides an exception to the time limits. The respondent contends that the applicant is aware of the reasons why the additional assessment was issued. However it would not prejudice the respondent if both parties shared the said grounds with the Tribunal.

In **Kasese Cobalt v Uganda Revenue Authority** (supra) the Tribunal noted that issues of time limits should be raised at the beginning of the trial. This is because, like in this case, the Tribunal would like the respondent to be aware of the case before it, and is given ample time to prepare its defence and respond. When issues of time limits in respect of additional assessments are raised at the end of the trial or in submissions, it is usually too late for the respondent to prove fraud or willful neglect or the discovery of new information to the satisfaction of the Tribunal. Lord Denning in **Kanda v Government of Malaya** [1962] AC 322 said:

“if the right to be heard is to be a real right which is worth anything, it must carry with it a right for the accused man to know the case which is made against him. He must know what evidence has been given and statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.”

The Tribunal has already noted that issues of time limits are points of substantive law that can be raised at any time during a trial. However the respondent should be given ample time to contradict them or raise grounds objecting to them. That is why the Tribunal insists they should be raised at the beginning of the trial. However raising them during or at the end of the trial does not mean that the Tribunal will not entertain them.

Taking above into consideration, the applicant raising and including the ground of time limits as an issue provides ample time for the respondent to contradict or set up a defence. It does not prejudice the respondent. In fact it helps the respondent. There

may be delays in hearing the matter but listening to the said ground at the earliest opportunity avoids a multiplicity of suits and unnecessary appeals.

We accordingly allow this application with costs.

Dated at Kampala this

20<sup>th</sup>

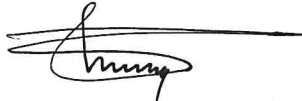
day of

May

2020.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**DR. STEPHEN AKABWAY**  
**MEMBER**



**MR. ALI SIRAJI**  
**MEMBER**