THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

MISCELLANEOUS APPLICATION 51 OF 2021

CAROLINE KAHAMUTIMA ==========APPLICANT

VERSUS

COMMISSIONER CUSTOMS,
UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE,

RULING

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

This application is brought under S. 16(2) of the Tax Appeals Tribunal Act, Rules 12 and 30 of the Tax Appeals Tribunal (Procedure) Rules 2012 and the Civil Procedure Rules. It is for prayers that the time to file an application for review before the Tax Appeals Tribunal be extended and costs for the application.

The facts of the application are stated in the affidavit of Mr. Oscar Kamusiime a counsel of the applicant as follows. Around 14th October 2010, the applicant imported a motor vehicle, Mitsubishi Airtrek. She made a self- assessment based on the transaction value. The respondent queried the self- assessment and demanded further tax of US$ 5,994. On 24th November 2011, the applicant challenged the decision by filing Civil Suit 778 of 2011 in the Chief Magistrate's court against the respondent. On 25th January 2016 the Chief Magistrate ruled that the additional tax was unjustified and ordered the respondent to refund the tax. On 13th February 2018, the respondent filed an application in the High Court for extension of time within which to lodge an appeal which was dismissed on 17th August 2018. On 16th June 2021, the applicant wrote to the respondent requesting for a

refund of Shs. 11,141,608.32. The applicant contends that respondent never refunded tax of shs. 5,990122 and interest of Shs. 11,141,608.32. The applicant contends that due to the lockdown it was not able to file an application within 30 days from the days prescribed under the Tax Appeals Tribunal Act.

The respondent in an affidavit in reply by Tracy Basiima, its employee working in the Legal Services and Board Affairs Department contended that the Tribunal does not have jurisdiction to entertain the matter. She reiterated what was stated in the affidavit of the applicant's counsel. She contended that that there is no sufficient ground to warrant the extension of time.

The issue for determination is whether the Tribunal can extend the time for the applicant's application to review the objection decision.

The applicant was represented by Ms.Lyia Namugoma and Ms. Belinda Nakiganda while the respondent by Mr. George Senyomo.

The gist of the applicant's application is that it failed to file an application in time before the Tribunal because it was affected by the government lockdown due to the COVID pandemic.

The applicant submitted that S. 16(2) of the Tax Appeals Tribunal Act provides that a tribunal may extend the time for making an application. S. 16(7) of the Act provides that the application shall be made within 6 months after the date of the taxation decision. Rule 12 of the Tax Appeals Tribunal (Procedure) Rules provides that the Tribunal may in its discretion extend the time. The applicant cited *Prompt Supply 2011 Ltd. v URA* MA 91 of 2019 where it was held that the applicant has to show that it has reasonable cause as to why the application was not filed in time. Good cause must relate and include the factors which caused inability to file the appeal within the prescribed time. The applicant

contended that it was not able to file in time due to the Covid 19 lockdown imposed by the government which was effective from 18th June 2021 to 30th July 2021.

The applicant cited *Mulindwa George William v Kisubika Joseph* Civil Appeal 12 of 2014 where the Supreme Court considered the factors in an application for extension time as (i) the length of the delay (ii) the reason of delay iii) the possibility or chances of success iv) the degree of prejudice to the other party. The applicant contended that it satisfied all the requirements of the above case. The applicant also cited Boney *Katatumba v Waheed Karim* SCCA 27 of 2007 where it was stated that "It follows that where it is not shown that enforcement of limitation of time would result in manifest denial of justice, extension of time is not justified." It argued that to refuse the application would amount to denial of justice.

In reply, the respondent raised a preliminary objection that the Tax Appeals Tribunal Act does not have jurisdiction to hear this matters. The respondent cited S. 34 of the Civil Procedure Act which provides that all questions arising between parties to the suit in which the decree was passed shall be determined by the court executing the decree. The respondent contended that the Magistrates court substantially dealt with issue of the vehicle and the taxes therein. It contended that the Magistrate's court being the executing court matters complained of should be raised before it.

The respondent contended that the refund for interest is time barred. The respondent cited S. 144 of the East African Community Customs Management Act (EACCMA) which provides that the Commissioner shall refund any customs duty of any import or export duty which has been made in error. The refund of claim shall be within a period of twelve months from the date of payment of duty. The respondent cited *Mandela Auto Spares Ltd. v Commissioner Customs* HCCS 201 of 2011 where the court stated that any claim for a refund is caught up by S.144(2) of the EACCMA has to be presented within a period of twelve months from the date of payment. The respondent also cited *Uganda Revenue Authority v Uganda Consolidated Properties Limited* Civil Appeal 31 of 2000 where the

Court of Appeal stated that timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

The respondent argued that the applicant has no justification for filing an application for extension of time. The respondent submitted that the applicant applied for taxes of Shs. 5,990,122 and interest of Shs. 11,141,608.32 in a letter dated 14th June 2021. In a reply dated 16th June 2021, the respondent advised the applicant to get in touch with the Commissioner Customs to process the refund of taxes. By a letter dated 17th July 2021 the respondent recalled its letter. On 13th August 2021, the applicant filed an application for extension of time. The respondent contended that the last communication by the respondent was on 17th July 2021. It was not necessary for the applicant to file an application for extension of time.

In rejoinder, the applicant contended that the respondent exercised its discretion and made a taxation decision in the letter of 16th June 2021 which the former is seeking to review. The applicant cited *Uganda Revenue Authority v Rabbo Enterprises* ACCA 12 of 2004 where the Supreme Court held that: “The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunal and only taken before the High Court on appeal.” The applicant also cited *Century Bottling Co. Ltd v URA* MA 32 of 2020 where the Tribunal stated that the rejection of a request to pay 30% of the tax in dispute was a tax decision. The applicant further cited *Fresh Handling Uganda Ltd. v URA* TAT 83 of 2019, where the Tribunal handled a matter involving the issuing of a third party agency notice. The applicant contended that the taxation decision of the respondent falls under the action of which the Tribunal has jurisdiction to review.

The applicant contended that the time limit of twelve months under S. 144(2) of the EACCMA only applied to S. 144(1) which deals with a refund of customs duty paid. However the applicant made its application under S. 144(3) of the EACCMA which states that the Commissioner shall refund any import duty in respect of which an order remitting such duty has been made.

Having read the application and submissions of the parties this is the ruling of the Tribunal

The respondent raised a preliminary objection to the effect that the Tax Appeals Tribunal does not have jurisdiction to entertain this application. The respondent contends that this application arises from a decree that was issued in the Chief Magistrate's Court. A perusal of the decree which is attached to the applicant's application shows that this dispute was before a Magistrate's court and was determined. The magistrate omitted to award interest.

Once a matter is handled by a court where its jurisdiction has not been challenged and a decision is made, it become res judicata. A court award cannot be equated to a request to pay 30% of tax in dispute in instalments as in *Century Bottling Co. Ltd v URA* (supra) as there was no court award. One cannot bring a complaint handled by a court in another form before another court of competent jurisdiction. This is because it has been decided on and the Tax Appeals Tribunal is not an appellant court. There has to be an end to litigation. In *Fresh Handling Uganda Limited v URA* (supra) the dispute originated from the Tax Appeals Tribunal and went upto to the Court of Appeal. The EACCMA provided for interest on matters that end up in High Court and Court of Appeal. The Tribunal reluctantly entertained it as it involved a decision made by it.

The court that handled the matter would be competent to address the issue of interest. The East African Community Customs Management Act S. 144(1)(c) provides that the Commissioner shall refund any customs duty paid on the importation of goods which has been paid in error. Under S. 144(3) the Commissioner shall refund any import duty on goods in respect of which an order remitting such duty has been paid. The said Section does not provide for interest. Therefore if the applicant is seeking for interest it ought to have applied for a review of the court decree to the court that made the award. It cannot rectify the omission to award interest by bringing the dispute to the Tax Appeals Tribunal.

The applicant contends that it applied for the refund in its letter of 14th June 2021. The respondent replied in its letter of 16th June 2021 where it stated that it would go ahead and process the refund of Shs. 5,990,112. Though the respondent submitted that it recalled the said letter in its letter of 17th July 2021, the latter letter was not attached to its affidavit in reply nor adduced as evidence. The applicant contends that the letter of 16th June 2021 was a taxation decision. If the Tribunal was wrong to state that the matter should been have handled by the court that made the award, the applicant ought to have followed the procedure stated in the EACCMA. If the applicant was aggrieved by the letter of 16th June 2021 it ought to have applied to the Commissioner for a review. S. 229(1) of the EACCMA provides that:

> "A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission."

S. 229(4) of the same Act provides that:

> "The Commissioner shall within a period not exceeding thirty days of receipt of the application under subsection (2) and any further communication the Commissioner may require from the person lodging the application communicate his or her reason in writing to the person lodging the application stating the reasons for the decision."

S. 230 of the EACCMA provides that:

> "(1) A person dissatisfied with the decision of the commissioner under section 229 may appeal to a tax appeals tribunal established in accordance with section 231.
>
> (2) A person intending to lodge an appeal under this section shall lodge an appeal within forty five days after being served with the decision, and shall serve a copy of the appeal on the Commissioner."

Therefore the applicant by filing an application for extension of time when it had not applied to the commissioner to review the letter of 16th June 2021, she was acting prematurely. The Tribunal does not have a decision of the Commissioner to review. Therefore this application is incompetent.

Having stated that the Tribunal cannot handle a matter which had already been decided on by another court or that the applicant ought to have first applied for review, which it did

not, it is not necessary for the Tribunal to delve into whether the application was time barred under S. 144(3) of the EACCMA.

Taking the above into consideration, this application is dismissed with costs.

Dated at Kampala this 21st day of september 2021.

DR. ASA MUGENYI	**MR. GEORGE MUGERWA**	**MS. CHRISTINE KATWE**
CHAIRMAN	**MEMBER**	**MEMBER**