

Applicant

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 135 OF 2020

KANSAI PLASCON (UGANDA) LIMITED ::::::::::: APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY ::::::::::: RESPONDENT

DR. ASA MUGENYI, DR. STEPHEN AKABWAY MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application to extend time to lodge an objection to a tax assessment by the applicant which the respondent rejected.

The applicant is a company incorporated in Uganda dealing in the manufacture and sale of paint. On 26th February 2020, the respondent issued a management letter and an assessment of Shs. 68,927,551,086 which included interest and penalties on the applicant. On 14th April 2020, the applicant paid principal tax of Shs. 14,229,295,922. On the 13th and 14th May 2020, the applicant applied for extension of time to lodge an objection to the tax assessment which the respondent rejected.

Issues

1. Whether the respondent was justified to refuse to grant an extension of time to lodge an objection?
2. What remedies are available?

The applicant was represented by Mr. Philip Karugaba and Mr. Patrick Turinawe while the respondent by Mr. Tonny Kalungi.

The applicant submitted that on the 13th and 14th May 2020 through its advisors, M/s Grant Thornton Taxation Services, it applied for extension of time within which to lodge an objection to tax assessments under S. 24(4) of the Tax Procedure Code Act. The reasons it gave were that it required additional time to obtain relevant documents and information from previous shareholders. The applicant started collecting the

information, but the process was delayed by the COVID lockdown. The applicant required additional time to reconcile the details of the assessment. The respondent in its notices of 14th and 15th May 2020, rejected the applications for extension of time on the following grounds: The application has been filed outside the mandatory time limit for filing an objection decision. The principal tax has been paid and the voluntary disclosure rejected.

The applicant submitted that having rejected its application it made an objection on the following grounds: The request for extension of time can be made after the expiry of time. The payment of the principal tax does not constitute a bar to an assessment. The applicant paid the tax in good faith to show its willingness to cooperate with the respondent. It required additional time to obtain relevant documents and information. The respondent rejected the objection on the grounds that the Tax Procedure Code Act gives the Commissioner discretionary powers to extend time. The applicant gave unsatisfactory grounds. The payment of tax was an obligation on the applicant and should not be used as a basis for applying for extension of time.

The applicant further submitted that S. 24 of the Tax Procedure Code Act provides that a person may apply in writing to the Commissioner for extension of time to lodge an application. The provision grants the Commissioner discretionary powers to grant the application if satisfied with the grounds of the application. However, the Section is silent on whether such an application of time should be made before or after the expiry of the prescribed time to lodge an objection. The applicant cited S. 34(3) of the Interpretation Act which states that where power is given to court or other authority to extend time the power may be exercised after the expiration of the prescribed time. The applicant contended that an application for extension of time may be made after the prescribed time. The applicant cited *Mukula International v Cardinal Nsubuga* Civil Appeal 4 of 1981 where the court stated in the absence of a provision for extension of time courts do not have jurisdiction to extend the time or enlarge the time fixed by statute. The applicant also cited *Ojara v Okwera* Civil Application 23 of 2017 where the court stated that an application for enlargement of appeal should ordinarily be granted unless the applicant is guilty of unexplained or inordinate delay. The applicant contended that justifiable reasons or sufficient cause ought to be shown. It cited *Ganesh Engineering Works Limited and 3 others v Yamini Builders Ltd.* [2020] eKLR

3 where the court stated that it is difficult to define 'sufficient cause'. However, the words should be construed liberally to advance substantive justice, when no negligence, or inaction or want of bona fide is imputed on the appellant. It also cited *Shanti v Hindocha* [1973] EA 207, where it was stated that the applicant must show that there was no delay caused or contributed to dilatory conduct on his part. The applicant also cited *Century Bottling Company v URA* Misc 32 of 2020 where the Tribunal recognised the widespread economic loss caused by the COVID pandemic.

The applicant contended that the Commissioner General must exercise his discretion rationally in accordance with the Constitution. The applicant cited *Rutayisire and another v Uganda Revenue Authority* where the court stated that the reason must be aligned with to what is authorised within the Constitution and any other enabling law to be rationally justified in a democratic society. The applicant cited Article 42 of the Constitution which enshrines the right for any person to be treated justly and fairly in administrative decisions. It also cited *Banco Arabe Espanol v Bank of Uganda* [1992] 2 EA 22 where the court stated the administration of justice requires that the substance of all disputes should be investigated and decided on merit.

Applying the law to the facts, the applicant contended that it needed time to reconcile the taxes paid and the assessments issued. If reconciled there would be a substantial reduction of taxes up to Shs. 4,266,695,456. The applicant had a new shareholder and did not have relevant supporting documents. The COVID lockdown affected the applicant.

In reply, the respondent admitted that the powers granted to the Commissioner are discretionary. It also admitted that discretionary powers by public authorities must be exercised judiciously, reasonably and in good faith. The respondent submitted that it exercised its discretionary powers judiciously, reasonably and in good faith. The respondent contended that it was not satisfied with the applicant's grounds for extension of time.

The first ground of request of time being made outside the expiry of statutory time was not in the objection decision. The respondent contended that it was not the basis on which it made its decision. The applicant contended while it was mentioned in the

rejection notice it was not part of the objection decision. The respondent contended that under S. 25(1) of the Tax Appeals Tribunal Act only grounds in the objection decision should be considered and not those in the rejection notice.

The respondent further contended that the applicant's ground of payment of tax does not explain the reason of delay. The applicant has a duty to pay tax. The respondent also contended that the applicant's other ground that it paid principal tax on the understanding it would not pay interest and penalty is contrary to the law. The respondent contended that the applicant paid the principal tax voluntarily. The respondent also contended that the applicant agreed to pay tax if it failed to get documentation from other shareholders. The applicant did not get the information. The respondent wondered why the applicant wanted to object to the principal tax when it had paid it. The respondent also relied on a letter by the applicant, Exh A3 where it committed to pay the principal tax on set out dates. The respondent contended that the applicant's issue of voluntary declaration is out of scope of the objection decision. The respondent contended that when it rejected the applicant's voluntary declaration it decided to apply for extension of time to object to the principal tax. The respondent also contended that the applicant did not adduce evidence to show that it was affected by the COVID 19 lockdown. The respondent cited *Haji Mohammed Bagaliwo v Attorney General* [1998-1990] HCB 136 where the court took judicial notice that parts of Uganda were cut off during a guerrilla warfare but noted that the plaintiff had not adduced evidence to show that he was in Masaka and unable to contact his advocates. The respondent contended that during that time of the COVID pandemic the former shareholders were able to file an application in the High Court challenging a private ruling of the respondent. The respondent contended that the COVID pandemic is not a magic wand that every taxpayer waves as an explanation for disability to comply with statutory timelines.

The respondent also contended that the applicant delayed for 77 days. The assessments were issued on 26th February 2020. The applicant applied for extension on 13th and 14th May 2020. The delay is not justifiable.

In rejoinder, the applicant reiterated that S. 24(4) of the Tax Procedure Code Act does not restrict the time an application for extension can be made. It also submitted that it

paid the principal tax with reservations. As regards its obligation to pay taxes, the applicant submitted that it should pay taxes that are lawfully due. S. 37(3) of the Tax Procedure Code Act provides for payment of tax that is overpaid. The applicant argued that it overpaid tax and can obtain a refund from the respondent. The applicant submitted that it requested the respondent to revise the tax assessment subject to the former obtaining information from previous shareholders. The applicant also invited the Tribunal to take judicial notice of the unique circumstances created by the COVID lockdown. The applicant also reiterated that S. 34(3) of the Interpretation Act allows an authority to exercise power after the expiration of the time prescribed. The applicant also submitted that the length of delay was 33 days and not 77 days. It contended that the respondent's computation is wrongly premised from the date the tax was assessed. The applicant contended it extensively explained the reason for the delay.

Having read the submissions of the parties and perused their exhibits, this is the ruling of the Tribunal.

On 26th February 2020, the applicant was issued a management letter containing an additional assessment of Shs. 68,927,551,084 which comprised of principal tax of Shs. 14,288,954,488, interest and penalties of Shs. 54,638,596,596.

In a letter dated 20th March 2020, the managing director of the applicant wrote to the Commissioner General where he stated that:

"... we would like to underline our commitment to clear the outstanding principal tax payments by the dates we set out as well [sic] formally apply for a waiver of penalties and interest pursuant to the provisions of section 66(1) of the Tax Procedure Code Act 2014("TPC")."

S. 66(1) of the Tax Procedure Code Act reads:

- (1) if a person has committed an offence under a tax law, other than section 65, the commissioner may, at any time prior to the commencement of court proceedings, enter into an agreement with the offender to compound the offence, if the offender agrees to pay to the Commissioner –
 - (a) any unpaid tax; and
 - (b) any amount not exceeding the maximum fine imposed by the tax law for the offence."

The said letter shows that the applicant not only admitted that it had committed an offence but had also committed itself to pay the principal tax in instalments. Therefore, a question arises, by the time the applicant applied for an extension of time was it not aware of its admission and commitment?

On 14th April 2020, the applicant paid the principal taxes of Shs. 14,229,295,922. The applicant's counsel submitted that it overpaid taxes and is entitled to a refund. Under S. 37(3) of the Tax Procedure Code Act where a tax has been overpaid the Commissioner may inter alia refund the excess. On the 13th and 14th May 2020, the applicant applied for extension of time to lodge an objection to the tax assessment. If a taxpayer has overpaid taxes, is it not within its right to apply for an extension of time? The grounds for the extension of time in the applicant's letter were: It required additional time to obtain relevant supporting information and documentation from the previous shareholders. The company had started collating the required supporting documents, but the process had been delayed by the COVID lockdown. The company required additional time to reconcile the details of the assessment with the voluntary disclosure it made.

On 14th May 2020, the respondent wrote to the applicant rejecting its extension of time. The reasons the respondent gave are: The request has been made after the expiry of the statutory timelines within which the objection can be made. Secondly, the principal tax was already fully settled by the company. Thirdly the grounds upon which the request was made are not valid. Finally, the voluntary disclosure by the applicant was rejected and it was notified.

The Tribunal notes that the applicant was served an assessment on 26th February 2020. S. 24 of the Tax Procedure Code Act states that a person dissatisfied with a tax decision may lodge an objection with the Commissioner within forty- five days after receiving notice of the tax decision. Under S. 3 of the Act a tax decision includes a tax assessment and a decision, or any matter left to inter alia the discretion, judgement, direction or determination of the Commissioner other than a decision made in relation to an assessment. Therefore, the applicant had up to 12th April 2020 to file an objection. The Tribunal takes judicial notice of the COVID lockdown which was effected by the President of Uganda on 31st March 2020. So, the question is: Did the

lockdown affect the applicant in its attempt to file an objection? Did the respondent deny the applicant a right to extend time to file an objection justifiably?

The Tribunal also notes that the respondent made its decision rejecting the extension of time on 14th May 2020. Under S. 1 of the Tax Appeals Tribunal Act a taxation decision means any assessment, determination, decision or notice. The decision rejecting the extension of time was a taxation decision under the Tax Appeals Tribunal Act. S. 16 of the Act states that an application for review of a taxation decision shall be made within thirty days after the person has been served with notice of the decision. Therefore, the applicant had up to 14th June 2020 to file its application challenging the rejection decision. The applicant filed the application in the Tribunal on 18th September 2020. Therefore, the grounds in the rejection application of 14th May 2020 would not have been considered by the Tribunal as they were made outside the prescribed period the Tribunal is allowed to entertain it, but for the reasons stated below.

The applicant made an objection which the respondent entertained and made an objection decision. Of course, having made a rejection decision, the objection decision was superfluous. However, since an objection decision was made, the Tribunal has to listen to it. The grounds the respondent gave in the objection decision, exh R2 are: The grounds the applicant gave for extension of time were unsatisfactory. The respondent also reiterated the position it gave in its letter of 14th May 2020. In short, the respondent relied on the grounds it gave in its rejection letter. This means that the Tribunal can entertain the grounds in the rejection letter as they were relied on in the objection decision.

Having stated the grounds, the Tribunal has to ask itself whether the Commissioner was justified to reject the applicant's application for extension of time. S. 24(4) of the Tax Procedure Code Act provides that 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 he determines. The word "may" connotes that the Commissioner is given discretion to grant an application if he is satisfied. Discretion has been

mentioned in various disciplines. H.W.R. Wade in "Administrative Law" 5th Edition p. 353 refers to the case of *R V Wilkes* (1770) 4 Burr 2527 at 2539 which states:

"For discretion is a science of understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colorable glosses and pretences, and not to do according to their wills and private affections: for one saith, talis discretio discretionem confundit."

The Tribunal like any other court is reluctant to interfere with a public authority or official's exercise of administrative powers as it would amount to the court or Tribunal exercising executive powers, yet it is more of a judicial body. Halsbury's Law of England 3rd Edition Vol. 30 p. 687 para. 1326 states that

"Where public bodies are given a discretion in the exercise of powers conferred upon them by statute, the courts will not interfere with the exercise of that discretion so long as it is exercised bona fide and reasonably; nor will the decision of an administrative body be interfered with by the courts if there is anything on which that body could reasonably have come to its conclusion."

In *Breen V Amalgamated Engineering Union* [1971] 2 Q.B 1 Lord Denning underlined the importance of an unfettered discretion by stating that:

"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant consideration and not by irrelevant. If its decision is influenced by extraneous consideration which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside."

S. 19(1)(c) of the Tax Appeals Tribunal Act empowers the Tribunal to step into the shoes of a decision maker. However, the Tribunal will only exercise those powers when the decision maker does not act justifiably or illegally.

When the Commissioner is listening to applications for extension of time he is exercising quasi-judicial functions. Therefore, the Commissioner is required to exercise his discretion judiciously. This means that it should not be exercised arbitrarily, capriciously or whimsically. In *Mulji Jethawa V Partal Singh* (1931) 13 L.R.K 1 it is stated that judicial discretion, has to be exercised on fixed principles and not on private opinions, sympathy and benevolence.

The purpose of a public authority or official exercising its discretion is stated in *Shah V Mbogo and another* [1967] E.A 116 as 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. Therefore, there are two requirements the Tribunal must consider. The first is: Was the applicant diligent and did not cause the delay? Secondly the Tribunal must consider whether the Commissioner exercise his discretion judiciously.

The first question the Tribunal will answer is that: Did the Commissioner exercise his discretion judiciously? In exercising his discretion, the Commissioner must satisfy himself that the grounds for the extension of time are valid.

When the Tribunal is considering the exercise of the discretion of the Commissioner it is reviewing his decision. The said review is like a judicial review. In *Twinomuhangi Pastoli V Kabale District Local Government Council, Katarishangwa Jack & Beebwajuba Mary* [2006] HCB Vol. 1 p. 30 Kasule J. held inter alia that:

- "1. In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety..."
2. Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or it's principles are instances of illegality.
3. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.
4. Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non- observance of the Rules of natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision."

Therefore, the Tribunal has to ask: Did the Commissioner act illegally, or irrationally or with procedural impropriety.

The first consideration is; did the Commissioner act illegally? The first ground of the rejection was that the application for extension of time was made outside the statutory time limits. The Tax Procedure Code Act is silent as to the time when an application for extension of time should be filed. S. 34(3) of the Interpretation Act provides that:

"Whereby any Act a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend that time, the power may be exercised by the court or other authority although the application for the exercise of the power is not made until after the expiration of the time prescribed."

S. 34(2) of the Interpretation Act states that; "Where no time is prescribed or allowed within which anything shall be done, that thing shall be done without unreasonable delay and as often as due occasion arises." Therefore, where the Act is silent the Commissioner ought to use his discretion in allowing an application for extension of time without imposing time limits not prescribed by a statute. Though the Commissioner stated that the request has been made after the expiry of the statutory timelines within which the objection can be made, he went to give other grounds as to why he rejected the application. By doing so, he was entertaining the application in contradiction of the first ground. By listening to the other grounds, the Commissioner acted within the legal mandate of S. 24(4) of the Act when it rejected the extension.

Having stated that the Commissioner acted legally, the next question is that did the Commissioner act irrationally. The Tribunal is not required to step into the shoes of the Commissioner and listen to the application afresh. It is required to only find if the Commissioner acted irrationally when considering the application. We already stated that irrationality is where there is such gross unreasonableness in the decision taken having addressed facts and the law applicable. It is a decision in defiance of logic and acceptable moral standards. A decision may not be a hundred percent accurate, but this does not amount to gross unreasonableness or irrationality. Therefore, the Tribunal must look at the grounds given by the Commissioner and decide whether they were irrational. The first ground has already been discussed.

The second ground the Commissioner gave was that the principal tax was already paid. The applicant contended that it is entitled to a refund of overpaid tax. To understand whether the said ground is irrational one must understand the facts of the

case. The applicant in its letter dated 20th March 2020 to the Commissioner indicated its commitment to pay the principal tax to benefit from a voluntary declaration scheme under S. 66(1) of the Tax Procedure Code Act where interest and penalties would be waived. From the said letter it is apparent that the applicant wanted to pay the principal tax in settlement of its tax obligations. The applicant did not call any witnesses or adduce any evidence to show that it changed its mind and started contesting the liability or that it paid the principal tax with reservations. The issue of overpaid tax and payment with reservations came up in the submissions of the applicant's counsel who when handling a matter before a court or tribunal cannot testify for their client. The applicant ought to have adduced evidence and called witnesses to show that it changed its position and started contesting the liability or that the principal tax was paid with reservations. This is because witnesses are subjected to cross-examination to prove the tenacity of their testimony. In the absence of such evidence, it is difficult for the Tribunal to hold that the respondent acted irrationally when it stated that the applicant had paid the tax in settlement of its obligations.

Thirdly, the respondent contended that the grounds upon which the request of extension of time was made are not valid. The applicant applied for additional time to obtain relevant supporting information and documentation from the previous shareholders. It stated that it had started collating the required supporting documents but the process was delayed by the COVID lockdown. The Tribunal took judicial notice of the fact that there was a COVID lockdown at the time the applicant was required to put its objection. However, the effect the COVID lockdown had on taxpayers can only be understood by adducing evidence to that effect. When the President effected the lockdown on 31st March 2020 it affected taxpayers in different ways. The President

“ordered the closure of all shopping malls, arcades, hardware shops, businesses selling non-food items, saloons, lodges and garages for 14 days.

He noted, however, that the order does not apply to hospitals, medical establishments and organizations involved in healthcare-related, manufacturing and distribution.

Also exempted are commercial establishments involved in food processing and distribution as well as power generation, transmission and distribution companies, private security companies, cleaning services, the fire brigade, petrol, water and funeral services, the Kampala Capital City Authority, the Uganda Revenue Authority

and the Uganda National Roads Authority." (Reference: <https://www.aa.com.tr/en/africa/uganda-declares-curfew-to-curb-spread-of-covid-19/1785775>)

Manufacturers and industries could operate. The applicant as a manufacturer of paint may not have been affected. While the sale of industries may have been affected their operation may not have been. Uganda Revenue Authority was allowed to operate which meant taxpayers would contact it. The Tribunal notes that the applicant paid Shs. 14,229,295,922 as taxes on 14th April 2020 during the lockdown. It is not understandable how the applicant could have paid the said taxes and failed to lodge an objection or an application for extension on or around the said day. In the absence of evidence by witnesses to show the effect of the lockdown on the applicant the Tribunal cannot say the decision of the respondent not to consider the effect of the COVID lockdown on the applicant was irrational.

If the applicant wanted to show that the Commissioner acted irrationally when it did not consider its application during the COVID lockdown, it ought to have adduced evidence to show that there were numerous applications for extension of time due to the lockdown which the respondent granted but refused to grant its application. In this case, so far we see only one application which is by the applicant. Were there other taxpayers not affected by the lockdown as they did not apply for extension of time? If there were no other applications, why then was it only the applicant that was affected? These are questions the Tribunal has to understand before it can say that the respondent acted irrationally.

In its submissions, the respondent contends that the application of assessment was filed 77 days from the date of the assessment. The applicant states that it was lodged 33 days after the date it ought to have filed an objection. It is a question of semantics as each party is using a different starting point. S. 34(2) of the Interpretation Act states that; Where no time is prescribed or allowed within which anything shall be done, that thing shall be done without unreasonable delay and as often as due occasion arises. In *Mulindwa George William v Kisubika Joseph* Civil Appeal 12 of 2014, the Supreme Court of Uganda considered the following factors inter alia for an application for extension of time, the length of delay and the reason for the delay. The assessment was issued on 26th February 2020. The objection ought to have been filed by 13th April 2020. The applicant paid the principal tax on 14th April 2020. It filed the application for

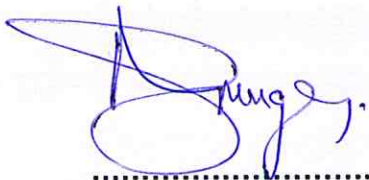
extension of time on 13th and 14th May 2020. The Tribunal already noted that where a statute does not prescribe time the Commissioner ought to use his discretion. Was there unreasonable delay by the applicant? The Tribunal already noted that if the applicant paid the principal tax by 14th April 2020 why could it not have filed an application for extension of time by then? While obtaining information from the former shareholders may take time, 30 days or more, an application for extension of time takes minutes. An application made online does not need months to effect. Getting information from third parties or shareholders does not prevent a party from making an application for extension in time. All the taxpayer is required to do is inform the respondent that it is seeking information from its shareholders as it lodges the application within the time required to make an objection or very soon after. If there is any delay it should not be more than five working days from the date of lodging the objection. If there is a delay the taxpayer has to give convincing reasons as to why the delay occurred. In this matter, there is no convincing reason as to why the applicant took 33 days to file an application for extension of time from the date it ought to have filed an objection.

Lastly, a taxpayer who is seeking for extension of time has to show that there was no dilatory conduct on its part. The applicant has not cleared the doubt in the mind of the Tribunal that the delay to file an application for extension was not due to the ambivalent stand it took in paying the principal tax. The applicant on the onset wanted to benefit from a waiver of interest and penalties by making a voluntary declaration under the Tax Procedure Code Act. Later it may have changed its mind. If the tribunal were to say that the applicant changed its mind, that delay in making up its mind is inexcusable. Furthermore, there are still unanswered questions. Companies keep information and documentation with the management at their premises and not with shareholders. If the new shareholders acquired the applicant, did they not carry out a due diligence on it as to establish its tax obligations? Why did the new shareholders not insist on obtaining all information and documentation of the applicant at time of its acquisition? When was the applicant acquired? What information was the applicant seeking from the previous shareholders? The parties opted not to call witnesses, leaving the said questions unanswered. All these unanswered questions make it difficult for the Tribunal to say that the applicant discharged the burden placed on it that the respondent acted irrationally.

Lastly the Tribunal notes that no evidence has been adduced to show that the respondent acted with procedural impropriety.

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

Dated at Kampala this 1st day of May 2021.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MS. CHRISTINE KATWE
MEMBER

RULING