

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS APPLICATION NO. 26 OF 2021

SAFARI CLOTHING (UGANDA) LIMITED=====APPLICANT
VERSUS
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 decisions.

This application is brought under S. 16(2) of the Tax Appeals Tribunal Act, Rule 12 of the Tax Appeals Tribunals (Procedure) Rules and S. 98 of the Civil Procedure Act and Order 52 Rules 1, 2 and 3 of 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 for costs for the application.

The applicant contends that it was excessively assessed both income and Valued Added Tax (VAT) by the respondent. The applicant made objections against the assessments which were disallowed by the respondent. The applicant thereafter appealed against the said objections for review to the Commissioner Domestic Tax. The applicant is still holding meetings with the respondent. The applicant contends that the decision of the Commissioner is likely to take long.

The applicant was represented by Ms. Immaculate Nshekanabo while the respondent by Mr. Barnabas Nuwuha and Mr. Sam Kwerit

The application is supported by the affidavit of Mr. Ahmed Syed Sharafuden, the applicant's director. He deponed that the applicant appointed Mr. Samuel Pius Gabula of Finch Firm Consultant as its tax agent. He was instructed to lodge an appeal against the objection decisions of the respondent for assessments which cover the period 2014 to 2020. There is a review pending. He deponed the review by the Commissioner may take long. The second affidavit was of Mr. Samuel Pius Gabula, the applicant's tax agent who deponed that he objected on the applicant's behalf to assessments issued by the respondent. The respondent requested for more information to support the objections. The respondent issued additional assessments. That he appealed for review of the objection decision of the respondent.

The respondent filed a reply through Mr. Tony Kalungi who contended that the applicant has not given any justifiable cause for extension of the application to be filed out of time. The applicant sought to be given an opportunity to provide explanations and avail documents. It did not receive any reply from the respondent. Hence it filed this application before the Tribunal.

The applicant cited S. 16(2) of the Tax Appeals Tribunal Act which provides that the Tribunal may upon application in writing extend the time for making an application for review of a taxation decision. The applicant also cited Rule 12 of the Tax Appeals Tribunal (Procedure) Rule which provides that the Tribunal in its discretion upon an application extend the time for making an application. The applicant further cited *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Civil Application 255 of 1997 where the courts stated that it is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. What the court takes into account in deciding whether to grant an extension are: the length of delay, secondly the reason of delay, thirdly the possibility of chances of appeal succeeding and fourthly the prejudice to the respondent. The applicant also cited *Manuchar Kenya Limited v Commissioner of Domestic Tax Appeal* E067 of 2020 where the court put conditions to consider on extension of time as. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. A court should exercise the discretion to extend time. Reasonable delay should be

explained to the satisfaction of the court. The court has to see if there is any prejudice suffered by the respondent, the application has been brought without undue delay.

The applicant submitted that its delay was caused by the failure of the respondent to reply in time to its appeal for review. The applicant contended that the respondent applied a 25% profit margin instead of 5%. The applicant also contended that the respondent issued additional VAT assessments of Shs. 516,900,556. If unchallenged they will result in a financial loss of Shs. 383,887,414. The respondent issued additional income assessments of Shs. 796,014,605 which would cause a financial loss to the applicant.

The applicant contended that Article 126(2)(e) of the Constitution provides that substantial justice shall be administered without undue regard to technicalities. S.98 of the Civil Procedure Code Act states that a court may exercise its inherent powers for the ends of justice or prevent abuse of court process.

In reply, the respondent citing *George Mulindwa v Kisubika Joseph* Civil Appeal 12 of 2014 contended that the applicant has the burden of providing to the court that it has sufficient reasons for why it was not possible to lodge the application in time. The respondent also cited *Safari Clothing (Uganda) Limited v Uganda Revenue Authority* Miscellaneous Application 1 of 2020 where the Tribunal stated that the applicant has to show reasonable cause as to why it not lodge an application in time. The respondent contended that the applicant has not stated any ground to warrant the grant of the application.

In rejoinder, the applicant contended that it was excessively assessed by the respondent. The Commissioner Domestic Taxes never replied to their appeal for review dated 6th April 2021.

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

The applicant does not disclose the date when it was issued income tax and VAT assessments. The applicant attached assessments to its deponent's affidavits. A perusal of the assessments show that some were made in March 2021 while some others go back

to December 2019. It is not clear when they were served on the applicant. The applicant stated that around 4th April 2021 it instructed its tax agent to object to the assessments. The applicant is not clear on the dates the objections were made. A perusal of the documents attached to the affidavits have dates of acknowledgements of objections as far back as October 2020. The applicant does not state when the objection decisions were served on it. The objection decisions the applicant is challenging are not marked nor indicated. It becomes difficult for the Tribunal to assist a taxpayer who does not disclose the dates it was served the objection decisions.

In its application, the applicant states that it applied for review for the objection decisions on 6th April 2021. It means that by 6th April 2021 the applicant had been notified of the objection decision. If we go by that date the applicant ought to have filed an application in the Tribunal before 6th May 2021 which it did not. S. 16(1) (c) of the Tax Appeals Tribunal Act provides that an application for review shall be made within 30 days of the taxpayer being notified of the taxation decision. 16(2) of the same Act provides that the tribunal may, upon application in writing, extend the time for the making of an application to the tribunal for a review of a taxation decision. S. 16(7) provides that an application for a review shall be made within six months of the taxation decision. The applicant has made its application within the prescribed six months. There is no inordinate delay in bringing the application for extension of time. Rule 11(6) of the Tax Appeals Tribunal (Procedure) Rules 2012, 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.

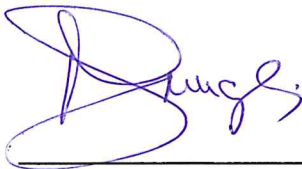
The applicant contends that the reason it delayed to file an application was that the respondent issued additional assessments in its objection decisions. It filed an application to review the objection decisions or the additional assessments to the Commissioner Domestic Taxes. In *Cable Corporation (U) Ltd v Uganda Revenue Authority*, High Court Civil Appeal No.1 of 2011 the High Court was of the view that once a Commissioner has made an objection decision it become functus officio. In respect of filing further matters after the respondent has made an object decision, the court stated that:

"Will it not encourage corrupt practices? What principles of law or policy or standards will the Respondent use to review its own objection decision pursuant to a further objection to it by the taxpayer? Does a taxpayer have a right to object to an objection decision to the same authority? How many time can a taxpayer object to an objection decision?"

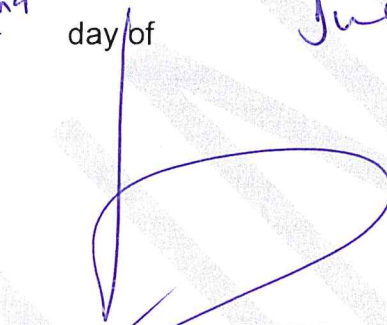
Any meetings or discussions held after an objection decision has been made which do not alter it may not benefit the taxpayer where time limits are concerned. Having been served with objection decisions, the applicant ought to have filed a matter in the Tribunal and not gone back for a review. The reason given by the applicant is not justifiable.

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

Dated at Kampala this 22nd day of July 2021.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MS. CHRISTINE KATWE
MEMBER