

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO. 197 OF 2022**

**ZARIN PHAMACEUTICALS LIMITED ..... APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY..... RESPONDENT**

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

**RULING**

This application is in respect of an application for extension of time to file an application before the Tax Appeals Tribunal.

The respondent issued the applicant additional income tax assessments totaling to Shs. 128,588,111 for financial year 2017. On 14<sup>th</sup> November 2018, the applicant objected and on 31<sup>st</sup> January 2019 the respondent purportedly issued an objection decision on it. The applicant did not file an application before the Tribunal within the prescribed time from the purported service of the objection decision. On 22<sup>nd</sup> December 2022, the applicant lodged this application for extension of time within which to file an application before the tribunal.

**Issues**

- a) Whether the application discloses sufficient grounds for extension of time?
- b) What remedies are available for the parties?

The applicant was represented by Mr. Sydney Ojwee while the respondent by Mr. Rodney Amanya Mishambi.

The applicant filed this application under Order 52 of the Civil Procedure Rules. The applicant's submissions showed that they were in respect of MA 153 of 2022 *Moon Light Buildings Ltd v URA* instead of MA 197 of 2023 *Zarin Pharmaceuticals Ltd v URA*. The tax in dispute in the submissions filed by the applicant in this case do not match that in its notice of motion. Despite that, the applicant served the respondent, and the latter filed its reply. The Tribunal will not consider the submissions filed by the applicant as the citation of the application and the parties are different. The Tribunal notes that the applicant filed a rejoinder which brings out clearly the grounds of its application. It will not be prejudiced by the decision of the Tribunal to consider the rejoinder instead of the submissions that were filed in error.

However, the Tribunal will consider the evidence in the application i.e., what stated in the notice of motion and supporting affidavit. According to the application, the respondent issued the applicant with tax assessment totaling to Shs. 128,588,111. On 31<sup>st</sup> January 2019, the respondent issued its objection decision. On 22<sup>nd</sup> December 2022, the applicant lodged this application for extension of time within which to file an application before the tribunal. The applicant contended that the main application had high chances of success and that it was fair and in the interest of justice if this application is granted.

The respondent submitted that S. 25(1) of the Tax Procedures Code Act provides that.

“a person dissatisfied with an objection decision may, within 30 days after being served with a notice of objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision”.

The respondent cited S. 16(1)(e) of the Tax Appeals Tribunal Act provides that.

“An application to the Tribunal for review of a tax decision shall be made within 30 days of being served with notice of the decision”.

The respondent submitted that S. 16(2) of the Tax Procedures Code Act grants the Tribunal discretion to extend time within which to file an application for review of an objection decision. The tribunal only exercises its discretion where the applicant demonstrates sufficient cause for failure to file his/her application for review within the

stipulated time. The respondent cited *Cable Corporation (U) Ltd v Uganda Revenue Authority*, HCCA 1 of 2011, where the High Court stated that “The 30 days laid down in S. 16 of the Tax Appeals Tribunal Act, start to run on receipt of the letter communicating the decision from the respondent”.

The respondent submitted that the applicant bears the burden of proving that it has sufficient reasons for not filing its application for review of the respondent's objection decision in time. The objection decision was issued on 31<sup>st</sup> January 2019. The respondent submitted that the applicant was served with the notice of the objection decision via email. Therefore, the applicant had until the 3<sup>rd</sup> of March 2019 to lodge its application for review of the Objection decision. The applicant waited for four years to seek extension of time.

The respondent submitted that the applicant alleged that it was never served with the objection decision. S. 72(2)(d) of the Tax Procedure Code Act states.

"Except as otherwise provided in a tax law, a notice or other document required to be served by the Commissioner on a person for the purposes of a tax law is treated as sufficiently served on the person if.

d) An electronic data message is transmitted to the person's known or registered electronic account."

The respondent submitted that taxpayers register with it contact details to which communications relating to their tax affairs should be sent. The taxpayers maintain a URA Portal User account to which tax communications are uploaded. The respondent submitted that the applicant listed [manjiconsult@gmail.com](mailto:manjiconsult@gmail.com) as its email address to which tax communications should be sent and is the applicant's known and registered email address. The email address [zarinphramaceuticalsltd2008@gmail.com](mailto:zarinphramaceuticalsltd2008@gmail.com) which the applicant claims as its official email address does not appear anywhere in its tax profile. The contact information provided by the applicant is the only contact information that the respondent could reasonably be expected to use. On 31<sup>st</sup> January 2019, the respondent electronically served the applicant the notice of the objection decision via its registered/known email address for tax purposes. The notice of objection decision was also uploaded to the applicant's URA Portal User account on the same day.

The respondent submitted that the applicant admitted the electronic service of the objection decision. However it alleged that the above-mentioned email address does not belong to it but to its accountant who did not inform it of the objection decision until later. The respondent submitted that the email address, [manjiconsult@gmail.com](mailto:manjiconsult@gmail.com) and URA Portal User account have been used as effective modes of communication between the applicant and respondent. The applicant did not dispute receipt and knowledge of prior tax communications sent to it vide these channels of communications including the impugned income tax assessments and acknowledgement of receipt of its objection to the said assessments. The respondent prayed that this Tribunal finds that electronic service of the objection decision was sufficient service on the applicant.

The respondent also contended that service on an agent is sufficient service. It cited Order 3 Rule 3(1) of the Civil Procedure Rules which are to the effect that.

"Processes served on the recognized agent of a party shall be as effectual as if they had been served on the party in person, unless the court otherwise directs."

Furthermore, Order 5 Rule 10 provides:

"Wherever it is practicable, service shall be made on the Defendant in person, unless he or she has an agent empowered to accept service, in which case service on the agent shall be sufficient."

The respondent submitted that the applicant presented the accountant as its recognized agent for tax purposes when it listed their email address as its preferred email address for communications relating to tax. The applicant alleged that its accountant did not communicate the objection decision to it until 10<sup>th</sup> December 2022.

The respondent submitted that the tax liability in the assessments still appeared in the applicant's ledger. No evidence was adduced on any follow-ups made by the applicant or the respondent. The respondent contended that this is an indication of lack of prudence and disinterest by the applicant of its tax affairs. The respondent argued that applicant can thus not be allowed to apportion blame on another entity. The respondent cited Justice Wilson Masalu Musene in *Matovu Charles Kidimbo v Lukwata Yusuf & 3 others HCMA No. 40 OF 2017* where he stated as follows.

"Whereas it is true it has been held in a number of cases including *Mutaba Barisa Kweterana LTD vs Bazirakye Yeremiya C.A.CA. NO. 158 of 2014*, that mistake or negligence of an Advocate should not be visited on the litigant, the question is for how long should a litigant hold on the mistake of his/her Advocate? Is it for one month, two months, six months or one year. In my humble view, there has to be a time limit within which a litigant can be excused due to the mistake of his/her Advocate. It would be understandable if the delay was say between one month to six months, it would amount to abuse of court process if one is allowed extension of time after a delay of a whole year or two years as was apparent in the present Application. Timelines were set by the legislature with a purpose and not for fun."

The respondent also cited *Erica Jos Perino v Vuzzi Azza Victor & 2 others HCMA 9 of 2017* where Justice Stephen Mubiru stated that.

"An order for enlargement of time to file an appeal should ordinarily be allowed unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of court".

The respondent submitted that that a long time has elapsed between 31<sup>st</sup> January 2019 when the objection decision was issued and served and when the application for extension of time was filed. The respondent contended that it is undisputed that the notice of the objection decision was electronically served on 31<sup>st</sup> January 2019 by way of email sent to the applicant's registered/known email address. The respondent submitted that the applicant was aware of the objection decision or should have been aware of it with the exercise of reasonable diligence. Instead, the applicant elected to sit on its rights for almost 4 years. The applicant is thus guilty of laches and/or unreasonable delay.

The respondent submitted that it is trite that there should be an end to litigation and one of the tools used by the law to achieve this is placing timelines within which actions should be taken. The respondent cited Justice Wilson Masalu Musene in *Matovu Charles Kidimbo v Lukwata Yusuf & 3 others HCMA 40 of 2017* where he held that.

"Timelines were set by the legislature with a purpose and not for fun. One of the purposes is in my view that there has to be an end to court process. Court process including travelling to and from, expenses must all be curtailed. And it would be unfair for one to be subjected to Court attendance and processes indefinitely".

The respondent prayed that the tribunal finds the application time barred and dismisses it with costs.

In rejoinder, the applicant stated that it was not served. The applicant contended that if the respondent served the former, it should inform the Tribunal who served the applicant, who identified the applicant and who exactly received the objection. A proper service should be followed by an affidavit of service. The applicant cited *Lalji v Devji* [1962] EA 306 where it was held that for service to be proper there must be proof of service by a serving officer or process server. The applicant cited Order 5 Rule 16 of the Civil Procedure Rules which provides that the serving officer shall cause to be annexed an affidavit of service stating the time when and manner in which summons was served, the name and address of the person if any identifying the person served. The applicant contended that the respondent's witness is not a court process server. The applicant cited *Abwayo Constance v Uganda Revenue Authority* MA 2 of 2022 where the Tribunal noted that the respondent's deponent Mr. Sam Kwerit is not a process server.

The applicant also cited Order 5 Rule 10 of the Civil Procedure Rules which states that service shall be made on the defendant in person unless he or she has an agent empowered to accept service. The applicant submitted that it has never empowered its accountant to receive service on its behalf. It cited *Erukana Omuchilo v Ayub Mudiwa* [1966] EA 229 where the Court held that.

"Service of the defendant's agent is effective service only if the agent is empowered to accept service. It is also the settled position that proper effort must be made to effect personal service but if its not possible, service maybe made to an agent or an advocate."

The applicant contended that it has a physical address known to the respondent. The respondent should have made efforts to serve it in person.

The applicant argued that the mistake of an accountant should not be visited on the it. It cited *Banco Arab Espanol v Bank of Uganda* SCCA 8 of 1998 where it was held that.

"A mistake, negligence, oversight or error on the part of the counsel should not be visited on the litigant. Such mistake or as the case may be, constitutes just cause

entitling the trial judge to use his discretion so that the matter is considered on its merits.”

The applicant submitted that it should not be punished for the mistake or negligence of its accountant.

The applicant cited *Mulindwa George William v Kisubikka Joseph* Civil Appeal 12 where it was stated that sufficient cause should include the reason for the delay, the possibility or chances of success and degree of prejudice to the other party. The applicant contended that as soon as it became aware of the objection decision it filed this application. The applicant’s case has a high likelihood of success. The respondent will not be prejudiced by the grant of the application. The applicant contended that Article 126(2) of the Constitution requires that justice is administered without due regard to technicalities. It also cited *Sipiriya Kyaturesire v Justine Bakachulike* CA 20 1995 where it was stated that the administration of justice normally requires that the substance of all disputes should be investigated and decided on merits.

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

On 8<sup>th</sup> November 2018, the respondent issued the applicant with tax assessments totaling to Shs.128,588,111. On 14<sup>th</sup> November 2018, the applicant objected to the assessments on the ground that they were excessive. On 31<sup>st</sup> January 2019, the respondent purportedly issued its objection decision. The applicant contends that it was never served the objection decision. On 22<sup>nd</sup> December 2022, the applicant lodged this application for extension of time within which to file an application before the tribunal.

The time for filing an application is provided for under S. 16(1)(c) of the Tax Appeals Tribunal Act which provides that an application to a tribunal for review of a taxation decision shall be lodged with the tribunal within thirty (30) days after the person making the application has been served with notice of the decision. S. 25(1) of the Tax Procedures Code Act also provides that; “a person dissatisfied with an objection

decision may, within 30 days after being served with a notice of the objection decision lodge an application to the Tribunal.”

Applications before the tribunal should be filed before the lapse of 30 days. In cases where the applicant has failed to lodge an application within the required time and it has reasonable cause, it may apply for extension of time to file an application before the tribunal. In *Mulindwa George William v Kisubika Joseph* Civil Appeal 12 of 2014, the Supreme Court of Uganda stated that;

“... it is important to bear in mind that time limits are there to be observed, and justice may be defeated if there is laxity. Factors to be considered in an application for extension of time are;

- i. The length of delay.
- ii. The reason for delay.
- iii. The possibility or chances of success.
- iv. The degree of prejudice to the other party. Once a delay is not accounted for, it does not matter the length of delay. There must always be an explanation for the period of delay”.

The applicant must show that it has reasonable cause or an explanation as to why the application was not filed in time. In *Tight Security Limited v Chartis Uganda Insurance Co. Limited* Misc. Application 8 of 2014, the court held that.

“Good Cause relate to and include the factors which caused inability to file within the prescribed period of 30 days. The Phase ‘good cause’ is however wider and includes other causes other than causes of delay such as the public importance of an appeal and the court should not restrict the meaning of good cause. It should depend on the facts and circumstances of each case and prior precedents of appellate courts on extension of time”.

In *Uganda Revenue Authority v Uganda Consolidated Properties Limited*, Court of Appeal Civil Appeal 31 of 2000 it was held that “Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with”. The applicant cited Article 126 of the Constitution. Article 126 of the Constitution is not a magic wand that can be used to wave away the requirement to comply with time limits.

Rules of Procedure are hand maidens of justice. In *Horizon Coaches v Edward Rurangaranga and Mbarara Municipal Council* SCCA No. 18/2009 (unreported), Katureebe JSC, as he then was, held as follows:

“Article 126 (2) (e) of the Constitution enjoins Courts to do substantive justice without undue regard to technicalities. This does not mean that courts should not have regard to technicalities. But where the effect of adherence to technicalities may have the effect of denying a party substantive justice, the Court should endeavor to invoke that provision of the Constitution.”

This was cited also in *Mulindwa George William v Kisubika Joseph* (supra). Therefore, a taxpayer who is not diligent enough to respect time limits maybe denied a chance to have its matter heard on merits.

In this case the applicant denies that it was served. It contended that the respondent served the objection decision on its accountant and should have served it personally. There was no affidavit of service. The applicant also contends that the respondent did not serve in accordance with the Civil Procedure Rules. The questions the Tribunal must ask itself are whether the accountant was a proper person to receive an objection decision. Secondly, whether the respondent did not comply with the Civil Procedure Rules.

A company is not a physical entity. Companies act through their employees and directors. It cannot be served physically. Service can only be effected through its officials. These officials include management and senior staff of the company. The applicant cited *Banco Arab Espanol v Bank of Uganda* (supra) where it was stated that mistake or negligence of an advocate should not be visited on the litigant. An advocate is not an employee of his or her clients. He or she is a service provider unlike an accountant who is an employee. The applicant does not deny that the accountant was its employee. The Tribunal does not see any reason why the respondent could not serve him.

The applicant also contended that the respondent did not comply with the Civil Procedure Rules when it purportedly served it with an objection decision. An objection

“(a) personally served on the person.

(c) Sent by registered post to the person's registered office, place of business, or last known address as stated in any communication with the Commissioner; or

The applicant does not deny that it had an electronic account. It also does not deny that the accountant gave his email address as the contact address of the applicant to who notices would be sent to. Therefore, the applicant cannot deny that the accountant properly received the objection decision on its behalf.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**MR. GEORGE MUGERWA**  
**MEMBER**