

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 180 OF 2022

ESSENTIAL AUTO PARTS LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

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

RULING

This application is in respect of a preliminary objection raised by the respondent alleging that this application was filed out time.

The applicant is a company incorporated in Uganda carrying on the business of sale of motor spare parts. The respondent raised several assessments against it for 2010 to 2012 based on inconsistencies in the latter's returns, non-filing of returns and undeclared income. Between 27th November 2017 and 1st January 2018, the applicant objected to the assessments. The respondent issued objection decisions between 8th January and 18th May 2018 disallowing the objections. The applicant filed this application on the 8th of July 2022.

Issues

1. Whether the application is time barred?
2. What remedies are available to the parties?

The applicant was represented by Mr. Peter Kimbowa while the respondent by Mr. Donald Bakashaba.

The respondent submitted that the law on preliminary points of law is provided for under Order 6 rule 28 of the Civil Procedure Rules which provides that any party shall be entitled

to raise by his or her pleadings any point of law which shall be disposed of by the Court before or after the hearing. See *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696.

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 submitted that S.16(1)(c) 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 law set out the mandatory timelines for a person dissatisfied with the decision of the commissioner to file an application in the Tax Appeals Tribunal. The respondent submitted that in *Uganda Revenue Authority v Uganda Consolidated Properties Limited*, Court of Appeal Civil No. 31, the Court of Appeal held that.

"Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. Consequently, the Court of Appeal held that the application of the Respondent to the Tax Appeals Tribunal was properly rejected by the Tribunal as being time barred."

The respondent submitted that the decisions of the Commissioner were issued and served on the applicant between 8th January and 18th May 2018. The applicant ought to have made an application for review of the objection decision within 30 days from date of service in 2018 and not four years later as in this case. The respondent invited the tribunal to hold that the applicant had 30 days within which to file their application to the Tax Appeals Tribunal.

Having read the submissions of the respondent, the applicant did not file any, this is the ruling of the tribunal.

A preliminary point of law was raised by the respondent that the applicant's application is time barred. The law on preliminary points of law is provided for under Order 6 Rule. 28 of the Civil Procedure Rules which states that.

“Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing”.

In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 Sir Charles Newbold, said that.

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”

The respondent raised a preliminary objection that this matter was filed out of time as the assessments of 2010 were issued in 2018 and in 2013 while this application was filed on 8th June 2022. In *Uganda Revenue Authority v Uganda Consolidated properties Ltd, Court of Appeal* Civil No. 31 of 2000 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”.

S. 16 of the Tax Appeals Tribunal Act provides that.

“(1) An application to a tribunal for review of a taxation decision shall- ...
(c) 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 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 with the Tax Appeals Tribunal for review of the objection decision”.

Tax decisions were issued by the respondent in 2018. The applicant had up to 30 days to file its application but instead filed it in June 2022. If the applicant was not able to file within 30 days, it would still have a right to apply for extension of time in writing to the tribunal. S. 16 (2) of the Tax Appeals Tribunal Act provides that “a tribunal may upon application in writing, extend time for the making of an application to the tribunal for a review of a taxation decision”. The applicant did not use this right and just went ahead

and filed this application on 8th June 2022. The objection decision notices filed are dated in 2018. The dates are way out of time within which a party may file an application before the Tribunal. Delay defeats equity and equity aids the vigilant and not the indolent. The applicant delayed filing this application neither did it apply for extension of time to file the application when it still could. In the circumstances, this application is dismissed with costs to the respondent.

Dated this day of 2023.

DR. ASA MUGENYI
CHAIRMAN

MR. GEORGE MUGERWA
MEMBER

MS. CHRISTINE KATWE
MEMBER