

In reply, Ms. Diana Mulira opposed the application on grounds that the time within which to apply for review expired. She deponed that the applicant has not demonstrated sufficient cause to warrant extension of time. She contended that the applicant is guilty of dilatory conduct.

In rejoinder, the applicant stated that he suffered from Covid-19. He stated that after suffering from Covid-19, he developed complications which kept him in hospital from June to December 2022. On 14th July 2023, he filed the application for extension of time.

Issues raised:

- 1) Whether there is a justifiable cause to extend time for the applicant to lodge an application for review of tax decision?
- 2) What remedies are available?

The applicant submitted that S.14(1) of the Tax Appeals Tribunal Act provides that any person who is aggrieved by a decision made under a taxing Act may apply to the tribunal for a review of the decision. S.16(1)(c) provides that the application should be lodged with the tribunal within thirty days after the person making the application has been served with notice of the decision. S.16 (7) provides that an application for review of a taxation decision shall be made within six months after the date of the taxation decision. He cited *Kenya Revenue Authority & 2 Others v Mount Kenya Bottlers & 4 Others Application 12 (E021) of 2021* and submitted that it is a settled position of the law that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of court

The applicant submitted that S.16(2) of the Act and Rule 11(1) the Tax Appeals Tribunal (Procedure) Rules provide that the tribunal, may in its discretion and upon the application of the applicant, extend the time for making an application for review where it is not filed within 45 days from the date of service of the taxation decision. He submitted that S. 98 of the Civil Procedure Act confers courts with wider discretionary powers to do anything within the law to meet the ends of justice. (See, *Umeme Limited v Justice Singh Choudry*

Misc. Application 736 of 2021 and *Vagal (U) Ltd v Godfrey Ssentongo* Misc. Application 72 of 2020.

The applicant submitted that to qualify for extension of time there is need for him to show that he has reasonable cause for extension of time. He argued that good cause involves what caused inability to file an application within 30 days (see, *Tight Security Ltd v Chartis Uganda Insurance Company Ltd and Brazafric Enterprises Ltd* Application 8 of 2014 and *Farid Meghani v URA* Civil Miscellaneous Application 185 of 2020). The applicant further cited *Gideon Mosa Onchati v Kenya Oil Co.* 2017 eKLR where it was stated that;

“It is difficult to attempt to define the meaning sufficient cause. It is generally accepted however that the words should receive a liberal construction in order to advance substantial justice, when no negligence or inaction or want of bonafides is imputed on the appellants.”

The applicant argued that sufficient or good cause mean a lot of things and what qualifies to be construed as sufficient cause is not static and is left to the discretion of court. He submitted that he suffered from Covid-19 which prevented him from filing an application before the tribunal. He was admitted at Mulago hospital from 24th June 2022 to 11th December 2022. When he was discharged, the ailment struck him again and he was taken to Case hospital where he was admitted between 4th September 2022 to 11th December 2022. The delay to file the application in the tribunal was due to prolonged sickness. He contended that this tribunal should allow the extension bought after the expiry of two years as long as he can justify the reasons for the delay. He was not negligent.

In reply, the respondent submitted that the time within which to apply for review expired. It submitted that it issued the objection decision on 14th July 2021. The applicant is seeking to extend time after the expiry of two years. The respondent contended that this application is misconceived and not tenable under the law. It argued that the applicant's illness came almost a year after the issuance of objection decision in July 2021. There is no explanation as to why the applicant did not file an application for extension of time before his illness. The respondent cited *Victoria Flowers v URA* Application 12 of 2008, where the tribunal dismissed the application for extension of time on the ground that the

applicant had not exercised diligence in pursuing its rights to file an application for review within the stipulated time. He cited *Cable Corporation (U) Ltd v URA* HCCA 1 of 2011 where court held that respondent having exercised its powers under the income tax Act and made an objection decision it is functus officio.

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

The applicant filed this application to extend time before the tribunal on 14th July 2023. S. 16(2) of the Tax Appeals Tribunal Act provides that a 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 review of a taxation decision shall be made within six months after the date of the taxation decision. Rule 11(1) of the Tax Appeals Tribunal (Procedure) Rules provides that the tribunal, may in its discretion and upon the application of the applicant, extend the time for making an application for review where it is not filed within 45 days from the date of service of the taxation decision. S. 16 of the Tax Appeals Tribunal Act and S. 25 of the Tax Procedure Code Act reduced the time to 30 days. Rule 11(6) provides that the Tribunal may extend time if it is satisfied that the tax payer was unable to file the application because of illness, absence from Uganda or any other reasonable cause.

In order to qualify for an extension of time there is need for the applicant to show that he was ill, absent from Uganda or has reasonable cause as to why the application was not filed in time. The term "reasonable cause" is not defined in the Tax Appeals Tribunal Act. However, the courts in this country have sought to provide guidance in determining what amounts to reasonable cause. In *Tight Security Limited v Chartis Uganda Insurance Co. Limited* Misc. Application 8 of 2014, the court held that;

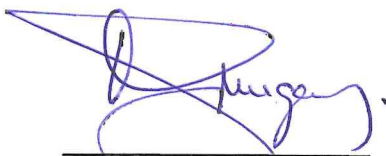
" Good cause must relate to and include the factors which caused inability to file the appeal within the prescribed period of 30 days."

So, the Tribunal has to determine if the applicant was ill or if no, whether he has shown good cause.

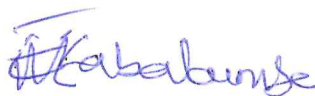
The date of the objection decision is 22nd July 2021. The applicant ought to have filed his application by 22nd August 2021 which he did not. He contended that he was suffering from post-covid 19 complications. He was admitted to hospital from June to July and then up to December 2022. The issue of illness came a year after the issuance of objection decision in July 2021. The medical reports attached to his affidavit show that he was admitted on 31st July 2022. He was discharged on 11th December 2022. The applicant had ample time between 22nd July 2021 and June 2022 and also from 11th December 2022 to 14th July 2023 to file an application for extension of time. The applicant does not provide a reasonable excuse as to why he did not file his application 30 days from 22nd July 2021. If the Tribunal was to assume he was sick up to 31st December 2022 the 30 days for filing an application ought to have run from the date he was discharged on 11th December 2022. They expired in January 2023. He file his application on 14th July 2023 which is still out of time. An application brought after a year cannot be extended. The issue Covid 19 cannot arise. Issues of time limits are matters of substantive justice. Time limits in filing applications before the Tribunal or any court go to the substance or merit of the application. In *Uganda Revenue Authority v Uganda Consolidated Properties Limited* Court of Appeal Civil Appeal 31 of 2000 the Court held that "Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with".

The Tribunal cannot grant the applicant's prayer to file his application outside the prescribed six months. The tribunal finds that there was inexcusable laxity on the part of the applicant. This application fails and request to validate the Application 109 of 2021 is declined and it is dismissed with costs. Costs in the application are awarded against the applicant.

Dated at Kampala this 14th day of September 2023.



DR. ASA MUGENYI
CHAIRMAN



MS. KABAKUMBA MASIKO
MEMBER

MS. ROSEMARY NAJJEMBA
MEMBER