

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA**  
**APPLICATION NO. 84 OF 2022**

**PRECISE ENGINEERING SERVICES LIMITED..... APPLICANT**  
**VERSUS**  
**UGANDA REVENUE AUTHORITY..... RESPONDENT**

**BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. SIRAJ ALI.**

**RULING**

This application is in respect of three preliminary objections raised by the respondent that this application is time barred, there are no objections to the Value Added Tax (VAT) assessments and that the applicant has not paid 30% of the tax in dispute.

The applicant is registered as a private limited company in Uganda. The respondent examined the applicant's returns and income tax assessment and VAT of Shs. 370,741,714 and Shs. 108,548,843 respectively were issued against the latter. The applicant disputed the income tax assessment of Shs. 365,511,943. Objection decisions were made on 31<sup>st</sup> October 2021, 24<sup>th</sup> September 2021, 28<sup>th</sup> February 2019, and 14<sup>th</sup> February 2019. On 12<sup>th</sup> April 2022, the applicant lodged this application.

The respondent raised three preliminary objections.

1. The application regarding income tax assessments is time barred.
2. The dispute regarding the VAT assessments is premature as the applicant did not object to the said assessments.
3. The application is improperly before the Tribunal as it has not paid 30% of the tax assessed as required by law.

Issues arising

1. Whether the application regarding the income tax assessments is time barred?

2. Whether the dispute regarding VAT assessments is premature?
3. Whether the application is improperly before this Court as the applicant has not paid 30% of the tax assessed?

The applicant was represented by Mr. Henry Agaba while the respondent was by Ms. Gloria Twinomugisha.

The respondent submitted that S. 14(1) of the Tax Appeals Tribunal Act grants persons aggrieved by a decision made by the respondent the right to apply to the Tax Appeals Tribunal for review of the said 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 objection, lodge an application with the Tax Appeals Tribunal for review of the objection decision. 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. S. 16(7) of the Tax Appeals Tribunal Act provides that: "An application for review of a taxation decision shall be made within six months after the date of the taxation decision". The respondent cited *Uganda Revenue Authority v Uganda Consolidated Properties Limited*, Civil Appeal 31 of 2000 where 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." The respondent submitted that the applicant had up to 30 days from the date of receipt of the objection decisions to lodge an application for review. However, this was not done. The respondent issued its objection decisions on 31<sup>st</sup> October 2021, 22<sup>nd</sup> September 2021, 28<sup>th</sup> February 2019 and on 14<sup>th</sup> February 2019. This application was filed on 12<sup>th</sup> April 2022, long after the statutory timelines of 30 days had expired.

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 upon receipt of an application in writing. The respondent submitted that after the mandatory 30 days had expired, the applicant should have obtained leave to file the application out of time. The applicant never filed any application for enlargement of

time before lodging this application for review. Therefore, the dispute relating to the income tax assessments are time barred and ought to be struck out.

On the VAT assessments being premature, the respondent submitted that the applicant never objected to them. The respondent submitted that the statutory procedure for a taxpayer aggrieved by an assessment is to first lodge an objection to the assessment with the Commissioner. Consequently, an objection decision is a prerequisite for lodging an application for review before the Tax Appeals Tribunal. The respondent cited S. 24 of the Tax Procedures Code Act which states that.

- "1) A person who is dissatisfied with a tax decision may lodge an objection with the commissioner within 45 days after receiving notice of the tax decision.
- 2) An objection shall be in the prescribed form and shall state the grounds upon which it is made and contain sufficient evidence to support the objection"

The respondent submitted that in the absence of an objection decision, the Tax Appeals Tribunal would have nothing to review. It cited *Caroline Kahamutima v Commissioner Customs, Uganda Revenue Authority* Miscellaneous Application 51 of 2021 where the applicant filed an application for extension of time to lodge a review application with the tribunal without first objecting to the respondent's decision. The tribunal held that.

"Therefore, the applicant by filing an application for extension of time when it had not applied to the commissioner to review the letter of 16 June 2021, she was acting prematurely. The Tribunal does not have a decision of the Commissioner to review. Therefore, this application is incompetent."

The respondent submitted that the applicant never objected to the VAT assessments of Shs. 20,446,496, Shs. 9,847,336, Shs. 31,262,380 and Shs. 46,992,631 for June 2013, June 2014, June 2015, and June 2016 before lodging this application for review. The respondent prayed that the tribunal finds that the dispute regarding the said assessments is premature and strikes them out.

As to whether the application is improperly before this Court as the applicant has not paid 30% of the tax assessed as required by law, the respondent submitted that S. 15 of the Tax Appeals Tribunal Act provides that a taxpayer who has lodged a notice of objection pending final resolution of the objection must pay 30% of the tax assessed or that part not

in dispute, whichever is greater. The respondent cited *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* Constitutional Appeal 2 of 1999 where the Supreme Court ruled that the requirement to pay 30% of the tax assessed, or that which is not in dispute, whichever is greater, is constitutional and did not infringe on the right to a fair hearing. The Supreme Court was following with approval in the South African case of *Metchash Trading Co. Ltd. v Commissioner for South African Revenue Services* and another where it was held "That a taxpayer has to pay his taxes and argue later". In *Commissioner General Uganda Revenue Authority v Meera Investments Ltd. Civil Appeal 22 of 2007* Justice Kanyeihamba stated that "The government needs taxes paid expeditiously, in national interest." The respondent submitted that on the income tax of Shs. 370,741,714 and VAT of Shs. 108,548,843, the applicant ought to have paid 30% which it has not done.

The applicant did not file any reply to the preliminary objections of the respondent.

Having read the submissions on file this is the ruling of the tribunal.

The respondent raised three preliminary objections. The law in respect of preliminary objections is stated in 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 or after the hearing; except that by consent of the parties, or by order of court on the application of either party, appoint 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 stated 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".

In *Yaya v Obur and Others (Civil Appeal 81 / 2018) [2020]* Court stated that.

"It is always in the interest of justice to such objections on dispositive points of law at the earliest so as to save time and costs and to avoid a trial in nullity. Court has discretion to dispose of the preliminary objection immediately or defer its ruling until after hearing the

whole case Such a deferment may be made where it is necessary to hear some or the entire evidence to enable the Court to decide whether the objection raised is dispositive of the suit or not".

Therefore, the tribunal will address the three preliminary objections raised.

Regarding the income tax assessments, this application was filed on 12<sup>th</sup> April 2022 by the applicant. The respondent issued objection decisions on 31<sup>st</sup> October 2021, 28<sup>th</sup> February 2021, and 14<sup>th</sup> February 2019. 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". Similarly, 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 applicant was not able to file applications within the 30 days of the dates it was served with the objection decisions.

The applicant had the right to apply to the tribunal for leave to file an application out of time within six months from the date the objection decision was given. S.16(2) of the Tax Appeals Tribunal Act states 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) of the Tax Appeals Tribunal Act provides that "An application for review of a taxation decision shall be made within six months after the date of the taxation decision." In *Uganda Revenue Authority v Uganda Consolidated Properties Limited*, Civil Appeal 31 of 2000 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. The applicant has not complied with the statutory timelines. This is a ground for dismissal of its application.

Regarding the VAT assessments, the respondent contended that the applicant did not object to them. Hence there are no objection decisions. For there to be an objection decision, there must be an objection. The *Black's Law Dictionary* 10<sup>th</sup> p. 1241 defines an 'objection' as; "A formal statement opposing something that has occurred, or is about to

occur, in court and seeking the judges immediate ruling on the point". An objection is the formal statement that opposes something that has occurred, and the Commissioner has to make an objection decision. S. 1(g) of the Tax Appeals Tribunal Act defines an objection decision to mean the taxation decision made in respect of a taxation objection. In our view there must be a taxation objection before an objection decision is made. In *Kahamutima Vs Commissioner Customs, Uganda Revenue Authority* Misc. Application 51 of 2021, this Tribunal held that.

"Therefore, the applicant by filing an application for extension of time when it had not applied to the commissioner to review the letter of 16<sup>th</sup> June 2021, she was acting prematurely. The Tribunal does not have a decision of the Commissioner to review. Therefore, this application is incompetent."

In this case, the applicant did not object to the assessment and hence there is no objection decision. A court cannot have jurisdiction without an objection decision or taxation decision. In *Mujib Juma v Adam Musa & others* Civil Appeal 2015/ [2018] court stated.

"That Jurisdiction of court can only be granted by law. If the proceedings are conducted by a court without jurisdiction, they are a nullity. This was the case in *Desai V Warsaw* (1967) EA 351. Therefore, any award or judgment arising from such proceedings of court without jurisdiction is also a nullity".

In *Desai v Wasama* (1967) EA 351 court stated that.

"No court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, the proceedings and the determination are nullities..."

Coming to the Tribunal without an objection decision or tax decision is illegal and should not be entertained. In *Makula International Ltd v His Eminence Cardinal Nsubuga & Another* [1982] HCB 111, it was held that:

"A court of law cannot sanction what is illegal and illegality once brought to the attention of the court overrides all questions of pleading including admissions made thereof."

The failure by the applicant to object and obtain an objection decision is an illegality that denies the Tribunal jurisdiction to review its application.



In relation to the 30% of the tax not in dispute, the respondent alleged that the applicant has not paid the 30%. S.15 (1) of the Tax Appeals Tribunal Act provides that.

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute whichever is greater".

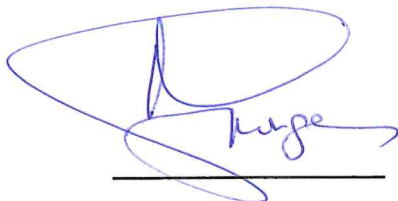
In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority* SCCA 2 of 2009 the Supreme Court held that "The requirement to pay 30% of the assessed tax was not unconstitutional when balanced with the citizen's duty to pay taxes." Furthermore, in *Bullion Refinery Limited v Uganda Revenue Authority* Application 36 of 2021, this tribunal held that.

"The requirement to pay the 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a taxpayer files a matter in the Tax Appeals Tribunal...where the 30 % has not been paid the taxpayer loses its right to access the tribunal as it shows it does not have any intention of paying any tax in dispute. It does not come to the tribunal with clean hands".

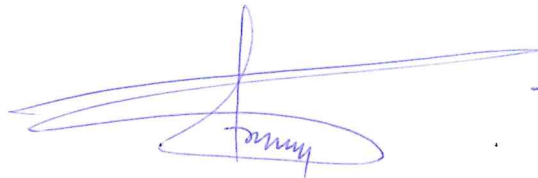
When we perused the file, we did not see any evidence of 30% payment. This means that the applicant is not properly before this tribunal. The requirement to pay 30% is a creature of the statute. When one intends to proceed in the Tax Appeals Tribunal, it should be complied with.

The applicant did not file written submissions. By not filing submissions, the preliminary objections by the respondent were uncontroverted. Therefore, the Tribunal will uphold the preliminary objections. The main application is dismissed with costs.

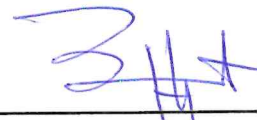
Dated at Kampala this 17th day of April 2023.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**DR. STEPHEN AKABWAY**  
**MEMBER**



**MR. SIRAJ ALI**  
**MEMBER**