UGANDA REVENUE AUTHORITY

V

UGANDA CONSOLIDATED PROPERTIES LTD

COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.31 OF 2000
(ON APPEAL FROM HIGH COURT CIVIL APPEAL 75 OF 1999)

BEFORE:
HON. LADY JUSTICE L.E.MUKASA KIKONYOGO, DCJ
HON. MR. JUSTICE A. TWINOMUJUNI, JA
HON. LADY JUSTICE C.N.B. KITUMBA, J.A

August 8, 2000

JUDGMENT

JUDGMENT TWINOMUJUNI J.A.: This is an appeal against the decision of the High Court of Uganda (Okumu Wengi, J) dated March 24, 2000 in which The Tax Appeals Tribunal was ordered to hear the Respondent's application which it had refused to entertain on the grounds that it was time barred.

The facts of this case and issues involved as found by the learned High Court judge are as follows:

> "The Uganda Revenue Authority (the Respondent) levied a tax of shs.504,152,054 on the Appellant by a notice of February 1, 1999 on the basis of incomes from sales of houses by the Appellant in the years 1992 to 1997. An objection was made by the taxpayer and a decision on this objection was made on March 23, 1999. On June 14, 1999, the Respondent moved to collect the taxes by directly reaching the Respondent's Bank accounts. A meeting between the parties resulted in a 30% deposit on the assessed tax and this was reduced into writing by a letter of the Respondent to the Appellant dated June 17, 1999. By this letter the Respondent made a final declaration that the taxes were payable as assessed. The Appellant then filed two applications for review before the Tax Appeals Tribunal. The first one was filed on July 6, 1999. On August 9, 1999 another application was filed. According to the counsel for the Appellant the first application was not served upon the Respondent within the requisite period of five days. The Tribunal in its rendition of the first facts of this appeal did not refer to this application. The issue before the Tribunal and in this Appeal is the date of the Taxation decision from when the limitation period began to run. If the date of March 23, 1999 was the material date then, and this is what the Tribunal found, the application for review would be time barred. If on the other hand the 15th or June 17, 1999 when a "final" decision was communicated then as the Appellant argues he was within time to prefer his application. There is also the issue of which limit is to be observed under section 17 of the Tax Appeals Tribunal Act; whether it is 30 days or whether six months are the time limits."

The learned judge held that the date of the Taxation decision was June 17, 1999, and that the Respondent was within the time limit of 30 days when he filed the application on July 6, 1999. He ordered the Tax Appeals Tribunal to hear the application on its merits, hence this appeal. There are five grounds of appeal, namely:

1. The Honourable Judge erred in law and in fact in holding that the agency notice was a taxation decision.

2. The Honourable Judge erred in law and in fact in holding that an application which was not stamped or sealed and endorsed by the Tribunal, was a valid application.

3. The Honourable Judge erred in law and in fact in holding that the Appellant's subsequent correspondences revived the dates of the objection decision.

4. The Honourable Judge erred in law and in fact in holding that the Respondent filed its application within the statutory time.

5. The Honourable Judge erred in law and in fact in allowing the appeal with costs.

In my judgment, these grounds of appeal raise the same three issues that were before the learned trial judge namely:

(a) Whether the trial judge was right to hold that the date of the Taxation Decision in question was June 17,1999.

(b) Whether he was right to hold that the Respondent filed a valid application before the Tax Appeals Tribunal on July 6, 1999.

(c) Whether the applicable time limit under section 17 of the Tax Appeals Tribunal Act is 30 days or six months.

In arriving at the conclusions that follow, I have had the benefit of perusing detailed written submissions submitted by counsel in the High Court and lengthy oral submissions made before this court. I do not detail the arguments in this judgment but they are taken into account in arriving at answers to the above three issues posed.

What is the date of the taxation decision?
Evidence on record shows that for many years before 1999, the parties had been trying to agree on the tax liability of the Respondent. On the February 1, 1999 the Appellant made a Tax assessment decision which it communicated to the Respondent. By their letters dated 18th and 23rd February 1999, the Respondent, through their Auditors objected to the assessment. On March 23, 1999 the Appellant rejected the objection and advised the Respondent to settle the outstanding tax as assessed. By their letter dated May 12, 1999, the Respondent requested the Appellant to reconsider the assessment and gave reasons for the request. The Appellant did not reply to this letter, On June 14, 1999 the Appellant appointed the Uganda Commercial Bank Ltd. Agent under section 107 of the Income Tax 1997 to recover shs.504, 152,054/= from the Respondent's bank accounts and pay it over to the Appellant. As a result of this order by the Appellant, a meeting was convened between the Appellant and the Respondent on June 15, 1999 in which it was agreed that:

> "As a Way Forward it was agreed that; Uganda Consolidated In Properties 30% pay installment as follows:
>
> 40,000,000/= by 30.6.1999
> 40,000,000/= by 15.07.99
> 40,000,000/= by 15.09.99

> Commissioner, Ltd is to lift the Agency Notice upon receipt of the first installment.
> The Auditors of Ms. Pricewater House are to advise Uganda Consolidated Properties on the next course of action."- From Minutes of that meeting in Exhibit 11 on record.

It seems to me on the evidence that though the tax assessment was made at the beginning of February 1999, the parties continued to disagree on the basis on which the assessment had been made. The Appellant appeared to be willing to listen to the Respondent's reasons for their objection until after the meeting of June 15, 1999 whose final decision was communicated to the Respondent in a letter dated June 17, 1999. Under these circumstances, I would agree with the learned trial judge when he made the following observations in his judgment:

> "Now in this case it seems that after the letter of March 23, 1999 the Appellant disputed the tax by a letter of May 12, 1999. As of June 15, 1999 no reply by way of an objection decision had been communicated. It can only be stated that the appointment of Uganda Commercial Bank as agent under the provisions of section 107 of the Income Tax Act 1997 became the notification of the objection decision. However, it did not by itself mean that that the tax payable was not in dispute. Once this collection move was notified to the taxpayer an urgent meeting was called and agreement was reached for the taxpayer to pay 30% of the assessed tax. It is the view of this court that the collection agency notification fulfilled the requirement of section 100(b) and section 107(3) simultaneously. It is also the view of this court that the subsequent meeting and notice issued thereafter revived the assessment updating it to June 17, 1999. As a result the Appellant could lodge an application with the Tribunal."

My finding on these issues is that the date of the Taxation Decision was not March 23, 1999 but the June 17, 1999. If the Respondent wished to apply for a review to the Tax Appeals Tribunal, time limitation would start running on this date.

This is perhaps a convenient point to deal with the issue whether under section 17 of the *Tax Appeals Tribunal Act*, an application had to be made within 30 days or six months from the date of the Taxation Decision. The learned trial judge handled the issue thus:

> "Now turning to the apparent discrepancy between section 17(1)(c) and section 17(7) of the *Tax Appeals Tribunals Act 1997*, I do not see any difficulty whatsoever. The one provides for a taxation decision. The thirty days begin to run from the date when notice of the decision has been given to the applicant. The date of notification may not be the same as the date of the decision which section 17(7) deals with. The six months is the limit from the date of the decision itself. In other words even if the date of the taxation decision were for arguments sake March 23, 1999 then an application to review it may not be made after September 23, 1999. In other words the commissioner has some duty to notify taxpayers of his decisions. But he may delay and notify the taxpayer, say on 21/8/1999 in which case the taxpayer may apply for review within 30 days of notification."

I agree entirely with this reasoning.

Finally, the only remaining issue is whether the Respondent made an application for review within 30 days from the date of notification of a Taxation Decision. The Appellant disputes the holding of the trial judge where he stated:

> "…in the absence of any information regarding the status of the Appellant's application of

> July 6, 1999, namely whether it was dismissed or just abandoned, the Appellant did lodge an application within 30 days of the notice to him of an objection decision. (This application appears at p.101l of the Record of Appeal). I have not seen any order of the Tribunal discontinuing dismissing or otherwise disposing of this application. Whether or not it was competently made is another matter but it cannot be ignored, as it seems to be pending. The Respondent in its submissions did not address this matter in any way."

It was submitted on behalf of the Respondent that section 23 of the *Tax Appeals Tribunal Act* requires that the Tribunal should conduct its business with as little formalities and technicality as possible and that as such the ruling of the Tribunal that the application was filed out of time was contrary to the spirit of the provision. Section 23 of the Act provides:

> "23(1) In any proceedings before the Tribunal the procedure of the Tribunal, subject to this Act, within the discretion of the Tribunal.
> (2) The proceedings before the Tribunal shall be conducted with as little formality and technicality as possible, and the Tribunal shall not be bound by the rules of evidence but may inform itself on any matter in such a manner as it thinks appropriate."

With respect, my understanding of this provision is that the procedure to be followed by the Tribunal is only discretionary subject to the Act. In other words where the Act and the Rules made there under specifically spell out procedure to be followed on any matter, then the discretion of the Tribunal is limited to that extent. In my judgment section 23 of the Act does not relieve the Tribunal from the mandatory requirement of section 17(1)(c) of the Act which requires that applications for review to be filed within thirty days after the person making the application has been served with notice of a tax decision.

On the record of appeal there are two documents purporting to be applications under section 17 of the Tax Appeals Tribunal Act. One is dated 6th July 1999 and the other 12/8/1999. The document dated 6th July 1999 is not stamped by the registry of the Tribunal at all. It is also common ground that, that document was never served on the Appellant by the Respondent as required by section 17 of the Act and by Rule 13 of the Tax Appeals Tribunal (Procedure) Rules 1999.

In my judgment, that document could not have formed a basis of a valid application under section 17 of the Act unless it conformed to the requirements of Rules 10, 11 and 13 of the procedure rules made under the Act. Clearly the document dated 6th July 1999 falls far short of what is required and therefore no application was filed by the Respondent on that date. I do not agree with the learned trial judge that there is

> "absence of Information regarding the status of the Appellants application of July 6, 1999, namely whether it was dismissed or just abandoned."

There is evidence on record that the application was actually abandoned because it did not conform to the rules and had not been served on the Appellant. That is why the Respondent filed a second application dated August 12, 1999 which was thrown out by the Tribunal for being time barred. Clearly, that application was filed after over 50 days from the June 17, 1999 instead of within 30 days as required by the law. Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

The Respondent filed six grounds for affirming the decision other than those which were relied upon by the learned judge in the High Court. They are:

1. The members of Tax Appeals Tribunal erred in law in entertaining the Appellant's preliminary

objection when the said objection was not brought in conformity with the Tribunal's rules of procedure.

2. The members of the Tax Appeal erred in law in holding that time within which the Respondent could appeal against the Taxation decision begun to run on March 23, 1999 and June 17, 1999.

3. The members of the Tribunal erred in law in failing to grant the Respondent an extension of time within which to file a fresh Application.

4. The members of the Tribunal erred in law in holding that the provisions of section 17(1)(c) and section 17(7) of the *Tax Appeals Tribunals Act* are not in conflict with each other.

5. The members of the Tribunal erred in law in ordering the Respondent to pay shs. 504,152,054/= as taxes to the Appellant plus interest thereon when the Respondent's application had not been heard and determined on it's merits.

6. The members of the Tribunal erred in law in holding that the additional assessments to income tax made by the Appellant against the Respondent in 1999 for the years 1992, 1993, 1994 and 1995 were lawful.

The fourth ground was abandoned by learned counsel for the Respondent. Grounds 2, 4 and 5 have been adequately covered in this judgment. On the first ground, learned counsel for the Respondent submitted that the Tribunal entertained the Appellant's application without following its own rules which required that the application be by notice of motion. He did not produce the decision in *Jan Impex (U) Ltd v. Uganda Revenue Authority* TAT 10/99(Unreported) in which he claimed the rule was made. Learned counsel for the Appellant argued that the rule was not only made after the ruling in this case but is also contrary to order 6 rule 15 *Civil Procedure Rules* which was adapted to the rules of procedures of the Tribunal by Rule 30 *Tax Appeal Tribunal Rules*.

I have no wish to speculate whether the rule existed at the time of the ruling of the Tribunal or not. If the Respondent wished to rely on the same, he had the duty to produce it. No attempt was made to produce it.

As regards ground three, the application to extend time referred to was made after the ruling of the Tribunal. In this appeal we are only concerned with the manner of dismissal of the Respondent's application by the Tribunal. The application to extend time which was made after that is not part of this appeal and is therefore misconceived.

Finally, on the sixth ground, it raises a matter that would have been entertained by the Tribunal if the Respondent's application for review had been properly made in time. I do not see the alleged illegality to justify the intervention of this court. I find no merit in any of these grounds.

For this reason, I would hold that the application of the Respondent to the Tax Appeals Tribunal to review the Taxation Decision made by the Appellant on June 17, 1999 was properly rejected by the Tribunal as time barred. I would allow this appeal, set aside the order of the judge and reinstate the order of the Tribunal with costs here, the High Court and the Tax Appeals Tribunal to the Appellant.

KITUMBA JA: I have heard the benefit of reading in draft the judgment of Twinomujuni JA, and I agree with it and the orders proposed therein. I have nothing useful to add.

MUKASA KIKONYOGO, DCJ: I had the opportunity to read the judgment in draft prepared by

Twinomujuni J.A, and I agree with him that the Appellant's appeal must succeed. Since Kitumba JA, also holds a similar view, this appeal is allowed with costs here, in the High Court and the tax Appeals Tribunal to the Appellant.

UGANDA CONSOLIDATED PROPERTIES
v
UGANDA REVENUE AUTHORITY

HIGH CORT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)

CIVIL APPEAL NO. 75 OF 1999

BEFORE: THE HONOURABLE MR. JUSTICE R.O. OKUMU WENGI

March 27, 2000

JUDGMENT

OKUMU WENGI, J: This Appeal was brought to contest the ruling of the Tax Appeals Tribunal made on 26th November 1999. In that ruling made on a preliminary point of law the Tribunal dismissed an application for review of a taxation decision on grounds that it was time barred.

The facts of the case are that the Uganda Revenue Authority (the Respondent) levied a tax of shs. 504,152,054 on the Appellant by a notice of February 1, 1999 on the basis of incomes from sales of houses by the Appellant in the years 1992 to 1997. An objection was made by the tax payer and a decision on this objection was made on March 23, 1999. On June 14, 1999 the Respondent moved to collect the taxes by directly reaching the Respondents Bank accounts. A meeting between the parties resulted in a 30% deposit on the assessed tax and this was reduced into writing by a letter of the Respondent to the Appellant dated June 17, 1999. By this letter the Respondent made a final declaration that the taxes were payable as assessed. The Appellant then filed two applications for review before the Tax Appeals Tribunal. The first one was filed on 6th July 1999. On 9th August 1999 another application was filed. According to the Counsel for the Appellant the first application was not served upon the Respondent within the requisite period of five days. The Tribunal in its rendition of the facts of this appeal did not

refer to this first application. The issue before the Tribunal and in this Appeal is the date of the Taxation decision from when the limitation period began to run. If the date of March 23, 1999 was the material date then, and this is what the Tribunal found, the application for review would be time barred. If on the other hand the 15th or June 17, 1999 when a "final" decision was communicated then as the Appellant argues he was within time to prefer his application. There is also the issue of which limit is to be observed under section 17 of the *Tax Appeals Tribunal Act*; whether it is 30 days or whether six months are the time limits.

Firstly I will deal with the problem of a taxation decision. According to section 3 of the *Income Tax Act 1997* "assessment" means ascertainment of income or penal tax and includes "any decision of the Commissioner which under this Act is subject to objection or appeal." And "taxation decision" is defined in section 2(1) to mean any assessment determination decision or notice.

Now in this case it seems that after the letter of March 23, 1999 the Appellant disputed the tax by a letter of May 12, 1999. As of June 15, 1999 no reply by way of an objection decision had been communicated. It can only be stated that the appointment of Uganda Commercial Bank as agent under the provisions of section 107 of the *Income Tax Act 1997* became the notification of the objection decision. However it did not by itself mean that the tax payable was not in dispute. Once this collection move was notified to the tax payer an urgent meeting was called and an agreement was reached for the tax payer to pay 30% of the assessed tax. It is the view of this court that the collection agency notification fulfilled the requirement of section 100(b) and section 107(3) simultaneously. It is also the view of this court that the subsequent meeting and notice issued thereafter revived the assessment updating it to June 17, 1999.As a result the Appellant could lodge an Application with the Tribunal.

In this regard, in the absence of any information regarding the status of the Appellants application of July 6, 1999, namely whether it was dismissed or just abandoned, the Appellant did lodge an application within 30 days of the notice to him of an objection decision (This application appears at page101 of the Record of Appeal). I have not seen any order of the Tribunal discontinuing dismissing or otherwise disposing of this application. Whether or not it was competently made is another matter but it cannot be ignored as it seems to be pending. The Respondent in its submissions did not address this matter in any way.

Now turning to the apparent discrepancy between Section 17 (1) (c) and Section 17 (7) of the *Tax Appeals Tribunals Act 1997*, I do not see any difficulty whatsoever. The one provides for a period of 30 days within which a person may apply for review of a taxation decision. The thirty days begin to run from the date when notice of the decision has been given to the Applicant. The date of notification may not be the same as the date of the decision which Section 17 (7) deals with. The six months is the limit from the date of the decision itself. In other words even if the date of the taxation decision were for arguments sake March 23, 1999 then an application to review it may not be made after September 23, 1999. In other words the commissioner has some duty to notify tax payers of his decisions. But he may delay and notify the tax payer, say on September 23, 1999 in which case the tax payer may apply for review within 30 days of notification.

In view of what has been stated above the date of the tax decision and or assessment and or objection decision is mid June1999 the date having been revived by the Respondents own communication. If the commissioner large tax payers had not written notices at all the date would have been frozen to March 23, 1999 subject to election by the tax payer following delay to respond to the tax payers May 1999 letter disputing the tax payable. In the law of Limitation, as I know it, writing letters, even those with negative content, may have the undesired effect of reviving an otherwise stale cause. In this case it did just that and updated the decision to mid June 1999.

In consequence, I have to allow this appeal with costs and remit the application for review to be heard, for and disposed of by the Tax Appeals Tribunal. Leave against this Judgment Appellant is entitled to if required is granted and the Appellant is entitled to costs of this appeal.