

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISC. APP NO. 66 OF 2021
ARISING OUT OF APPLICATION NO. 20 OF 2021

UGANDA REVENUE AUTHORITY..... APPLICANT

VERSUS

RWENZORI BOTTLING COMPANY LTD.....RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE

RULING

This ruling is in respect of the application by the applicant seeking leave to amend its statement of reasons for taxation decision.

The applicant brought this application under Order 6 Rule 19 and Order 52 of the Civil Procedure Rules and Rule 30 of the Tax Appeals Procedure Rules. It is for orders that leave be granted to amend the statement of reason. It also prayed that costs of the application be in the cause.

The grounds of the application are that certain key facts were left out of the statement of reasons. The amendment will not prejudice the respondent. The amendment is necessary and vital to help resolve the real issues in controversy.

The application was supported by the affidavit of Mr. Enock Kiyemba an officer in the customs department of the applicant. He stated that the applicant communicated an audit finding to the respondent on the 17th February 2020. The respondent objected to the audit finding on 24th February 2002 but it was received by the applicant on 28th February 2020. He depones that the said facts were omitted in the statement of reason. There are material in the determination of the matter.

The respondent lodged an application in the Tax Appeals Tribunal seeking review of the applicant's objection decision. On 22nd April 2021, the applicant lodged its Statement of Reasons for taxation decision. The applicant has filed this application seeking for leave to amend its statement of reasons.

Issue

Whether the applicant should be granted leave to amend its Statement of Reasons?

The applicant submitted that *Order 6 rule 19* provides that a court may at any stage of the proceedings allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just. The applicant cited *Gasco Transporters Services Ltd V Martin Adala Obene SCCA No. 4 of 1994*, where the Supreme Court ruled that;

- “(a) the amendment should be granted if it is in the interest of justice to the opposite party.
- (b) The amendment should be granted if it if it is in the interest of justice and avoid multiplicity of suits.
- (c) It should be made in good faith.
- (d) It must be expressly or impliedly prohibited by law”.

The applicant stated that the grounds are contained in its affidavit in support and state as follows;

- (a) That material facts were omitted in preparation of the statement of reasons for taxation decision.
- (b) That the amendment will not prejudice the respondent.
- (c) That the applicant is not introducing a new cause of action.

The dates of the objection and the objection decision as are contained in the annexures to the supporting affidavit

The applicant submitted that the intended amendment will only clarify on the facts contained in the main application. It is in the interest of justice that the dispute before the tribunal is clearly defined in order to make a proper ruling.

In reply, the respondent opposed the application and contended that it violates the principles on amendment of pleadings, precedent and the Tax Appeals Tribunal Act. It submitted that the applicant attempted to raise a preliminary objection that the

respondent's application was time barred in vain. The respondent also contended that the applicant wants to substitute the notice of its final decision dated 17th February 2021 with another issued on 6th March 2020. The respondent contended that the amendment is prejudicial to it and may cause injustice.

The respondent cited also *Gasu Transport Services (Bus) Ltd V Obene* (1990-1994)1 EA 88 where it was stated that grounds to allow amendment are:

- i) The amendment should not work injustice to the other side. An injury that can be compensated by costs is not treated as an injustice.
- ii) Multiplicity of proceedings should be avoided and amendments which avoid multiplicity should be allowed
- iii) An application which is made mala fide should not be granted.
- iv) No amendment should be allowed where it expressly or impliedly prohibited by any law.

The respondent submitted that the proposed amendment which introduces a new cause of action after expiry of a period of limitation must be rejected.

The respondent contended that. S.17 of the Tax Appeals Tribunal Act requires the applicant to lodge a notice of the decision within 30 days after being served with the notice of the decision. The applicant was served a copy of the application on 22nd April 2021. This application is prejudicial and should not be allowed on account of introducing a new cause of action outside the limitation period. The respondent cited *Kyagulnayi Ssentamu Robert v Yoweri Kaguta Museveni and others SCMA 01 OF 2021*, where the Supreme Court rejected an amendment that introduced a new cause of action after the expiry of the time limit for the decision above and held that an amendment that introduces a new cause of action after expiry of a limitation period must be rejected.

The respondent also cited *Rio Insurance co v URA, Application 6 OF 1999*, where the Tribunal held that exercise of discretion to allow the commissioner to lodge late documents is limited by S. 17 of the tat act which does not allow the tribunal to extend time to enable the respondent to file late documents.

The respondent cited *Onekui Sarafino v Tokwiny Isaac & 4 others* HCMCA 43 of 2020 where it was held that;

“In the instant application, the relevance of the facts sought to be introduced cannot be determined since they are not disclosed in the application. The Court is consequently not guided as to whether when introduced by amendment such facts will advance the cause of determining the real question in controversy between the parties...as the order sought in the instant application is devoid of the necessary legal and factual foundation , it must fail”.

The respondent contended that the application lacked justification as to why the amendment should be granted.

The respondent submitted that Rule 30 of the Tax Appeals Tribunal (Procedure) Rules is inapplicable. The respondent contended that Rule 30 limits its application to proceedings before the tribunal and not pleadings and their amendment which are clearly provided for in Sections 16 and 27 of the Tax Appeals Tribunal Act and Rules 10 and 14 of the Tax Appeals Tribunal (Procedure) Rules. It is therefore, not proper for the tribunal to exercise discretion not granted to it by the Act.

Having read the submissions of both parties, this is the ruling of the tribunal.

On 19th March 2021, the respondent filed an application challenging import duty, VAT and excise duty assessment of Shs. 732,372,537 resulting from purported under valuation of wine and spirits imports by the respondent. On the 22nd April 2021, the applicant lodged its Statement of Reasons.

The respondent lodged this application seeking to amend its Statement of Reasons. The grounds of the applicant are:

- (a) That material facts were omitted in preparation of the statement of reasons for taxation decision.
- (b) That the amendment will not prejudice the respondent.
- (c) That the applicant is not introducing a new cause of action.

In the affidavit of Kiyemba, he deposed that Statement of Reason did not mention the day the applicant made its audit finding and communicated the date of its objection decision.

Rule 31(2) of the Tax Appeals Tribunal Procedure Rules allows the Tribunal to use any rules or practice or procedure of the High Court. The Civil Procedure Rules provide for the amendment of pleadings. Order 6 rule 19 provides:

“The court may at any stage of the proceedings allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just or all such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”.

In *Lea Associates Limited V Bunga Hill House Limited Hct-00-Cc-Ma-0348-2008 Js* *Lameck N. Mukasa* stated that;

“As a general rule amendment of pleadings should be allowed at any stage of the proceedings where court is satisfied that the amendment will enable the real question in controversy between the parties to be adjudicated upon and no injustice would be occasioned to the opposite party.”

Therefore if the amendment is necessary for the purposes of determining any issues or controversies the Tribunal may allow the amendment.

In *Gasu Transporters Services Ltd v Martin Adala Obene SCCA No. 4 of 1994*, the Supreme Court ruled that;

- “(a) the amendment should be granted if it is in the interest of justice to the opposite party.
- (b) The amendment should be granted if it if it is in the interest of justice and avoid multiplicity of suits.
- (c) It should be made in good faith.
- (d) It must be expressly or impliedly prohibited by law”.

The dispute between the parties involving the amendment revolve around the date each party claims the objection or taxation decision was served. The application of the respondent states that the date of service of the taxation decision was 19th February 2021. Mr. Enock KiYemba states that the respondent was served on 6th March 2020.

The issue of when a taxation decision was served is a matter a Tribunal may have to determine because the law prescribes time when applications should be filed before it. Therefore it may be necessary to allow the amendment so as to resolve the real question in controversy as regards whether the main application was time barred. However the

Tribunal notes that because the parties have different dates, it can be resolved by adducing evidence on the service.

The respondent contended that the application to amend was brought in bad faith. Issues of time limit are matters of law. A party is entitled to use the law to dispose of its matters. Where a party argues that an application to amend raising issues of time limits which application maybe heard anytime and decided on merit thereafter it cannot be said to be acting in bad faith. The only way the Tribunal can determine whether the application was brought in bad faith is by allowing it. Each party will be given a right to be heard. After listening to the evidence the Tribunal may be able to determine whether there was bad faith. In *Bullion Refinery Limited v. URA TAT App. No. 36 of 2021*, this tribunal noted the importance of coming to the tribunal with clean hands. This evidence will not prejudice the respondent especially if they have nothing to hide.

Taking the above into consideration, the Tribunal will allow the application. Costs shall be in the cause.

Dated at Kampala this 14th day of December 2021.

ASA MUGENYI
CHAIRMAN

STEPHEN AKABWAY
MEMBER

CHRISTINE KATWE
MEMBER