

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 161 of 2023
ARISING FROM APP NO. 019 OF 2023.

DSN INTERNATIONAL LIMITED..... APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. GEORGE MUGERWA
RULING

This ruling is in respect of an application seeking orders to have Application 19 of 2023 reinstated.

The applicant filed Application 019 of 2023 on 25th January 2023. The applicant claimed that the application was served on the respondent on 5th July 2023. On the same day the deputy registrar of the Tax Appeals Tribunal abated the application.

Issues;

1. Whether Application 19 of 2023 should be reinstated?
2. What remedies are available?

The applicant was represented by Ms. Acen Novy Norin while the respondent by Mr. Derrick Nahumuza and Mr. Donald Bakshaba.

The application was supported by the affidavit of Mr. Geoffrey Mayanja Nalima, who stated that the application was served late on the respondent. He was informed that service should have been done within 5 days after filing the application. He prayed that in the interest of justice and equity the matter be reinstated.

Mr. Sam Kwerit, a supervisor in the legal services and board affairs department of the respondent deponed the applicant filed its application on 25th January 2023. The application was served on the respondent on 5th July 2023. It was brought to the parties' attention that the application had been closed because of failure to serve it on the respondent within the prescribed time. He contended that the applicant disclosed no sufficient cause to warrant grant of reinstatement.

The applicant submitted that it filed Application 19 of 2023 on 25th January 2023. It was served on the respondent on 5th July 2023. Its lawyers omitted to file an affidavit of service in the matter and service was done out of time. That despite the failure to serve on time and file proof of service, the matter was never fixed for hearing. It was closed on 5th July 2023.

The applicant submitted that in *AG v AKPM Lutaaya* SCCA 12 of 2007 cited by Justice Ssekaana Musa in *Kibuuka v Uganda Catholic Lawyer's Society & 2 others* MA 696 of 2018, Katureebe JSC held that "The litigant's interests should not be defeated by the mistakes and lapses of his counsel". The applicant relied on its lawyer to follow due court process including serving and filing an affidavit of service which was not done. The applicant was not in possession of the court documents and incapable of following the procedure personally. The applicant was not aware that service was not done within the specified period. Its former lawyer told it that service had been made. The applicant learnt of the closure of the said application in November 2023 and immediately filed for reinstatement

The applicant cited Rule 25 (3) of the Tax Appeal Tribunal Rules which is to the effect that if an applicant fails, within reasonable time to proceed with the application or comply with a direction by a tribunal in relation to the application, the tribunal may dismiss the application. Rule XI (5)(1) of the Civil Procedure Amendment Rules is to the effect that in a case where no application has been made or step taken for a period of 6 months by either party with a view to proceeding with the suit, the suit shall automatically abate. The applicant submitted that the application was filed on 25th January 2023 and service was done on 5th July 2023. The applicant submitted that much as service was done beyond

the statutory provision, the application was abated within a period of 5 months on 5th July 2023 one month after service was done. The 6 months period prescribed by the Civil Procedure Amendment Rules had not yet expired. Under S. 98 of the Civil Procedure Act, the court has powers to make such orders as may be necessary for the ends of justice as well as under Order 9 Rule 23 of the Civil Procedure Rules to set aside the abatement/dismissal/closure on sufficient cause being shown.

The applicant submitted that in its affidavit of service it mentions that it was engaging the respondent in order to settle the matter out of court. The company was on the verge of liquidation. It is in the interest of justice and equity that the order closing Application 19 of 2023 be set aside. The respondent will not suffer any loss if the matter is reinstated. This application is brought in good faith and not brought after inordinate delay.

In reply, the respondent submitted that on 5th July 2023, more than five months after filing its application, the applicant served it on the Commissioner General. Upon filing its statement of reasons, it was brought to the attention of the respondent that the application had been closed. The respondent submitted that S. 16(3) of the Tax Appeal Tribunal Act provides that; "An applicant to the tribunal shall serve a copy of the application on the decision maker within five days after lodging the application with the tribunal". The respondent submitted that Rule 13 of the Tax Appeals Tribunal Procedure Rules provide that "an applicant shall, within five days after filing an application with a tribunal, serve a copy of the application on the Commissioner General". The respondent submitted that the applicant served the respondent more than six months after the application had been filed in the Tribunal. This amounted to indolence. S. 25(3) of the Tax Appeals Tribunal Act provides that; "if an applicant fails within a reasonable time to proceed with the application or comply with a direction by the tribunal in relation to the application, the Tribunal may dismiss the application".

The respondent submitted that S. 25(4) of the Tax Appeals Tribunal Act provides that where an application has been dismissed, the applicant has to apply to the tribunal for reinstatement within thirty days. The application was closed on 5th July 2023. The

applicant sought reinstatement on 8th November 2023. This is more than four months later which amounts to an unreasonable delay as was considered in *URA V NSSF* Miscellaneous Application 117 of 2021 where Justice Rwakakoko held that;

"I am of the view that 92 days is unreasonable delay without a proper reason by the applicant."

The respondent submitted that in *Butera Richard v Mutalemwa Godfrey* SC Application 391 of 2017, it was held that;

"I wish to emphasize the importance of time limits set by statutes. Such limits are a matter of substantive justice that enable the orderly and predictable schedules within which litigants and counsel are required to perform particular acts. They are not mere technicalities that can be done away with at will. They should be strictly complied with except with good reason."

The respondent submitted that the applicant has exhibited indolence that cannot be cured by reinstatement. In *Essential Autoparts Limited v URA* Application 180 of 2022 the Tribunal held that;

"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."

The respondent submitted that the applicant alleges that the failure to serve was due to an alleged mistake of counsel. The applicant does not provide any evidence of the alleged mistake by its former lawyer.

Having perused the application and read the submissions of the parties, this is the ruling of the tribunal;

This application was brought under Order 52 Rules 1 and 2 of the Civil Procedure Rules and S. 98 of the Civil Procedure Act seeking for orders that the closure of Application 19 of 2023 be set aside and it be reinstated.

It is not in dispute that the applicant filed its application on 25th January 2023. The applicant served the respondent on 5th July 2023. On the same day, the deputy registrar noted.

"Whereas the applicant filed App No. 019 of 2023, there is no acknowledgement of service signed by the Commissioner General or her representatives. In accordance with S. 16 (3) of the Tax Appeal Tribunal Act, the applicant has lost interest in prosecuting this application and it is hereby closed".

The applicant is seeking to reinstate the application.

The prescribed period for serving an application is provided for in S. 16(3) of the Tax Appeals Tribunal Act which provides that;

"(3) An applicant to a tribunal shall serve a copy of the application on the decision maker within five days after lodging the application with the tribunal."

S. 19 of the Tax Appeals Tribunal Act also states.

"(3) An applicant to a tribunal shall serve a copy of the application on the decision maker within five days after lodging the application with the tribunal".

The tribunal notes that the time within which the applicant should have filed a copy of its application on the respondent is five days. Having filed its application on 25th January 2023, the applicant ought to have served it by 30th January 2023.

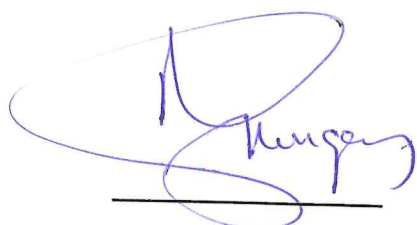
The applicant cited Order 9 rule 12 of the Civil Procedure Rules which states that;

"Where judgement has been passed pursuant to any preceding rules of this order, or where judgement has been entered by the registrar in cases under Order L of these rules, the court may set aside or vary the judgement upon such terms as may be just".

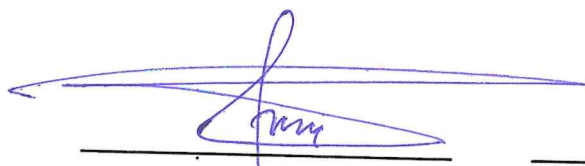
The time required to serve an application is 5 days. The said period is mandatory. By the time the applicant served the application on 5th July 2023, the mandatory 5 days had expired. In *Uganda Revenue Authority v Uganda Consolidated Properties Ltd* Civil Appeal 31 of 2000, the court held that time limits set by statutes were matters of substantive law and not mere technicalities which must be strictly complied with. It is trite law that a matter is not properly filed until effective service has been made on the opposite party. By failing to serve the opposite party within the prescribed time, the applicant ceased to act within the law. The applicant ought to have complied with the prescribed period. In any case the

period between 30th January 2023 and 5th July 2023 is not short. It is over 5 months. It shows that the applicant was not diligent. It would be unjust to set aside the dismissal of the applicant's case. In the circumstances, this application is dismissed with costs to the respondent.

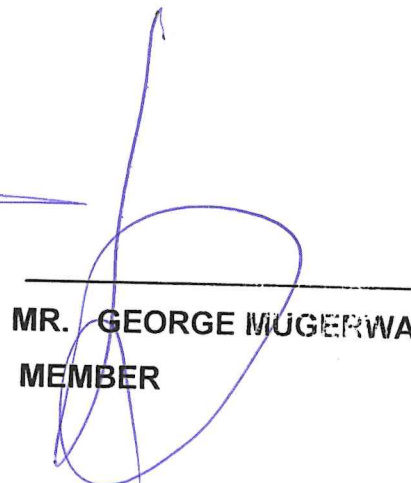
Dated at Kampala this 20th day of December 2023.



DR. ASA MUGENYI
CHAIRMAN



DR. STEPHEN AKABWAY
MEMBER



MR. GEORGE MUGERWA
MEMBER