

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 14 OF 2023

GROFIN UGANDA LIMITED..... APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: MR. SIRAJ ALI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE.

RULING

This ruling is in respect of two preliminary objections raised by the respondent that this application was filed out of time and that the applicant has not paid 30% of the tax in dispute.

The applicant deals in establishment and management of development funds to small and medium enterprises. On 21st September 2015, the respondent issued the applicant with an administrative Income tax assessment of Shs. 32,245,292 for the period of March 2013 being the additional amount assessed under PAYE to balance the applicant's ledger. On 2nd November 2015, the applicant objected and on 12th January 2016, the respondent issued its objection decision disallowing the objection. On the 20th January 2023, the applicant lodged this application for review of the objection decision.

When the matter came up for scheduling, counsel for the respondent informed the Tribunal that it intends to raise preliminary objections to the application to wit;

- "a) The application was filed out of time as the objection decision was made and communicated on 12th January 2016, and the applicant filed her application for review on 20th January 2023, Seven years after the objection decision was made and communicated to the applicant.
- b) The applicant has not yet paid the 30% of the tax".

Issues.

1. Whether this application was filed out of time?
2. Whether the applicant has paid the 30%?

The applicant was represented by Ms. Damalie Izaula while the respondent by Mr. Edmond Agaba.

1. Whether this application was filed out of time.

The respondent submitted that Order 15 rule 2 of the Civil Procedure Rules empowers the Court to try the issues of law if it deems that the case or any part of it may be disposed of on the issues of law only. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, Sir Charles Newbold, summarized the law on preliminary points of law as follows;

"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. Examples are an objection to the jurisdiction of the court, or a plea in limitation..."

The respondent submitted that S. 14(1) of the Tax Appeals Tribunal Act provides for any person who is aggrieved by a decision made under a taxing Act by Uganda Revenue Authority to apply to the tribunal for review of the said decision. The respondent submitted that S. 25(1) of the Tax Procedures Code Act states that a person dissatisfied with an objection decision may lodge an application with the Tax Appeals Tribunal for review of the objection decision within 30 days after being served with a notice of objection.

The respondent submitted that 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 lodged 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 submitted that the applicant objected to the tax assessment on 2nd November 2015. The respondent issued its objection decision on the 12th January 2016. The application for review was filed in the

Tribunal on 20th January 2023, seven years after the objection decision was made. The applicant had until 12th February 2016 to lodge an application. However, this was not done. The respondent submitted that after the 12th January 2016, the applicant could still have filed its application for review of the objection decision but subject to first obtaining leave to file the same out of time. In the case of *Uganda Revenue Authority v. Uganda Consolidated Properties Ltd* Court of Appeal. Civil Appeal No. 75, 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. Consequently, the Court of Appeal held that the application of the Respondent to the Tax Appeals Tribunal was properly rejected by the Tribunal as being time barred." In *Ahmed Said Ali vs. Uganda Revenue Authority*, TAT Application No. 241 of 2022, the Tax Appeals Tribunal held that the application was time barred, the same having been lodged after 30 days from service of the notice of the decision on the applicant. The respondent prayed that this tribunal dismisses the application on ground that it is time barred with costs.

Whether the applicant has paid the 30% of the tax in dispute or that part not in dispute, whichever is greater?

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 percent of the tax assessed or that part not in dispute, whichever is greater. The respondent submitted that in *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority Constitutional Appeal 2 of 1999* 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 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". The importance of prompt payment of tax was emphasized in the case of *Commissioner General Uganda Revenue Authority v Meera Investments Ltd. Civil Appeal 22 of 2007* where Justice Kanyeihamba stated that: "The government needs taxes paid expeditiously, in national

interest." In *Elgon Electronic v Uganda Revenue Authority* HCCA 11 of 2007, Justice Geoffrey Kiryabwire held that the provisions of S. 15(1) of the Tax Appeals Tribunal Act are mandatory".

The respondent submitted that in the case of *Samuel Mayanja v Uganda Revenue Authority* HCT 0017 of 2005, Justice Egonda Ntende held that, once a taxpayer has lodged an application for review under S. 15 of the Tax Appeals Tribunal Act, he is obliged to deposit at least 30% of the tax assessed. The respondent contends that the tax in dispute is Shs.32, 245, 292. Therefore, the applicant ought to have paid 30% of the amount in dispute which translates to Shs. 9, 673, 588. This is a reasonable amount for a business person like the applicant and would not significantly impact their ability to conduct business. The respondent prayed that this application should be dismissed on grounds that the applicant filed this application out of time with costs to the respondent. Furthermore, there is no proof of payment of the required 30% as mandated by law.

Whether the application was filed out of time?

In reply, the applicant submitted that it does not seek the review of the objection decision of January 2016 as the same had indicated that no tax was payable by the applicant. The applicant seeks to review the tax decision of the respondent issued to the applicant on 5th December 2022. The applicant submitted that the application was filed within the requisite time. S. 14 (1) of the Tax Appeals Tribunal Act states that: "A person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the Tribunal for review of the decision".

The applicant submitted that S. 16 (1) of the Tax Appeals Tribunal Act states that:

"An application to a tribunal for review of a taxation decision shall-

- c) Be lodged with the tribunal within thirty days after the person making the application has been served with notice of the decision"

The applicant submitted that Rule 30 of the Tax Appeals Tribunal (Procedure) Rules provides that in matters relating to the proceedings of the Tribunal for which these Rules do not provide, the rules of practice and procedure of the High Court shall apply subject

to such modifications as the Tribunal may direct. Order 51 rule 4 of the Civil Procedure Rules provides that unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleading or for doing any other act; except that this rule shall not apply to any application for an interim injunction, to any business classified by the registrar or by a magistrate's court as urgent, Considering that the Tax Appeals Tribunal (Procedure) Rules do not provide for computation of time during the period of 24th December and 15th January, we invoke the provisions of Order 51 Rule 4 of the Civil Procedure Rules in accordance Rule 30 of the Tribunal Rules.

The applicant submitted that the respondent served its decision on the applicant on 5th December 2022. The applicant was required to file its application for review within 30 days. The applicant's time of 30 days began to run on 6th December 2022 to 23rd December 2022. By 23rd December 2022, 18 days had run out. The time then froze from 24th December 2022 to 15th January 2023. The time resumed to run on 16th January 2023. Consequently, the 30 days were to run out on 27th January 2023.

The applicant submitted that it filed this application on 20th January which was the 23rd day of the 30 days period. The applicant's application was therefore filed in time. The applicant's letter dated 19th September 2022, to which the letter of 5th December 2022 replied, sought the direction and approval of the Commissioner to handle the matters surrounding the assessment in issue under the ADR procedure so that the same would be expunged from the applicant's ledger. Despite the applicant's request for ADR which process was intended to expunge the assessment in issue, the same was rejected and the applicant was advised to instead pay the outstanding tax liability arising from an assessment to wit the respondent had stated there was no tax payable in its previous decisions.

The applicant submitted that tax decisions by the Tax Appeals Tribunal is not only limited to objection decisions as purported by the respondent in their submissions but also to such decisions where the Commissioner General has exercised his discretion to issue

judgment, opinion, direction, approval, or such determination as enshrined in the provisions of S. 1(k) of the Tax Appeals Tribunal Act and S. 3 of the Tax Procedure Code Act. The applicant prayed that the Tribunal reviews the respondent's decision enshrined in the letter of 5th December 2022 otherwise the applicant would be denied justice and would have no recourse in such circumstances where on one hand the respondent states that no tax is payable and later seeks to recover the same tax it had indicated was not payable.

Whether the applicant has paid the 30% of the tax in dispute or that part not in dispute, whichever is greater?

The applicant submitted that it is willing and has already commenced the process of making the payment of the 30%. The applicant submitted that 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 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

The applicant submitted that the law allows for a Taxpayer to pay the 30% before the final resolution of the matter. Courts have also decided that even in instances where an Applicant pays the 30% after dismissal of their application, the matter can be reinstated, and the application is heard on its merits. As was held in *Eco Bus Company v Uganda Revenue Authority* Civil Appeal 0035 of 2021, Compliance by the appellant to pay 30% of the assessed tax even after their application had been dismissed gave the appellant a right for their matter to be reinstated and heard before the Tribunal. Further in *A Better Place Uganda Limited v Uganda Revenue Authority* Civil Appeal No. 37 of 2019, Justice Boniface Wamala held that it was not proper for the Tribunal to dismiss the application for failure to pay the 30% before the matter could be heard. Court stated that the Tribunal could have directed the applicant to pay with timelines within which to comply and if the applicant failed to comply then the Tribunal could dismiss the matter. The applicant submitted that it is ready and willing to make the payment and is making arrangement to make the payment. The applicant prayed that it is given time to pay since the matter is still at its preliminary stages instead of dismissing this application. The applicant prayed

that this tribunal overrules the respondent's preliminary objection with costs by confirming that the applicant's application is not time barred and therefore valid. The applicant prayed that the applicant's matter is set down for hearing on merits.

In rejoinder, the respondent submitted that the applicant objected to the tax assessment in question on 2nd November 2015. Subsequently, on 12th January 2016, the respondent issued its objection decision, disallowing the objection. However, the application for review was filed in the Tax Appeals Tribunal Registry on 20th January 2023, which is seven years after the objection decision was communicated to the applicant. This is well beyond the mandatory 30 days period for lodging an application for review.

The respondent submitted that the applicant claims that the application before this Tribunal seeks to review the taxation decision issued to the applicant on 5th December 2022. The respondent submitted that the letter dated 1st December, 2022 and dispatched by the respondent for service on 5th December, 2022 on the applicant is simply a rejection letter to review the objection decision dated 12th January, 2016 for Alternative Dispute Resolution (ADR). This Tribunal seeks to review the objection decision issued on 12th January, 2016 disallowing the objection.

The respondent submitted that even if the Tribunal was to consider the letter dated 1st December, 2022 as taxation decision subject to review by the Tribunal, the application for review would still be time barred having been filed in the Tax Appeals Tribunal Registry on 20th January 2023, which is 46 days after the letter was served on the applicant on 5th December, 2022. The application for review was filed well beyond the mandatory 30 days period for lodging an application for review as provided under S. 16(1)(C) of the Tax Appeals Tribunal Act and S. 25 (1) of the Tax Procedure Code Act. The applicant argues that time period between 24th December and 15th January should not be reckoned in the computation of time for filing the application for review. They relied on Order 51 rule 4 of the Civil Procedure Rules in their submissions. However, we contend that a clear reading of Order 51 rule 4 CPR shows that the provision is applicable to the time appointed or allowed by the Civil Procedure Rules for filing pleadings or service of summons, not time

provided by a substantive Act of Parliament. The respondent prayed that this tribunal dismisses the application with costs to the respondent on ground that it is time barred.

The respondent submitted that the applicant having lodged his application for review he is obliged to deposit 30% of taxes in dispute. The respondent submitted that the S. 15(1) TAT Act presupposes that 30% of the taxes in dispute should be paid at the objection stage of the assessment, rather than at the review stage of the objection decision by Tax Appeals Tribunal. This interpretation has been affirmed by this court in the case of *Bullion Refinery Limited V URA*, TAT Application No. 36 of 2021. The respondent prayed that this Tribunal finds the instant application time barred and the required 30% payment of the taxes in dispute has not been made and be pleased to dismiss the application with costs to the respondent.

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

When parties met before the tribunal, counsel for the respondent stated that it had two preliminary objections. The first one was that the application was filed out of time. The second one is that the applicant has not paid 30% of the tax in dispute. Both parties filed submissions to this effect.

On 21st September 2015, the respondent issued an assessment for the period March 2013 for the sum of Shs. 32,245,295. The applicant objected on 2nd November 2015. The respondent made a decision on 12th January 2016. This application was filed on the 20th January 2023 stating that the tax was not payable. The applicant in 2020 noticed that the above liability was still reflected on its accounts and there was a continuing interest. The applicant wrote to the respondent highlighting removal of the above assessment. However, the applicant states that it seeks the tribunal to review the decision made on 5th December 2022 which the respondent disputes stating that the decision was made on 12th January 2016. The tribunal addresses this as follows;

The law relating to preliminary objection is provided for under Order 6 Rule 28 of the Civil Procedure Rules which provides 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 a 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".

Sir Charles Newbold in the case of *Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd* [1969] EA 696, 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".

The applicant submitted that it applied to the respondent for Alternative Dispute Resolution (ADR) and the respondent disallowed this request. The applicant contends that the decision made on the 5th December 2022 should be the one addressed by the tribunal. The respondent does not seem to dispute the decision of 5th December 2022 was the one where time begins to run. The Tribunal will go with said decision.

Time limits are set out in the Tax Appeals Tribunal Act. S. 16(1) (c) of the Act provides that;

"(1) An application to a tribunal for review of a taxation decision shall- (c) be lodged with the tribunal within thirty (30) days after the person making the application has been served with notice of the 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 the objection decision, lodge an application with the Tax Appeals Tribunal for review of the objection decision".

In *Uganda Revenue Authority v Uganda Consolidated properties Ltd*, Court of Appeal Civil Appeal No. 75 of 1999) [2000] it was held that;

"Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with".

If the Tribunal is to go by the Act, the applicant would have been required to file its application by 4th January 2023. It filed its application on 20th January 2023. This would mean that it was 16 days out of time.

We notice that the Civil Procedure Rules mentions computation of days for filing applications before the High Court. Order 51 Rule 2 of the Civil Procedure rules provides that;

"Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day, Good Friday, and any other day appointed as a public holiday shall not be reckoned in the computation of the limited time".

Order 51 rule 4 of the Civil Procedure rules provides that;

"Unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleading or for doing any other act; except that this rule shall not apply to any application for an interim injunction, or to any business classified by the registrar or by a magistrate's court as urgent".

If the tribunal were to use the date of 5th December 2022, using the Civil Procedure Rules Order 51 Rule 2 taking into consideration the public holidays, the applicant should have filed its application by 8th January 2023, which is not the case. If we are to go by Order 51 Rule 4, which mentions computation of time between 24th December and 15th January, the applicant should have filed its application by 16th January 2023, which again is not the case. The applicant filed this application on the 20th January 2023, which is four days later. There is no explanation as to why the applicant did not file within time.

However, the Tribunal wishes to state that the Tax Appeals Tribunals Act is clear. S. 16(1)(c) of the Act which we repeat states that;

"(1) An application to a tribunal for review of a taxation decision shall-
(c) be lodged with the tribunal within thirty (30) days after the person making the application has been served with notice of the decision".

Furthermore S. 16(2) and (7) of the Act states that;

"An application for review of the taxation decision shall be made within six (6) months after the date of the taxation decision."

This provision is in the principal Act which takes precedence over other statutes including the Civil Procedure Rules which is a subsidiary legislation. Where the Act is clear, one cannot look for a remedy in a subsidiary legislation. The Civil Procedure Rules do not

provide for extension of time while the Tax Appeals Tribunal Act provides for extension of time. If the applicant was affected during the time of public holidays, it ought to have applied for extension of time showing how it was affected.

Furthermore, the Tribunal is open throughout the year apart from public holidays and weekends. The Tribunal commences hearing matters immediately after 1st January of each year. It is inconceivable to say the Tribunal can listen to tax matters, but parties cannot file applications. The applicant did not adduce evidence to show that at the time when it was required to file its application the registry at the Tribunal was closed. If the applicant was inconvenienced by public holidays around Christmas time and the beginning of the year it ought to have applied for extension of time which is provided for under S. 16(7) of the Tax Appeals Tribunal Act which it did not do. The Civil Procedure Rules do not provide for applications of extension of time. Therefore the applicant cannot apply them and ignore the Tax Appeals Tribunal Act.

Taking the above into consideration, we find that this application is time barred.

On the second preliminary objection the tribunal addresses it as follows;

The respondent submitted that the applicant has not yet paid the 30% of the tax in dispute or that part of the assessed not in dispute, whichever is greater". Article 152 (1) of the same provides that; "No tax shall be imposed unless provided for by the law".

Furthermore S.15 (1) of the Tax Appeals Tribunal Act provides that;

"A tax payer 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*, Supreme Court Constitutional Appeal 2 of 1999. Court ruled that;

"The statutory requirement in the then VAT Act (similar to S.15 of the TAT Act), requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, is constitutional, and did not infringe on the

right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law."

The Supreme Court followed, with approval, the *South African case of Metcash Trading Co. Ltd v Commissioner for South African Revenue Services and another*, wherein it was held that; "A taxpayer has to pay his tax and argue later". The Supreme Court also talked about the constitutional duty of a citizen to pay taxes, under Article 17 of the Constitution, and to do so promptly, so that Government business can go on".

Furthermore, in *Bullion Refinery Limited v URA 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 tax payer files a matter in the Tax Appeals Tribunal. This means that by the time the matter is filed in the tribunal, the 30% ought to have been paid". The tribunal further stated that; "where the 30 % has not been paid the tax payer 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."

The applicant submitted that it is willing and has already commenced the process of making the payment of the 30%. The applicant submitted that it is ready and willing to make the payment and is making arrangement to make the payment. The respondent stated that the applicant ought to have paid 30% of the amount in dispute which translates to Shs. 9,673,588.

The tribunal notes that the applicant in a letter dated 13th June 2023 to the Registrar attached an email showing a purported payment of the 30% of the tax in dispute which was effected on 8th June 2023 against (PRN): 2230015018378. Firstly, the said email is not a receipt. Its authenticity is not verified. It was done after the respondent had raised its preliminary objection. At the stage of submissions, one cannot adduce evidence by a letter to the Registrar which was not received by the respondent. Therefore, denying it a chance to respond. The respondent's counsel has not confirmed the said payment in any response. It does not bear a stamp of the respondent. There is no evidence that the respondent was served the said letter. The Tribunal cannot consider the letter when there


is no response from the respondent. A party has a right to be heard before it is condemned. The respondent issues receipt on payment of taxes. The parties mentioned a tax period of March 2013 while the email states "NA". It is not clear what this purported payment was meant for the tax period in dispute. It is not clear why the applicant has not tendered in a receipt, which is conclusive evidence of payment. The Tribunal cannot say that the 30% was paid, where the respondent has not confirmed payment. In the circumstances, this preliminary objection is upheld.

The respondent succeeds on both preliminary objections. This main application is dismissed with costs to the respondent.

Dated at Kampala this 30th day of June 2023.



MR. GEORGE MUGERWA
MEMBER



MS. CHRISTINE KATWE
MEMBER

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISC.APPLICATION NO. 14 of 2023

GROFIN UGANDA LIMITEDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

BEFORE: MR. SIRAJ ALI, MR. G.W. MUGERWA, MS. CHRISTINE KATWE

RULING

I have perused the ruling of my colleagues and wish to dissent as hereunder.

The facts briefly stated are that, on 21st September 2015, the respondent raised an Administrative Additional PAYE Assessment for the month of March 2013 in the sum of Shs. 32,245,292. The applicant objected to the said assessment and on 12th January 2016, the respondent issued an objection decision which stated that "the objection has been disallowed since the assessment was raised to balance the ledger and therefore tax is not payable." In the year 2020, the applicant established that its PAYE ledger still reflected the assessment of Shs. 32,245,292 which had been issued in September 2015. On 19th September 2022, the applicant wrote to the respondent requesting that the matter be referred to and handled under the respondent's Alternative Dispute Resolution Scheme. On 5th December 2022, the Commissioner responded to the applicant's letter and rejected the request for the matter to be handled under the Alternative Dispute Resolution and proceeded to direct the applicant to pay the sum of Shs. 50,778,496.63 as outstanding PAYE tax liability. The applicant determining that the Commissioner's letter was a taxation decision proceeded to file an application for review before the tribunal on 20th January 2023.

The applicant was represented by Ms. Olivia Kyarimpa Matovu while the respondent was represented by Mr. Edmund Agaba.

When the matter came up for scheduling, the respondent raised preliminary objections to the effect that the application for review had been filed out of time and that the applicant had not paid the requisite 30% of the tax in dispute. The tribunal directed the parties to file written submissions in support of their respective cases. On 13th June 2023, the applicant forwarded to the tribunal proof of payment of the requisite 30% of the tax in dispute. As a result, the preliminary objection relating to non-payment of the said sum is considered resolved and will form no further part of this ruling.

The respondent 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 by the Uganda Revenue Authority may apply to the tribunal for review of the said decision. The respondent submitted further that S. 25(1) of the Tax Procedures Code Act and S.16 (1) (c) of the Tax Appeals Tribunal Act provides that a person dissatisfied with an objection decision may lodge an application with the tribunal for review of the objection decision within 30 days after being served with an objection decision while 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 submitted that while the applicant objected to the tax assessment on 2nd November 2015 and the respondent issued its objection decision on 12th January 2016, the applicant only filed the application for review of the objection decision on 20th January 2023, a period of seven years after the objection decision was made and communicated to the applicant. The respondent submitted that pursuant to the above cited provisions of the law, the applicant had until 12th February 2016 to lodge an application for review of the objection decision. The respondent submitted therefore that the instant application was filed out of time. In support of this argument the respondent relied on the decisions in *Uganda Revenue Authority v Uganda Consolidated Properties Ltd*, Court of Appeal CA 75 and *Ahmed Said Ali v Uganda Revenue Authority*, Application 241 of 2022.

The applicant submitted that the instant application does not seek the review of the objection decision of January 2016, as the same had indicated that no tax was payable by the applicant. The applicant submitted that the instant application seeks to review the

tax decision issued to the applicant by the respondent on 5th December 2022 and that the instant application was filed within the requisite time. The applicant submitted that the respondent served its decision on the applicant on 5th December 2022 and the applicant was required to file its application for review within 30 days after 5th December 2022. The applicant submitted that in line with Order 51 rule 4 of the Civil Procedure Rules, time began to run for the applicant on 6th December 2022 to 23rd December 2022. The applicant submitted that the computation of time froze from 24th December 2022 to 15th January 2023 and began to run again on 16th January 2023. The applicant submitted that by the time the 30 days within which to file the application lapsed on 27th January 2023, it had filed the instant application on 20th January 2023, which was the 23rd day of the 30 day period. The applicant submitted that the provisions of Order 51 rule 4 of the Civil Procedure Rules applied in computing the time within which to file the application by virtue of Rule 30 of the Tax Appeals Tribunal (Procedure) Rules.

The applicant submitted further that the respondent's letter dated 5th December 2022, was a taxation decision entitling the applicant to file an application for a review. In support of this argument the applicant relied on the decision of the tribunal in *Century Bottling Company Ltd v. Uganda Revenue Authority* Application No. 032 of 2020, where the tribunal found that a rejection of a tax payer's request by the Commissioner constituted a decision. The applicant submitted that its letter to the respondent dated 19th September 2022, to which the respondent replied by its letter dated 5th December 2022, sought the approval of the Commissioner to handle matters surrounding the assessment issued in 2016 under the Alternative Dispute Resolution scheme. The applicant submitted that the request for Alternative Dispute Resolution was based on previous positions by the respondent that no tax was payable yet the assessment continued to reflect on the applicant's ledger and created a liability which continued to accumulate interest. The applicant submitted that the act of considering the applicant's issue and expunging the assessment and the resultant interest from the ledger was within the Commissioner's discretion. The applicant submitted that by rejecting the applicant's request and requiring it to pay the amount stated in the assessment the Commissioner had changed the decision stated in the objection decision dated 12th January 2016. The applicant stated that as a result of the Commissioner's decision the applicant was now required to pay the

tax and the resultant interest which continued to accrue. The applicant submitted that its only recourse under these circumstances was to review the respondent's directive requiring it to pay.

In rejoinder the respondent, reiterated its earlier arguments and submitted that the respondent's letter served on the applicant on 5th December 2022, was not a taxation decision but simply a letter rejecting the applicant's request for its matter to be handled under the Alternative Dispute Resolution Scheme. The respondent submitted in the alternative that even if the said letter was a taxation decision, the instant application was still filed out of time. The respondent submitted that Order 51 rule 4 of the Civil Procedure Rules did not apply for the reason that the said provision only applies to time appointed or allowed by the Civil Procedure Rules for filing pleadings or for the service of summons and not in cases where the time for the doing of an act has been specified by substantive Acts of Parliament like the Tax Appeals Tribunal Act and the Tax Procedure Code Act. In support of this argument the respondent relied on the decisions in *Uganda Revenue Authority v. Uganda Consolidated Properties Ltd* and *Madhvani International S.A v Attorney General SCCA No. 23 of 2010*.

Having read the submissions of the parties, the following is my ruling.

The respondent has submitted that the instant application was filed out of time as the objection decision in respect of which it was filed was communicated to the applicant on 12th January 2016 and the applicant filed the instant application for review on 20th January 2023. This is the gist of the preliminary objection filed by the respondent.

In order to resolve this point, I need to peruse the instant application. The instant application was filed on 20th January 2023. It was filed under S. 16 of the Tax Appeals Tribunal Act and Rule 10 of the Tax Appeals (Procedure) Rules. The date of service of the taxation decision is stated as 5th December 2022 not 12th January 2016. The respondent's position is that the Commissioner's letter dated 5th December 2022, is not a taxation decision but merely correspondence rejecting the applicant's request for a review of the objection decision dated 12th January 2016 under the respondent's

Alternative Dispute Resolution scheme. Before resolving the question as to whether the respondent's letter dated 5th December 2022, is a taxation decision within the meaning of S. 16(1) of the Tax Appeals Tribunal Act, I need to resolve the questions surrounding the objection decision dated 12th January 2016.

The objection decision dated 12th January 2016, is marked 'D' and is attached to the applicant's trial bundle at page 15. It states under Section B - Decision Details, that the objection has been disallowed however under Section C- Reasons, it states that the objection has been disallowed since the assessment was raised to balance the ledger and therefore tax is not payable.

S. 14 (1) of the Tax Appeals Tribunal Act states that 'A person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the Tribunal for review of the decision'. The question which arises is whether the applicant was 'a person aggrieved' by the objection decision dated 12th January 2016?

In *Hussein v Kakiiza and Another* 1995-1998 2 EA 135 SCU page 142, the Supreme Court quoted with approval the following observation in *The Code of Civil Procedure by Manhar and Chitale* (1985 ed) Vol. 5 at page 145.

"It is only a person aggrieved by a decree or order who can apply for a review. A person aggrieved means a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something....."

Did the objection decision dated 12th January 2016, deprive the applicant of something or did it wrongfully affect his title to something? The objection by the applicant on 2nd November 2015, was based on the ground that no tax was due because the applicant had fully declared and paid its PAYE for March 2013. An objection decision stating that no tax was payable, was a decision in agreement with the applicant's objection. The applicant could not therefore file an application to review the said objection decision because it was not a person aggrieved within the meaning of S. 14(1) above. The respondent having agreed with the applicant that no tax was due, ought to have updated the applicant's ledger in accordance with its objection decision.

I will now proceed to determine whether the respondent's letter dated 5th December 2022, is a taxation decision within the meaning of S. 16(1) of the Tax Appeals Tribunal Act. S. 3 of the Tax Procedure Code Act defines a tax decision as "an assessment or decision left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the Commissioner." S. 1(k) of the Tax Appeals Tribunal Act defines a taxation decision as any assessment, decision, or notice.

In *Century Bottling Company Limited v Uganda Revenue Authority* Application 032 of 2020, the tribunal found that a decision by the Commissioner rejecting a proposal by the applicant to pay 30% of the tax assessed in instalments was a taxation decision.

In the instant case, the respondent's letter dated 5th December 2022, is a taxation decision in more ways than one. Firstly, the decision by the Commissioner rejecting the request by the applicant to review the objection decision dated 12th January 2016, was a taxation decision because the decision was one which was left to the discretion of the Commissioner. As can be seen from S.3 of the Tax Procedure Code Act above, a decision left to the discretion of the Commissioner is a taxation decision. Secondly, the Commissioner did not stop at rejecting the applicant's said request but went ahead to direct the applicant to pay tax in the sum of Shs. 50,778,496.63. It will be recalled that the objection decision dated 12th January 2016, had indicated that no tax was payable. The said letter therefore had the effect of reversing the decision set out in the said objection decision by creating a tax liability where previously none existed. The decision by the Commissioner was a determination as to whether tax was payable by the applicant or not. This determination clearly fell under S. 3 of the Tax Procedure Code Act and S. 1(k) of the Tax Appeals Tribunal Act. By determining that tax was due and payable by the applicant, the Commissioner had opened up the applicant to legal liability. The applicant was now a person aggrieved within the meaning of S. 14 (1) of the Tax Appeals Tribunal Act. It would be a miscarriage of justice to leave the applicant without a remedy in these circumstances. I accordingly find that the respondent's letter dated 5th December 2022, was a taxation decision entitling the applicant to file an application for review before the tribunal.

Having determined that the respondent's letter dated 5th December 2022, was a taxation decision what remains to be resolved is whether the application for review of the said taxation decision was filed by the applicant within the statutory period of 30 days as provided for under S. 16(1) (c) of the Tax Appeals Tribunal Act and S. 25 of the Tax Procedure Code Act.

The taxation decision having been filed on 5th December 2022, the applicant ought to have filed the instant application by 4th January 2023, which was the last day of the statutory 30 days period. The application in question was however filed on 20th January 2023. The applicant has submitted that the provisions of Order 51 rule 4 of the Civil Procedure Rules apply to it in computing the time within which to file the application by virtue of Rule 30 of the Tax Appeals Tribunal (Procedure) Rules. The respondent on the other hand states that Order 51 rule 4 of the Civil Procedure Rules does not apply for the reason that the time within which to file applications for review of taxation decisions have been provided for in both the Tax Appeals Tribunal Act and the Tax Procedure Code Act. Consequently, the provisions of the substantive Acts stated above take precedence over the Civil Procedure Rules which is a subsidiary legislation.

Rule 30 of the Tax Appeals Tribunal (Procedure) Rules states as follows;

"In any matter relating to the proceedings of a Tribunal for which these Rules do not provide, the rules of practice and procedure of the High Court shall apply, subject to such modifications as the Tribunal may direct."

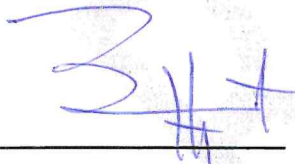
Order 51 Rule 4 of the Civil Procedure Rules states as follows;

"Unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleadings or for doing any other act; except that this rule shall not apply to any application for an interim injunction, or to any business classified by the registrar or by a magistrate's court as urgent".

It will be observed from a perusal of Order 51 Rule 4 of the Civil Procedure Rules, Rule 4 of the Judicature (Court of Appeal) Rules and Rule 4 of the Judicature (Supreme Court Rules) Directions, that provision has been made for the computation of time during the Christmas break. These rules form part of the procedure of these courts and serve a practical purpose since court registries are usually closed during the Christmas break. The Tax Appeals Tribunal (Procedure) Rules, do not provide a procedure for the computation of time during the Christmas break despite the fact that the tribunal registries are also closed during this period. Rule 30 of the Tax Appeals Tribunal (Procedure) Rules was enacted to cater for such situations. The objection by the respondent fails to recognize that both the Tax Appeals Tribunal Act and the Tax Procedure Code Act only provide timelines for the filing of reviews but is silent on the computation of time during the Christmas break when the tribunal registries are closed. I accordingly find that Order 51 Rule 4 of the Civil Procedure Rules, is applicable in computing the time within which the applicant ought to have filed the instant application.

For the reasons above I find that the instant application was not filed out of time.

Dated at Kampala this 30th day of June 2023.



MR. SIRAJ ALI
CHAIRMAN