

UGANDA / JUDGMENT

Farola Supplies Limited v Uganda Revenue Authority (Miscellaneous Application 2 of 2023) [2023] UGTAT 23 (14 March 2023)

[2023] UGTAT 23

COURT

Tax Appeals Tribunal (Uganda)

BEFORE

Mugenyi, Chairperson, Akabway, Panel Member,
Mugerwa

CASE / FILE NUMBER

Miscellaneous Application 2 of 2023

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THE REPUBLIC OF UGANDA IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA MISCELLANEOUS APPLICATION NO. 002 OF 2023

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FAROLA SUPPLIES LIMITED.....

VERSUS

UGANDA REVENUE AUTHORITY.....

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

This ruling is in respect of an application to seek leave from the tribunal to extend time to file the main application.

The applicant is a company which deals in importation, purchases, and sale of locally sourced products. On 31st May 2022, the applicant received a tax assessment of Shs. 363,841,600 from the respondent. On 16th August 2022, the applicant was issued a Third-Party Agency Notice. On 25th August 2022, the applicant objected. On 17th November 2022, the applicant received an objection notice from the respondent which disallowed the objection on grounds that the former failed to avail supporting documentary evidence. The applicant filed an application for extension of time on 17th January 2023.

The issue for determination is: whether the applicant should be granted an extension of time to file this application before the Tribunal?

The applicant was represented by Ms. Rachel Turinawo while the respondent by Ms. Christa Namutebi.

The applicant submitted that under S. 14(1) of the Tax Appeals Tribunal Act any person who is aggrieved by a decision under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision. S. 16(1)(c) of the Act further provides that

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the application shall be lodged within 30 days after being served the notice of decision. The applicant submitted that where a party exceeds 30 days, they have to seek leave from the Tribunal for extension of time in which to file the application under S. 16(2) of the which is to the effect that upon application in writing, the Tribunal may extend the time for the making of an application for a review of the taxation decision. It submitted that further S. 16(7) of the Act provides that an application for review shall be made within 6 months of the taxation decision.

The applicant submitted that Rule 11(6) of Tax Appeals Tribunals (Procedure) Rules provides for circumstances under which the Tribunal may extend time for filing an application. These include - absence from Uganda, illness, or any other reasonable cause. The party who seeks for extension of time has the burden to satisfy court, to exercise its discretion. The party has to demonstrate that there was a justifiable/reasonable cause. Good Cause includes the factors which caused inability to commence the intended action within the prescribed period of 30 days. It has been adjudged to be of wider import and includes other causes such as the public importance of the case/appeal, illness, ignorance of procedure for a lay person among others. It should depend on the facts and circumstances of each case and prior precedents of appellate courts on extension of time."

The applicant submitted that in *Gideon Mosa Onchati v Kenya Oil Co Ltd* and another 2017 eKLR, citing *Registered Trustees of the Archdiocese of Dar es Salaam v The Chairman Bunju Village Government and others*, when Court in discussing what constitutes sufficient cause, opined that; "It is difficult to attempt to define the meaning "sufficient cause". It is generally accepted however that the words should receive a liberal construction in order to advance substantial justice, when no negligence or inaction or want of bona fides is imputed to the appellant." The applicant submitted that it is apparent that sufficient or good cause means a lot of things, and what is sufficient to be construed as sufficient cause is not static and openly left to the discretion of Court/Tribunal to determine whether it is a sufficient.

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The applicant submitted that the duty the law places unto the Tribunal in this instance is to determine whether failure of counsel to file an application in time as instructed by the client amounts to sufficient cause for it to exercise its discretion to allow the application. Failure or mistake of counsel is a cause sufficient for the Tribunal to exercise its discretionary power to

allow the application. Mistakes of counsel have been held to be sufficient cause. Counsel's indolent delay or indolence or mistake should not be visited upon the client. The applicant cited *Banco Arabe Espanol v Bank of Uganda* SCCA 8 of 1998 [1997-2001] UCL 1. Where the court held that; "The present case was one where the error by counsel for the appellant need not be visited on the appellant, and the circumstances amounted to sufficient cause..." In *Aluma Michael Bayo & 2 Ors v Okuti* (Miscellaneous Civil Application No. 0012 of 2016, Mubiru J, while espousing the same principle opined that.

"Implicit in mistakes, faults, lapses or dilatory conduct of counsel is the common thread of breach by counsel of the duty owed to his or her client by failure to conform to the applicable standards of professionalism. It is only just that such lapses should not be visited on the litigant".

See also *National Forestry Authority v Uganda Revenue Authority* Application 4 of 2021. The applicant also cited *Capt. Philip Ongom v Catherine Nyero Owota*, SCCA 14/2001 [2003] KALR where it was stated that:

"a litigant ought not to bear the consequences of an Advocate's default unless the litigant is privy to the default or where the default results from the default of a litigant to give instructions to the Advocate".

The applicant submitted that its director tried to find out whether the instructed counsel had executed the instructions and had filed an application in the Tribunal to challenge the taxation decision. Upon realizing that counsel had not executed the instructions in time, it sought the services of a fresh law firm, which advised her about the delay in filing the application to challenge the taxation decision, and the need to file the application for extension of time, for which this application was lodged on the same day of receiving instructions. The applicant submitted that the mistake of the applicant's previous counsel should not be visited on it.

The applicant submitted that it should have filed its application by 17th December 2022, which was not done. It lodged this application for extension of time within seven days from $\frac{S}{S}$

the date she was supposed to have filed it. There was a delay of 29 days which is not a lengthy delay. The applicant submitted that the application does not prejudice the respondent. It cited *K and K Amman Ltd v Mount Kenya Game Ranch and others* [2003] 1 EA 105 (CAK), where court in granting an application for extension of time based it on not occasioning prejudice to the respondent.

The applicant prayed that the Tribunal exercises its discretion and allows the application. The applicant submitted that S. 16 (7) of the Tax Appeals Tribunal Act states that "An application for review shall be made within six (6) month of the taxation decision." It contended that the application is lodged less than one month from the date that the applicants should have lodged an application challenging the taxation decision. The applicant cited *Farid Meghani v Uganda Revenue Authority* (Civil Miscellaneous Application 185 of 2020 where the Tribunal stated that; "The Tribunal can only exercise its discretion if an application for extension of time is brought

within the statutory six months period prescribed by law. After that it has no discretion to exercise." The applicant submitted that this application having been brought within six months as statutorily provided it is fit and proper for the Tribunal to exercise its discretion and allow it.

In reply, the respondent submitted that 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. It also cited S. 16(1) (c) of the Tax Appeals Tribunal Act which 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. It cited *Cable Corporation (U) Ltd v Uganda Revenue Authority*, High Court Civil Appeal 1 of 2011, where the High Court stated that; "the 30 days laid down in S. 16 of the Tax Appeals Tribunal Act, start to run on receipt of the letter communicating the decision from the respondent".

The respondent submitted that the decision of the Commissioner was made on 17th November 2022. The respondent submitted that the applicant therefore had up to 17th December 2022 to file the application. The respondent submitted that failure to file within 4

the requisite 30 days was an inordinate delay that was not excusable as considered in *URA v NSSF Miscellaneous Application 117 of 2021*, where Justice Rwakakoko held that; 92 days is unreasonable delay without a proper reason by the applicants. The respondent cited **Uganda Revenue Authority v Uganda Consolidated Properties Limited** Civil Appeal 75, 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 prayed that the tribunal dismisses this application. It contended that the applicant did not provide any justifiable reason to warrant a grant of an extension of time to file an application for review of the respondent's taxation decision. The respondent cited Rule 11(1) of the Tax Appeals Tribunal Rules that the taxpayer has to show that it was unable to file the application due to absence from Uganda, illness or any other reasonable cause under Rule 11 (6) of the of the Tax Appeals Tribunal Rules. It cited *Farid Menghani v URA Civil Appeal No. 6 of 2021* where in Justice Mubiru stated that; "The considerations for such extension are specified in rule 11 (6) as; - (a) absence from Uganda; (b) illness; or (c) any other reasonable cause. Just like "sufficient reason," The respondent submitted that the applicant did not provide any evidence as to why there was a delay in making the application. The applicant was not prevented by any inability to take the step and file the application. The allegation that the applicant's consultants and lawyer did not file the application is unfounded. The applicant presents alleged email trails as evidence of instructions to lawyers to file the application. However, this is not evidence to justify why the applicant did not file the application on time. The respondent cited **Victoria Flowers* v Uganda Revenue Authority. Application 12 of 2008*, where the Tribunal dismissed an application for extension of time on grounds that the applicant had not exercised due diligence in pursuing its rights for an application for review within the stipulated timelines. The respondent

submitted that the applicant ought to have done due diligence by following up on their objection decision and subsequently filing an application for extension of time within the stipulated time limits.

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In rejoinder, the applicant cited Tight security Limited v Chartis Uganda Insurance Company Limited Misc. Application f 2014, where on what amounts to good cause, the court observed that.

"Good causes relate to and include the factors which caused inability to file within the prescribed period of 30 days. The phrase good cause is however wider and includes other causes other than causes of delay such as the public importance of an appeal and the court should not restrict the meaning of good cause. It should depend on the facts and circumstances of each case and prior precedents of appellate courts on extension of time". The applicant reiterated that its application is proper and is in conformity with S. 16 (7) of the Tax Appeals Tribunal Act. It did not any delay in lodging the application demonstrating that it was diligent. The applicant contended that the emails exchanged confirm the instructions given to the lawyers and the respondent was free to verify them.

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

On 31st May 2022, the applicant received a tax assessment of Shs. 363,841,600 from the respondent. On 16th August 2022, the respondent issued a Third-Party Agency Notice on the applicant. On 25th August 2022, the applicant objected. On 17th November 2022, the applicant received an objection decision notice from the respondent which disallowed the objection on the grounds that the former failed to avail supporting documentary evidence. On 17th January 2023, the applicant filed an application for extension of time.

The applicant submitted that it first instructed its tax consultants, Fripp Consultants, who did not lodge an application before the Tribunal. It later instructed her lawful Attorneys M/S Ewatu & Co. Advocates, to lodge an application for review of the taxation decision to the Tax Appeals Tribunal and also to apply for extension of time to file the application for review.

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".

In **Uganda Revenue Authority v Uganda Consolidated Properties Limited** Civil Appeal. 31 of 2000 the Court stated that; "Timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with".

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 Act provides that "An application for review of a taxation decision shall be made within six months after the date of the taxation decision."

For the applicant to qualify for extension of time, the applicant must show that it has reasonable cause as to why the application was not filed in time. Rule 11(2) of the Tax Appeals Tribunal (Procedure) Rules provides that "An application for extension of time shall be in writing supported by an affidavit stating reasons why the applicant was unable to file an application against the Commissioner General in time. Under Rule 11(6), the Tribunal may grant the extension of time if it is satisfied that the taxpayer was unable to file the application for the following reasons—

- a. absence from Uganda.
- b. illness; or
- c. Any other reasonable cause."

In **Tight Security Limited v Chartis Uganda Insurance Company Limited Misc.** Application 8 of 2014, the court held that.

"Good Cause relate to and include the factors which caused inability to file within the prescribed period of 30 days. The Phrase 'good cause' is however wider and includes other causes other than causes of delay such as the public importance of an appeal and the court should not restrict the meaning of good cause. It should depend on the facts and circumstances of each case and prior precedents of appellate courts on extension of time". In **Mulindwa George William v Kisubika Joseph Civil Appeal** 12 of 2014, The Supreme Court of Uganda set out the following factors that should be considered in cases of an application for extension of time.

"i. The Length of delay.

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- ii. The reason for the delay.
- iii. The possibility or chances of success.
- iv. The degree of prejudice to the other party."

In this case, the applicant blames the failure of filling the application on time on its consultant. Failure to file an application by the applicant's consultant should not be visited on it. This falls under Rule 11(6)(c) of the Rules. The applicant has been vigilant enough to exercise its right to extension of time to file this application before the Tax Appeals Tribunal and has also explain that there will be no prejudice to the respondent. This application was filed within six months and the applicant sought leave for time to be extended to file this application.

In the circumstances, this application is allowed. Each party to bear its costs.

Marci Dated at Kampala this \$14m\$ day of 2023. my DR. ASA MUGENYI DR. STEPHEN AKABWAY
MR. GEORGE MUGERWA CHAIRMAN MEMBER MEMBER

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Prepared on 14 October 2026 · Esheria