

UGANDA / JUDGMENT

Kampala City Council v Uganda Revenue Authority (HCT-00-CC-MC 18 of 2007) [2007] UGCommC 91 (13 November 2007) [2007] UGCommC 91

COURT
Commercial Court of Uganda

CASE / FILE NUMBER
HCT-00-CC-MC 18 of 2007

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MC-0018-2007

KAMPALA CITY COUNCIL APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The applicant, Kampala City Council, is seeking that this court extends the time within which the applicant can file an appeal against a decision of the Tax Appeals Tribunal in TAT Application number 23 of 2006 made on 11th May 2007. The applicant contends that its failure to file a notice of appeal in time was caused by a combination of factors not attributable to the applicant. These factors were that the tribunal did not give to the applicant a notice of the day the ruling would be delivered. Secondly that the applicant's advocate made a mistake in the computation of time for filing for an appeal. Thirdly that it is in the interests of justice and will cause no prejudice to the respondent if the extension of time to file an appeal was granted. In support of this application an affidavit sworn by Florence Kabenge, advocate in the applicant's counsel law firm, was filed.
2. The respondent filed an affidavit in opposition sworn by Mr. Moses Kazibwe Kawumi.

3. This application is made under Section 27(1) of the Tax Appeals Tribunal Act. It appears to me that it is not only sub section 1 that is relevant but the sub section 2 of the same section is equally relevant to this application. I will set it out both. '27 (1) A party to a proceeding before a tribunal may, within thirty days after being notified of the decision or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the tribunal. (2) An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.'
4. It appears to me that only appeals on points of law may be allowed at this stage for all appeals against the tribunal decisions in accordance with Section 27(2) of the Act. Where an appeal has not been filed in time, the High Court is granted the power to extend such further time as it may decide. The provisions do not state on what grounds the High Court may exercise its discretion.
5. This **carte blanche** allowed to the courts must be exercised bearing in mind the statutory scheme of this Act. If only appeals on points of law may be taken against the tribunal decisions, it would be imperative in my view, on an application of this nature for the applicant, not only to explain as to why in the first place it did not take benefit of the time provided for filing an appeal, but must also show that there is a point of law to be taken on the appeal. It may show this by attaching to its application the proposed notice of appeal which would contain the grounds of appeal. It may show this in the application itself for leave. I find that it is imperative that the applicant demonstrates that there is a point of law to be taken on the appeal.
6. The applicant has not done so in the instant application. The application does not disclose that the intended appeal is over a point of law. Neither is the proposed notice of appeal attached to this application to enable this court satisfy itself that the intended appeal shall be within the confines permitted by statute.
7. The applicant's affidavit deals only with the facts related to the error of counsel in computing the time for appeal and the discovery by the applicant's counsel of the ruling a week after it was delivered. As was pointed out by the counsel for the respondent at the hearing of the application, 23 days was still sufficient time for diligent counsel to file. Even if an allowance was made for the 7 days, and time was to run from the date of the applicant's counsel received the ruling, the applicant was nevertheless still out of time. Nevertheless even if this point were taken in favour of the applicant, and taken to have significantly disadvantaged him, the failure to articulate, in a meaningful manner, that the intended appeal is over a point of law, is in my view, fatal to this application.
8. This application is dismissed with costs. Signed, dated, delivered at Kampala this 14th day of November 2007

FMS Egonda-Ntende Judge

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