

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS APPLICATION NO. 004 OF 2021

NATIONAL FORESTRY AUTHORITYAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

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

RULING

This ruling is in respect of an application to extend time within which to file an application to review the respondent's objection decision.

This application is brought under the Tax Appeals Tribunal (Procedure) Rules and the Tax Procedures Code Act for extension of time to file an objection/appeal against the tax decision of the respondent.

The applicant was represented by Mr. Moses Muhumuza while the respondent by Mr. Sam Kwerit.

This application is supported by an affidavit of Mr. Joseph Kwesiga a legal officer with the applicant which states the facts of this application as follows: Sometime around 25th May 2015, the applicant sought guidance on the tax treatment of several products offered to the public in the forestry sector. The respondent made a private ruling. In July 2020, the respondent adjusted the private ruling, revoking it. On 17th August 2002, the applicant made an objection. On 28th October 2020, the respondent made adjustments but maintained the tax liability. The time to file an application for review expired. The applicant's legal clerk inadvertently omitted to file an application for review in time. The respondent replied by an affidavit of Ms. Charlotte Katutu working in its legal Service and Board Affairs department. She stated that the objection decision was made on 28th

October 2020. The applicant did not file an application for review of the objection decision in time. In rejoinder, Mr. Moses Muhumuza, a legal manager of the applicant, contended that the mistake of counsel and his legal clerk should not be visited on the applicant.

The applicant submitted that Rule 11 of the Tax Appeals Tribunal (Procedure) Rules empowers the Tribunal to use its discretion to extend the time to file an application for review. The applicant submitted that the discretion should be exercised judiciously and not capriciously. The applicant submitted that rules of law are handmaidens of justice and should not frustrate justice. For the Tribunal to extend time there has to be sufficient cause. The applicant contended that the term 'sufficient cause' has received extensive adjudication. In **Registered Trustees of the Archdiocese of Dar es Salaam v The Chairman Bunju Village Government and others** cited in **Gideon Mosa Onchati v Kenya Oil Co Ltd and another** 2017 eKLR when discussing what constitutes sufficient cause, the court had this to say

“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 the words “sufficient cause” is used interchangeably with “good cause”. The applicant contended that the management instructed its lawyers to proceed with an objection to the Tax Appeals Tribunal. Courts have found that the mistake of a counsel should not be visited on a litigant. The Applicant cited **Kaderbhai and another v Shamsherali** Civil Application 20 of 2008 where the court held that a party shall not be deprived of the right of putting forward a bona fide claim or defence by reason of the default of his professional advisor or advisor’s clerk. The applicant argued that S. 6 of the Advocates Act states an advocate includes any person holding an office in the service of the Government, a district administration, or any city, municipal or town council. The counsel and clerk of the applicant fall within the ambit of sufficient cause in the above decisions.

The applicant contended that it has a prima facie case. It sought guidance on tax treatment of several products which was provided by the respondent. The respondent is estopped

from denying and or revoking the guidance. The applicant cited **Pan African Insurance Company v International Air Transport Association** HCCS 667 of 2003 where the court held that the doctrine of estoppel by conduct prevents a party against whom it is set up from denying the truth of the matter.

In reply, the respondent submitted S. 16(1)(c) of the Tax Appeals Tribunal Act provides for an application for review of a tax decision to be made within 30 days after the person making the application has been served with a notice of the decision. About extension of time, S. 16(2) of the Tax Appeals Tribunal Act provides that a Tribunal may upon application in writing, extend the time for the making of an application to the tribunal for review of the taxation decision. 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. The respondent cited **Uganda Revenue Authority v Uganda Consolidated Properties Ltd Court of Appeal**. Civil Appeal No. 75 of 2000 the court of Appeal held that; Timelines set by the statutes are matters of substantive law and not mere technicalities and must be strictly complied with. The respondent submitted that the applicant was served with an objection decision notice on 30th October 2020 and should have lodged its application for review by 30th November 2020. The applicant filed the application for extension on 7th January 2021. It is clearly out of time.

The respondent contended that the applicant has cited authorities that show that a mistake of counsel should not be visited on the litigant. However, in this case the mistake was by the applicant's clerk and not counsel. There is no authority to the effect that mistakes of clerks amount to reasonable cause.

Having read the pleadings and submissions of the parties this is the ruling of the Tribunal.

S. 16(1)(c) of the Tax Appeals Tribunal Act provides that an application to a tribunal for review of a taxation decision shall be lodged with the tribunal within thirty (30) days after the person making the application has been served with notice of the decision. Rule 11(6) of the Tax Appeals Procedure Rules provides that the tribunal may extend time if satisfied that the taxpayer was unable to file the application because of illness, absence from Uganda or any other reasonable cause. The term “reasonable cause” has not been defined in the Rules. Courts have provided guidance in determining what amounts to reasonable cause. In **Tight Security Limited v Chartis Uganda Insurance Co. 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 an application for extension of time;

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

In **Victoria Flowers v Uganda Revenue Authority** the Tribunal noted that sufficient cause must relate to the inability to take a particular step in the first instance. The applicant can do so by showing that the delay has not been caused by his dilatory conduct. There is a line of authorities to the effect that a mistake or negligence by counsel is not necessarily a bar to his obtaining extension of time. In **Banco Arabe Espanol v Bank of Uganda** SCCA 8 of 1998 [1997-2001]UCL I, 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 for the purpose of setting aside the dismissal of the suit.”

The Tribunal has to ask itself; was the inadvertent omission of the applicant's clerk sufficient cause not to file an application in time. The applicant cited **The Registered Trustees of the Archdiocese of Dar es Salaam v the Chairman Bunju Village Government and others** (supra) where the court stated that:

“Sufficient cause means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been not “acting diligently” or “remaining inactive”.

Institutions like companies are non-physical entities. They work through their employees. Any action, including negligence, by an employee is imputed on the employer. The applicant's clerk was an employee of the applicant. The omission of the clerk was done in the course of his employment and the applicant is culpable for the dilatory conduct by him. The applicant failed to supervise him diligently. An external counsel is an independent contractor whose actions cannot be imputed on a client. A clerk employed by a party cannot be equated to a counsel who is not employed by it. In tort, the employer would be vicariously liable for the actions of the employee. Therefore the negligence of the clerk employed by the applicant is its negligence.

The applicant contended that it has a prima facie case. The applicant contended that the respondent should be estopped from denying the guidance it issued to the applicant. It is trite law and there are a number of authorities that a statutory body cannot be overridden by estoppel. In **Pride Exporters Ltd. v Uganda Revenue Authority** HCCS 563 of 2006 Justice Geoffrey Kiryabwire stated that a statutory body like the Uganda Revenue Authority when given powers under a statute cannot have those powers fettered or overridden by estoppel or mistake. Therefore the applicant has failed to establish a prima facie case. Of course by prima facie case, the applicant was trying to establish the chances of success which it seems it has failed to do.

Though the applicant did not delay to bring its application for review in time, it has failed to establish a good reason for the delay, the possibility or chance of success and that no prejudice shall be caused to the other party by the extension if granted. Taking the said into consideration, the Tribunal dismisses this application with costs to the respondent.

Dated at Kampala this 18th day of March 2021.

DR. ASA MUGENYI
MEMBER

DR. STEPHEN AKABWAY
MEMBER

MS. CHRISTINE KATWE
MEMBER

RULING