

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
MSC. APP. NO. 22 of 2019

JOSEPH OCHUNGA.....APPELLANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

RULING

1. The Applicant is a male adult and an insurance agent working with Britam. His postal address is P. O. Box 165200-20100 Nakuru.
2. The Respondent is established under Section 3 of the Kenya Revenue Act, Chapter 469 laws of Kenya charged with the responsibility of assessment and collection of tax revenue.
3. On 23rd October 2018 the Applicant received an assessment order amounting to Ksh. 625,708.00 based on withholding tax which he claims had already been paid. On 17th December 2018 he received a confirmation of the assessment from the Respondent.
4. The Applicant on 16th September 2019 filed an application dated 9th September seeking leave to file an appeal out of time under Section 13(4) of the Tax Appeals Tribunal Act 2013 and Rule 10 of the Tax Appeals (Procedure) Rules 2015 and all other enabling provisions of the law. The application is also supported by his sworn affidavit, which the Tribunal notes was erroneously entitled “Statement of Facts”.
5. The Applicant premises the application on the following grounds:
 - a) The Statutory time to lodge the Appeal with the Tribunal has expired.
 - b) The Applicant could not lodge the appeal within the speculated period due to hindrance in communication.

- c) If the application is not allowed, the Applicant will suffer from irrecoverable loss as the taxes being demanded by the Respondent are erroneous and grossly exaggerated.
- d) If this application is allowed the Respondent will not suffer any loss in the event it is determined that taxes are due, interest will accrue for the continued period of non-payment of taxes.

6. The Respondent opposed the Application on the following grounds:

- a) **THAT** the Application by the Applicant offends/flaunts the Statutory Provisions of Section 13 of the TAT Act 2015. The Act grants a party 30 days upon the decision of the Commissioner, to lodge a Notice of Appeal as against the Objection Decision.
- b) **THAT** the Application is misconceived as the Appellants Application does not meet the standards to warrant extension of time under Section 13(3) and (4) of the TAT Act.
- c) **THAT** the Applicant has not satisfied the criteria for grant of an extension of time and does not therefore Warrant Extension under Section 10(3) of the Tribunal (procedure) Rules 2015.
- d) **THAT** no reasonable circumstances have been demonstrated to Warrant an Order for Extension of time.
- e) **THAT** the Applicant has rested on its laurels since 19th December 2018 in prosecuting the matter only to surface on 16th September 2019 to request for an extension of time.
- f) **THAT** this application is an abuse of TAT process as the inordinate delay demonstrated by the Applicant is unjustifiable and seeking to make a mockery of the Tribunal process.
- g) **THAT** the Applicant has not demonstrated that it will suffer irreparable/irredeemable harm if the Application is not granted.
- h) After hearing the parties together with their the submissions, the Tribunal determined that the only issue for its determination is whether the Applicant has adduced sufficient reasons for the Tribunal to exercise its discretion to grant him leave to appeal out of time.

- i) The power to extend time to file an appeal is donated in Section 13 of the TAT which provides that; **(3) The Tribunal may, upon application in writing, extend the time for submitting the documents referred to in subsection (2).** As pointed out in **The United Arab Emirates V Abdelghafar & others (1995 IRL 243)** an extension of time is an indulgence requested from the court by a party in default. He is not entitled to an extension. He has no reasonable or legitimate expectation of receiving one. His only reasonable or legitimate expectation is that the discretion relevant to his application to extend time will be exercised judiciously in accordance with established principles of what is fair and reasonable.
- j) The Tribunal having analyzed the application and the supporting documents finds that the Respondent's Objection Decision was made on 17th December 2018 and the Applicant admits having received the same as stated in paragraph 5 of his affidavit which we reproduce hereunder:

“THAT the appellant received later a confirmation of assessment on the 17th December 2018 as additional assessment confirming the figure above”

7. It is worth noting that the Applicant, upon receipt of the said confirmation notice from the Respondent proceeded and lodged a Notice of Appeal before the Tribunal two days thereafter, on 19th December 2018. The same was served upon the Respondent on even date, as shown in the Respondent's grounds of opposition, attachment in paragraph 5 thereof. The Tribunal makes a finding that it is not true that the Applicant did not receive the confirmation notice on time.
8. Moreover, the Tribunal having combed the Applicant's entire documentation has failed to find any other reason advanced for not filing the Appeal.
9. In the circumstances, the Tribunal agrees with the Respondent that the Applicant rested on his laurels from 19th December 2018 to 16th September 2019 to file the appeal which is a delay of nine months, which delay is unreasonably long and unexplained. The Tribunal finds that the Applicant has failed to demonstrate to its satisfaction as to the reasons for not filing the appeal on time as envisaged in law.

10. In view of the foregoing, the order that commends itself to the Tribunal is that the application dated 9th September 2019 has no merits and the same is hereby dismissed.

11. There will be no orders as to costs.

DATED and DELIVERED at NAIROBI this 28th day of February, 2020.

In the presence of:-

No appearance
.....for the Applicant
Joshua Opande
.....for the Respondent

.....
MOSES B. OBONYO
CHAIRMAN

[Signature]
.....
JOSEPHINE K. MAANGI
MEMBER

[Signature]
.....
GABRIEL KITENGA
MEMBER