

**REPUBLIC OF KENYA**  
**IN THE TAX APPEALS TRIBUNAL**  
**MISC. APP. NO. 31 OF 2020**

BRINKLEY LIMITED.....APPLICANT

VERSUS

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

**RULING**

1. The Appellant filed a Notice of Motion dated the 4<sup>th</sup> day of June, 2020 under a Certificate of Urgency.
2. The said application seeks the following orders;
  - a. This Honorable Tribunal do certify this application as urgent and service thereof be dispensed with in the first instance.
  - b. This Honorable Tribunal be pleased to enlarge the time within which the Applicant is to file the Notice of Appeal, Memorandum of Appeal, Statement of Facts and Tax Decision within 14 days.
  - c. Upon granting the prayer above, this Honorable Tribunal do deem the Notice of Appeal, Memorandum of Appeal, Statement of Facts and tax decision filed herein as duly filed.
  - d. This Honorable Tribunal to grant leave to the Applicant to apply for further orders as it may deem just and fair to grant.
  - e. Costs of this Application be in the cause.

3. The application was supported by the Affidavit of **KARIM HASSANALI**, the director of the Appellant and was based on the following grounds;

- a. The period within which the Applicant was to submit to the Tribunal the notice of appeal lapsed on 23<sup>rd</sup> May 2019, the decision of the Respondent having been dated 24<sup>th</sup> April 2019.
- b. The Applicant was required to have filed a Memorandum of Appeal, a Statement of Facts and the tax decision within fourteen (14) days from the date of filing the Notice of Appeal.
- c. The Respondent's decision was communicated to the Applicant on 24<sup>th</sup> April 2019 through a letter. The said letter confirmed the Appellant's failure to provide specific documents as listed in the letter dated 11<sup>th</sup> March 2019 and subsequent emails dated 12<sup>th</sup> March 2019 and 17<sup>th</sup> April 2019. The Appellant was unable to produce the specific documents so mentioned in the said letter/said within the prescribed time as the auditor had not finalized on the audit and preparation of the financial statements for the years of income 2015 to 2018.
- d. The Applicant has therefore at all times been willing to submit the tax returns except for the fact that the audit was not concluded within the prescribed dates as per the law.
- e. The failure to file the Notice of Appeal, Memorandum of Appeal, Statement of facts and the Respondent's tax decision within time is not a deliberate mistake and therefore should not be visited on the Applicant.

- f. This application has not been brought after undue delay but promptly upon notice of the failure to file appeal within time.
  - g. The Respondent will not suffer any prejudice if the orders sought herein are granted.
  - h. It is in the interest of justice and fairness that the Application is allowed to pave way for hearing and determination of the appeal on the merits.
4. The Respondent through its Grounds of Opposition dated 18<sup>th</sup> June 2020, contends that the application does not bring out any of conditions set out under Section 13 (4) of the Tax Appeals Tribunal Act, 2013 and Rule 10 (2) and 10 (3) of the Tax Appeals Tribunal (Procedure) Rules, 2015 as to invoke the discretion of the Tribunal to grant the orders so sought.
5. It is worth noting that the Respondent requested for the documentation, i.e. the financial statements for the years 2015 to 2018, before rendering its objection and confirming the assessment on 24<sup>th</sup> April 2019. However, the Applicant did not comply.
6. The Applicant's reason for seeking an enlargement of time is that its auditor had not finalized the preparation of the documents sought by the Respondent. However, no explanation has been proffered as to why it took a whole year to prepare and provide the documents to the Respondent.

7. Moreover, the Tribunal having combed through the Applicant's entire documentation has failed to find any other reason advanced for not filing the Appeal in time.
8. In the circumstance, the Tribunal agrees with the Respondent that the application herein fails to satisfy the conditions for enlarge of time for appeal as set forth in Section 13 (4) of the Tax Appeals Tribunal Act, 2013 and Rule 10 (2) and 10 (3) of the Tax Appeals Tribunal (Procedure) Rules, 2015.
9. The Applicant herein simply rested on its laurels from 23<sup>rd</sup> May 2019 to 4<sup>th</sup> June 2020 to file the appeal, which is a delay of over one year. The Tribunal finds this delay to be unreasonably long and unexplained. Accordingly, 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 4<sup>th</sup> June 2020 has no merits and the same is hereby dismissed.
11. There will be no orders as to costs.

**DATED and DELIVERED at NAIROBI on this 4<sup>th</sup> day of September, 2020.**

**MAHAT SOMANE  
CHAIRPERSON**

**PATRICIA MAGIRI  
MEMBER**

**TIMOTHY CHESIRE  
MEMBER**

**WAMBUI NAMU  
MEMBER**