

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL AT NAIROBI
MISC. APPLICATION NO. 42 OF 2019

JOMUSONS INVESTMENT LIMITED.....APPLICANT

-VERSUS-

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

RULING

1. The Applicant is a limited liability company incorporated in Kenya under the Companies Act cap 486. Its principal business is the provision of construction services.
2. The Respondent is a principal officer of the Kenya Revenue Authority and which Authority is established under Section 3 of the Kenya Revenue Act Cap 469 Laws of Kenya charged with the responsibility of assessment and collection of all Government Revenue.
3. On 3rd September 2018, the Respondent raised an assessment for the sum of Kshs 888, 480.00 which was received by the Applicant on the same date via Itax. The Applicant was reminded of its right to object to the assessment in accordance with Section 51 of the Tax Procedures Act, 2015.
4. The Applicant objected to the said assessment on 26th September 2018. The Respondent confirmed the said objection application vide Itax on 16th November, 2018, denying the Applicant's objection.

5. Consequently, the Applicant filed an application for extension of time to Appeal out of time on 11th November 2019. It sought the following orders:-
 - a) That this Honorable Tribunal be pleased to grant leave to the Applicant to file appeal out of time.
 - b) That the attached draft Memorandum of Appeal and Statement of Facts be deemed as duly filed.
 - c) That failure to file the appeal documents within time was occasioned by the fact that the Applicant was of the view that the matter was still under review by the Respondent.
 - d) That the intended appeal is merited and the Respondent will not be prejudiced in anyway if this application is granted.
6. The Applicant further relied on an Affidavit of Harrison Kinyanjui Mureithi, a director of the Applicant which affidavit restated the same grounds aforesaid.
7. Upon service, the Respondent opposed the application and submitted as follows:
 - a) That the Respondent raised the assessment on 3rd September 2018 for the sum of Kshs 888,480.00 which was received on the same date via Itax by the Applicant who on 26th September 2018, raised an objection against the said decision and on 16th November the Respondent issued their confirmation denying the Applicant's objection.

- b) That the application by the Applicant offends/flaunts the statutory provisions of Section 13 of the Tax Appeals Tribunal 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.
- c) That the Applicant has not satisfied the criteria for grant of an extension of time and does not therefore warrant an extension under Section 10 (30) of the Tax Tribunal (procedures) Rules.
- d) That the delay in filing the Appeal is inordinate and does not warrant extension of time.
- e) That the Respondent confirmed the objection vide Itax on 16th November 2018. Thereafter the Appellant upon receiving the confirmation failed to file a notice of appeal within thirty days thereafter.
- f) That the Applicant filed an application to file an appeal out of time on 11th November 2019 contrary to Section 13(1)(b) of the Tax Appeals Tribunal Act 2013 which stipulates that **“a notice of Appeal to the Tribunal shall be submitted within 30 days upon receipt of the decision of the Commissioner.”**
- g) That by virtue of Rule 10 (3) of the Tax Appeals Tribunal (Procedure) Rules 2015, this Honorable Tribunal may extend time for filing the Memorandum of Appeal if it is satisfied that the applicant was unable to submit the documents because of either sickness, absence from Kenya or any other reasonable cause.
- h) That the Applicant in its affidavit sworn by one said Harison Kinyanjui Mureithi has averred in paragraph 6 that the Appellants failure to file the Appeal within time was because they were mistaken that the Respondent was still reviewing the matter yet

the Respondent had served the Applicant with an objection decision on itax in accordance with Section 74(1) of the Tax Procedures Act 2015.

8. The Tribunal has carefully studied the parties' pleadings and is of the respectful view that the only issue for determination is whether the Applicant has adduced sufficient reasons for the Tribunal to grant it leave to file its appeal out time.
9. The power to extent time to file an appeal is donated under Section 13 of the Tax Appeals Tribunal which provides that the Tribunal may, upon application in writing, extend the time for submitting the documents referred to in subsection (2) of the said Act, due to sickness, absence from Kenya or other reasonable cause.
10. The Tribunal is guided by the criteria set in the case of **Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others (2014) eKLR** where it was held that:
 - a) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
 - b) A party who seeks for extension of time has the burden of laying the basis to the satisfaction of the court.
 - c) Whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis.
 - d) Whether there is a reasonable reason for delay, the delay should be made to the satisfaction of the court.

- e) Whether there will be prejudice suffered by the Respondent if the extension is granted.
- f) Whether the application for extension has been brought without undue delay.
11. The Tribunal notes that the Respondent's demand was on 3rd September 2018, to which the Applicant objected on 26th September 2018, which objection was made within the thirty (30) days as envisaged in law. Further, the Respondent served the Applicant with an objection decision on itax on 16th November 2018 denying the Applicant's objection.
12. The Tribunal notes that it was not until 11th November 2019 that the Applicant filed an application to appeal out of time. This was a period of one year since the Applicant received the Respondent's Objection Decision. We find that the Applicant slept on its laurels as the period is inordinately long in the circumstances.
13. Moreover, it is worth noting that the Applicant has averred in both its grounds and supporting affidavit filed on 11th November, 2019 that the reason for the delay was due to the mistaken impression that the Respondent was still reviewing their matter, having submitted the documents in support of their objection. However, the Tribunal notes that by the time of filling this application, the Respondent had already served the Applicant with an objection decision denying the Applicant's objection, therefore, there was nothing still under review by the Respondent. We find that the said averment by the Applicant's director under oath is not true.
14. In view of the foregoing, the Tribunal makes a finding that the Applicant has failed to demonstrate to its satisfaction as to the reason for its delay in filing the appeal on time.

15. Consequently, the application is unmerited and the Tribunal makes the following Orders:-

a) The application is hereby dismissed.

b) Each party to bear its costs.

DATED and DELIVERED at NAIROBI this 2nd Day of October, 2020.

JOSEPHINE K. MAANGI
CHAIRPERSON

TANVIR ALI
MEMBER

GEOFFREY KARUU
MEMBER

DELILAH K. NGALA
MEMBER