

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
APPEAL NO. 85 OF 2015

BETWEEN

THE EAST AFRICAN MARINE SYSTEMS LIMITED.....APPELLANT

-AND-

THE COMMISSIONER OF DOMESTIC TAXESRESPONDENT

RULING

The Appellant filed its Memorandum of Appeal on the 12th of March, 2014 and filed the Statement of Facts on the same day.

The Respondent did not file its Statement of Facts within thirty (30) days for the issues in dispute in respect of Withholding Tax which period also covered the dispute in respect of Value Added Tax (VAT).

The Tax Appeals Tribunal Act came into force on 1st of April, 2015. This Act has provision for the timelines within which parties have to file pleadings.

This appeal came up for mention on 4th December, 2015. The record shows that the Appellant was represented by both Mr. Martin Kisuu and Mr. Karanja Kamotho whilst the Respondent was represented by Mr. Hudson Omari.

The Tribunal made an order for the Hearing Notice to issue hence the hearing of this appeal today the 27th January, 2016. When this appeal came up for hearing both parties indicated to the Tribunal that they were ready to proceed with the hearing of the appeal and were allocated time for this purpose. However when the parties appeared for the substantive hearing Mr. Martin Kisuu for the Appellant orally made an application for his appeal to be allowed as the Respondent had not filed its response and Statement of Facts.

We have perused the file availed by the Tax Appeal Tribunal Secretariat and noticed that the Respondent filed what it refers to as the Commissioner's Memorandum and Statement of facts on 25th January, 2016 (two days ago).

This appeal is an amalgamation of two cases arising out of a dispute under the Income Tax Act and the VAT Act filed under the Local Committee and the VAT Appeals Tribunal respectively.

From the records availed to the Tribunal we have established that there is no application seeking to extend time for the Respondent to file its pleadings. That is all we need to say in respect to the filing of the pleadings at this stage.

Upon Mr. Kisuu concluding his argument and upon the Respondent being requested to reply, the Respondent did not reply to the issues raised in the Appellant's oral application but instead applied for an adjournment on the grounds that it was not ready to proceed with the application and that it did not have notice that the Appellant would make the oral application. It urged the Tribunal to grant it an adjournment on the further grounds that the appeal involves a matter of great public interest, the subject matter is substantial and that it is only fair and just that the matter be heard and determined on merit. The Respondent also admitted that it filed its response and Statement of Facts on 25th of January, 2016.

We wish to draw the attention of the parties to the provisions of *Section 13(7)* which mandatorily requires the Tribunal to hear and determine an appeal before it within ninety (90) days from the date of the filing of the appeal. This provision enjoins the Tribunal and other parties to be vigilant in the prosecution of their respective obligations under the Act.

With the greatest respect to the Respondent the Tribunal is not impressed by its conduct in respect to this matter this far as it was dishonest in misleading the Tribunal that it was in a position to proceed with the substantive hearing of the appeal while it knew all along that its house was not in order and that it could have proceeded on the basis of its pleadings on record.

This is a clear example of the lack of vigilance and seriousness on the part of the Respondent which attitude and conduct is in breach of Section 13(7) of the Act.

The conduct of the Respondent amounts to nothing short of a blatant waste of the valuable time and resources of this Honourable Tribunal and the Appellant.

The Tribunal is cognizant of the lack of seriousness and lackluster attitude of the Respondent in respect not only to this appeal but also to other matters before it.

The Respondent while replying to the Appellant's application shamelessly misled the Tribunal by claiming that during the mention of the appeal it was represented by technical experts who would have been in a better position to respond to the application by the Appellant but who were not present in the Tribunal today. The record indicates the contrary in that one Hudson Omari whom we have mentioned earlier as present in the mention is present today. We hope that the Respondent will up their game and take this Tribunal seriously.

This Tribunal has carefully considered the arguments by both parties the pleadings before it and the law. It has further taken into account that this is the first application by the Respondent for adjournment and that the subject matter is substantial.

The Tribunal considers this to be a proper case for the Tribunal to exercise its discretion in allowing the adjournment sought by the Respondent which it has reluctantly granted.

The Tribunal further directs that the Respondent shall reply to the Appellant's application on the 22nd February, 2016 when this matter comes up for further hearing.

The Respondent is condemned to pay the Tribunal and the Appellant's costs of adjournment. The parties are directed to address the Tribunal on the quantum of the said costs on the 22nd of February, 2016.

Orders accordingly.

Dated at Nairobi this 27th day of January, 2016.

A.G.N KAMAU (CHAIRMAN)

GEOFFREY K.C. KATSOLEH

PHILOMENA N. KIROKEN

PHILIP K. KORIR

WILFRED N. GICHUKI

