

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
MISC. APP. NO. 32 OF 2019

EMMANUEL TRADING COMPANY LIMITED.....APPLICANT

-VERSUS-

THE COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

RULING

1. The Applicant filed a Notice of Motion under certificate of urgency on 23rd of October, 2019. The same is supported by an affidavit sworn on 23rd October 2019 by its director, Godfrey Kairanga Mwangi.
2. The Notice of Motion dated 23rd of October, 2019 sought the following orders:-
 - a) **THAT** this Application be certified urgent and in view of the urgency, service in the first instance be dispensed with.
 - b) **THAT** the Honourable Tribunal be pleased to enlarge the time within which the Applicant is to file the Memorandum of Appeal, Statement of Facts and tax decisions by thirty (30) days.
 - c) **THAT** consequently, the said Memorandum of Appeal, Statement of Facts and tax decisions be deemed to have been properly filed within time.
 - d) **THAT** the Honourable Tribunal be pleased to restrain the Respondent from issuing an agency notice against the Applicant pending the hearing and determination of this Application and Appeal.
 - e) **THAT** the Applicant be at liberty to apply for further orders as the Honourable Tribunal may deem just to grant.
 - f) **THAT** the costs of this Application be in the cause.

3. The Respondent, upon service of the said application filed its grounds of opposition on 31st October, 2019.
4. The sworn affidavit of Godfrey Kairanga Mwangi dated 23rd October, 2019 states that he is a director of the Applicant, which is the holder of KRA Pin No. P051612238Z which Pin he previously used to operate a wholesale business which was subsequently taken over by the Applicant.
5. He stated that during the year 2017, the Respondent made additional assessment against the Applicant whereupon his tax agents, Messrs Njenga K. Ngugi and company objected to the said additional taxes vide a letter dated 25th May, 2019. The said tax agents proceeded to make an offer to provide the Respondent with all relevant documents used to audit the accounts for the said period.
6. The Applicant's director further stated that while the parties were reviewing the options of settlement, he was astonished to find through his tax agents that the Respondent had escalated the matter to its tax collection department.
7. According to the Applicant's sworn affidavit, failure to lodge its appeal on time was solely due to the fact that the need to lodge the appeal only arose when the matter was escalated to the debt collection department of the Respondent, while the Applicant was still hopeful that the matter would be resolved amicably with the Respondent's Nyeri local office.
8. On its part, the Respondent opposed the application vide its grounds of opposition dated 31st October, 2019 and filed on even date. The Respondent contended that the application offends the mandatory and express provisions of the law and further that the Applicant has not satisfied the criteria set out in the relevant law to warrant leave to enlarge time within which to file an appeal.
9. Having carefully considered the Application, its supporting affidavit and the grounds of opposition, the Tribunal notes that the issue for its determination is whether the Applicant has been able to advance reasonable grounds to enable it exercise its discretion to extend time to appeal out of time as provided for under Section 13(3) and (4) of the Tax Appeals Tribunal Act.

10. The Tribunal will turn to the relevant legislation relating to the determination as to whether it ought to extend time to the Applicant to file and serve the Respondent with the Notice of Appeal, Memorandum of Appeal and Statement of Facts. The same is Section 13(3) and (4) of the Tax Appeals Tribunal Act and it provides as follows:-

“(3) The Tribunal may, upon application in writing, extend the time for submitting the documents referred to in subsection (2).

(4) An extension under subsection (3) may be granted owing to absence from Kenya or sickness, or other reasonable cause that may have prevented the applicant from giving notice of appeal within the specified period”.

11. Consequently, the Tribunal is required to determine the length and reason for the delay when determining the Application for extension of time to appeal out of time. It is noted that the power to extend time is discretionary and unfettered but the same must be exercised judiciously.
12. The Tribunal has carefully studied the Applicant’s application together with the documentation therein including the supporting affidavit by the applicant for its failure to lodge the Appeal on time. The only reason advanced by the Applicant is that the need to file this application only arose when the matter was escalated to the debt collection department of the Respondent. This is a clear admission on the part of the Applicant that it was indeed awoken from its slumber by the Respondent’s action. The Applicant’s assertion that the parties were reviewing the matter for settlement is unsupported as it has failed to demonstrate that there were any negotiations going on between the parties. There is no communication produced to show that the parties were engaging in any way to substantiate the same.
13. The Tribunal notes that the Applicant, after objecting to the said tax assessment vide its letter of 26th December, 2018 did not take any action until 23rd of October 2019 when it filed this application. This was after a period of over ten (10) months. The Tribunal finds that it is clearly evident that the delay herein is inordinate in the circumstances.

14. It is trite law that the law does not aid the indolent but the vigilant. Consequently, the Tribunal finds that the Applicant does not deserve orders sought as it has failed to demonstrate to the satisfaction of the Tribunal as to the reasons for the delay in lodging its appeal as envisaged in law.
15. The Applicant having failed to satisfy the criteria set out in law for granting of an extension of time to file its appeal, the Tribunal holds that the Application dated 23rd of October, 2019 is unmerited and must fail.
16. The upshot of the foregoing is that the Tribunal makes the following Orders:-
- a) The Applicant's Notice of Motion dated 23rd October, 2019 and filed on even date is hereby dismissed.
 - b) Each party to bear its costs.

DATED and DELIVERED at NAIROBI this 27th day of February, 2020.

In the presence of:-

Benson Njirufor the Applicant
Jashva Opandefor the Respondent

MOSES B. OBONYO
CHAIRMAN

JOSEPHINE K. MAANGI
MEMBER

GABRIEL KITENGA
MEMBER