

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
MISC. APP. NO. 33 OF 2019

NIMSOS TRADING COMPANY LIMITED.....APPLICANT

-VERSUS-

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 it's 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 5th November, 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 in the year 2017, the Respondent assessed additional taxes against the Applicant to which the latter's tax agents, Messrs Njenga K. Ngugi and company objected to the same vide a letter dated 25th May, 2019 and made 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, the Applicant was surprised to find through its tax agents that the Respondent had escalated the matter to its tax collection department for recovery of the assessed taxes.
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 this application 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. The Respondent opposed the application vide its grounds of opposition dated 5TH November 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 to the satisfaction of the Tribunal that there were any negotiations going on between the parties. There is no evidence produced to substantiate the same as the Applicant has failed to do so.
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 the 23rd of October 2019 when it filed this application. This was after a period of over Ten months. The Tribunal finds that it is clearly evident that the delay herein is inordinate in the circumstances.
14. Consequently, the Tribunal finds that the failure to file the appeal on time was of the Applicant’s own making and in the absence of any adequate and reasonable explanation for the delay leading to the expiry of time, the

Applicant does not deserve the orders sought. The Tribunal holds that the Application dated 23rd of October, 2019 is unmerited and must fail.

15. 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 it's costs.

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

In the presence of

Benson Mjirufor the Applicant

Lydia Ngangafor the Respondent


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MOSES B. OBONYO
CHAIRMAN


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JOSEPHINE K. MAANGI
MEMBER


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GABRIEL KITENGA
MEMBER