

**REPUBLIC OF KENYA**  
**IN THE TAX APPEALS TRIBUNAL**  
**MISC. APP. NO. 36 OF 2019**

ZHANGO LIMITED.....APPLICANT

-VERSUS-

THE COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

**RULING**

1. The Applicant filed a Notice of Motion under certificate of urgency on 23<sup>rd</sup> of October, 2019. The same is supported by an affidavit sworn on 26<sup>th</sup> October 2019 by its Director, Jennifer Wambura Kinyua.
2. The Notice of Motion dated 23<sup>rd</sup> of October, 2019 sought the following Orders:-
  - a) **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.
  - b) **THAT** consequently, the said Memorandum of Appeal, Statement of Facts and tax decisions be deemed to have been properly filed within time.
  - c) **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.
  - d) **THAT** the Applicant be at liberty to apply for further orders as the Honourable Tribunal may deem just to grant.
  - e) **THAT** the costs of this Application be in the cause.
3. Upon service of the said application, the Respondent filed its Grounds of Opposition on 5<sup>th</sup> November, 2019.

4. The said sworn affidavit of Jennifer Wambura Kinyua states that she is one of the Directors of the Applicant, which is the holder of KRA Pin No. P051516384Q, which performed a tender awarded to it by Kenya Rural Roads Authority for construction of a road. In preparing the said tender, the Applicant made purchases of assorted materials and the Purchase Orders were duly filed with the Respondent. Following the invoice generated from the said tender and the cost of purchases, the Applicant assessed itself and paid taxes of Kshs. 27,035/=.
5. The said Director further stated that the Respondent rejected the purchases invoices provided and on 9<sup>th</sup> May, 2019 issued an Assessment of Additional Taxes of Kshs. 229,279/= . The Applicant objected to the same vide its tax agent's letter of 27<sup>th</sup> of August 2019, annexed to the application.
6. According to the Applicant's sworn affidavit, failure to lodge its Appeal on time was solely due to the fact that the Applicant was still hopeful that the matter would be resolved amicably with the Respondent's Nyeri local office.
7. On its part, the Respondent opposed the application vide its Grounds of Opposition dated 5<sup>th</sup> 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.
8. 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.
9. 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”.*

10. Consequently, the Tribunal is required to determine the reason for the delay when determining an 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.
11. 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 it was still hopeful that the matter would be resolved amicably with the Respondent’s Nyeri local office. The Applicant’s assertion that it was hopeful for a settlement is a mere allegation on its part as it is unsupported. 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. The Tribunal will therefore treat it as such, a mere allegation.
12. In view of the foregoing, the Tribunal finds that the Applicant does not deserve the 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.
13. 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 23<sup>rd</sup> of October, 2019 has no merit.
14. The upshot of the foregoing is that the Tribunal makes the following Orders:-
  - a) The Applicant’s Notice of Motion dated 23<sup>rd</sup> October, 2019 and filed on even date is hereby dismissed.
  - b) Each party to bear its costs.

DATED and DELIVERED at NAIROBI this 27<sup>th</sup> day of February, 2020.

In the presence of

Benson Njiru .....for the Applicant

Lydra Ng'anga .....for the Respondent

MOSES B. OBONYO  
CHAIRMAN

JOSEPHINE K. MAANGI  
MEMBER

GABRIEL KITENGA  
MEMBER