IN THE COURT OF APPEAL OF TANZANIA

AT DAR-ES-SALAAM

(CORAM: MUGASHA, J.A., KITUSI, J.A., And RUMANYIKA, J.A.)

CIVIL APPEAL NO. 283 OF 2021

AHMED TEJA T/A ALMAS AUTOPARTS LIMITED ..... APPELLANT
VERSUS
COMMISSIONER GENERAL TRA .....RESPONDENT

[Appeal from the Judgment and decree of the Tax Revenue Appeals Tribunal at Dar es Salaam]

(Kamuzora, Vice Chairperson)

dated the 15th day of March, 2021
in
Tax Appeal No. 76 of 2019

JUDGMENT OF THE COURT

8th & 22nd November, 2022

KITUSI, J.A.:

The appellant intends to appeal against the decision of the respondent rejecting his objection to tax assessments. However, as he was late in doing so, he applied to the Tax Appeals Board (Board) for extension of time in terms of section 16 (5) of the Tax Revenue Appeals Act Cap 408, (the Act) citing illness as the reason for the delay. That application was dismissed, and so was the appeal before the Tax Revenue Appeals Tribunal (Tribunal) intended to challenge the dismissal by the Board. This is an appeal against the decision of the Tribunal dismissing the appeal.

Essentially, there is one issue for our determination, namely whether the decision of the Board dismissing the application and that of the Tribunal dismissing the appeal were erroneous. In refusing to extend time, both the Board and the Tribunal took the view that when the appellant was taken ill on 8th December, 2017 as alleged by him, he was already out of time counting from 31st August 2017 when the objection was rejected by the respondent.

Caselaw is settled that extension of time is in the discretion of the court. See **Paradise Holiday Resort Limited v. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018 (unreported). In order therefore, for the appellant to succeed here, he has to persuade us that the Board and the Tribunal on appeal did not exercise their discretion judicially.

This appeal is mainly on the same argument as reflected by the first ground of appeal which reads:-

> *"1. That the Tax Revenue Appeals Tribunal erred in law by holding that the appellant's sickness could hardly be a cause for his delay to lodge with the Board the intended appeal"*

The appellant prosecuted the appeal in person by adopting the written submissions that had earlier been drawn and lodged by Mr.

Mustapha Said Nassoro, learned advocate. It appeared that the appellant and that advocate had parted ways, so he opted to proceed on his own and in doing so he did not add anything to the written submissions. On the other hand, the respondent appeared through Mr. Leyan Sabore, learned State Attorney. He also adopted the written submissions which he had earlier lodged in opposition of the appeal. He too did not have an additional oral address.

As we intimated earlier, the same issue is being presented for our determination again. First, in order to put matters in their proper perspectives, we ask whether the Tribunal really stated what is being alleged in the first ground of appeal that *"sickness could hardly be a cause for his delay..."* With respect, the learned Vice Chairperson of the Tribunal did not say anything of that sort. Rather the Board, having found that by the time the appellant fell ill he was already out of time, it observed that:- *"... the applicant's sickness of 8th December, 2017 could hardly be a cause for his delay..."*

It is to be noted that section 16 (5) of the Act is clear that extension of time may be granted on ground of illness, therefore the Board would not have stated what it is alleged in ground 1 above. However, we cannot fault the findings of the Board and that of the

Tribunal that the alleged illness of 8th December, 2017 was irrelevant in accounting for the delay counted from 31st August, 2017 because we agree with their finding that long before the appellant was taken ill, he was time barred in appealing. For that reason, the first ground of appeal has no merit and must be dismissed.

Instead of proceeding to consider grounds 2 and 3, we shall now consider ground 4. This is because the appellant has abandoned ground 3 and that given the nature of the complaint in ground 2, we shall consider it last in passing. Ground 4 states:-

> *" That the Tax Revenue Appeals Tribunal erred in law in holding that the appellant was well informed on the rejection of his notice of objection on 31st August 2017 in the absence of such evidence (letter dated 31st August 2017)".*

The appellant argued before the Board and Tribunal and has continued to argue before us that there was no proof that he became aware of the rejection of the objection earlier than 18th December, 2017. He relied on the respondent's letter dated 14th December, 2017 which he claims he received on 18th December, 2017.

In rejecting this argument, the Tribunal observed that the letter dated 14th December, 2017 was a mere reminder as it cited the letter of 31st August, 2017. Before us, the appellant argued that the Tribunal ought to have called evidence to satisfy itself if the letter dated 31st August, 2017 did, in fact, exist. The respondent's counsel argued that this point was not raised before the Board for it to determine. Citing section 16 (4) of the Act, he argued that the Tribunal could not have decided on a point that was not decided upon by the Board.

We find the appellant's argument that he became aware of the rejection on 18th December, 2017 to be self-defeating, because before the Board, the affidavit taken in support of the application only cited the illness of 8th December 2017 as the reason for the delay. We need not remind the appellant that affidavits, which are statements made on oath, are the basis upon which applications are decided. Any statement not raised in affidavit is always disregarded as a mere statement from the bar. We reiterate what we stated in **Richard Mchau v. Shabir F. Abdulhussein** Civil Application No. 87 of 2008 (unreported), that:-

> *"It is our considered view that if the applicant was served out of time, he would not have failed to raise such an alarm in the affidavit. Having not done so, we think, the respondent's contention to*

the effect that the applicant's assertion is an afterthought holds a lot of water".

Similarly, in this case, the alleged late service of notification must have been an afterthought because it is inconceivable that the appellant would not raise that fact in the supporting affidavit and instead raised the issue of illness on dates that bear no relevancy. In arguing that the Tribunal ought to have called evidence, the appellant in effect acknowledges that there was none presented by him for the court's determination. Since cases belong to the parties it is for them, not the court, to prove relevant facts. See **Anthony M. Masanga v. Penina Mama Mgesi and Lucia Mama Anna,** Civil Appeal No. 118 of 2014 (unreported). This ground is also devoid of merit, and is dismissed.

We shall now deal with ground 2, alleging that the appellant was denied the right to be heard. The appellant cited the Constitution of the United Republic of Tanzania, 1977 and caselaw to argue that the denial of extension of time denied him the right to be heard on the main grievance. He cited **EX D 8656 CPL Senga Idd Nyembo & Others v. Republic** Criminal Application No. 16 of 2018, **National Insurance Corporation Ltd v. Shengena Ltd,** Civil Application No.230 of 2015

and **DPP v. Yassin Hassan**, Criminal Appeeal No. 202 of 2019 (all unreported).

The respondent's counsel submitted that the cited cases are not relevant to the instant case. He further submitted that the decision by the respondent was according to tax laws, and failure by the appellant to challenge it within the time prescribed by law cannot be said to constitute denial of the right to be heard.

With respect, we do not go along with the appellant on this point. For one, sub article (3) of article 13 of the Constitution provides that the courts shall safeguard the rights and duties of citizens according to law, so the appellant's right to be heard should be exercised according to law. In **Golden Globe International Services Ltd & Another v. Millicom Tanzania N.V & 4 Others**, Civil Application No 441/01 of 2018 (unreported), we adopted the following statement made by the High Court in **Afriscan Group (T) Limited v. Said Msangi**, Commercial Case No. 87 of 2013 (unreported):-

> *"The right to be heard just like other rights, must be exercised within the confines of the law so as to avoid further breach of justice".*

We reiterate that position and we dismiss ground 2 for being misconceived and lacking merit. Consequently, for the reasons we have shown, this appeal is dismissed with costs.

It is so ordered.

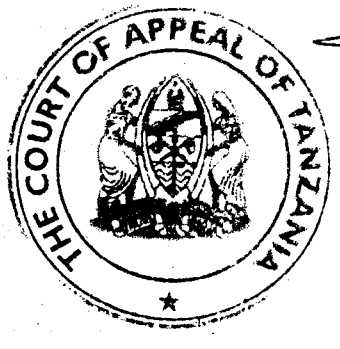
DATED at **DAR ES SALAAM** this 18th day of November, 2022.

S. E. A. MUGASHA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of November, 2022 in the presence of Mr. Andrew Francis, learned State Attorney for the Respondent and in the absence of the Appellant, is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL