IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CIVIL APPEAL NO. 211 OF 2019

STAR MEDIA (TANZANIA) LIMITED ..... APPELLANT

VERSUS

THE TANZANIA REVENUE AUTHORITY ..... RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar-es-Salaam)

(Mjemas, J.)

dated the 24th day of June, 2019
in
Tax Appeal No. 1 of 2018

JUDGMENT OF THE COURT

21st April & 7th May, 2021

KITUSI, J.A.:

This appeal arises from the decisions of the Tax Appeals Board (The Board) and the Revenue Tax Appeals Tribunal (The Tribunal), the Board dismissing the appellant's application for extension of time and the Tribunal dismissing the subsequent appeal that sought to challenge the Board's decision. The undisputed facts forming the background of this matter as correctly summarized by the Tribunal are as follows: -

On 31 March 2017 the respondent in exercise of its statutory powers served the appellant with tax assessments for the years of

income 2013, 2014 and 2015 raising a demand for a total of TZS 8,443,993,166.00. The appellant objected to the assessment and the objection was admitted by the respondent after payment of TZS 150,000,000.00 by the appellant.

We are, at the moment, skipping some details which we will bring forth at an appropriate time later. On 6th June 2017 the respondent informed the appellant in writing that it had determined the objection by refusing to vary or amend the assessment of TZS 8,443,993,106.00, and that it intended to confirm it. The appellant had a right of appeal against the respondent's decision and should have lodged a notice of appeal within 30 days under Rule 3 (1) and (2) of the Tax Revenue Appeals Board Rules, 2018 (the Rules). However, for some reason, she did not lodge that notice within the time stipulated by law.

On 25th August 2017 the appellant lodged at the Board, an application for extension of time within which to lodge a notice of appeal against the respondent's decision. The Board dismissed the application and as we have indicated earlier, the appellant's first appeal to the Tribunal to challenge the dismissal bore no fruits. Hence this appeal.

Prior to the determination of the objection, the respondent had written to the appellant requiring her to submit to it audited financial

statements for the years under scrutiny, and to do so within three days. However, the appellant could not do so within time on the ground that the statements were in the office of the Controller and Auditor General (CAG), and she wrote the respondent to disclose that predicament. That was the appellant's main ground before the Board in the application for extension of time

The respondent admitted to have received the applicant's said letter but submitted that the same was received after the objection had already been determined. It was further submitted that in the notice of confirmation of the intended tax assessment, the respondent stipulated the procedure to be followed by the applicant if she intended to dispute it.

At the end of the day, the Board accepted the respondent's argument that the applicant had not shown reasonable cause for the delay as required by section 16 (5) of the Tax Revenue Appeals Act, Cap 408, (Cap 408) because at the time the appellant informed the respondent by a letter dated 17th August, 2017 that the statements were in the CAG's office, the objection had already been determined.

Before the Tribunal on first appeal and before us, the appellant raised the issue of illegality. It was her contention that the respondent

determined the objection without affording her an opportunity to be heard. This is reflected in the first two grounds of appeal which run as follows: -

1. *That the Tax Revenue Appeals Tribunal erred in law by holding that the appellant was given an opportunity to be heard by the respondent before confirming the assessment.*
2. *That the Tax Revenue Appeals Tribunal erred in law by holding that the issue of illegality does not arise after holding that the complaint concerning the right to be heard has no merit.*

The third ground of appeal was not pursued. It had sought to fault the Tribunal on a factual finding that the Board correctly relied on the appellant's letter to the respondent as being proof of the said appellant's conduct. We go along with the appellant that this ground of appeal was correctly abandoned because it is factual and there are two concurrent findings on it.

Back to the question of illegality raised under the two grounds of appeal, we have to make it clear right from the beginning, that since the Tribunal decided on that question, our duty is limited to determining if that decision should or should not stand. Mr. Stephen Axwesso, learned

advocate for the appellant, urged us to find fault in the decision of the Tribunal. Written submissions had been filed well ahead of the date of hearing, and counsel adopted them, preferring to elaborate on those two grounds of appeal.

Mr. Axwesso's arguments were on what he insisted should have been done under section 52 of the Tax Administration Act, No. 10 of 2015, hereafter the Act, upon admitting the objection. He then pointed out what was actually done in this case. He submitted that section 52 of the Act requires the respondent, upon admitting an objection raised by a tax payer, to determine it. Specifically, he referred to section 52 (3) of the Act as requiring the respondent to respond to every aspect of the objection, and section 52 (4) of the Act as giving the appellant the right to submit on every aspect of it.

Instead of observing that procedure, counsel submitted, the respondent demanded audited financial statements, thereby denying the appellant the statutory right of addressing every point as stipulated under the law cited above. Mr. Axwesso submitted further, referring to the decision of the Tribunal, that it erred in observing that the issue of illegality was not raised, while in fact it was. Counsel argued that the illegality was so patent that even if it had not been raised by the

appellant, the Tribunal ought to have raised it on its own motion. He submitted that in its determination on the issue of denial of the right to be heard, the Tribunal erred because it did not consider the effect of the clear violation of the procedure stipulated under section 52 (3) (4) and (5) of the Act. Counsel referred to the case of **Dishon John Mtaita v. The Director of Public Prosecutions,** Criminal Appeal No. 132 of 2004 (unreported) and Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977 to support his argument that the right to be heard is fundamental and the respondent's violation of that right is fatal. He proceeded to submit that, that violation constitutes an illegality, which in turn entitles the appellant to extension of time. On this, the learned counsel cited the cases of **Arunaben Chaggan Mistry v. Naushad Mohamed Hussein and 2 Others,** Civil Application No. 6 of 2016 and; **V.I.P Engineering and Marketing Limited v. Citi Bank Tanzania Limited,** Consolidated Civil Reference No. 6, 7 and 8 of 2006 (both unreported).

On the other hand, the respondent was opposed to the appeal. It was represented by Mr. Harold Gugami, learned Senior State Attorney. Like the appellant, the respondent had filed written submissions, which Mr. Gugami adopted immediately upon taking the floor.

The learned Senior State Attorney's initial argument was that the appellant did not need the audited financial statements in lodging the intended notice of appeal. Then he went on to take us through the procedure that was followed by the respondent and argued that it acted within the law. He submitted that section 52 (1) of the Act empowers the Commissioner, when dealing with an objection, to request for further evidence. He submitted that the respondent's demand for submission of audited financial statements was meant to call from the appellant, submission of further evidence under that provision. When the appellant did not comply with the respondent's demand, the respondent issued a letter informing her of its intention to confirm the assessment. In this letter, the appellant was given 30 days within which to make submissions against the intended confirmation. When there were no submissions by the appellant, on 10th July 2017 the respondent confirmed the assessment.

Mr. Gugami submitted that the appellant acted outside the law, so he cannot take advantage of illegality. He submitted further that the cases cited by Mr. Axwesso on illegality are distinguishable to the facts of the present case.

Those are the arguments by the parties, for us to consider. Our starting point is section 16 of Cap 408 and Rule 3 (1) and (2) of the Rules. Under the Rules, the period for lodging a notice of appeal is 30 days from the date of the impugned decision. The Board has powers under section 16 (5) of Cap 408 to extend the time upon proof by the applicant that the delay was caused by his absence from the United Republic, or his illness or any other reasonable cause.

There is no dispute that illegality has, hitherto, formed a ground for extension of time in its own right. The question that lingers here is whether the appellant was denied the right to be heard as alleged, because if she was denied that right, then that constitutes an illegality.

Although the counsel for the parties hold different views on the matter, both of them have built their arguments around the same provisions of section 52 of the Act. We shall reproduce that provision in full so as to easily fathom the essence of the arguments: -

> *"(1) The Commissioner General may, upon admission of an objection pursuant to section 51, make a decision by determining the objection or call for any evidence or any other information as may appear necessary for the determination of the objection and may, in that respect-*

(a) *amend the assessment in accordance with the objection and any further evidence that has been received; or*

(b) refuse to amend the assessment.

(2) *where the Commissioner General agrees to amend the assessment in accordance with the objection,*

he shall serve a notice of the final assessment to the objector.

(3) *where the Commissioner General-*

(a) intends to amend the assessment in accordance with the objection and any further evidence; or

(b) decides to refuse to amend the assessment, he shall serve the objector with a notice setting out the reasons for the intention or decision.

(4) *The objector shall, within thirty days from the receipt of the notice pursuant to subsection (3), make submission in writing to the Commissioner General on his agreement or disagreement with the amended assessment or the refusal.*

(5) *The Commissioner Generai may, after the receipt of the submissions by the objector made pursuant to subsection (4)-*

(a) *determine the objection in the light of the amended assessment or refusal and any submission made by the objector; or*

(b) *determine the objection partially in accordance with the submission by the objector.*

We have closely read the above provisions as well as the written communications the respondent made to the appellant. It dawns on us that the respondent acted within the law and the appellant's insinuation of denial of a hearing is a vain attempt lacking legal support. We shall give our reasons.

First, we agree with Mr. Gugami that section 52(1) empowers the respondent to request for more evidence. Acting under those powers, the respondent wrote to the appellant on 29/5/2017 requiring submission by her of duly signed audited financial statements. On 6/6/2017 the respondent wrote to the appellant a letter intimating an intention to confirm the assessments after the appellant's failure to submit the said statements. Part of the letter reads:

> *"According to available evidence your objections were admitted and, in the determination process it was realized that duly signed audited financial statements for*

the period under review were not submitted. It should be noted that application of section 40 (3) of the Tax Administration Act, 2015 on jeopardy assessments were effected due to such failure and that financial statements are basic documents in objection determination. In view of the above, the Commissioner General has refused to amend the assessments and you are given thirty (30) days from the receipt of this notice to make submission in writing to the undersigned as to whether you agree or disagree on the decision made as per law".

Secondly, we hold the view that the very request for evidence in the form of duly signed audited financial statements, was an opportunity for the appellant to be heard by substantiating her objection. Even when no statements were submitted, the record shows that the respondent did not unilaterally confirm the assessments. Rather, it wrote to the appellant and gave her 30 days within which she could make submissions in opposition to the proposed confirmation.

Therefore, while we agree with the appellant's argument that the respondent had a legal duty to determine every aspect of the objection and the appellant had a right to submit on every aspect of the objection, our conclusion from the available material is that since the appellant

made no submissions for the respondent to consider, she cannot blame anyone for the self-inflicted injury that resulted. What we gather from the provisions of section 52 of the Act is that the right of a tax payer to be heard is inherent in it, and all the appellant as well as the respondent needed to do was to comply with that provision.

Incidentally, all that is too much of a digression, in our view because, in principle, for a party to successfully argue illegality in an application for extension of time, it must be one that is obvious. We have said this so many times, since the times of **Principal Secretary Ministry of Defence and National Service v. Devran Valambia** [1991] T.L.R 387 and other cases such as **Lyamuya Construction Company Limited v. The Board of the Registered Trustees of Young Women Christian Assosciation of Tanzania**, Civil Application No. 2 of 2010 and **Ngao Godwin Losero v. Julius Mwarabu,** Civil Application No. 10 of 2015 (both unreported). We need not repeat ourselves in expressing the view that illegality should not involve long drawn arguments for it to qualify as a ground for extension of time. In this case however, that is exactly what happened.

To conclude this part, we agree with the Tribunal that there was no illegality, and that in any event, not every time illegality is raised, it should entitle a party to extension of time. After all, the decision of the Tribunal was in the exercise of its discretionary powers which is rarely questioned by a superior court or tribunal. In the case of **Republic v. Donatus Dominic @ Ishengoma and 6 Others**, Criminal Appeal No. 262 of 2018 (unreported), we cited our earlier decision in **Credo Siwale v. Republic,** Criminal Appeal No. 417 of 2013 (unreported) where we stated: -

> *"There are principles upon which an appellate Court can interfere with the exercise of discretion of an inferior court or tribunal. These general principles were set out in the decision of the East Court of Appeal in MBOGO AND ANOTHER v. SHAH [1968] E.A. 93. And these are:-*
>
> *(i) if the inferior court misdirected itself; or*
>
> *(ii) it has acted on matters on which it should not have acted; or*
>
> *(iii) it has failed to take into consideration matters which it should have taken into consideration,*
>
> *And in so doing, arrived at a wrong conclusion."*

None of the three factors exist in this case, so we have no justification for interfering with the decision of the Tribunal. Accordingly, we find no merit in this appeal. We dismiss it in its entirety, with costs.

DATED at **DAR-ES-SALAAM** this 29th day of April, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

Judgment delivered this 7th day of May, 2021 in the presence of Mr. Stephen Axwesso, learned counsel for the appellant and Mr. Harold Gugami and Mr. Uso Luoga, learned Senior State Attorneys for the respondent, is hereby certified as a true copy of the original.

H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL