



**Central Rift Valley Water Development Agency v Kenya Revenue Authority & another (Miscellaneous Application E563 of 2022)  
[2022] KEHC 16893 (KLR) (Commercial and Tax) (21 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E563 OF 2022  
DAS MAJANJA, J  
DECEMBER 21, 2022**

**BETWEEN**

**CENTRAL RIFT VALLEY WATER DEVELOPMENT AGENCY ..... APPLICANT**

**AND**

**KENYA REVENUE AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER OF DOMESTIC TAXES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant has filed a Notice of Motion dated July 25, 2022 invoking, *inter alia*, sections 1, 1A, 3 and 3A of the [Civil Procedure Act](#) (chapter 21 of the Laws of Kenya), order 42 rules 1(1) of the [Civil Procedures Rules](#), section 32 of the [Tax Appeals Tribunal Act](#), 2013 and sections 53 and 56 of the [Tax Procedures Act](#), 2015 where it seeks the following orders:
  - i. Spent\*;
  - ii. That this honourable court be pleased to grant stay orders allowing the applicant herein to file the intended appeal out of time against the decision of the Tax Appeals Tribunal rendered on June 4, 2021.
  - iii. Spent\*
  - iv. That this honourable court be pleased to grant the applicant leave to file a tax appeal against the decision of the Tax Appeals Tribunal Appeal Number 230 of 2020 Central Rift Valley Water Development Agency vs Commissioner of Domestic Taxes delivered on June 4, 2021, out of the stipulated 30- day period under section 32(1) of the [Tax Appeal Tribunal Act](#), No 40 of 2013



- v. That this honourable court be pleased to order that the Notice of Appeal marked “SKO1” annexed to this application be deemed as duly filed and served or in the alternative, this honourable court be pleased to give directions with regard to the filing and service of the Notice of Appeal.
  - vi. That such further orders and directions be issued to facilitate just, expeditious and fair determination of this application and the substantive appeal
2. The application is supported by the grounds on its face and the affidavit sworn on July 25, 2022 by the applicant’s Chief Executive Officer, Eng Samuel K Oruma. It is opposed by the respondents through the replying affidavit sworn on August 29, 2022 by its officer, Monica Muya. The parties’ advocates made brief oral submissions in support of their respective positions and which I have considered.
  3. It is common ground that on June 4, 2021, the Tax Appeals Tribunal (“the Tribunal”) rendered a judgment dismissing the applicant’s appeal and upholding the respondents’ objection decision dated May 14, 2020 that assessed the applicant’s tax liability at Kshs 643,394,426.00. The applicant has evinced its intention to appeal against that judgment and now seeks the leave of court to file the said appeal out of time and stay the execution of the judgment.
  4. The main issue for the court’s determination is whether the applicant should be granted leave to file its appeal out of time. The applicant appreciates that under section 32 of the [Tax Appeals Tribunal Act](#):
 

A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.
  5. This position is repeated in section 53 of the [Tax Procedures Act](#) which provides that
 

A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court in accordance with the provisions of the [Tax Appeals Tribunal Act](#) 2013 (No 40 of 2013).
  6. Pursuant to the above, rules 3 & 4 of the [Tax Appeals Tribunal \(Appeals to The High Court\) Rules, 2015](#) provide;
    3. The appellant shall, within thirty days, after the date of service of a notice of appeal under section 32(1), file a memorandum of appeal with the registrar and serve a copy on the respondent.
    4. The court may extend the time specified in rule 3 if the court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant.
  7. The thread running through the provisions I have cited is that a person intending to appeal has a limited time within which to act in order to secure its right of appeal. The applicant never served the Notice of Appeal within the stipulated time and since it does not state that it was sick or absent from Kenya, the question is whether it has presented reasonable cause so that the court may condone its delay and allow it to file the appeal out of time. As stated by the respondents, the Supreme Court in [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR



set out the considerations to guide the court in exercising its discretion in cases seeking extension of time. It distilled the following considerations:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
  - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
  - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  - vi. Whether the application has been brought without undue delay; and
  - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
8. The applicant grounds its application on the fact that it has been negotiating a settlement with the respondents on the demanded taxes and since the negotiations have apparently broken down, it recourse is to pursue the appeal before the court. The Court of Appeal has always held that time does not stop running merely because parties are engaged in out of court negotiations and it is incumbent upon them to bear in mind the provisions of the law even as they engage in the negotiations (see *G4S Security Services (K) Limited v Joseph Kamau & 468 others* NRB CA Civil Appeal No 158 of 2015 [2018] eKLR). This ground by the Applicant cannot therefore hold and collapses.
9. In any case, I find that the delay of close to a year in filing the Notice of Appeal is inordinate and inexcusable. From the material before the court, I agree with the respondents that the applicant has never been keen on pursuing an appeal and has only done so to avert further recovery and agency notices from the respondents for the demanded taxes which the applicant appears to have admitted as evidenced by making partial payment.
10. I also reject the any argument that gives preference to public bodies. They are to be treated like ordinary litigants and are required to comply with the legal procedures. Merely because the applicant is a public body does not excuse it from application of the applicable procedures. If anything, the amount in dispute imposes on it a greater responsibility to conduct its litigation with greatest care and respect for the procedures in order to protect its interests.
11. For the reasons I have given, I dismiss the application dated July 25, 2022 but with no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF DECEMBER 2022.**

**D S MAJANJA**

**JUDGE**

Court assistant: Mr M Onyango

Ms Langat instructed by Kabata Mwaura and Partners Advocates for the applicant.

Ms Kithinji instructed by the Kenya Revenue Authority for the respondents.

