

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D.S. MAJANJA J.

TAX APPEAL NO. E064 OF 2020

BETWEEN

LG ELECTRONICS AFRICA LOGISTICS FZE KENYA BRANCH.....APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

RULING NO. 2

1. The application for consideration is the appellant's Notice of Motion dated 7th September 2020. The appellant seeks an order for the enlargement of time within which to file its Statement of Facts and that the Statement of Facts dated 16th July 2020 filed on 4th August 2020 be deemed as duly filed.

2. The reason given for failure to file the Statement of Facts within the prescribed time by Charles Kamonji, an officer of the respondent, in his deposition sworn on 7th September 2020 is that respondent experienced technical hitches in accessing the filing platform and was only able to file it on 4th August 2020 despite the same having been given to the process server to file it on 15th July 2020. In addition, Mr Opande, counsel for the respondent deponed, in his affidavit sworn on 7th September 2020, that he was unwell from 1st July 2020 to 13th July 2020 and had been given 8 days bed rest. He stated that it is only when he resumed duty that he gave Mr Kamonji instructions to file the Statement of Facts on 15th July 2020.

3. The appellant did not file any replying affidavit to oppose the application. However, counsel for the appellant, Ms Ouma, submitted that while she accepted that Mr Opande was unwell, the explanation given by Mr Kamonji that he was unable to file the Statement of Facts due to technical hitches was doubtful and insufficient to sustain an application for extension of time.

4. At the hearing I disclosed to the parties that I was aware that certain Government institutions like the Office Attorney General and Kenya Revenue Authority had been having difficulties filing documents on the online portal until the month of August 2020 as the system had not been configured to accept documents from non-fee paying institutions. In the circumstances, I found the explanation given by Mr Kamonji acceptable. Taking the facts as a whole, I accept the explanation given by the respondent for failing to file the Statement of Facts in time.

5. I allow the Notice of Motion dated 7th September 2020 and order that the Statement of Facts dated 16th July 2020 and filed on 4th August 2020 be deemed as duly filed within time. Costs of the application shall be in the appeal.

DATED and DELIVERED at NAIROBI this 2ND day of OCTOBER 2020.

D. S. MAJANJA

JUDGE

Ms Ouma with instructed by Anjarwalla & Khanna LLP Advocates for the appellant.

Mr Opande, Advocate instructed by Kenya Revenue Authority for the Commissioner of Domestic Taxes.