



**Modern Coast Limited v Commissioner of Domestic Taxes (Income Tax Appeal E207 of 2021) [2024] KEHC 2864 (KLR) (Commercial and Tax) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2864 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E207 OF 2021**

**A MABEYA, J**

**MARCH 21, 2024**

**BETWEEN**

**MODERN COAST LIMITED ..... APPELLANT**

**AND**

**COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT**

**RULING**

1. The application before Court is dated 1/8/2023 by the appellant. The application was not based on any provision of the law.
2. It seeks a review of the orders issued on 31/7/2023 which dismissed the appeal dated 15/12/2021 and reinstate the appeal. The applicant further prays for orders for stay of execution of the judgment entered against it and the consequential decree and orders, proclamation attachment and execution.
3. The application is based on the grounds on the face of it and the supporting affidavit of CHRISTINE MUFUTU sworn on 1/8/2023. The appellant contended that on 31/7/2023, the appeal was dismissed on account of its failure to comply with the directions that the record of appeal be filed within 21 days. That it had reached out to the registrar of The Tax Appeals Tribunal via a letter requesting for proceedings. That the response it got was that the tribunal was shifting its offices and therefore the Tribunal could not comply with the request. That the appellant had a valid appeal and it stood the risk of being taxed an amount that it had already paid
4. The respondent opposed the application vide a replying affidavit of Benard Mugo sworn on 30/8/2023. The respondent's position was that, the appellant only wrote to the Tribunal requesting for the judgment after the Court had dismissed the appeal. That the appellant was indolent as the main appeal was filed two years ago and failed to file an application for filing an appeal out of time.



5. The application was canvassed by way of written submissions which I have considered. The appellant submitted that the failure to file the record of appeal within the given time was not deliberate or meant to delay justice. That the appeal was meritorious and raised triable issues and the respondent would not be prejudiced if the application was allowed.
6. I have considered the pleadings and the submissions on record. The main issue for determination is whether the appellant has made out a case for setting aside the order of 31/7/2023 that dismissed the appeal.
7. On 15/12/2021 filed a Memorandum of Appeal against the decision of the Tax Appeals Tribunal delivered on 23/11/2021. However, it failed to file the record of appeal and on 13/06/2023, the Court directed the applicant to file and serve the record within 21 days. The appellant failed to comply and the appeal stood dismissed. On 31/7/2023 the Court confirmed that the appeal stood dismissed for non-compliance of the directions of the Court.
8. The appellant's reason for non-compliance with the order of the Court requiring it to file its record of appeal was that it was unable to receive the proceedings from the Tribunal. It should be noted that the judgment of the Tribunal was made on 23/11/2021. A notice and memorandum of appeal in respect thereof was lodged on 17/12/2024. The applicant had 30 days from that date to lodge its record of appeal in terms of section 32(1) of the [\*Tax Appeals Tribunal Act\*](#).
9. The appellant did not take any action until the Court listed the matter on 17/4/2023. The An appearance was made on 9/5/2023 when the Counsel for the applicant informed the Court that the parties were discussing with a view to recording a settlement. The Court gave the parties a month to finalize the alleged discussions.
10. On 13/6/2024 when the matter came up for mention, Counsel for the respondent informed the Court that there were no negotiations whereby the Court gave directions as to the disposal of the appeal. One of the directions was that the record of appeal be filed within 21 days in default, the appeal shall stand dismissed. The applicant failed to lodge the record and the appeal stood dismissed.
11. I have seen the documents annexed to the application I agree with Counsel for the respondent that it would seem that the applicant only woke up from its slumber and request for proceedings from the Tribunal after the orders of 13/6/2023. There is no evidence that any effort was made before that date. Having in mind that matters tax are timebound, a party to a tax proceeding is expected to be vigilant. That is how it is supposed to be as it is a constitutional imperative under Article 159 of the [\*Constitution\*](#).
12. In considering application for extension of time, the guiding principles were laid out by the Supreme Court in the case of [\*Nicholas Kiptoo arap Korir Salat v The Independent Electoral & Boundaries Commission & 7 Others\*](#) (2014) eKLR as follows;
  - “(1) 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;
  - (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - (3) Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  - (4) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;



- (5) Whether there will be any prejudice suffered by the respondents if the extension is granted;
- (6) Whether the application has been brought without undue delay; and
- (7) Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

13. I have considered the evidence on record and the applicant has only produced one letter dated 19/6/2023 written to the Tribunal. The appellant had an option of filing an application for extension of time before the 21 days lapsed. I find that the applicant has not established reasonable grounds for setting aside the order of 31/7/2023. In any event, the order that had the appeal dismissed was the one dated 13/6/2023 and the same has not been challenged or sought to be reviewed.

14. In view of the foregoing, I am not satisfied that the applicant has made a case to warrant the orders sought. The application is therefore without merit and the same is dismissed with costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

