



**Shri Hari Electronics and Mobile v Commissioner of Domestic Taxes (Income Tax Appeal E020 of 2022) [2024] KEHC 4437 (KLR) (Commercial and Tax) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4437 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E020 OF 2022**

**A MABEYA, J**

**APRIL 30, 2024**

**BETWEEN**

**SHRI HARI ELECTRONICS AND MOBILE ..... APPELLANT**

**AND**

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

**JUDGMENT**

1. This is an appeal against the decision of the Tax Appeals Tribunal delivered on 24/1/2022. The respondent gave an assessment of the appellant on 2/10/2018. The appellant objected to the assessment and the respondent gave an objection decision on 28/12/2018 confirming the same.
2. The appellant did not appeal immediately but on 12/10/2021, it made an application seeking an extension of time to appeal out of time. The Tribunal dismissed the application on 24/1/2022 on the ground that the delay had not been satisfactorily explained.
3. Aggrieved by that decision, the appellant lodged an appeal before this Court vide a Memorandum of Appeal dated 28/2/2022. The grounds of appeal can be summarized into two, namely;
  - a. That the Tribunal erred in law and in fact in not considering the evidence provided as reasons for the application for extension of time.
  - b. That the Tribunal erred in fact and law in failing to exercise its discretion on account of section 13(3) and (4) of the Tax Appeals Tribunal (“the TAT”).
4. The respondent opposed the appeal vide a statement of facts dated 16/11/2022. He contended that extension of time is not a matter of right and the statutory timelines provided for in section 51(12) of the *Tax Procedures Act* (“the TPA”) ought to be adhered to. That the appellant did not avail enough evidence to show that the partner in the appellant had travelled outside the country for treatment as



no evidence of medical treatment was availed. That the appellant had slept on its right for three years and it cannot be heard to state that it was not accorded an opportunity to be heard.

5. The appeal was canvassed by way of written submissions which I have considered. The appellant submitted that the Tribunal failed to consider the evidence presented by the appellant in explaining the delay. That the Tribunal erred in holding that there was another partner involved in the running of the business and should have been lenient in considering the reasons for delay. That Tribunal overlooked the fact that the managing partner was Mr. Kidho Vakariya. That the Tribunal's discretion ought to be exercised judiciously in a manner that it does not allow technicalities to impede justice. That the respondent was not to be prejudiced in any way.
6. On his part, the respondent submitted that the appellant had failed to provide medical records to show that one of the appellant's partner had been unwell and had travelled outside the country for treatment. That a partnership involves more than one person so that incase one partner was incapacitated, the other one could take over. That the application for extension of time was an afterthought since the appellant did not have any medical documents to prove any treatment.
7. I have considered the record, the response by the respondent as well as the written submissions by Learned Counsel. The main issue for determination is whether the Tribunal erred in failing to grant leave for filing an appeal out of time.
8. Section 51(12) of the TPA is clear that the time limit for preferring an appeal to the Tax Appeals Tribunal from an objection decision is 30 days upon receipt of the objection decision. It provides: -

“ A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.”
9. However, the *Tax Appeals Tribunal Act* grants the Tribunal the discretion to extend the time for filing an appeal against the Commissioner. Section 13 (3) & (4) of the TAT provides: -
  3. The Tribunal may, upon application in writing or through electronic means, extend the time for filing the notice of appeal and for submitting the documents referred to in subsection (2).
  4. An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from filing the notice of appeal or submitting the documents within the specified period.”
10. From the foregoing, the factors to be considered in such an application for extension of time are three namely, absence from Kenya, sickness or any other reasonable cause. In its application, the appellant's reason for the delay was that due to sickness. The same was dismissed by the Tribunal for lack of supporting evidence.
11. The power to extend time to file an appeal out of time is discretionary upon consideration of several factors. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* {2014} e KLR set out the considerations to guide the Court in exercising its discretion in cases of this nature. It stated: -
  - 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."
12. In view of the foregoing, it was the appellant's obligation to give a reasonable cause for the delay to the satisfaction of the Tribunal. The Tribunal was not satisfied that the appellant's director/partner had been unwell or had travelled outside the country.
  13. The objection decision was issued on 28/12/2018 and the application for enlargement of time was filed on 13/10/2021. That was close to three years' delay. The question that begs is, why did the other partner, if there was any, not proceed with the matter.
  14. Further, it was upon the appellant to provide sufficient evidence to explain the delay. This would have been by way of medical records showing the nature of the sickness, the date of the commence the treatment period and the date of completion thereof. Without such evidence, I am afraid the Tribunal cannot be faulted for declining to exercise its discretion in favour of the appellant.
  15. Accordingly, I find no merit in the appeal and the same is dismissed with costs and uphold the decision of the Tribunal dated 24/1/2022.

It is so decreed.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

