



MULENGA MUNDASHI LEGAL PRACTITIONERS

Memorandum on the Tax Appeals Tribunal Rules 2022

ISSUED AUGUST 2022

The Tax Appeals Tribunal Rules 2022 and the right to make interlocutory Applications before the Tax Appeals Tribunal

Background

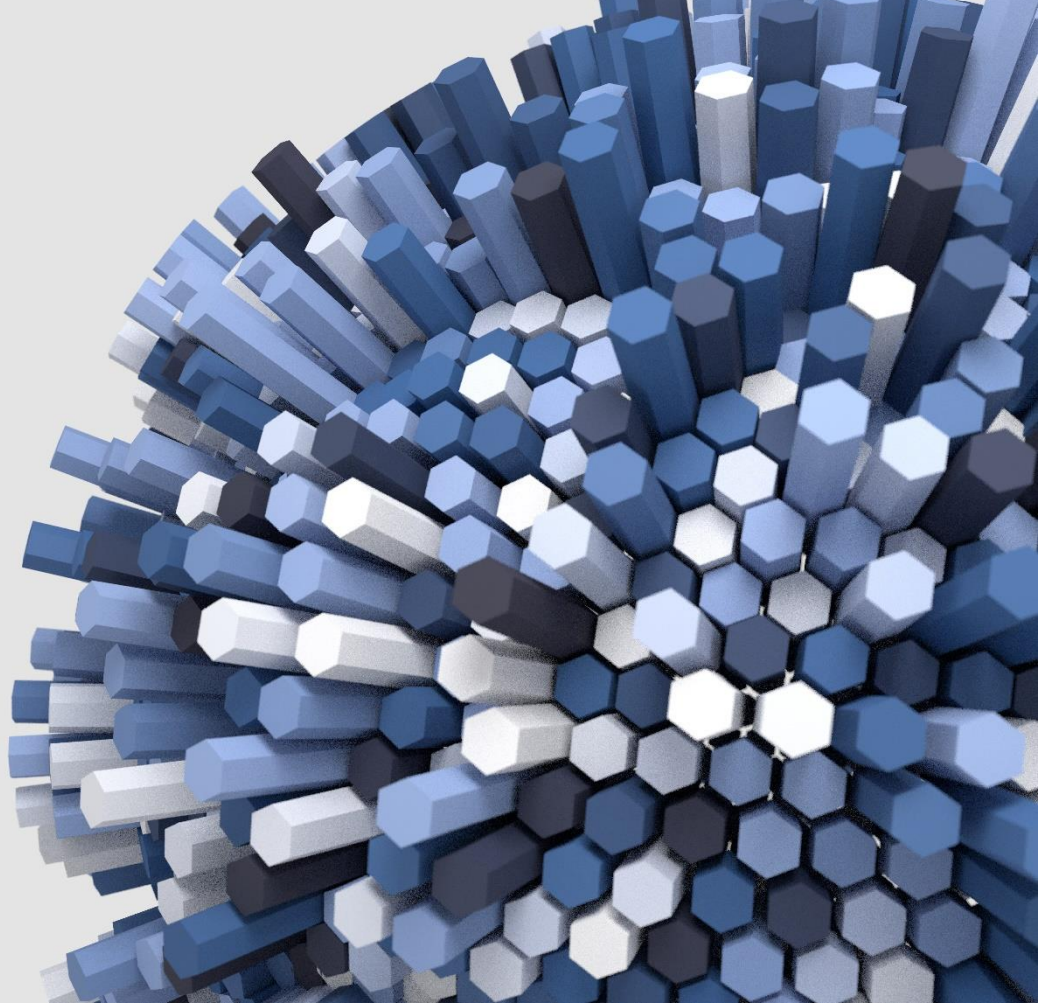
On 24 April 1998, the Parliament of Zambia enacted the Revenue Appeals Tribunal Act No 11 of 1998 ("**RAT Act**"), which established the Revenue Appeals Tribunal to hear appeals under the Customs and Excise Act, the Income Tax Act and the Value Added Tax Act and provide for matters incidental to the foregoing. More than a decade later, the Parliament of Zambia enacted the Tax Appeal Tribunal Act No 1 of 2015 (the "**TAT Act**") on 7 April 2015 to repeal the RAT Act, continue the existence of the Revenue Appeals Tribunal, rename it as the Tax Appeals Tribunal (the "**Tribunal**"), provide for the composition and functions of the Tribunal and provide for matters incidental to the foregoing.

According to section 18 of the TAT Act, the Chief Justice is empowered to make new rules to govern the practice and procedure of the Tribunal, however, no such rules were promulgated, until recently. This in essence meant that the Revenue Appeals Tribunal Regulations, 1998 Statutory Instrument No. 143 of 1998 and the Revenue Appeals Tribunal (Fees) Regulations, Statutory Instrument No. 75 of 1999 (collectively "**the Old Rules**") are the regulations that prescribed the Tribunal's practice and procedure.

However, on 19 May 2022, the Chief Justice exercised his powers under

section 18 of the TAT Act and made the Tax Appeals Tribunal Rules 2022, Statutory Instrument No. 37 of 2022 ("**the Rules**"), which came into effect on 3 June 2022 when they were published in the Government Gazette. The Rules have revoked the Old Rules and set out the new practice and procedure that must be followed before the Tribunal.

The purpose of this brief is to highlight the salient features of the Rules, as they have introduced some changes to the Tribunals' procedure and practice. The same are highlighted below.



Establishment of Registries

The Rules provide for the establishment of the Principal Registry of the Tribunal in Lusaka and for the Chairman of the Tribunal to designate Regional Registries at any other place throughout the country, by

notice in the Government Gazette. The effect of the foregoing is that all documents which must be filed under the Rules, must be filed at the Principal or Regional Registry.

” *All documents which must be filed under the Rules, must be filed at the Principal or Regional Registry.*

Appeals Procedure

A taxpayer who is aggrieved with the ZRA Commissioner General's decision has the right to appeal to the Tribunal against such a decision, within thirty days of being notified of the decision. To lodge an appeal with the Tribunal, the taxpayer must file a notice of appeal in Form I set out in the First Schedule of the Rules, an affidavit in Form II and documents relevant to that decision. On filing the forementioned documents, the taxpayer must pay filing fees as follows:

- (a) large taxpayer - ZMW 3,000;
- (b) medium taxpayer - ZMW 1,500; and
- (c) small taxpayer - ZMW 500.

If a taxpayer fails to file a notice of appeal within thirty days of being notified of the Commissioner Generals' decision, an application can be made to the Registrar to extend the period for filing the appeal.

Once the notice of appeal has been filed, the taxpayer who is now called an appellant is required to serve the same on the ZRA (respondent) and file an affidavit of service. An affidavit of service is a document that serves as proof that a party has received a document.

Within fourteen days of being served with the appeal, the ZRA must file an affidavit in opposition to the appeal, which should be accompanied by the decision appealed against and documents relevant to that decision. The ZRA's must then serve its opposition on the appellant within seven

days of filing, after which, the appellant may within seven days of being served, file an affidavit in reply, and serve the same on the ZRA within seven days of filing.

The Registrar is required to summon the appellant and ZRA to a scheduling conference, within fourteen days of expiry of the period stipulated for the filing of an affidavit in opposition. The purpose of this scheduling conference is for the Registrar to issue directions on the schedule of events in the matter, which must be adhered to by all parties. A date of hearing is likely to be set at the scheduling conference, subject to the direction of the Chairperson of the Tribunal.

Take note that it is very important for an appellant to attend a scheduling conference, as the Registrar has the power to dismiss an appeal if the appellant fails to attend a scheduling conference on two consecutive occasions without justifiable cause.

The Registrar may summon the parties to a status conference to discuss the progress of matter, not less than fourteen days before the hearing date. The Registrar is also required to serve a notice of the hearing on the parties within the same timeframe.

Take note that it is very important for an appellant to attend a scheduling conference ”

Interlocutory Applications

An interlocutory application is an application that is made in a proceeding after it has been commenced. It relates to an interim matter in a case and is filed in pursuance of an order or relief other than the final decision in the matter. These include inter alia an application for extension of time, an application to amend documents and an application to stay the execution of an order.

Previously, neither the TAT Act nor the Old Rules provided for the possibility of obtaining an interlocutory order, as such taxpayers could not make any interlocutory applications, such as an application to stay the Commissioner Generals' decision pending the determination of the appeal. This position was confirmed by the Supreme

Court,* which held that the Tribunal did not have the jurisdiction to grant an order of stay of execution pending appeal, as such power was not provided for under the enabling legislation. The effect of the foregoing for taxpayers was that the payment of assessed tax could not be suspended pending an appeal unless a taxpayer was directed otherwise.

Under the new Rules, parties can make interlocutory applications under regulation 25. The nature of interlocutory applications that a party may make is not circumscribed defined, as the relevant regulation merely enacts that a party may make an interlocutory application "except where the rules provide otherwise". However the granting of jurisdiction to the Tribunal to hear interlocutory applications marks a significant step forward and may

*See *Zambia Revenue Authority vs Armcor Security Ltd Appeal No. 72/2014* and *Zambia Revenue Authority vs Fellimart Investment Limited Supreme Court Judgment No. 24 of 2017*.

possibly address the basis on which the Supreme Court had previously held that the Tribunal did not have the power to stay tax assessments pending the hearing and determination of an appeal before the Tribunal.

The procedure for making an interlocutory application is that a party must file a summons in Form VIII, an affidavit in support in Form II and skeleton arguments, and pay the prescribed fee of ZMW 75. These documents must be served on the other party within seven days of filing. If the other party wishes to oppose the application, they must file an affidavit in opposition and skeleton arguments within fourteen days of being served and serve the same on the applicant within seven days of filing. The applicant is at liberty to file a reply within seven days of being served.

A party who is aggrieved by the decision of the Registrar with respect to an interlocutory application may within fourteen days of the decision, appeal against the decision, to the Chairperson of the Tribunal. A party aggrieved by the decision of the Chairpersons, may within fourteen days of the decision, appeal against the same to the Tribunal. An appeal to the Chairperson or the Tribunal is a re-hearing on the documents filed by the parties.

Take note that an appeal from a decision of the Registrar or the Chairperson does not operate as a stay of proceedings unless such an order is made. Further that once the Tribunal makes a decision regarding an

interlocutory application, such a decision is final.

The Rules have expressly provided for the hearing of certain interlocutory applications. Some of the interlocutory applications which may be made pursuant to the Rules are as follows:

Application to amend documents

A party can apply to amend a document that they filed, at any stage of the proceedings.

Application to extend time

A party can apply to extend the time within which to take a step in, or in connection with the proceedings.

Application for Inspection of Property

A party can make an application for the Tribunal or the Registrar to enter and inspect property which is the subject of the proceedings, at reasonable times. Such an inspection can also be carried out at the instance of the Tribunal or the Registrar. Before carrying out the inspection, the Tribunal or Registrar is required to give not less than twenty-four hours' notice to the parties of the intention to enter and inspect the property. A party may attend an inspection in person or be represented by a legal practitioner. Take note that an inspection is valid even if a party does not attend it, provided that the party was notified of the inspection

Based on regulation 25, however it would appear that the aforementioned applications stated in the Rules are by no means exhaustive.

Decisions

On conclusion of the hearing, the Registrar, the Chairperson, or the Tribunal may deliver the decision at once or reserve the decision to be delivered within sixty days after the conclusion of the hearing. The Rules empower the Registrar, the Chairperson or the Tribunal to, at any time, correct a clerical error arising from an accidental slip or omission in a decision made. A decision of the Registrar, the Chairperson or the Tribunal shall be enforced as if it were a decision of the High Court.

Withdrawal of proceedings

An appellant or applicant can withdraw the appeal or an application at any stage of

the proceeding by filing the filing a notice of withdrawal in Form X and paying ZMW 50. The same must be served on the other party within five days of filing. Take note the Tribunal or the Registrar may order an appellant or applicant that withdraws a matter to pay costs to the other party.

” *A decision of the Registrar, the Chairperson or the Tribunal shall be enforced as if it were a decision of the High Court.*

Our Limitations

Kindly note that this legal note does not constitute legal or professional advice. In the event that you would like us to render a comprehensive legal opinion, kindly contact our Mr. Mulenga Chiteba on mchiteba@mmlp.co.zm. Alternatively, you may call any of the following numbers: Tel: +260 211 254248/50 | Direct: +260 211 254266.

Authors

Mulenga Chiteba - Partner

Chimwemwe Mulenga Bwalya - Associate

Tuttie N. Nkombo-Kapalasa - Associate

MULENGA MUNDASHI
LEGAL PRACTITIONERS

 @LegalMulenga

 @Mulenga Mundashi Legal Practitioners