



IN THE REVENUE APPEALS TRIBUNAL
PRINCIPAL REGISTRY
APPEAL NO. 3 OF 2025

IN THE MATTER BETWEEN

CDH INVESTMENT BANK.....APPELLANT

- AND

COMMISSIONER GENERAL.....RESPONDENT

CORAM : H/H T.J. Chirwa, Registrar
Counsel Fiskani Movete Nkhoma for the Appellant
Counsel Watson Panji Chirwa for the Respondent
Mr. Neema Chithuli, Tribunal Clerk

RULING

1. Background

- 1.1. This is a ruling on an application by the Respondent to dismiss an appeal of the Appellant for failing to file grounds of appeal within the prescribed period.
- 1.2. This application was made by way of a Notice of Preliminary Objection filed on 31st July 2025 under **sections 13 & 14 of the Revenue Appeals Tribunal Act, 2021** (henceforth referred to as **RAT Act**). An affidavit of Counsel for the Respondent, Mr. Watson Panji Chirwa, was contemporaneously filed in support of this application.
- 1.3. In response, the Appellant filed their affidavit of Counsel Fiskani Movete Nkhoma and accompanying skeleton arguments.
- 1.4. Hearing of this application took place on 8th August 2025, with both parties present.
- 1.5. In their application as originally filed, the Respondent sought an order dismissing the Appellant's appeal on two grounds, namely:

- 1.5.1. That the Appellant, before filing the appeal, had not satisfied the peremptory requirements under **section 13(2) of the RAT Act** as read with **section 59 of the Tax Administration Act** in failing to pay 50% deposit of the assessed amount of tax in dispute in this matter; and
 - 1.5.2. That the Appellant, before filing the appeal, had not fulfilled the requirements of **section 13(3) of the RAT Act** by not filing a statement of facts and arguments in law, witness statements and a copy of the objection decision in dispute in this matter within 14 days of filing their Notice of Appeal.
- 1.6. During hearing, the Respondent withdrew the first ground. Counsel for the Respondent informed the Tribunal that the Appellant had, as at the time of filing the appeal, in fact already paid 50% of the amount of tax in dispute in this appeal. The Respondent conceded that they had made a factual error in initially asserting that the Appellant had not done so. With the Appellant compliant with provisions of **section 13(2) of the RAT Act** as read with **section 59 of the Tax Administration Act**, and with the first ground of the application withdrawn, hearing of the application proceeded on the basis of the second ground only.
- 1.7. For purposes of the present interlocutory application, the facts in issue (as may be gathered from the Respondent's affidavit herein) are that the Respondent conducted an audit on the Appellant for a period commencing January 2017 ending December 2022 for corporate income tax. From the audit, the Respondent made an assessment of K615, 717, 449.00 comprising the payable corporate income tax, interest and penalties which the Respondent demanded to be paid within a given period of time. The Appellant appealed to the Commissioner General, objecting to and challenging the audit report and resultant assessment. By way of a letter dated 22nd May 2025, served on the Appellant on 11th July 2025, the Commissioner General dismissed the appeal and determined that the Appellant should pay the assessed corporate tax amount. Dissatisfied with the Commissioner General's 'objection decision', the Appellant, on the same day of 11th July 2025, filed with the Tribunal their Notice of Appeal. Pertinently, they had not, as of 31st July 2025, filed their grounds of appeal and any other relevant documents as required under **section 14(3) of the RAT Act**.
- 1.8. In summary, the Respondent argued that filing grounds of appeal out of time without leave is an irregularity warranting dismissal of the appeal. They further argued the Appellant should have made an advance formal application for extension of time (under **section 15 of the RAT Act**) before they could file the grounds of appeal such that an oral application, in the course of hearing of the present application, for extension of the relevant time for filing the grounds of appeal was equally irregular and should not be entertained by the Tribunal.

- 1.9. The Appellant, both in their affidavit in response and during hearing of the application, admitted the fact of failing to file grounds of appeal and such other documents within the prescribed statutory time limits.
- 1.10. Even so, they resisted the Respondent's application, contending that: (i) At the time of filing of their Notice of Appeal, the **Revenue Appeals Tribunal (Procedure) Rules** had not yet come into force¹ in the absence of which there was no form to be used to prepare and file the grounds of appeal, and Counsel who had conduct of the appeal was outside Malawi at the material time, which all constituted a reasonable cause for their delay to file the grounds of appeal within time; (ii) there was no inordinate delay – the delay was for two days as at the date of filing by the Respondent of the present application, namely, 31st July 2025 (to them, having filed their Notice of Appeal on 11th July 2025, the applicable 14 days' time limit for filing the grounds of appeal lapsed on 28th July 2025 counting from 14th July 2025, the date of service of the notice on the Respondent); (ii) the Respondent had relied on a wrong statutory provision in moving for dismissal – the application was premised on **sections 13 & 14 of the RAT Act** wherein there is no provision expressly entitling the Respondent to make an application of the nature such as the present one.

2. Issues for Determination

The following issues fall for determination:

- 2.1. Whether the filing of grounds of appeal out of time, without prior application for extension, constitutes an irregularity that warrants dismissal of the appeal;
- 2.2. Whether an oral application for extension of time is permissible under the Tribunal's procedural rules; and
- 2.3. What directions, if any, ought to be given for the further conduct of the appeal.

3. Determination

- 3.1. On the irregularity in filing grounds out of time, **section 14 of the RAT Act** sets a mandatory time limit of 14 days from the date of filing the Notice of Appeal within which to file grounds of appeal. It is not in dispute that the Appellant did not file the grounds of appeal within this time. The issue is what should be the effect of the Appellant's non-compliance with the cited rule in this matter.
- 3.2. Under **Rule 10 of the Revenue Appeal (Procedure) Rules**, non-compliance with procedural requirements may lead to dismissal of an appeal. However, the Tribunal is also empowered, under the same rule, to make such order as it considers just in the circumstances, including directing that the irregularity be rectified or remedied.

¹The rules came into force on 1st August 2025.

- 3.3. In the present case, the Appellant did not inordinately delay in filing the grounds. The coming into force of the **Revenue Appeals Tribunal (Procedure) Rules** during the pendency of the appeal herein, coupled with the temporary absence of Counsel of the Appellant, constitute reasonable explanation for the delay. In my considered view, the interests of justice and the underlying objective of the Tribunal's procedural rules to have disputes resolved on the merits rather than technicalities, weigh against dismissal of the appeal.
- 3.4. On the form of an application for extension of time, such an application should ordinarily be made in advance in writing under **section 15 (1) of the RAT Act**. However, this provision does not exclude the possibility of an oral application, heard in the course of hearing of another application. In a certain set of circumstances, such an oral application will be accepted to facilitate a speedy resolution of matters. This is in fulfillment of the overarching objective of the **Revenue Appeals Tribunal (Procedure) Rules** which is, per **rule 3(1)**, to enable the Tribunal determine appeals against objection decisions of the Commissioner General expeditiously, fairly and justly. It will also be in line with **rule 3(2) (b)** which requires the Tribunal to avoid unnecessary formality and to allow such flexibility in the conduct of proceedings as would enable it to dispose of the proceedings expeditiously, fairly and justly.
- 3.5. What is critical is that the application is made before the Tribunal, and that the Tribunal is satisfied with the reasons advanced. To hold otherwise would unduly elevate form over substance. Obviously, these rules do not provide parties a blank cheque for non-compliance. The Tribunal emphasizes that parties, and in particular Appellants, must strictly observe statutory timelines and procedural rules. While the Tribunal is prepared to overlook irregularities where justice so demands, it will not hesitate, in appropriate cases, to dismiss appeals for non-compliance.
- 3.6. On the Appellant's other contention that the Respondent had relied on wrong provisions in support of this application, it is correct that the Respondent relied on **sections 13 & 14 of the RAT Act**, which does not expressly confer on it a right to move for dismissal. However, this does not in itself invalidate its application, since the Tribunal retains, under **Rule 10 of the Revenue Appeals Tribunal (Procedure) Rules**, discretion to consider issues of compliance with its rules and procedures in a manner it sees appropriate.

4. Disposition

- 4.1. For the foregoing reasons, the Tribunal makes the following orders:
 - 4.1.1. The application by the Respondent to dismiss the appeal is dismissed;
 - 4.1.2. The Appellant's application for extension of time within which to file grounds of appeal is hereby granted. Consequently, the Appellant's late

filing of grounds of appeal is hereby regularized, and the appeal shall proceed on their grounds of appeal to be filed as directed herein- per **rule 10(2) (a) (d) & (f) of the Revenue Appeals Tribunal (Procedure) Rules.**

4.1.3. The Appellant is hereby warned that any further non-compliance in this matter may attract adverse orders, including dismissal.

4.1.4. Each party shall bear its own costs for these proceedings.

4.2. For purposes of the further conduct of this appeal:

4.2.1. The appeal is deemed properly filed as of the date the Notice of Appeal was lodged.

4.2.2. The Appellant shall, if having not already done so, file their grounds of appeal and such other documents within 14 days from date hereof.

4.2.3. The Respondent shall file its response to the grounds of appeal within 14 days from the date of service of these grounds on them.

4.2.4. The matter shall thereafter be set down for review by the Tribunal under **rule 20 of the Revenue Appeals Tribunal (Procedure) Rules.**

4.3. Perhaps it is of merit to make a comment on the meaning and import of **rule 20** cited in the preceding paragraph. This rule establishes a procedural checkpoint between the filing of pleadings and the commencement of the substantive hearing of an appeal. Its key features and implications are as follows:

(a) **Timing** - the Registrar may only set down a matter for review and directions after at least 7 days have elapsed from the filing of the Commissioner General's response/reply to the notice and grounds of appeal. This period allows parties to consider the pleadings and for the Tribunal to prepare for review.

(b) **Purpose of the Review** - the review serves a gatekeeping function. The Tribunal examines whether the appeal satisfies all peremptory (mandatory) requirements for a valid appeal, such as: (i) Timely filing of the notice and grounds of appeal; (ii) payment of tax amount in dispute and filing fees; (c) proper service of documents; (iii) compliance with statutory timelines and formats. It also allows the Tribunal to assess whether further procedural steps are necessary before the hearing can proceed.

(c) **Scope of Tribunal's Powers at Review** - the Tribunal may consider: (i) whether to compel a party to the appeal or any third party to submit a document to the Tribunal; (ii) whether additional witnesses should be summoned; (iii) whether expert reports, further evidence, or investigations


are required; and (iv) whether to strike out or dismiss defective appeals at this stage.

- (d) **Directions** - the Tribunal may issue directions to guide the further conduct of proceedings, such as: (i) scheduling timelines for submission of additional evidence or witness lists; (ii) fixing deadlines for interlocutory applications; (iii) setting the date for the substantive hearing; and (iv) directing pre-hearing conferences or mediation where appropriate.
- (e) **Import of the Rule** -rule 20, as read with rule 9, ensures efficiency and orderliness in the Tribunal's case management. It acts as a filtering mechanism, preventing irregular or incomplete appeals from advancing to hearing, thereby saving time and resources. It affirms the Tribunal's role in active case management, akin to civil procedure practices in superior courts, promoting expeditious and fair resolution of disputes. In summary, this embeds case management discipline into the Tribunal's process, ensuring that appeals progress to hearing only when they are procedurally sound and ready for fair determination.

- 4.4. As a sidenote, the Appellant, in paragraph 5.1 of their affidavit herein, stated that they were supposed to file their grounds of appeal within 14 days from the date of service on the Respondent of their Notice of Appeal. Observably, they were counting the 14 days' period from the date of service of the Notice of Appeal. However, a reading of **section 14(3) of the RAT Act** shows that this 14 days' period should be counted from the date of filing of the Notice of Appeal, and not of service of the same. We hope Counsel will take note of this for future purposes.
- 4.5. In closing, we regret the delay in delivering this ruling. We had undertaken to deliver it within 7 days from the date of hearing. Owing to unforeseen circumstances in the intervening period, we were unable to do so. At the Tribunal, we shall always strive to dispense justice within the prescribed statutory time limits. But, with due care. Yes, delayed justice is justice denied; and that hurried justice is not justice at all. However, the law demands decisions that are both timely and thorough.
- 4.6. Any party aggrieved by this ruling is at liberty to appeal to the Chairperson or Deputy Chairperson of the Tribunal as is permissible under **section 6(3) of the RAT Act**.

It is so ordered.

This 26th day of August 2025 at Blantyre.


Timothy John Chirwa
Registrar

In the matter between CDH Investment Bank v Commissioner General, Appeal no. 3 of 2025, Revenue Appeals Tribunal, Principal Registry.