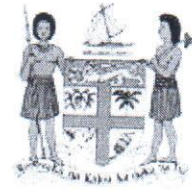


IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE TAX TRIBUNAL



Decision

Section 89 *Tax Administration Decree 2009*

Title of Matter: THREE RELATED TAXPAYERS (Applicant)
v
FIJI REVENUE AND CUSTOMS AUTHORITY (Respondent)

Section: Section 82 *Tax Administration Decree 2009*

Subject: Application for Review of Reviewable Decision

Matter Number(s): Matter No 02 of 2006, 3A of 2006 and 3B of 2006

Appearances: Mr. A. Naco, Naco Chambers
Ms. R Malani, FRCA Legal Unit for the Respondent

Date of Hearing: 19 August 2014

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 19 August 2014

FAILURE TO PROSECUTE PROCEEDINGS IN A TIMELY FASHION – ORDER XXX RULE 2, MAGISTRATES COURT RULES 1978

1. The cases before the Tribunal involve 3 taxpayers. For the convenience of the taxpayers and the Tribunal, it was agreed to join and proceed with the hearing of all matters simultaneously. These cases were:
 1. Case 02/2006 –Taxpayer GA1 versus the Commissioner of Inland Revenue,
 2. Case 3A/2006 – Taxpayer KA versus Commissioner of Fiji Island Revenue and Customs Authority; and

3. Case 3B/2006 – Taxpayer GA2 and the Commissioner of Inland Revenue.
2. On 4 December 2013 a Cost Order was issued by the Tribunal against the Applicants for their failure to prosecute the matter in accordance with the directions of the Tribunal. And on that occasion, costs were also ordered against a firm of lawyers for what would seem to have been, their contribution to the frustration of the proper attendances of the matter on behalf of their clients.
3. On 12 December 2013, a Notice of Change of Solicitors was lodged in the registry of the High Court of Fiji. Naco Chambers, Barristers & Solicitors thereafter became the solicitors on the record for all 3 matters.
4. Attendant with that change, the Tribunal recognized the need to allow Mr. Naco of that firm some time to acquaint himself with the details in respect of all these 3 matters and for that reason on several occasions a good deal of leeway was given to Mr. Naco in the manner in which he proceeded to advance the case of the taxpayers, in a bid to ensure all parties were given a fair appearance before the Tribunal.
5. On several occasions, on 11 March 2014 for example, it appeared that there was an inadequacy in the manner in which information had been provided to the Tribunal and a lack of clarity as to the arguments and the issues that were in dispute.
6. The matter proceeded again on 17 March 2014 and upon further direction of the Tribunal, was called again on the 28 April 2014. It was adjourned to the 8 May 2014 and again due to the lack of clarity in the information about the chain of events by Mr. Naco on behalf of the Applicants, was called back on 21 July 2014. Still further time and assistance was provided by the Tribunal to allow the Applicant's another opportunity to clearly present their case. On 21 July 2014, the Tribunal issued directions that all Final Submissions and documents supporting the Application and the Response were to be filed by no later than 14 August 2014 and the matter will be called on for any residual Submissions of the parties on 19th August 2014.
7. The Tribunal recalls on the last occasion, given the degree of latitude that had been provided to the Applicants, that the time had come for them to properly

present Submissions to the Tribunal so as to complete the longstanding matters first commenced in 2006.

8. The Tribunal is advised that on the 4 August 2014, a Notice of Listing was sent to both parties. On 6 August 2014 and for reasons not particularly relevant to these matters, it was anticipated that the Tribunal may need to vacate the hearing date of 19 August 2014. It was for that reason that a Notice of Cancellation of the matter listed for 19 August 2014 at 12 pm was emailed to both parties, that being the Applicant's solicitors and the Respondent.
9. Arising out of a change of administrative arrangements, on 7 August 2014 an email was sent to both parties that the matter will proceed as per the original Notice of Listing. On 11 August 2014, Direction Orders for the parties to file and serve the Final Submissions by no later than 14 August 2014 were also issued.
10. On 12 August 2014, the Tribunal is advised by registry staff that a phone call was made to both parties notifying of the confirmation of the return date of 19 August 2014 at 12 pm for Final Submissions and reinforcing that any Submission were to be filed by 14 August 2014.
11. On 12 August 2014, a Notice of Amended Hearing was served to both parties notifying of the call on date of 19 August 2014 at 12 pm.
12. I am advised today by the court clerk in attendance, that shortly before this matter was called on for hearing, he was advised by a person purportedly representing Naco Chambers that another solicitor instead of Mr. Naco, was due to attend proceedings. Despite the fact that 55 minutes have now passed, no such appearance has been made.
13. The Tribunal is mindful of the obligation set out with section 84 (2) of the Tax Administration Decree 2009:

"That in all proceedings, the Tribunal must act fairly."

14. The Tribunal believes that having regard to these 3 applications, that it has gone to great lengths to ensure it has been fair at all times to the taxpayers. For whatever reasons the taxpayers have failed to comply now with directions required of them to complete the case.
15. In cases of this type, the onus is on the Applicants to discharge the burden of proof as to whether or not their Applications for Review have been made out (see section 21(1) of the *Tax Administration Decree 2009*).
16. The Tribunal is not satisfied that the taxpayers have discharged their obligation to prosecute this matter in a genuine instance here. The taxpayers have not complied with the essential direction of the Tribunal to provide Final Submissions in order that this matter should be determined. There should have been no misunderstanding whatsoever as to the importance of those last directions that were issued to the parties on 21 July 2014. That is approximately some 4 weeks ago.

Conclusions

17. For the above reasons and in accordance with the Order XXX Rule 2 of the *Magistrates Court Rules 1978*, the Tribunal has determined that it will now dismiss all 3 applications for the failure of the Applicants to properly prosecute their applications before the Tribunal.

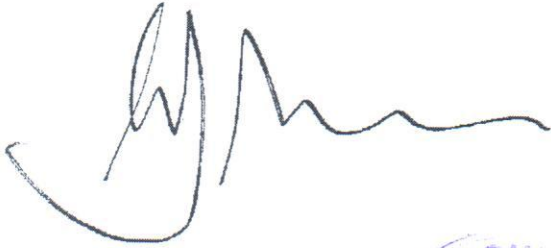
Costs

18. The Respondent seeks reimbursement of costs in the amount of \$1000.00. Those costs shall be apportioned against all 3 taxpayers and ordered to be paid within 14 days.

Decision

This Tribunal Orders that:

- (i) The Application is dismissed.
- (ii) The Respondent seeks reimbursement of costs in the amount of \$1000.00. Those costs shall be apportioned against all 3 taxpayers and ordered to be paid within 14 days.



Mr Andrew J See
Resident Magistrate

