

## **TELE 10 RWANDA Ltd v. RWANDA REVENUE AUTHORITY (RRA)**

[Rwanda SUPREME COURT – RCOMAA0037/14/CS (Kanyange, P.J., Rugabirwa and  
Ngagi, J.) July 29, 2016]

*Tax procedure – Time limit for filing a claim to the court by the taxpayer who opted for the amicable settlement – A taxpayer who opts for the amicable settlement but fails to reach an agreement files a claim to the court within 30 days, counted from the time he/she was notified that the amicable settlement is not possible – Law N°74/2008 of 31/12/2008 modifying and complementing Law N°25/2005 of 04/12/2005 of tax procedure,,article 7 – Law N°01/2012 of 03/02/2012 modifying and complementing the Law N°25/2005 of 04/12/2005 of tax procedure, article 9.*

**Facts:** After the tax assessment of TELE 10 Rwanda Ltd for the fiscal years 2007, 2008, 2009 and 2010, RRA indicated that there is another tax of 124,891,684Frw owed by TELE 10 Rwanda Ltd in addition to what was initially declared during the tax declaration period. TELE 10 Rwanda Ltd appealed to the Commissioner General and in response he informed it that the appeal lacks merit. Afterwards, on 25/06/2013 it wrote a letter requesting for amicable settlement, whereby the Commissioner General replied that the amicable settlement is not possible since TELE 10 Rwanda Ltd refused to acknowledge how the tax was computed.

Thereafter, TELE 10 Rwanda Ltd lodged a claim in Nyarugenge Commercial Court, whereby RRA raised a preliminary objection of inadmissibility on the ground that the claim was filed beyond the prescribed time limit because it had to be filed within 30 days, counted from the day it received the Commissioner General’s decision on its administrative appeal. The Court rejected the claim of TELE 10 Rwanda Ltd on the ground that it had to sue against the decision of the Commissioner General within 30 days.

TELE 10 Rwanda Ltd appealed against the decision of the court in the Commercial High Court, and consequently that court found the appeal with merit, reversed the rulings of the appeal judgment so that TELE 10 Rwanda Ltd can be allowed to file again its claim and so that the case can be heard on merits at the first instance level.

RRA appealed the judgment in the Supreme Court stating that the Commercial High Court held that the claim of TELE 10 Rwanda Ltd was admissible in disregard of the provision of the Law N°74/2008 of 31/12/2008 of modifying and complementing article 38 of the law N°25/2005 of 04/12/2005 relating to tax procedure, which provides that the taxpayer who is aggrieved by the decision of the Commissioner General, has to file a claim within 30 days from the day he/she received that decision, while TELE 10 Rwanda Ltd filed the case beyond that time limit. It also went further to argue that even though TELE 10 Rwanda Ltd had to lodge that claim after the amicable settlement still it had to do so within the time limit of the 30 days which is provided by the law.

In its defence, TELE 10 Rwanda Ltd argues that filing a claim to the court by taxpayer who is not contented with the Commissioner General’s decision has two procedures, the first one is whereby the taxpayer who is not satisfied with that decision can directly file a claim to court, which has to be done within 30 days, the second one is whereby the taxpayer who is not contented by the mentioned decision can request the Commissioner General for amicable settlement and when both parties fails to reach amicable agreement, the taxpayer can file a

claim to a competent court, but the taxpayer has to wait for the conclusion of the amicable settlement for him/her to file that claim and that there is no prescribed time limit for the taxpayer who opts for the second procedure.

**Held:** 1. A taxpayer who opts for the amicable settlement procedure files a claim to a competent court after failing to reach amicable agreement. Therefore, the fact that TELE 10 Rwanda Ltd had opted for the amicable settlement procedure, it was not obliged file a claim to court within 30 days counted from the time it received the decision of the Commissioner General.

2. The taxpayer who requested for amicable settlement but the parties fail to reach amicable settlement, files a claim to the court within 30 days, counted from the time he/she is notified that the amicable settlement is not possible. Therefore, the fact that on 20 December 2013, TELE 10 Rwanda Ltd was notified through the Post Office that the amicable settlement is not possible and then it filed a claim to the court in march 2014, that infers that the claim was filed beyond the time limit, therefore the claim was not supposed to be admitted in the court.

**Appeal has merit.  
The claim is rejected.**

**Statutes and statutory instruments referred to:**

Law N°74/2008 of 31/12/2008 modifying and complementing Law N°25/2005 of 04/12/2005 of tax procedure, article 7.

Law N°01/2012 of 03/02/2012 modifying and complementing the Law N°25/2005 of 04/12/2005 of tax procedure, article 9.

Law N°21/2012 ryo of 14/06/2012 relating to civil, commercial, labour and administrative procedure, article 168.

Rules of Commissioner General N°001/2014 of 01/11/2014 regulating amicable settlement in tax matters, article 6.

**Cases reffered to:**

RRA v. SOCOMIE Ltd, N° RCOMAA 0029/15/CS rendered by Supreme Court on 31/07/2015.

**Authors cited:**

Hakim Boularban, Olivier CAPRASSE, *Georges DE LEVAL*, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, *Droit judiciaire*, Tome 2, Manuel de procédure civile, Larcier, p.794.

SERGE GUINCHARD, *Droit et Pratique de la Procédure Civile*, Huitième édition, 2014-2015, p.1513.

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] TELE 10 Rwanda Ltd was assessed for fiscal years 2007, 2008, 2009 and 2010, RRA concluded that there is additional tax equal to 124,891,684Frw that should be charged to the

one declared during tax declaration period. Among that tax, includes withholding tax equivalent to 87,272,797Frw charged on products which TELE 10 Rwanda Ltd argues that it technologically import and sells them to its clients, while RRA, argues that it is a hire of MULTI CHOICE AFRICA's technology in order to access DSTV channels.

[2] Consequently, TELE 10 Rwanda Ltd appealed to Commissioner General of RRA and the latter replied that the appeal has no merit, thereafter, on 25/06/2013 it wrote a request for amicable settlement of the matter, on 20/12/2013, the Commissioner General responded that the amicable settlement was impossible as TELE 10 Rwanda Ltd was unsatisfied with how the tax was computed.

[3] TELE 10 Rwanda Ltd lodged a case in Nyarugenge Commercial Court, and RRA raised a preliminary objection of inadmissibility, arguing that the claim of TELE 10 Rwanda Ltd is time barred because it had to be lodged within 30 days counted from the time TELE 10 Rwanda Ltd received the decision of the Commissioner General in regard to its appeal. Basing on article 32 of the Law N° 25/2005 of 04/12/2005 relating to tax procedure as modified and completed to date, the Court ruled that the claim of TELE 10 Rwanda Ltd is inadmissible because it should have been lodged within 30 days.

[4] TELE 10 Rwanda Ltd appealed to Commercial High Court and in the judgment RCOMA0287/14/HCC rendered on 30/07/2014 it found the appeal with merit, and overturned the rulings of the appealed judgment, thus TELE 10 Rwanda Ltd can be allowed to file its case at first instance level.

[5] In taking that decision, the Commercial High Court, interpreted article 32 of the Law N°25/2005 of 04/12/2005 mentioned above, article 9 of the law modifying and completing Law N°25/2005 of 04/12/2005 and article 38 of the same law and found that the legislator provided for a period within which the taxpayer who used the amicable settlement procedure seize the court, whereby it is done when the parties fail to amicably settle the matter. Thus, filing the claim is not done before knowing the outcome of the negotiation.

[6] The Court also explained that the purpose of providing for negotiations before seizing the court is endeavouring that the parties try to resolve the matter themselves without necessarily going to court. Also this mechanism is encouraged in various sectors of the State, it is the reason the court finds that it was put in tax laws in particular.

[7] Therefore, the Court found that the claim should have been admitted in Commercial Court, thus, pursuant to article 171 of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure, it found that since the claim was rejected due to time limit contrary to the provision of the Law, that decision is hereby overturned on the appeal level, thus TELE 10 Rwanda Ltd is allowed to file its claim to Court that had previously rejected it, so that it can examine it on first instance level.

[8] RRA appealed against that judgment to Supreme Court, arguing that the Commercial High Court ignored its defence and held that the claim of TELE 10 Rwanda Ltd should have been admitted disregarding the provisions of the law.

[9] The case was heard in public on 19 /04/2016, 08/06/2016 and on 20/07/2016, RRA represented by Counsel Byiringiro Bajeni, TELE 10 Rwanda Ltd represented by Counsel Twilingiyemungu Joseph.

## II. ANALYSIS OF THE LEGAL ISSUE

### **Whether there are some facts or laws disregarded by the Commercial High Court in ruling that the claim of TELE 10 Rwanda Ltd should have been admitted.**

[10] The Counsel for RRA argues that the Court ignored its pleadings and ruled that the claim of TELE 10 Rwanda Ltd should be admitted, disregarding the provisions of article 7 of the 74/2008 of 31/12/2008 modifying and complementing article 38 of the Law N°25/2005 of 04/12/2005 of tax procedure, which stipulates that the taxpayer who is aggrieved by the decision of the Commissioner General may make a judicial appeal which must be brought before the competent authority within thirty (30) days after the receipt of the decision of the Commissioner General moreover TELE 10 Rwanda Ltd knew that decision before 25/06/2013 and appealed in 2014, thus it was inadmissible.

[11] He further argues that article 32 of the Law N°25/2005 of 04/12/2005 relating to tax procedure, on which the Court based does not provide for amicable settlement rather article 9 of the Law N°01/2012 of 03/02/2012 modifying and completing article 32 of the Law N°25/2005 of 04/12/2005 mentioned above, is the one which provides for amicable settlement, and that article 9 did not repeal article 7 of the Law N°01/2012 of 3/02/2012.

[12] He also argues that a new element brought by article 9 of the Law N°01/2012 of 03/02/2012 is that any person not satisfied with the decision of the Commissioner General can request for amicable settlement, and in case this fails, he can file a claim to court, but it does not remove the fact that the gist of action is the decision of the Commissioner General and which has to be initiated within 30 days commencing the day the taxpayer receives that decision.

[13] He also explains that the taxpayer is allowed to concurrently use both procedures, but he must first file a claim against the decision of the Commissioner General so that he is not barred by the time limit, and this is obvious as in the amicable settlement letter there is no gist of action instead it is contained in the decision of the Commissioner General.

[14] He continues arguing that, the fact that the claim is filed against the decision of the Commissioner General has been decided upon, in the judgment N°RCOM 0210/12/HCC which was appealed in the Supreme Court which also held that 30 days commences from the time the taxpayer receives the response of the Commissioner General, instead of waiting for the decision from the amicable settlement.

[15] He goes on to urge that even though TELE 10 had to file a claim after the amicable settlement, it had to respect the time limit of 30 days provided for by the law because article 32 did not repeal article 38, and it was not necessary to remind the time limit to file a claim in the Commissioner General' rules while it is already provided in the law.

[16] He continues explaining that the Commissioner General replied to TELE 10 that the amicable settlement is no longer possible in the letter dated 20/12/2013, thus the period of 30 days for filing a claim had to run from the time TELE 10 received that letter, and it cannot deny that it is a decision while it is through it TELE 10 knew that the amicable settlement had failed and it could not file a claim at any time it wants. The Counsel of RRA finds also that RRA did not go beyond scope appeal as the subject matter is the time limit to file a claim to Court, thus this cannot be regarded as an objection in its own, but rather additional arguments of defense to those submitted earlier.

[17] In proving the time limit within which TELE 10 had to file a claim to court, RRA produced a list of registered mail which include that of TELE 10, that document indicates that the Post Office received it on 23/12/2013, he further argues that basing on articles 5 and 6 of the Law N°25/2005 of 04/12/2005 relating to tax procedure, what is considered is the date on which the letter was received by the Post Office, therefore TELE 10 Rwanda Ltd, cannot deny that it received that letter while it admits that it filed the case after knowing that the amicable settlement had failed.

[18] The Counsel for TELE 10 Rwanda Ltd argues that as it is stated in the appealed judgment, seizing the Court for a taxpayer who is not satisfied with the decision of the Commissioner General is of two procedures, the first one is provided for by article 38 of the Law N°25/2005 of 04/12/2005 of tax procedure, whereby the taxpayer who is not satisfied with the decision of the Commissioner General file a claim within 30 days, and the second one is provided for by article 9 of the Law N°01/2012 of 03/02/2012 modifying and complementing law N°25/2004 of 04/12/2005 mentioned above which provides that the taxpayer who is not satisfied by the decision of the Commissioner General may request to him/her for an amicable settlement this article further provides that in case both parties do not reach an amicable agreement, the taxpayer can make an appeal to a competent court, this implies that the taxpayer has to wait for the conclusion of the amicable settlement so that he can file a claim to court, and if they reach an agreement there is no need file a claim to court.

[19] He continues stating that TELE 10 Rwanda Ltd could not appeal against the decision of the Commissioner General within 30 days because the amicable settlement it applied for, took a long period without a response, thus the claim could not stay in court without a hearing and this was not the intention of the legislator because it would contradict the provisions of article 13 of the Law N°21/2012 of 14/06/2012 mentioned above, which states that cases introduced to court shall be tried in a period not exceeding 6 months.

[20] Regarding the statements of RRA that the subject matter of the claim is the content of the decision of the Commissioner General, the Counsel for TELE 10 Rwanda Ltd finds that, this does not have any impact on the time limit provided, because article 6 of the Commissioner General rules N°001/2014 of 01/11/2014 determining the modalities of amicable settlement of tax issues, states that when both parties do not reach an amicable settlement within 60 days, the decision of the Commissioner General remains valid, meaning that the grounds of the taxpayer's claim in court are those which were examined by the Commissioner General and on which he is not satisfied, and that even the rules state that, it is in case when both parties did not reach an agreement.

[21] He also explains that at time TELE 10 Rwanda Ltd requested for amicable settlement, there was no time limit provided neither to the Commissioner General nor to the taxpayer, as far as the party he is representing is concerned, he requested for amicable settlement on 25/06/2013 and he was replied on 20/12/2013, and seized the court in march 2014, thus if there was no time limit for the Commissioner General, it was also the same for the taxpayer because when he allocated himself 60 days to reply but could not give such time to taxpayer, he should bear the consequences.

[22] As regards to the letter dated 20/12/2013, he argues that it is not the one, on which to commence counting days for filing the claim because that is not what is provided by the law and it is not a decision which cannot be subject to litigation. And we cannot distinguish where the law does not provide for distinction, meaning that where the law provides for general purpose nobody should apply restrictions on it.

[23] He continues explaining that article 25 of the Law of 04/12/2005 relating to tax procedure , provides that, if one is not satisfied with the decision of the Commissioner General, he has to file a claim to court within 30 days, but regarding the amicable settlement, it states that the taxpayer who is not satisfied with the decision, can appeal against it but there is no time limit to be respected, and the Commissioner General is the one who was supposed to provide that time limit, thus there should be no confusion, between the decision of the Commissioner General which is appealed against within 30 days and the letter regarding the failure of amicable settlement.

[24] Regarding the judgment RCOMA0179/12/CS RRA referred to by RRA, he adduces that it should not be based on, because there is a recent one RCOMAA0029/15/CS which held that the claim has to be filed after the failure to reach an amicable agreement, and in that case the time limit of filing the claim was not debated upon even though they coincided. He finds that even in this case the issue to examine should be the subject matter and the appealed issue in this court, because the grounds of RRA are beyond the scope of the appeal, therefore the issue to be examined should limit on the subject matter which was debated upon in the first instance and on which the decision was taken in the appealed judgment concerning the filing of the claim within 30 days which commences from the decision of the Commissioner General, because if that is not the case the starting point of computing that period would be altered even the debate on it will change consequently.

[25] Regarding the time when TELE 10 Rwanda Ltd received the letter dated 20/12/2013, it's Counsel argues that the letter produced by RRA does not demonstrate whether it is the same letter it took to the Post Office, and the reason he casts doubt on it is because in the practice of RRA, the taxpayer who applied for amicable settlement is the one who has interest therefore he has to follow it up , one may wonder why RRA took that letter to the Post Office whilst it was easy to deliver it to TELE 10 offices which is located nearby, even though he does not deny that TELE 10 received that letter, but he does not know the exact date of its reception.

## **VIEW OF THE COURT**

[26] Article 7 of the Law N°74/2008 of 31/12/2008 of modifying and complementing article 38 of the Law N°25/2005 of 04/12/2005 of tax procedure provides that the taxpayer who is aggrieved by the decision of the Commissioner General may make a judicial appeal. The appeal is brought before the competent authority within thirty (30) days after the receipt of the Commissioner General's decision.

[27] Article 9 of the Law N°01/2012 of 03/02/2012 modifying and complementing the Law N°25/2005 of 04/12/2005 of tax procedure, provides in paragraph four that the taxpayer who is not satisfied with the decision of the Commissioner General may request him/her for an amicable settlement, and the paragraph five of that article provides that in case both parties do not reach an amicable agreement, the taxpayer may appeal to competent court.

[28] The provisions mentioned in the previous paragraphs, demonstrate that the taxpayer who is not satisfied with the Commissioner General's decision has two procedures he may use, the first one which had already been provided by the Law, which entails filing a claim to Court within 30 days from the time he received that decision, the second was incorporated in the Law N°01/2012 of 03/02/2012 mentioned above (article 9), which allows him to request

the Commissioner General to settle the matter amicably, if this fails he can file a claim to Court.

[29] On the issue of knowing the time limit of filing a claim to Court by the taxpayer who had first opted for amicable settlement, the Court finds that the statement of RRA's Counsel that in that case the taxpayer must first file a claim to court so that he does not be barred by the time limit of 30 days has no merit because these two procedures cannot be used concurrently, and this issue was clearly resolved in article 9 of the Law N°01/2012 of 03/02/2012, because it states that when both parties fail to reach an agreement that is when the taxpayer files a claim. Therefore, he cannot file a claim against the decision of the Commissioner General taken before the amicable settlement and file again a claim after the failure of the amicable settlement, because the Court finds that this was not the intention of the legislator in putting in place the amicable settlement procedure, but instead, he wished that, if someone opts for this procedure, he can seize the court if the amicable settlement fails, because when the amicable settlement succeed there is no reason to go to Court.

[30] Even though the above explanations were also held in the appealed judgment, as it also demonstrated that filing a claim to the court is initiated after the failure of the amicable settlement but it is also necessary to examine the time limit within which the taxpayer must file a claim to court when the matter has not been settled amicably, because the Counsel for RRA argues that even in that case the taxpayer has to file a claim within 30 days while the Counsel for TELE 10 Rwanda Ltd finds that there is no time limit provided.

[31] The Court finds that it is true that this issue was not examined in the appealed judgment because the Court was limited only on determining whether the claim is filed against the decision of the Commissioner General taken before the amicable settlement or the claim is filed when amicable settlement fails. In the appeal of RRA it requests that this issue should also be examined while TELE 10 Rwanda Ltd states that it will be going beyond the subject matter and the scope of the appeal.

[32] On the issue of determining whether the requests of RRA should not be examined in the appeal, the Court finds that the objection raised in Commercial Court of Nyarugenge was aimed at rejecting the claim of TELE 10 Rwanda Ltd on the ground that it was filed after 30 days which are provided by the law had already elapsed, and the judgment on that objection was the one appealed against in Commercial High Court, whereby the debate was about the time limit in which TELE 10 Rwanda Ltd should have filed the claim, whether it is after the decision of the Commissioner General or after the requested for amicable settlement had failed.

[33] The fact that on this level of appeal, RRA continued to establish that the taxpayer files a claim to court after the decision of the Commissioner General, and adds on that if its held that the claim is filed after the failure of the amicable settlement, it should also be held that the claim should also be filed within 30 days, therefore, the Court finds no reason for not examining this issue because it is aimed at rejecting the claim of TELE 10 Rwanda Ltd, as was the aim of the objection raised at first instance level, therefore examining it, cannot be regarded as going out beyond the scope of appeal, but it can be considered as new arguments of defence of RRA provided in article 168, paragraph three of the Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure.

[34] Law scholars also state that in appeal it is possible to review the qualification of facts contrary to the one made at first instance level, in that case it cannot be considered as an

additional claim but it is a way of explaining the same claim in different ways.<sup>1</sup> When the subject matter has not changed, the appellant can give other explanations and new arguments even though they were not debated upon.<sup>2</sup>

[35] Based on the above explanations, the Court finds that even though the taxpayer files a claim after the amicable settlement as failed, it does not mean that he can file it at any time he wants because if he has 30 days computed from the day he received the decision of the Commissioner General within which he must file his claim, therefore the rationale for that time limit cannot be put a side just because the taxpayer has been availed with another mechanism of settling the issue amicably. In addition to that when the amicable settlement fails, it is obvious that the decision of the Commissioner General remains into force and it is that decision which the claim is lodged against, implying that even though they first tried to settle the matter amicably but the taxpayer must file a claim to court within 30 days beginning from the day she/he was informed that the amicable settlement has failed.

[36] Regarding the statements of the Counsel for TELE 10 Rwanda Ltd that at the time it requested for amicable settlement, there was no time limit within which the Commissioner General had to reply, because that time limit was incorporated in rules N°001/2014 of 01/11/2014 and was not even given to taxpayer, he consequently base his argument that there was no time limit for the taxpayer to file a claim, the Court finds that the fact that the rules provide for the time limit within which the Commissioner General should have taken a decision it does not remove the time limit within which the claim has to be filed to the court which is provided by the law as already mentioned above, because what it is considered for the taxpayer is when the amicable settlement failed. Filing a claim within 30 days beginning from the time when the amicable settlement fails was also held in the judgment RCOMAA0029/15/CS rendered on 04/12/2015 by this court, whereby it also held that when the amicable settlement fails, the claim should be lodged within 30 days as provided by article 38 of the Law N°25/2005 of 04/12/2005.

[37] Regarding the time when the Commissioner General replied to TELE 10 Rwanda Ltd that the amicable settlement is no longer possible, from which the counting of 30 days should begin, the Court finds that it is 20/12/2013 because that is when the letter was received by the Post Office as demonstrated by the document produced by RRA, this is in pursuant to article 6, paragraph 2, of the Law N°25/2005 of 04/12/2005 of tax procedure, which provides that "when a taxpayer and the tax administration send each other a letter by post, they shall be deemed to have discharged their respective obligations as of the date of receipt of such a letter by post office" even TELE 10 Rwanda Ltd acknowledges also the reception of the letter dated of 20/12/2013, and it does not demonstrates any other means through which it might have received it beside the one proved by RRA, furthermore during the hearing of 19/04/2016, the counsel of TELE 10 Rwanda Ltd stated that the Commissioner General replied on 20/12/2013, and during that time there was no time limit,

---

<sup>1</sup> "Peut aussi être soumise à la juridiction d'appel, une qualification nouvelle des faits ou des actes invoqués en première instance. Dans ce cas, aucune prétention supplémentaire n'est formulée; on 'habille' autrement la même demande": Hakim Boularban, Olivier CAPRASSE, Georges DE LEVAL, Frédéric GEORGES, Pierre MOREAU, Dominique MOUGENOT, Jacques VAN COMPERNOLLE, Jean-François VAN DROOGHENBROECK, Droit judiciaire, Tome 2, Manuel de procédure civile, Larcier, p.794.

<sup>2</sup> "...Mais a contrario, et dans la mesure où la demande elle - même n'est pas modifiée, l'appellant peut présenter une argumentation et des moyens totalement nouveaux, même si ceux-ci changent le débat": SERGE GUINCHARD, Droit et Pratique de la Procédure Civile, Huitième édition, 2014-2015, p.1513.



he also averred that, they delayed to file a claim because they were waiting for other instructions as they lodged it in march 2014.

[38] The Court therefore finds the claim was received in Commercial High Court on 18/03/2014, implying that it was filed after the time limit of 30 days provided by the Law, thus it was inadmissible as it was held by the judge at the first instance level although the ground based on is different from those ones demonstrated above, therefore the judgment appealed is reversed.

### **III. DECISION OF THE COURT.**

[39] It decides that the appeal of RRA has merit;

[40] It holds that the claim of TELE 10 Rwanda Ltd was inadmissible due to the grounds explained above;

[41] It decides that the judgment RCOMA0287/14/HCC rendered on 30/07/2014 by the Commercial High Court is hereby reversed;

[42] It orders TELE 10 Rwanda Ltd to pay the court fees of 100,000Frw.