

REPUBLIC OF SOUTH AFRICA



**TAX COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO: 24682

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. NO
4 June 2021
DATE	SIGNATURE

In the matter between:

MR K

Appellant

and

**THE COMMISSIONER FOR
THE SOUTH AFRICAN REVENUE SERVICE**

Respondent

J U D G M E N T

GIBSON, AJ

Introduction

[1] On 3 December 2020 the appeal was dismissed. The reasons for the judgment and the final order are provided herewith.

[2] The appellant had appealed to the tax court, objecting to income tax assessments following an audit into the appellant's income tax affairs for the 2008 to 2013 tax years. The respondent raised additional income tax assessments for each of the tax years, including amounts of income not declared by the appellant into the appellant's gross income, and included penalties and interest.

[3] The matter was set down from the 30th of November 2020 until the 4th of December 2020. The court was assisted by both an accountant and a commercial member of the court. They are highly regarded professionals who have been practicing for many years in their respective fields, whose time is a valuable resource. Counsel for the Respondent travelled to Cape Town for the hearing as did the Registrar of the Tax Court. All of these expenses, which are significant, have been funded by the *Fiscus*, from taxpayers' money. The interpreter, originally appointed by the appellant, remained to assist the court, notwithstanding the fact that he had been informed by the appellant (as will appear later) that he would not be paid, for which I am extremely grateful.

[4] With complete disregard to this expenditure and the other parties' time, the appellant failed to appear at court on the 30th of November 2020. The respondent requested default judgement in terms of Rule 44(7) of the Tax Court. As the matter had been set down for a number of days, I stood the matter down and directed that the appellant's former attorney and the respondent ensure that the taxpayer be notified of the hearing and also requested that counsel for the respondent prepare and present argument in support of such request for judgement, as also provided for in Rule 44(7).

[5] The appellant's counsel had withdrawn and his attorney withdrew on the morning of the hearing, as he had not been paid or had been advised that he would not be paid. In addition, when the appellant eventually arrived at court, he advised that he is not in a position to fund the services of the court approved interpreter. Instead he wanted the court to provide an interpreter and also suggested that the respondent pay half for the interpreter. In place of a court translator, he also tendered the services of his wife as translator. I did not find this tender to be an acceptable replacement for a court approved translator.

[6] The appellant further alleged that he was not aware of the hearing. This seems improbable given that the matter has been on-going for 5 years and that he was well aware of the fact that pre-trial attendances were concluded on his instructions by his erstwhile legal representatives. In this regard, SARS' representative stated:

“So, for him to allege he has no knowledge, is unacceptable. There are pleadings, comprehensive pleadings drafted and submitted on his behalf, with detailed, factual information and detailed chronology of his involvement with SARS in his business activities in South Africa.

There was a pre-trial conference held, which I attended, with the attorney, wherein further detailed information was provided and instructions were received on the spot and also prior, sufficient instructions to be able to further this matter to Court today.

For the appellant now, again, to allege he is victim of representatives is a pattern that has been set out in my heads of argument. Every egregious piece of misconduct, that appellant has committed, is attempted to blend away by being misled by accountants and [inaudible] other representatives.”

[7] I asked SARS' representative to address the court and take the appellant and the court through the respondent's heads of argument. I then invited the appellant to make representations under oath himself. He, however, suggested that his wife give evidence on his behalf. He also wished to bring his accountant to give evidence.

[8] The matter stood down for the appellant to consider what SARS' representative had argued. When we returned to court a discussion again ensued relating to the costs of the interpreter and the appellant did not take the matter any further despite the fact that the interpreter had remained. This was not acceptable to the court and further delayed proceedings.

[9] In failing to make submissions to the court or to respond to the respondent's submissions, the appellant failed to prosecute his appeal despite having been given the opportunity to do so. The argument presented by the respondent was therefore uncontested by the appellant.

[10] For these reasons, I order the following:

1. The appeal is dismissed.
2. SARS decision to invalidate the appellant's objections against the additional assessments for the 2008, 2009 and 2010 tax years is confirmed.

3. The appellant is ordered to pay the costs of the proceedings, including the costs of the interpreter.

PRESIDENT: GIBSON, AJ