CORAM: RYER J.A.
          NEAR J.A.
          RENNIE J.A.

BETWEEN:

ADE OLUMIDE

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Heard at Ottawa, Ontario, on January 13, 2016.

Judgment delivered at Ottawa, Ontario, on January 15, 2016.

REASONS FOR JUDGMENT BY: RYER J.A.

CONCURRED IN BY: NEAR J.A.
                                                                 RENNIE J.A.

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REASONS FOR JUDGMENT

RYER J.A.

[1]   This is an appeal by Mr. Ade Olumide (the "Taxpayer") from a decision of Justice Judith Woods of the Tax Court of Canada (the "TCC"), dated June 29, 2015, dismissing an application made by the Taxpayer to reopen or reconsider two orders made by the TCC in dockets 2014-4590(GST)APP and 2012-2281(GST)I (the "2015 Application").

[2]   The issue in this appeal is whether Justice Woods erred in dismissing the 2015 Application. To address this issue, it is important to consider how and where it arose in the context of the myriad of proceedings that the Taxpayer has initiated in the TCC and other courts.

[3]   The first order that the Taxpayer sought to have reconsidered was made by Justice Georgette Sheridan on January 24, 2013 in docket 2012-2281(GST)I (the "2012-2281 Order"). In the 2012-2281 Order, Justice Sheridan dismissed an appeal by the Taxpayer to the TCC from a notice of assessment, dated August 5, 2011, pursuant to which the Minister of National Revenue denied applications for rebates of goods and services tax ("GST") paid by the Taxpayer and his wife in 2009, pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "ETA"), as a consequence of their purchase of certain residential real estate. The Taxpayer did not appeal the 2012-2281 Order.

[4]   The second order that the Taxpayer sought to have reconsidered was made by Justice Woods on May 19, 2015 in docket 2014-4590(GST)APP (the "2014-4590 Order"). In October of 2014, the Taxpayer made an application (the "2014 Application") to the TCC seeking an order:

   a) vacating certain court costs that were ordered against him in proceedings in courts other than the TCC;

   b) extending the time to appeal to the TCC against an assessment, dated April 14, 2010, that was made against him under the ETA (even though he had failed to file an objection to that assessment); and

   c) referring an application made by him for a $16,000 GST rebate back to the Minister for reconsideration and reassessment (even though that application had been denied by virtue of an assessment, dated August 5, 2011, and he did not appeal to the TCC against that assessment).

The Crown brought a motion to quash the 2014 Application, and the 2014-4590 Order granted that motion. The Taxpayer did not appeal the 2014-4590 Order.

[5]   On May 29, 2015, the Taxpayer made the 2015 Application, which he entitled "Rule 172 Application to Reopen 2012-2281-GST 1 and 2014-4590 (GST)APP". In the 2015 Application, the Taxpayer sought a wide variety of relief and also requested an oral hearing of that application.

[6]   By order dated June 29, 2015, Justice Woods denied the Taxpayer's request for an oral hearing. In considering the merits of the 2015 Application, she determined that:

a) the 2015 Application sought a reconsideration of the 2012-2281 Order and the 2014-4590 Order;

b) those Orders were final decisions of the TCC;

c) the limited circumstances in which final orders, such as the 2012-2281 Order and the 2014-4590 Order, could be reconsidered were not present; and

d) it would be an abuse of the process of the TCC to prolong the matter further.

On the basis of these determinations, Justice Woods made an order dismissing the 2015 Application.

[7]   The matter before this Court is an appeal from that order. The Taxpayer declined to participate in the hearing of this matter. The appeal proceeded on the basis that the Taxpayer had not abandoned the appeal but was relying on the written materials that he had filed, in particular his memorandum of fact and law and a Notice of Constitutional Question.

[8]   To reiterate, the issue in this appeal is whether Justice Woods erred in refusing to reconsider the 2012-2281 Order and the 2014-4590 Order and in dismissing the 2015 Application.

[9]   The basis of Justice Woods' decision is two-fold: the requirements of Rule 172 of the *Tax Court of Canada Rules (General Procedure)*, S.O.R./90-688a (the "*Tax Court Rules*") were not met and the 2015 Application was an abuse of the process of the TCC.

[10]   A party to a proceeding in the TCC may seek a reconsideration or reopening of a judgment of the TCC pursuant to Rule 172(2) of the *Tax Court Rules*, which reads as follows:

172(2) A party who seeks to,	**172(2)** Une partie peut demander, par voie de requête dans l'instance, selon le cas :
(a) have a judgment set aside or varied on the ground of fraud or of facts arising or discovered after it was made,	**a)** l'annulation ou la modification d'un jugement en raison d'une fraude ou de faits survenus ou découverts après qu'il a été rendu;
(b) suspend the operation of a judgment, or	**b)** un sursis d'exécution d'un jugement;
(c) obtain other relief than that originally directed,	**c)** une mesure de redressement différente de celle qui a déjà été accordée.
may make a motion for the relief claimed.	

[11]   A careful review of the Taxpayer's memorandum of fact and law has not persuaded me that Justice Woods made any error of fact, law, or mixed fact and law in reaching her conclusion that the requirements for reconsideration of the 2012-2281 Order and the 2014-4590 Order under Rule 172 of the *Tax Court Rules* had not been satisfied.

[12]   In addition, a careful review of the Taxpayer's Notice of Constitutional Question leads me to the conclusion that it does not challenge the "constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations made under such an Act" as required by subsection 57(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Accordingly, in my view the Notice of Constitutional Question adds nothing to the Taxpayer's memorandum of fact and law.

[13]   The Notice of Constitutional Question alludes to the possibility that the Taxpayer has been subjected to cruel and unusual treatment or punishment, in contravention of section 12 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. I conclude that an adjudication of this question would have no bearing upon the issue of whether Justice Woods erred in dismissing the 2015 Application and, in any event, such an adjudication by this Court is not possible by virtue of the absence of evidence of any such treatment or punishment. At most, paragraphs 107 to 127 of the Notice of Constitutional Question pose a number of questions in that regard. Moreover, by order dated November 23, 2015, Justice Nadon dismissed the Taxpayer's motion for leave to adduce evidence of such treatment or punishment in this appeal.

[14]   Having reached these conclusions, it is unnecessary for me to consider the abuse of the TCC process issue.

[15]   For these reasons, I would dismiss the appeal with costs in favour of the respondent.

<div align="right">
"C. Michael Ryer"

J.A.
</div>

"I agree
        D.G. Near J.A."

"I agree
        Donald J. Rennie J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-335-15

(APPEAL FROM AN OR ORDER OF JUSTICE JUDITH WOODS, DATED JUNE 29, 2015.)

STYLE OF CAUSE: ADE OLUMIDE v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 13, 2016

REASONS FOR JUDGMENT BY: RYER J.A.

CONCURRED IN BY: NEAR J.A.
RENNIE J.A.

DATED: JANUARY 15, 2016

APPEARANCES:

Joanna Hill   FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney   FOR THE RESPONDENT
Deputy Attorney General of Canada