

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260511

Docket: A-220-25

Citation: 2026 FCA 91

**CORAM: LOCKE J.A.
HECKMAN J.A.
ROCHESTER J.A.**

BETWEEN:

MOHAMED SIAM

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Montréal, Quebec, on May 11, 2026.
Judgment delivered from the Bench at Montréal, Quebec, on May 11, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on May 11, 2026).

LOCKE J.A.

[1] This appeal concerns a decision of the Tax Court of Canada (2025 TCC 69) that granted the respondent's motion to quash Mohamed Siam's appeal of a notice of reassessment dated August 18, 2023 regarding Mr. Siam's 2016 tax year (the 2023 Reassessment). The Tax Court concluded that the appeal could not proceed because Mr. Siam's required notice of objection was invalid. The Tax Court reached this conclusion on the basis that the 2023 Reassessment was

issued after the end of the normal assessment period and pursuant to subsection 152(4.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). That provision specifies that where a taxpayer applies to the Minister for a refund or reduction of tax within 10 years after the end of the relevant tax year, the Minister may reassess accordingly. However, subsection 165(1.2) prohibits objections to such reassessments. The Tax Court was convinced that, since the normal assessment period ended on April 19, 2021 (three years after the April 19, 2018 notice of assessment (the 2018 Assessment) concerning Mr. Siam's same tax year), the 2023 Reassessment, issued nearly two years later, fell within subsection 152(4.2).

[2] The present appeal turns on whether the Tax Court erred in concluding that the normal assessment period ended on April 19, 2021. Specifically, Mr. Siam argues that subsection 152(4.2) did not apply because the normal assessment period had not ended. He asserts that he did not receive the 2018 Assessment until some later date, and hence the normal assessment period did not begin in 2018.

[3] As noted by the Tax Court, subsection 152(3.1) provides that the normal assessment period begins with the sending of a notice of an original assessment, and Mr. Siam bore the burden of establishing on a balance of probabilities that it was not sent.

[4] There appears to be no dispute that the Tax Court and Federal Court of Appeal decisions in *Mpamugo v. The Queen*, 2016 TCC 215, aff'd 2017 FCA 136, provide the proper framework for assessing an allegation that a notice of assessment was not sent. At paragraph 6 of the Tax Court decision in *Mpamugo*, that Court laid out a multi-step test that begins with an obligation

for the taxpayer to assert that the notice of assessment was not mailed. This can be done either (i) by asserting that he or she did not receive the notice and thus believes it was not mailed, or (ii) by asserting that the notice was mailed to the wrong address through no fault of the taxpayer and was thus, in effect, not mailed. At paragraph 12 of its decision affirming the Tax Court decision in *Mpamugo*, this Court accepted that the Tax Court may initially assess the credibility of a taxpayer who alleges that he or she did not receive a notice of reassessment, provided that such assessment is made after all of the evidence has been heard.

[5] The Tax Court considered both avenues for advancing the proposition that the 2018 Assessment was not sent and found Mr. Siam's evidence in support of both was not credible.

[6] Mr. Siam argues that his evidence regarding the mailing (or non-mailing) of the 2018 Assessment was credible. This argument appears to be essentially a challenge to the Tax Court's weighing of the evidence. We can intervene in this regard only if we are convinced that the Tax Court has made a palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at paras. 10, 22-23); that is, an error that is both obvious and goes to the very core of the outcome of the case (*Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352 at para. 38). We see no such error in the Tax Court's weighing of Mr. Siam's evidence.

[7] At the hearing, Mr. Siam submitted that the respondent's affiant never confirmed that the 2018 Assessment was actually mailed, stating instead that it was issued. While Mr. Siam acknowledges that it was eventually received, he argues that the date of mailing is uncertain, and therefore the Tax Court erred in presuming a date of mailing. We are not convinced that the

wording of the respondent's affidavit and the 2023 Reassessment are sufficient to establish that the Tax Court erred in applying such a presumption.

[8] Mr. Siam also argues that the Tax Court misapplied the framework in *Mpamugo* by improperly discounting his evidence and making its finding of a lack of credibility before fully assessing the evidentiary record. We see no indication that the Tax Court failed to consider any of the evidence put before it. The Tax Court appropriately considered the credibility of Mr. Siam's evidence asserting that the 2018 Assessment was not mailed, at the first step of the *Mpamugo* test, as instructed by this Court. The Tax Court was not satisfied that Mr. Siam had met his burden on this step, and it was not required to continue its analysis of the subsequent steps of the *Mpamugo* test.

[9] As mentioned, to the extent that Mr. Siam takes issue with the Tax Court's assessment of the evidence, that requires Mr. Siam to establish a palpable and overriding error, which we do not see. We have no difficulty understanding how the Tax Court reached the conclusion that Mr. Siam was likely aware of the 2018 Assessment in 2019 at the latest, which is sufficient to support the Tax Court's conclusion that the normal assessment period had ended by 2023.

[10] Finally, Mr. Siam argues that he was denied procedural fairness in that the Canada Revenue Agency (CRA) Officer in charge of his case and the 2023 Reassessment itself both indicated that he could object to the reassessment, and hence he had a legitimate expectation that he could appeal the 2023 Reassessment before the Tax Court. This argument cannot succeed. The doctrine of legitimate expectations can affect only procedural rights: *Baker v. Canada*

(*Minister of Citizenship and Immigration*), [1999] 2 S.C.R. 817 at para. 26, *Agraira v. Canada* (*Minister of Public Safety and Emergency Preparedness*), 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 97; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249 at para. 78. It is unfortunate that Mr. Siam was given incorrect information regarding a right to object, and the CRA would be well advised to review its practices in this regard, but such an indication cannot give Mr. Siam a substantive right to appeal that is prohibited by statute. This is essentially what he seeks.

[11] For the foregoing reasons, and despite Mr. Bergman's able submissions, we will dismiss this appeal with costs.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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