

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAPMALA
MISC APPLICATION NO. 06 OF 2025
ARISING OUT OF TAT APPLICATION NO. 005 OF 2025

ADRAA AGRICULTURE COLLEGE.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MS. CHRISTINE KATWE, MR. WILLY NANGOSYAH.

RULING

This is an application for a temporary injunction brought under Section 98 of the Civil Procedure Act and Order 41, Rule 2 and 9 of the Civil procedure Rules seeking orders that:

- i. A temporary injunction be issued restraining the Respondent, its workmen, agents and servants from enforcing the tax demand of Shs. 61, 378, 928 until TAT Application No. 05 of 2025 is determined.
- ii. Costs of this application be provided for.

1. Background Facts

The grounds of this application are stated in the affidavit in support of the application by Mr. Charles Lagu the President of the Applicant deponed on the 14 January 2025, and he states that:

- 1) The Applicant is trust entity registered under the Trusteeship of the Franciscan Brothers engaged in educating and training people from rural communities in Uganda among other East African countries with the aim of improving capacities to enable the people use available resources to achieve sustainable livelihoods based in Okollo District.
- 2) On April 26, 2024, the Respondent issued a tax management letter of tax heads and amounting to Shs. 110, 294, 946 based on the claim that no supporting information was provided to validate the expenses by the Applicant.

- 3) On 7 June 2024 the Applicant objected and on 9 September 2024, the Respondent disallowed the objection and upheld the assessment due to the Applicants failure to submit the requested information.
- 4) That on 10 September 2024, the Applicant submitted an application for ADR requesting the Respondent to review the objection decision for income tax for the year 2020.
- 5) According to the ADR Settlement Agreement concluded by the parties, the Applicant undertook to pay the tax liability of Shs. 61,378,928.
- 6) Upon the Applicant's failure to pay the said sum of Shs. 61,378,928 the Respondent issued a third-party Agency Notice on 30 December 2024.
- 7) The Applicant contends that the Respondent's actions are unlawful and intended to cripple the Applicant's operations. That it erroneously recorded "inter-bank" transfers as donor income, resulting in double-counting and an inflated income figure. The revenue was clearly marked in the bank statements submitted to the Respondent but was ignored and the annotations were treated as new information.
- 8) That the Franciscan Brothers, both in Uganda and globally, are a Catholic-based community committed to advancing God's work with funding provided by believers worldwide.
- 9) That the Applicant believes that the main suit has high chances of success. Should the Respondent continue to enforce collection of the taxes, the Applicant's business shall suffer permanent loss which cannot be atoned with payment of damages.
- 10) That the balance of convenience favours the Applicant. It is just and equitable that a temporary injunction be granted restraining the Respondent from enforcing collection of the taxes awaiting determination of the main suit.

In the Affidavit in reply by Ms. Hildah Atusimiire an Advocate of the High Court, employed in the Legal Services and Board Affairs Department of the Respondent deponed on the 9 April 2025 states:

- 1) That the averments in paragraphs 3,4,5,6,7,8,9,10,11,12,13,14,15,16, the same are no basis for the grant of prayers sought in the Application.

- 2) That the assessment was based on failure to provide information which information was requested during Audit of the Applicant and at objections but was not provided by the Applicant.
- 3) That the same is not a taxation decision but rather an ADR decision arising out of an appeal of an objection decision. There was no amendment of an objection decision but rather the revision of the amount in the objection decision.
- 4) That the tax laws of Uganda do not provide for an appeal out of and ADR decision binding on the parties. The Applicant is bound by the ADR settlement agreement willingly entered into by the applicant to which no appeal can lie.
- 5) Further that the ADR settlement agreement was willingly entered by the Applicant who is in disregard of the terms of the same. Accordance to the ADR regulations that the amount per the ADR settlement agreement is immediately binding and enforceable against the parties.
- 6) That no evidence was presented at Audit and at objections. That the said dispute has no legal basis and is improperly before the Tribunal.
- 7) That there is no loss to be suffered as the taxes being collected by the Respondent are collected pursuant to binding ADR settlement agreement between the Applicant and Respondent and reversing the same would void the said agreement.
- 8) That the agency notice has already been issued and there is no status quo to preserve.
- 9) That the Applicant has not demonstrated nor met the requirements for grant of a temporary injunction.

2. Issues

The issue for determination is whether the temporary injunction should be issued?

3. Representation

The Applicant was represented by Mr. Trevor Mark Ntege while the Respondent by Mr. Banabus Nuwaha.

4. Submissions of the Applicant

The Applicant submitted that the grounds for the grant of a temporary injunction are well articulated in the case of *Kiyimba Kaggwa V Haji Abdul Katende (1985) HCB*

43, where the court held that three key considerations must be made that is the probability of success, the likelihood of irreparable damage, and the balance of convenience.

Probability of success

The Applicant submitted that in the case of Prof. ***Omolo Ndiege V Kyambogo University HCMA No. 764 of 2014***; the court held:

"For the grant of a temporary injunction, it is sufficient for an applicant to show that there are triable issues and that the action that has been brought is not frivolous or vexatious."

The Applicant submitted that TAT No. 05 of 2025, raises triable issues and believes there is a reasonable probability of success on the merits.

Irreparable Damage

The Applicant submitted that if the Respondent proceeds to enforce the tax liability, it will suffer significant financial loss and cash flow constraints. This will undermine its ability to conduct its educational and training programs within rural communities in Uganda. Such harm cannot be reversed or remedied by monetary compensation.

Balance of Convenience

The Applicant submitted that the Applicant has complied with the statutory requirement by paying 30% of the assessed tax, and believes that the Respondent shall not suffer any prejudice if this application is granted. Section 22(1) and (2) of the Tax Appeals Tribunal Act provides:

"In any proceedings before the Tribunal, the procedure shall be within the discretion of the Tribunal, and that the Tribunal shall not be bound by the strict rules of evidence but may inform itself in any manner it considers appropriate".

The Applicant submitted that the Tribunal has inherent powers to grant orders necessary for the ends of justice. The Applicant prayed that the temporary injunction be granted restraining the Respondent from enforcing the impugned tax liability until the final determination of TAT Application No. 05 of 2025.

5. Submissions of the Respondent

The Respondent submitted that in the case of ***E.L.T Kiyimba-Kaggwa V. Hajji Katende Abdunasser Civil Suit No. 2109 Of 1984 citing Geilla V. Cassman Brown***

& Co. Ltd (1973) Ea. 358, the conditions for grant of a temporary injunction were laid down as below:

"The Applicant must show a Primafacie case with a probability of success; such injunction will not normally be granted unless the appellant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages: Thirdly if the court is in doubt, it will decline an application on the balance of convenience."

The Respondent submitted that the granting of a temporary injunction is an exercise of judicial discretion. Order 41 Rule (2) CPR provides:

1. *"1. In any suit for restraining the Defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the Plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a Temporary Injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.*
2. *The Court may by order grant such Injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit".*

The Respondent submitted that for a temporary injunction to be granted, court is guided by the following as was noted in the case of **Shiv Construction versus Endesha Enterprises Ltd Civil Appeal No.34 of 1992**:

1. *"The Applicant must show that there is a substantial question to be investigated with chances of winning the main suit on his part;*
2. *The Applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the status quo not maintained; and*
3. *The balance of convenience is in the favour of the Application."*

1. The Applicant must show that there is a substantial question to be investigated with chances of winning the main suit on his part;

The Applicants seeks to restrain the Respondent from performing her statutory duties.

The Respondent relied on the **Tax Procedure Code Act (ADR Procedure) Act, 2023** under Regulations 11, 12 13 and 14 provides:

Regulation 11 which states that where the Commissioner General and the taxpayer agree to settle the tax dispute using ADR procedure, the issues agreed upon shall be set out in a settlement agreement which shall be signed by the Commissioner General and the taxpayer or by persons authorised to sign on their behalf.

The Respondent cited Regulation 12(2) provides that the altered or amended tax assessment shall not be subject to objection or appeal. Regulation 13 provides that a settlement agreement shall be recognised as binding and enforceable against the Commissioner General or taxpayer Regulation 14.

Further, Regulation 14 states that where the Commissioner General or Taxpayer fails to comply with or violates a settlement, the taxpayer or Commissioner General may apply to Court to enforce the settlement agreement.

In the Case of *RTI Ltd v MUR Shipping BV*

*"The principle of freedom of contract is fundamental to the English law of contract. One aspect of that principle is that (subject to where the consent of a party is impaired by factors such as mistake, misrepresentation, duress, undue influence, or incapacity) parties are generally free to contract on whatever terms they choose." As Lord Diplock put it in *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827, at p 848:"*

The Respondent submitted that it is an express term of the agreement Clause 3 that the agreement is legally binding and shall be full and final settlement of the matter. The Applicant has no legal recourse having willingly entered into a binding ADR settlement agreement. There is no substantial question to be investigated and prayed that this Tribunal dismisses this application.

ii. The Applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the status quo not maintained; and

The Respondent submitted that the Respondent is in good financial position to pay the Applicants damages if the Applicants were to succeed at the trial. However, if the Respondent were to succeed, the Applicants have not demonstrated how they would be in position to adequately compensate the Respondent for the loss she would have

sustained in enforcing the terms of the ADR settlement agreement and tax due. The Respondent faces greater risk of losing tax which was agreed to by the Applicant and such loss is incomparable to the said loss the Applicants purport to suffer.

iii. The balance of convenience is in the favour of the Application.

The Respondent submitted that it already entered into contract with the Applicant with a resultant sum legally binding against the Applicant. If granted, the said injunction will perpetuate an illegality and will be against the interests of justice given that Applicant comes in violation of a binding legal settlement. The Respondent prayed that the application is dismissed with costs.

6. Determination by the Tribunal.

This is an application for a temporary injunction restraining the Respondent and its agents from enforcing the tax demand of Shs. 61, 378, 928 until TAT App No. 05 of 2025 is determined which application the Respondent opposed. In order to resolve this dispute, we must determine whether the Applicant has satisfied the conditions for the grant of the Temporary Injunction;

In **Kenya Commercial Finance Co. Ltd vs. Afraha Education Society (2001) 1 EA 86**, the Court of Appeal of Kenya set out the following criteria for the grant of temporary injunctions.

“ The sequence of granting an interlocutory injunction is firstly, that an Applicant must show a prima facie case with a probability of success if this discretionary remedy will enure in his favour; secondly, that such an injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury; and thirdly, when the court is in doubt, it will decide the application on the balance of convenience – See *Giella v Cassman Brown and Co Ltd* [1973] EA 358 at 360 letter E. These conditions are sequential so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed”.

In **James Senkaaba Versus Ruth Kalyesubula HCMA 329 of 2001**, the Hon. Mr. Justice Lugayizi pointed out:

“Be that as it may, it is now well settled law that before an applicant may be granted a temporary injunction, he has to prove the following things:

- i. That the purpose of the temporary injunction is to preserve the status quo until the head suit is finally determined.
- ii. That the applicant has a *prima facie* case, which has the probability of success.
- i. That if the temporary injunction is not granted, the applicant would suffer irreparable injury, which damages cannot atone.
- ii. If Court remains in doubt after considering the above three requirements of the law, it would decide the application on the balance of conveniences.

As court considers the above requirements of the law, it will take into account the evidence before it ...”.

Prima facie Case

in order for the Applicant to succeed on this ground it must establish that it has a *prima facie* case with a probability of success against the Respondent.

The term *prima facie* case was defined in **James Musinguzi Garuga and Another vs. Dr. Chris Baryomunsi and 2 Others Misc. Cause 817 of 2016** as follows;

“Prima facie case does not mean that the case must succeed. What it means is that there should be a triable issue, that is an issue which raises a prima facie case for adjudication”.

In the case of **American Cyanamid Company vs. Ethicon Ltd [1975] 1 All ER 504**, Lord Diplock pointed out that to prove a *prima facie* case Court must be satisfied that the case is not frivolous or vexatious. In other words, there must be a serious question to be tried in the main cause.

In the instant case, the dispute between the Applicant and the Respondent was resolved through Alternative Dispute Resolution (ADR). The Applicant agreed to pay the sum of Shs. 61,378,928 in full and final settlement of the dispute. The Applicant has however turned around and disowned the settlement agreement and has filed an application before the tribunal for a review of the ADR settlement agreement.

In determining whether the case filed by the Applicant presents serious questions for trial we must inquire into the question as to whether the tribunal has the jurisdiction to entertain matters arising from ADR.

It is trite law that Appellate jurisdiction must be established by Statute. In **Attorney General v. Shah) No. 4) 1971 1 EA 50**, The Court of Appeal of East Africa stated that

"It has long been established, and we think there is ample authority for saying that appellate jurisdiction springs from statute. There is no such thing as inherent appellate jurisdiction".

In **Baku Raphael Obudra & Another vs. Attorney General S.C.C.A No. 1 of 2005**, **Odoki CJ** (as he then was) stated that;

"It is trite law that there is no such thing as inherent appellate jurisdiction. Appellate jurisdiction must be specifically created by law. It cannot be inferred or implied".

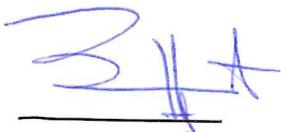
We have not found any statutory authority, on the basis of which the tribunal can be said to have jurisdiction to determine this matter. This being the case, we find that no serious questions for determination can arise, in a matter filed in a tribunal lacking the jurisdiction to entertain it. Accordingly, we find that no prima facie case has been established.

Irreparable Injury

It is not in dispute that the Applicant willingly agreed to pay the sum of Shs. 61,378,928 by a settlement agreement concluded at ADR. This agreement was stated as being in full and final settlement of the dispute between the parties. Under the terms of the settlement, the Applicant has an obligation to pay the sum in question. In these circumstances, it is difficult to see what injury the Applicant will suffer since any recovery measures taken by the Respondent will be in furtherance of the settlement agreement which is binding on the Applicant.

Having found as above, this Application is dismissed with costs.

Dated at Kampala this.....^{1st}.....day of September.....2025.



SIRAJ ALI
CHAIRMAN



CHRISTINE KATWE
MEMBER



WILLY NANGOSYAH
MEMBER