

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**MISC APPLICATIONS NO. 149, 151, 153,155**  
**(ARISING FROM TAT APPLICATIONS NO. 189, 194, 195, 193)**

1. AG INVESTMENTS FINANCE LTD (149)
2. AGLERT ENT CO. LTD (151)
3. AGAMO COMMODITIES (153)
4. BIGAAGA IMPORTERS & EXPORTERS UG LTD (155).....APPLICANTS

**VERSUS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

**BEFORE: MS. CRYSTAL KABAJWARA, MS. GRACE SAFI,  
MR. WILLY NANGOSYAH**

**RULING**

These applications are brought under Section 98 of the Civil Procedure Act, Rule 30 Tax Appeals Tribunal Procedure Rules, Order 41 Rule 1 (2) & Order 52 Rule 1 & 3 of the Civil Procedure Rules for orders that:

- (i) A temporary injunction be issued restraining the Respondent, her agents/servants, assignee, employees, or any other person who may be acting on their behalf from collecting withholding tax in respect to the Applicants' consignments some of which contain rice, groundnuts, maize held at Mutukula, Malaba and Busia Boarder points pending the hearing and final disposal of the main applications.
- (ii) That the Respondent unconditionally releases the Applicant's consignments pending the hearing and final disposal of the main applications.
- (iii) An order be issued to allow the Applicants' goods into the country without imposing and demanding withholding tax until the final disposal of the main applications.
- (iv) That the Respondent unblocks the Applicants' withholding tax exemption codes and Tax Identification Number to enable the importers to complete the clearing process.

(v) Costs of the Application be granted.

### **1. Background Facts**

The Applicants are importers of produce such as rice, beans, groundnuts and maize. The Applicants intended to import the said agricultural products and made declarations to the Respondent. However, they discovered that the Respondent had blocked their Tax Identification Numbers (TINs) and access to the withholding tax exemptions code. Therefore, they were unable to complete the clearing process.

The Respondent demands that the Applicants pay the withholding tax on their consignments, which the Applicants believe are exempt from tax. The Applicants contend that their products are perishable and delays in the determination of this dispute will lead to irreparable damage and loss to the Applicants. The Applicants also contend that the main applications disclose a prima facie case with high chances of success.

On the other hand, the Respondent denied the presence of the Applicants' goods at any of the border points. The Respondent further contends that all the Applicants' customs entries were processed and released by the Respondent's ASYCUDA system several months ago. However, the Applicants failed to remove the goods within the 14-day statutory period as required by section 60 of the EACMA.

### **2. Issue for determination**

The issue to be determined is whether a temporary injunction should be issued against the Respondent, restraining them from enforcing the collection of withholding tax from the Applicants.

### **3. Representation**

The Applicants were represented by Mr. Aggrey Mpora, while the Respondent was represented by Ms. Eseza Victoria Ssendege, Ms. Doreen Amutuhaire, Ms. Christine Mpumwire, Mr. Agaba Edmond and Mr. Amany Mishambi.

### **4. Submissions of the Applicants**

The Applicants submitted that they had filed main applications challenging the unlawful and arbitrary imposition and collection of withholding tax in respect of the consignments,

which are pending for hearing. They stated that the applications have a high likelihood of success since the consignments imported by the Applicants are agricultural produce from the East African community that are exempted from withholding tax.

The Applicants submitted that the grounds for granting a temporary injunction were laid down in the locus classicus case of *Nile Breweries V Uganda Revenue Authority, TAT MA 87 off 2024*. These include the existence of a prima facie case, proof of irreparable loss, and demonstrating where the balance of convenience lies.

**(i) Whether the Applicants have a prima facie case with a high likelihood of success?**

The Applicants submitted that Section 136 (3) & (5) of the Income tax Act provides that no tax should be levied on agricultural produce.

In the case of *Nyanga Oburofa Enterprises Ltd & 9 Others Uganda Revenue Authority, Applications No. 139, 144, 240, 270 & 150, 274, 304, 312, 332, 342, 380*, the Tribunal held that under section 136 (5) of the ITA, withholding tax does not apply to imports of agricultural supplies. The Applicant submitted that the Respondent's demand for payment of the tax is illegal.

The Applicants submitted that they wrote to the Commissioner of Customs complaining of the unlawful imposition of withholding tax and demanded the release of their goods. However, to date, they have not received a response. The Applicants further submitted that the Respondent's demand for withholding tax is unlawful and in total disregard of the law. Therefore, the Applicants have a prima facie case with a high likelihood of success against the Respondent.

**(ii) Whether the Applicant is most likely to suffer irreparable damages/injury?**

The Applicants relied on the case of *Kiyimba Kaggwa V Haji Katende [1985] HCB 43*, where the court defined irreparable damage or injury to mean that there must not be physical injury, but should be substantial or a material one. Further, the injury must be one that can't be adequately compensated for by damages.

The Applicants submitted that the imported consignments consist of perishable goods such as groundnuts and rice in large quantities and the goods have been held at the border by the Respondent's agents. This is causing the goods to deteriorate. The Applicants submitted that the continued detention of the Applicant's consignments has led to the nonpayment of suppliers, causing loss of goodwill and business reputation. Further, the goods are attracting daily demurrage costs at the warehouses, and some are still loaded on trucks, accruing transport costs. This is causing the Applicants irreparable loss and damage for which the Respondent is responsible.

**(iii) Whether the balance of convenience is favor of the Applicant?**

The Applicant submitted that in the case of *Gapco (U) Ltd V Kaweesa Badru HCMA No. 259/2013*, the Court defined the "balance of convenience" to mean:

*"If the risk of doing injustice is going to make the applicants suffer, then probably the balance of convenience is favorable to him/her and would most likely be inclined to grant him/her the application for the temporary injunction".*

The Applicants submitted that the balance of convenience lies in their favour since Section 136 (3) & (5) of the Income Tax Act prohibits tax levied on agricultural produce, including the goods in this present case. Further, the Applicants' consignments are perishable goods which cannot be held at the border any longer since they will suffer irreparable loss and or damage.

**5. Submissions of the Respondent**

The Respondent submitted that the grant of an interlocutory injunction is an exercise of judicial discretion and should be exercised judiciously. The rationale of this remedy is to preserve the status quo until the final determination of the main Application. The Respondent argued that the Applicant does not seek to maintain the status quo but rather to alter the status quo, contrary to the principles for the grant of a temporary injunction. As such, the Application ought to be dismissed with costs to the Respondent.

The Respondent cited the case of *Nived Enterprises Limited V URA, HCMA No. 301 of 2023*. In that case, the Applicant, whose withholding tax exemption certificate had been

revoked, sought a mandatory injunction directing the Respondent to allow the Applicant to import 8,540 tonnes of rice without charging withholding tax on the said imports. The High Court held:

*"The question here now is: what was the status quo at the time of the filing of this application. It is undisputed that the Applicant's withholding tax exemption certificate was revoked by the Respondent on the 29th of March 2023. It is further undisputed that this application was filed before this court after the 22nd of June 2023. At that material time, the status quo prevailing was the revocation of the withholding tax exemption certificate of the Applicant and the latter's liability to pay withholding tax on its rice imports... From the reading of this, the status quo sought to be maintained, I would suppose; is the revoked withholding exemption tax certificate and the Applicant's withholding tax liability, since this was the situation as at the time of filing this Application. As such, there is no status quo to be maintained in the circumstances before the Court to warrant the issuance of the mandatory injunctive orders."*

The Respondent argued that the status quo prevailing at the time of filing of this application was and is that the Applicants had no agricultural goods at the Respondent's Mutukula border point. Therefore, the applications ought to be dismissed.

#### **Grounds for the grant of a temporary injunction**

The Respondent submitted that in *E.L.T Kiyimba-Kaggwa V. Hajji Katende Abdunasser Civil Suit No. 2109 of 1984*, the conditions for grant of a temporary injunction were laid down as below:

*"The Applicant must show a prima facie 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."*

#### **(i) Prima facie case with a probability of success**

The Respondent submitted that the Applicants' case does not disclose a prima facie case with a probability of success. The Respondent submitted that the Applicants have never

been assessed withholding tax by the Respondent as alleged. Further, all the Applicants' Entries captured in the Respondent's ASYCUDA system were released several months ago. However, the Applicants have failed to evacuate the goods within the statutory 14-day period as required by Section 60 of the East African Community Customs Management Act (EACCMA).

The Respondent submitted that the Applicants have no items at the border they seek to be released and therefore a claim for enforcement by way of release of entries by the Respondent that are non-existent does not disclose a prima facie case with prospects of success and the main TAT Application No. 189 of 2025 will not succeed.

**(ii) Irreparable injury**

The Respondent submitted that in the case of *KIYIMBA KAGGWA (supra)* court stated:

*"Irreparable damage does not mean that there must not be a physical possibility of repairing the injury, but means that the injury must be a substantial or material one, that is, one that cannot be adequately compensated for in damages".*

The Respondent argued that the Applicant has not attached any evidence to prove that it will suffer irreparable damage. The Respondent submitted that they are a government agency mandated with revenue collection. Taxes are creatures of statute and there are procedures for refund of any taxes overpaid or wrongly paid, which the Applicants can explore if the main suit is decided in their favour or if the Respondent collects revenue and the Tribunal finds that such revenue should not have been collected. The Respondent stated that they have the capacity to refund any revenue erroneously collected. The matter would be different if, indeed, at the time of application, there were perishable items that the Respondent did not release.

**(iii) The balance of convenience**

The Respondent submitted that in the case of *Cotton International African Farmers Trade Association v Lango Cooperative Union*, [1996] HCB, 57, Justice Akiiki-Kiiza held that:

*"Before an injunction is granted, the court should be convinced that the comparative inconvenience which was likely to issue from withholding the injunction would be greater than that which was likely to arise from granting it".*

The Respondent submitted that in the present case, the balance of convenience lies with the Respondent. The Respondent would be inconvenienced if it is ordered to release consignments that are non-existent. Therefore, the balance of convenience tilts in the Respondent's favor.

The Respondent prayed that this Application be dismissed with costs to the Respondent as the Applicants are not entitled to any remedies sought from this Court. The Respondent further prayed that the Tribunal find that:

- (i) This Application is an abuse of the Tribunal's process as it seeks for impractical orders not envisaged by the law or logic.
- (ii) As the Applicant seeks to use the process of a temporary injunction to dispose of the main Application, this would amount to using the process for an improper purpose.
- (iii) The Respondent further prays that the Tribunal finds that the Applicant does not meet the conditions and requirements for granting a temporary injunction in the circumstances; and
- (iv) Further, the Respondent is entitled to the costs of the Application.

**6. The submissions of the Applicant in Rejoinder**

The Applicants submitted that the Respondent, in their submission, alleged the absence of the Applicants' goods at the border. The Applicant submitted that in a letter from the

Commissioner of Customs to the Applicant, which is on record, it is alleged that the Applicant's goods were released but not removed within the statutory period of 14 days. However, they, at the same time, allege that there are no goods physically at the border. During the hearing of this application, the Respondent brought a witness, Mr. Esungati, who clearly explained the process of clearing goods at the border. It was stated among others that the first step is to declare the goods for which entries are thereafter issued upon satisfaction of several requirements, to wit, presence of goods, payment of agricultural licence fees and Uganda National Bureau of Standards fees, having a certificate of origin, etc.

The Applicants further submitted that they cannot obtain entries without satisfying the said conditions. It is only after these conditions have been met that the goods will be released. It is not in contention that the goods were released but were not cleared for exit because the Respondent demanded payment of withholding tax.

The Applicants submitted that they proved the existence of their goods by affidavit evidence, which the Respondent did not rebut.

The Applicants submitted that the Tribunal pronounced itself and declared the Respondent's actions requiring the payment of withholding tax on the import of agricultural produce to be unlawful.

The Applicants prayed that the Tribunal be pleased to grant this application in their favor on all the terms as sought.

## **7. The determination of the Tribunal**

Having read the parties' submissions, considered the facts and evidence adduced, this is the decision of the Tribunal.

The Applicants allege to have imported agricultural products and declared the same to the Respondent. However, they discovered that the Respondent had blocked their access

to the withholding tax exemption code and their Tax Identification Numbers. The Respondent demands that the Applicants pay the withholding tax on the goods.

The Applicants contend that their products are perishable and a delay in determining this dispute will cause irreparable damage and loss. The Applicants allege that the main applications disclose a prima facie case with high chances of success.

The Respondent argued that the consignments were non-existent at the border points and there was no status quo to maintain. The Respondent argued that the applications be dismissed with costs.

**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.*

*(iii) That if the temporary injunction is not granted, the applicant would suffer irreparable injury, which cannot be atoned.*

*(iv) If the court remains in doubt after considering the above three requirements of the law, it would decide the application on the balance of convenience.*

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

We address each of the above points below.

**(i) Status Quo**

The Applicants have alleged that their consignment of goods is at the border and the Respondents have refused to clear the goods for exit. The Respondent has argued that there are no goods at the border and the Applicant failed to remove the goods within the

statutory 14-day period as required by the East African Community Customs Management Act.

It is a principle of law that he who alleges must prove and the statutory burden of proof in tax matters lies with the Applicants. In the present case, the Applicants have not adduced any evidence of the goods' presence at the border points

In **MA 151 involving Algert Enterprises Company Limited**, the Applicant states in paragraph 5 of the affidavit deponed by Ahimbisibwe James Grant that:

*“On 24 June 2025, the Applicant intended to import the said agricultural products, to wit rice and beans, from the Republic of Tanzania...”*

The above shows that the Applicant had not yet imported any goods into the country.

The above statement is repeated in paragraph 5 of the affidavit in support of **Misc. Application No. 153 involving Agamo Enterprises**. It is also repeated on paragraph 4 of **Misc. Application 155 involving Bigaaga Importers and Exporters Limited**. In **Misc. Application 149 involving AG Investments Finance**, the Applicant states in paragraph 4, of the Affidavit deponed by Ahimbisibwe James that the Respondent's field staff at the Mutukula border have held the Applicant's consignments. Again, there is no evidence showing that the consignments are at the Mutukula border.

It should be noted that the total consignment of goods in respect of the four applications in issue is 383,000 metric tonnes. This would require approximately 13,206 40-foot container loads at the borders, awaiting entry. If the said goods are indeed at the said borders, there would have been queues of over 13,000 trucks awaiting entry into the country. We would have expected the Applicants to produce photos of detention of the said consignment of goods, or evidence of warehousing receipts showing the demurrage costs being purportedly incurred by the Applicants, or even proof of payment to the alleged transporters showing that the said cargo has been transported to the borders.

Therefore, the only reasonable inference is that there are no goods at the borders as alleged by the Applicants.

**(ii) Whether the Applicants have a prima facie case**

The Applicant argues that the products that the Respondent seeks to tax are exempt under Section 136 (3) and (5) of the Income Tax Act.

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".*

Furthermore, in the case of ***Nyanga Oburofa & 9 others v URA, App No. 139 of 2024***, the Tribunal ruled:

*"We note that some of the Applicants presented expired WHT exemption certificates. Ordinarily, once a certificate has expired, it cannot be relied on. However, in the present case, since the goods are exempt from WHT as per section 136 of the ITA, it follows that there is no need for withholding tax exemption certificates".*

In this case, we find that the Applicant has satisfied this ground as there is currently a triable issue before this Tribunal as to whether the Applicants' goods are exempt from withholding tax.

**(iii) Whether the Applicants will suffer irreparable injury**

The Applicants have argued that their goods are perishable and their continued detention at the borders will cause them irreparable injury that cannot be atoned. Further, the Applicants have argued that the continued detention will cause financial loss arising from warehousing costs, transport costs, and damage to supplier relationships.

We have concluded that the Applicants do not have goods at the border awaiting clearance, and neither is the Respondent detaining the said goods. This is because the Applicants have not adduced proof of the alleged detention nor of the goods at the borders.

Therefore, since there is no proof of goods being detained at the borders, it follows that the Applicants are not suffering any injury on account of the Respondent. Therefore, the Applicants have not met this condition for the grant of a temporary injunction.

It is also worth noting at this point that a person who is at risk of suffering irreparable injury has a duty to as far as possible mitigate the injury. What would a reasonable trader in possession of perishable goods (as alleged by the Applicants) do in these circumstances? Would the trader continue incurring warehousing and transport costs to hold items that are supposedly perishing or would they pay the 6% withholding tax, clear the goods, sell them as quickly as possible to recover their capital and then pursue remedies against the Respondent after they have prevented their capital from wasting away?

Besides, the 6% withholding tax is not a final tax as it is recoverable against the Applicants' final corporate income tax liability for the any given year of income. This Tribunal has in several applications directed the Respondent to offset withholding tax credits due to and proved by taxpayers. Therefore, in the circumstances, what does commercial expediency require of the Applicants?

#### **(iv) The balance of convenience**

In the case of *Gapco (U) Ltd V Kaweesa Badru HCMA No. 259/2013*, the Court defined the "balance of convenience" to mean:

*"If the risk of doing injustice is going to make the applicants suffer, then probably the balance of convenience is favorable to him/her and would most likely be inclined to grant him/her the application for the temporary injunction".*

In the present case, the Applicants will not suffer an inconvenience since the Applicants have not proved the alleged detention of the said goods by the Respondent at the various border points as alleged by the Applicant.

#### **Unblocking the withholding tax exemption code**

One of the Applicants' prayers is for the Respondent to unblock the withholding tax exemption code. However, since the issue to be determined in the main suit is whether the Applicants' consignment of goods is subject to withholding tax or not, an order to unblock the withholding tax exemption code would amount to a determination of the main cause.

#### **Blocking taxpayers' Tax Identification Numbers (TINs)**

The Applicants alleged that the Respondent blocked their TINs, a fact that has not been rebutted or denied by the Respondent.

A TIN is a taxpayer's unique identifier used by a taxpayer when interacting with persons within a taxpayer's business ecosystem, which includes suppliers, customers, financiers, government agencies, etc. Therefore, a TIN can be equated to a National Identification Number or a passport, without which a business person cannot legitimately transact.

Consequently, the suspension or blocking of a taxpayer's TIN goes to the core of the taxpayer's ability to trade, transact, and earn a livelihood.

There are legal avenues available to the Respondent to discipline errant or non-compliant taxpayers. These include distress proceedings, temporary closure of a business or even prosecution. Therefore, the practice of blocking taxpayers' TINs is an abuse of the Respondent's discretion and powers. It should only be done in exceptional circumstances, for example, upon suspicion of fraud or illicit transactions.

A disagreement as to whether withholding tax is payable or not does not justify blocking a taxpayer's TIN. In the circumstances, we make the following orders:

- (i) The Applicants' application for a temporary injunction is hereby dismissed;
- (ii) The Applicants' prayer for the Respondent to unblock the withholding tax exemption codes is hereby denied;
- (iii) The Respondent is directed to unblock the Applicants' tax identification numbers; and
- (iv) Costs of this application shall abide in the main cause.

Dated at Kampala this 29<sup>th</sup> day of October 2025.

  
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MS. CRYSTAL KABAJWARA  
CHAIRPERSON

  
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MS. GRACE SAFI  
MEMEBR

  
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MR. WILLY NANGOSYAH  
MEMBER