

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS APPLICATION NO. 33 OF 2025
ARISING OUT OF TAT APPLICATION NO.90 OF 2024

COCA-COLA BEVERAGES UGANDA LTD.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MR. SIRAJ ALI, MR. WILLY NANGOSYAH,
MRS. STELLA NYAPENDI CHOMBO

RULING

This application was brought under **S. 22 and 98 of the Civil Procedure Act, Order 1 rule 13, Order 10 rule 12, Order 10 rule 14, Order 10 rule 24 of the Civil Procedure Rules and S. 22(2) of the Tax Appeals Tribunal Act.**

This application seeks the following orders;

1. Discovery on oath be ordered for the Respondent to produce the digital tax stamps coding machine reports for 1st February 2024 batch of 300ml Novida Pineapple and 17th January 2024 batch of 2 litre sprite bottles.
2. SICPA Uganda Limited, an entity contracted to operate the Digital Tax Stamps coding machine be joined as a Respondent to the suit on account of being a necessary party to enable the proper and complete adjudication of the matter.
3. The Applicant be granted access to carry out a forensic inspection of the Digital Tax Stamps coding machines on line 2 and line 3 manned by SICPA Uganda Limited officials to verify their functionality and ensure transparency in their operation.
4. Costs of the application be provided for.

1. Background Facts

The application is supported by the affidavit of Prossie Jjumba, the Applicant's tax manager. The affidavit in support states as follows;

The Tax Procedure Code (Tax Stamps) Regulations, 2018 requires all manufactured goods to be affixed with a tax stamp.

The Commissioner specified the mode of management of the tax stamps by taxpayers through a notice in the Gazette. This notice required the Applicant to acquire and install a digital tax stamp coding machine on its production line which would be manned and controlled by SICPA Uganda Limited (SICPA), an agent of the Respondent.

In order to fulfil its obligations under the above law, the Applicant did the following;

- i. Its bulk paid for digital stamps prior to their use by the SICPA agent on the manufactured bottles.
- ii. The Applicant provided space on all its production lines allowing for an integration of the DTS machine into its production process.
- iii. The Applicant acquired a stamp applicator used by SICPA to ensure that all its products were stamped before they entered the market.
- iv. The Applicant acquired and paid for the rejector functionality as a safeguard to reject unstamped bottles manned by SICPA.
- v. The Applicant made provision for a clean power source for all DTS equipment elements.
- vi. The Applicant provided a secure server room, network cabling within the factory to enable the DTS equipment on each line to transmit production data to the DTS master server in the Respondent`s server room.
- vii. The Applicant provided broadband internet connection with a dedicated IP Address to enable the DTS master server to transmit production data to the DTS central database at the Respondent`s premises.

The digital tax stamps are affixed by a digital tax stamps coding machine installed on the Applicant`s production lines which is fully integrated with the packaging and labeling systems. This cost of purchasing this machine is borne by the Applicant although it is owned by the Respondent and operated exclusively by SICPA, an agent of the Respondent.

The DTS coding machine which is indispensable to the production process is fully operated by SICPA without any operational input from the Applicant. This makes it impossible for production to take place without the machine.

On 12th February, 2024, 20 unstamped Novida Pineapple (NPA) 300ml bottles produced on 1st February 2024 were found on a truck at the Coca-Cola depot in Gayaza. On 15th February 2024, six unstamped 2 litre bottles of Sprite produced on 17th January 2024 were seized in Kayunga.

On 13th and 19th February 2024, following these discoveries, the Respondent issued assessments against the Applicant for the 20 Novida Pineapple 300 ml bottles and the 2 litre bottles of Sprite, totaling to Shs. 100,000,000.

The Applicant's production reports on the dates of production showed that a total of 189,408 Novida Pineapple 300 ml bottles were produced. No issue was reported with the DTS coding machine which would have led to any of the bottles going unstamped. The entire production line stops when there is an issue with the DTS machine. No such issue was reported.

The configuration of the production line ensures that bottles flow directly from the bottle filler and crowning machine to the DTS machine and then to the date coding machine. The confiscated unstamped products all have date codes thereby eliminating any possible out of the norm incidence which would have led to the bottles going unstamped besides the technical failure of the DTS machine.

Invitations by the Applicant to SICPA officials were not honored. SICPA has exclusive control of the digital tax stamps coding machine and the all records of interruptions, malfunctions and other operational issues.

The DTS coding machine malfunction reports are confidential between SICPA and the Respondent which makes it impossible for the Applicant to determine the root cause of the failure to affix the digital stamp.

The DTS machine makes errors which may go undetected causing bottles to go unstamped.

In reply to the application, the Respondent filed an affidavit deposed by Mr. Edmond Agaba, a supervisor in the Respondent's Legal and Board Affairs department.

Mr. Agaba deposed that on 10th, 12th and 15th February, the Respondent examined the Applicant's trucks at different locations and established that some bottles of the

beverages being sold by the Applicant were unstamped and did not bear the digital tax stamps.

Further on 13th and 19th February 2024, the Respondent issued a penalty of Shs. 100,000,000 for the periods 1/1/2024 – 31/1/2024 and informed the Applicant by a letter dated 20th February 2024.

The Applicant objected to this penalty. The Respondent's review team visited the enforcement stores and confirmed that the products in question had not been stamped. The penalty reversal requests by the Applicant were rejected by the Respondent.

Mr. Agaba deponed that a DTS malfunction report has already been shared with the Respondent, that there was no need to add SICPA as a party as it is only a nominal party contracted by the Respondent to manage the system.

The Respondent prayed for the dismissal of the Application.

2. Issues

- i. Whether SICPA Uganda Limited, an entity contracted to operate the Digital Tax Stamps coding machine be joined as a respondent to the application?
- ii. Whether the discovery and inspection orders being sought by the Applicant should be granted by this Tribunal?

3. Representation

The Applicant was represented by Mr. Ronal Kalema while the Respondent was represented by Ms. Diana Mulira, Mr. Goerge Ssenyomo and Ms. Doreen Amutuhaire.

4. Submissions of the Applicant.

The Applicant submitted that the joinder of SICPA is necessary for the effective and complete adjudication of the core issue in dispute namely whether the Applicant is liable for the penalty imposed.

In support of the above the Applicant relied on **Order 1 Rule 10(2)** of the **Civil Procedure Rules** and on the decisions in **Departed Asians Property Custodian Board v Jaffer Brothers Ltd Civil Appeal No. 9 of 1998** and on the decision of the tribunal in **Uganda Revenue Authority vs. Illiso Consulting (PTY) Ltd and Anor, Miscellaneous Application Bo. 34 of 2023**.

The Applicant submitted that it was necessary for SICPA to be joined as a party so as to provide clarity on how the DTS machine functions and address how the manufactured date coded bottles went unstamped yet the DTS machine comes before the date coding machine in the stamping sequence.

The Applicant submitted that in order to ensure transparency and accountability it was necessary that it should be granted access to conduct a forensic inspection of the DTS Coding machines on the production lines 2 and 3 operated by SICPA.

The Applicant submitted that SICPA maintains exclusive control over the digital stamps coding machines installed on the Applicant's production lines. No employee of the Applicant operates, services, or monitors these machines. The Applicant submitted further that the design of the production line confirms that products move sequentially from the bottle filler and crowner through the DTS machine and then to the date coding unit. The Applicant submitted that the seized bottles all bear valid date codes. The Applicant submitted that the sequencing eliminates any plausible explanation for unstamped bottles other than a failure of the DTS system itself which falls entirely under SICPA's control.

The Applicant submitted that its liability to the penalty imposed by the Respondent hinges on whether the DTS machine functioned as required at the material time which fact cannot be established in the absence of SICPA. The Applicant submitted further that the Respondent has not shown that it will suffer any prejudice from the joinder of SICPA.

The Applicant submitted that the circumstances of the case clearly establish that the report sought is both relevant and material to the issues in dispute, is not protected by any claim of privilege, is within the control of the Respondents and that prior efforts by the Applicant to obtain it voluntarily have been unsuccessful. The Applicant submitted that given the significance in determining whether the alleged unstamped products can justifiably be attributed to the Applicant, the report is essential for the fair and just resolution of this matter.

In support of the above submissions the Applicant cited the provisions of **S. 22(a)** of the **Civil Procedure Act**, **Order 10** of the **Civil Procedure Rules** and the decision in **Bemanyisa Adonija v Mujuni Richard and Anor, Misc. Application No. 3858 of 2023**. The Applicant also relied on the decision in **Simbamanyo Estates Ltd and Peter Kanya vs. Equity Bank Uganda Ltd and 4 others**.

5. Submissions of the Respondent

The Respondent submitted that SICPA does not have to be joined as a party to these proceedings for it to provide evidence. The Respondent submitted that SICPA can be called as a witness instead of being joined as a witness. The Respondent submitted that the Applicant has not demonstrated what interest SICPA has in the Applicant's assessment of Local Excise Duty issued by the Respondent.

The Respondent submitted that it was highly improbable that the addition of SICPA as a party would lead to the avoidance of a multiplicity of suits.

The Respondent submitted that for a matter to be brought to the tribunal, the Applicant should have an objection decision which they seek to review. The Respondent submitted that subsequent suits would require that subsequent Applicants have objection decisions with which they are dissatisfied. The Respondent submitted that tax assessments are unique to each taxpayer.

The Respondent objected to the prayer for discovery on the ground that the application was a mere fishing expedition. The Respondent submitted on the authority of the decision in **Mutesi vs. Attorney General, Misc. Application No. 912 of 2016**, that courts have a duty to deny applications for discovery which seem to be fishing expeditions.

Relying on the decisions in **Karuhanga and Anor vs. Attorney General and 2 others, Misc. Cause No. 060 of 2015** and **Gale vs. Denman Picture Houses Ltd [1930] KB 588, 590**, the Respondent submitted that an application for discovery should not be used by a plaintiff merely to determine if they have a case. Instead, a plaintiff must already understand their claim before seeking supporting documents from the opposing side. Where an application is driven by the hope that something will emerge which may form the basis of or support the Applicant's claim, then it is a fishing expedition.

6. Submissions of the Applicant rejoinder.

In rejoinder the Applicant reiterated its earlier submissions and stated that the proposition by the Respondent that SICPA may simply be called as a witness rather than being joined as a party, misconceives both the nature of the dispute and the procedural safeguards necessary for a fair hearing. The Applicant stated that the instant case was not one where SICPA's evidence is merely ancillary on the contrary, SICPA is at the centre of the

controversy. The Applicant stated that its entire defence rests on the claim that any failure to affix digital stamps was due to the malfunction or omission of the SICPA system and not the Applicant's conduct. The Applicant submitted that to exclude SICPA as a party while litigating its system's failure is to conduct proceedings in which the subject of the dispute is present but legally silent.

The Applicant rejoined that it does not merely seek SICPA's testimony but also challenges the functionality and reliability of a system that is fully controlled and operated by SICPA. The Applicant stated that the outcome of the Application turns on whether the DTS machine failed or not, and SICPA is the only party with the operational knowledge, system, records, diagnostic reports and accountability to speak to the issues in question meaningfully.

The Applicant stated that as a mere witness, SICPA cannot be compelled to make full disclosure, nor can it be bound by the tribunal's findings. The Applicant stated further that SICPA enjoys a right not to implicate itself as a broader part of the right to a fair hearing. In support of this argument the Applicant cited the decision in **Sserunkuuma George William and Anor vs. Attorney General Misc. Cause No. 102 of 2021**.

The Applicant rejoined that it cannot be expected to rebut allegations tied to a system it neither owns, controls, nor can interrogate without the cooperation of the entity accused of the failure.

The Applicant rejoined further that if SICPA remains outside these proceedings, there is a real risk that the tribunal will be called upon to make findings that implicate SICPA's conduct or systems without giving it the opportunity to defend itself. This the Applicant stated would offend the rules of natural justice and undermine the integrity of the process. The Applicant stated that joinder ensures that SICPA can respond fully to the allegations, disclose relevant evidence, and be bound by the outcome which avoids the injustice of findings being made in its absence.

The Applicant stated that to determine whether the Applicant failed to affix stamps without SICPA's participation, is to adjudicate the matter with a missing piece of the puzzle. The Applicant rejoined that a fair and effectual resolution of this matter is not possible without SICPA's joinder. The Applicant stated further that SICPA having already refused to file a

response despite having been served in the instant application cannot be expected to voluntarily assist as a witness.

The Applicant stated further that the instant application seeks to avoid multiplicity of suits. The Applicant stated that in the event that the failure to affix the digital stamps was found to be due to the malfunction or negligence of the DTS system, the Applicant would ordinarily have a cause of action against the Respondents in tort for negligence. The Applicant stated that excluding SICPA from the present proceedings would compel the Applicant to institute a separate suit thereby fragmenting what is essentially a single controversy.

7. Determination of the Application

Having carefully read and considered the affidavits on record and the submissions of both parties, the following is the ruling of the tribunal.

This application seeks the following orders:

1. Discovery on oath be ordered for the Respondent to produce the digital tax stamps coding machine reports for 1st February 2024 batch of 300ml Novida Pineapple and 17th January 2024 batch of 2 litre sprite bottles.
2. SICPA Uganda Limited, an entity contracted to operate the Digital Tax Stamps coding machine be joined as a Respondent to the suit on account of being a necessary party to enable the proper and complete adjudication of the matter.
3. The Applicant be granted access to carry out a forensic inspection of the Digital Tax Stamps coding machines on line 2 and line 3 manned by SICPA Uganda Limited officials to verify their functionality and ensure transparency in their operation.
4. Costs of the application be provided for.

Discovery is provided for under **S. 22** of the **Civil Procedure Act**, which states as follows: *“Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party;*

- a) *Make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts and the discovery, inspection, production, impounding and return of documents or material objects producible as evidence;*

- b) Issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- c) Order any fact to be proved by affidavit.

In **Simbamanyo Estates Limited and Another vs. Equity Bank Uganda Ltd and 4 Others, Misc. Application No. 0583 of 2022**, the court stated that in order for an applicant to succeed on an application for discovery, it must show that there is a sufficient *prima facie* basis for believing the evidence sought exists and that it is material and relevant to the issues at trial.

In the instant case, the evidence sought by the Applicant are the digital tax stamps coding machine reports for 1st February 2024 batch of 300ml Novida Pineapple and the digital tax stamps coding machine reports for 17th January 2024 batch of 2 litre sprite bottles. There is no indication from the affidavit in reply deponed by Mr. Edmond Agaba on behalf of the Respondent that the above reports do not exist. Paragraph 14 of the affidavit in support of the Application deponed by Prossie Jjumba states that the DTS malfunction reports are confidential between SICPA and the Respondent. This piece of evidence establishes a *prima facie* basis for believing that the reports sought by the Applicant exist.

The main issue at the trial is whether the failure to stamp the bottles in question were as a result of an omission by the Applicant or a malfunction of the DTS machine?

The reports sought by the Applicant are both material and relevant to the determination of the above issue because they seek to determine whether there was an error in the machine which affected its functionality on the dates in question.

Closely related to the above is the application to carry out a forensic inspection of the DTS machine on production lines 2 and 3. The reason given for this application is the need for transparency and accountability.

We note that SICPA has exclusive control of the digital tax stamps coding machine, its personnel are solely responsible for operating, servicing and monitoring the efficacy of the DTS machine and records of interruptions, malfunctions and other operational issues are in their exclusive possession.

Given the allegations made by the Applicant under paragraph 15 of the affidavit in support of the application deponed by Prossie Jjumba to the effect that the DTS machine is not 100% perfect and that it makes errors which may go undetected causing bottles to go

unstamped, we take the position that the forensic inspection of the DTS machine sought by the Applicant will help the tribunal in determining whether the failure to stamp the bottles in question were as a result of an omission by the Applicant or a malfunction of the DTS machine.

Joinder of parties to a suit is provided for under **O. 1. Rule 10 (2)** of the **Civil Procedure Rules**. It states as follows;

“(2) The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

The Applicant’s argument is that SICPA’s presence before the tribunal is necessary in order to enable the tribunal effectually and completely adjudicate upon and settle all questions involved in **TAT Application No. 90 of 2024; Coca-Cola Beverages Uganda Ltd vs. URA**.

The criteria for determining whether the presence of a person is necessary under **O.1 r.10 (2)** of the **Civil Procedure Rules** was set out by **Mulenga J.S.C**, in **Departed Asians Property Custodian Board v Jaffer Brothers Limited** (supra). A relevant excerpt from his ruling is reproduced here below;

*“However, taking a leaf from authorities in other jurisdictions having similar, and even identical rules of procedure, I would summarize the position as follows: For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies, (on application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set up a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person. (See Mulla on the Code of Civil Procedure of India) 14th Ed. By J.M. Shelat, Vol.11 pp. 858 and 864-5 and **Amon vs. Raphael Tuck & Sons Ltd (1956) 1 All ER 273 at p.290.**”*

The criteria for determining whether the presence of a person is necessary under O.1 r.10 (2) of the Civil Procedure Rules, are, firstly, that the orders which the plaintiff seeks in the suit would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he or she is bound by the decision of the court in that suit.

Alternatively, a person qualifies, (on application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set up a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.

The scope and purpose of O.1.R 10(2) of the *Indian Code of Civil Procedure* which is *in pari materia* with O.1. R.10 (2) of our Civil Procedure Rules was explained as follows in the Indian decision of **Ramesh Hira Chand Kundan Mittal Mal v. Municipal Corporation of Greater Bombay, AIR (1992) SCW 846:**

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, that is, he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights". (Emphasis Added) (See Mulla, *The Code of Civil Procedure 18th Edition Vol. 2 p.1525*)."

Applying the reasoning of the above authorities to the facts of the instant case, in order for the Applicant to succeed on the application to join SICPA as a party, it must show that the litigation may lead to a result which will affect SICPA legally.

From the Applicant's submissions it is clear that the Applicant's entire case rests on the claim that any failure to affix digital stamps was due to the malfunction or omission of the SICPA system and not the Applicant's conduct.

The question which the tribunal must answer, given the arguments made by the Applicant, about the functionality of the SICPA system, is whether litigation in the main Application may lead to a result which may affect SICPA legally?

The resolution of this question is important given the allegation by the Applicant that the DTS system occasionally malfunctions. It is of the utmost importance that SICPA is part of the proceedings in the main Application in order to defend itself against these allegations. A finding by the tribunal that the omission to stamp the beverages in question was due to a fault with the DTS machine will not only affect SICPA's reputation but will have far-reaching consequences in the implementation of the **Tax Procedure Code (Tax Stamps) Regulations, 2018**.

Our answer to the above question is that it is possible that litigation of the Applicant's defence in the main Application could lead to a result which could affect SICPA legally.

We accordingly find that SICPA's presence before the tribunal is necessary in order to enable the tribunal effectually and completely adjudicate upon and settle all questions involved in **TAT Application No. 90 of 2024; Coca-Cola Beverages Uganda Ltd vs. URA**.

In the result, this Application is allowed with the following orders:

1. The Respondent is ordered to submit the digital tax stamps coding machine reports for 1st February 2024 batch of 300ml Novida Pineapple and 17th January 2024 batch of 2 litre sprite bottles to the tribunal by close of business on 21st November 2025.
2. The Respondent and SICPA Uganda Limited will grant access to the Applicant to carry out a forensic inspection of the Digital Tax Stamps coding machines on line 2 and line 3 at the Applicant's factory. The inspection will be conducted in the presence of officials from the Respondent and from SICPA Uganda Limited.
3. SICPA Uganda Limited is hereby joined as a Respondent to the main Application. SICPA Uganda Limited will file a response to the allegations made

by the Applicant against it in the affidavit in support of the Application, by close of business on 24th November, 2025.

4. The Applicant is awarded the costs of this application.

This Application is accordingly allowed with costs.

Dated at Kampala this 10th day of **November** 2025.



MR. SIRAJ ALI
CHAIRMAN



MR. WILLY NANGOSYAH
MEMBER



MRS. STELLA NYAPENDI CHOMBO
MEMBER