

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISC APPLICATION NO. 82 & 97 OF 2025
(ARISING FROM TAT APPLICATION NO. 118 & 131 OF 2025)

1.CYNSOL TRADING CO. LTD

2.KAHIKYE INVESTMENT (U)LTDAPPLICANTS

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

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

RULING

This ruling is in respect of an application brought under S.98 Civil Procedure Act Cap 71, Order.41 R 1(2) and Order.52 Rule 1(2) and Rule 3 Civil Procedure Rules S.I 71-1 and R 30 of the Tax Appeals Tribunal (Procedure) Rules 2012 seeking the following reliefs:

- (i) A temporary injunction restraining the Respondent and its agents from collecting withholding tax in respect of the Applicants' goods currently held at Mutukula Border pending the determination of the main Application No. 118 & 131 of 2025;
- (ii) The Respondent unconditionally releases the Applicants' consignment held at the Mutukula Border Point;
- (iii) The Respondent unblocks the Applicants' Withholding tax exemption codes to enable them to complete the clearing process.

1. Background facts

The Tribunal heard both Applications at the same time as the facts were the same or similar and the representatives of the parties were the same in both applications.

The grounds of this application are contained in the affidavit in support of the notice of motion sworn by Mr. Bazire Benard and deponed on 17 April 2025 in respect of the 1st Applicant and notice of motion sworn by Mr. Ingabire Nahia Mubiru and deponed on 6 May 2025 in respect of the 2nd Applicant.

The summary of the grounds contained in both applications is as follows:

- (i) That the Applicants in April 2025 sought to import large quantities of perishable agricultural goods (groundnuts, beans, maize, millet, sorghum, onions, Irish potatoes and rice) from Tanzania to Uganda via the Mutukula border.
- (ii) The Applicants' consignments are currently being held at the border, with majority stored in warehouses and others still loaded on trucks.
- (iii) The Respondent has declined to clear the goods for entry on the basis of a demand for withholding tax (WHT).
- (iv) However, the Applicants possess valid and running WHT exemption certificates. The certificates were granted by the Respondent on 10 April 2025 & 4 February 2025 for 1st and 2nd Applicants respectively, both expiring June 30, 2025.
- (v) The importation of agricultural produce is exempt from withholding tax under section 136(5) (c) of the Income Tax Act.
- (vi) The Respondent is denying the Applicants the benefit of the exemption without reasonable cause and is unlawfully imposing WHT.
- (vii) If the temporary injunction is not granted, the Applicants will suffer significant loss as their goods are perishable and are deteriorating.

In reply, the Respondent presented their grounds opposing the applications in affidavits in reply sworn by Mr. Simon Peter Orishaba a Legal officer in the Respondent's Legal Services & Board Affairs Department deponed on the 27 May 2025 in respect of both applications. The Respondent's grounds were as follows:

- (I) That the Applications are premature, misconceived and an abuse of court process.
- (II) The Respondent is a body mandated to administer tax laws and collect revenue.
- (III) That the Applicants made declarations under codes which do not cater for Withholding Tax as required by the law.
- (IV) That the Applicants' imports attract withholding tax as per the Income Tax Act.
- (V) That the assessed WHT is payable by the Applicants, and the Applicants are obligated to meet all its tax obligations as they fall due.
- (VI) That the Respondent did not deny the Applicants the benefit of exemption but only guided the Applicants how to proceed and capture the entries so to pay the outstanding tax liability.
- (VII) However, the Applicants did not heed to the Respondent's advice.
- (VIII) The 1st and 2nd Application are barred by law since the Applicants did not object/appeal to the Commissioner in line with Section 229 of EACCMA ,2004 and has not paid 30%.
- (IX) If the Temporary injunction is granted, it will inconvenience the Respondent's work plans and the entire public meant to benefit from such tax revenues.

2. Representation

At the hearing of this Application, Mr. Aggrey Mpora Mushagara represented the Applicants while Mr. Agaba Edmond and Mr. Oseku Samuel appeared for the Respondent. The parties were invited to make their oral submissions, which they did and the same was considered by the Tribunal.

3. Issues for determination

The issue for determination is whether the Applicants meet the grounds for the grant of a temporary injunction.

4. Submissions of the Applicants

The Applicants submitted that they are seeking an order for a temporary injunction against the Respondent (URA) and its agents, restraining them from collecting WHT on a consignment of goods imported from Tanzania through the Mutukula Border. They also

sought the unconditional release of their goods held at Mutukula pending the determination of the main cases (TAT 118 & 119 of 2025). A further request is for an order directing the Respondent to unblock the Applicants' WHT exemption codes to enable the completion of the clearing process.

The Applicants submitted that their application is premised on the established grounds for granting a temporary injunction, as laid out in cases of *Kiyimba Kaggwa v Hajji Katende and Nile Breweries v URA TAT MA 87 of 2024*. These grounds are a prima facie case, proving irreparable loss, and demonstrating where the balance of convenience lies.

Whether there is a prima facie case

The Applicants contend that they have a prima facie case with a high likelihood of success in the main suit. This is evidenced by the fact that they possess a valid and running WHT exemption certificate, granted by the Respondent and expiring on 30 June 2025. This certificate was granted based on the rationale of stabilizing food supply and is given to compliant clients.

The Applicants further stated that despite having valid certificates, the Respondent held their goods at Mutukula demanding payment of WHT. The Applicants argued that the Respondent is not mandated to collect taxes from them while their WHT exemption certificates are valid. The Applicants believe the Respondent is acting unlawfully by turning around and demanding tax. The Applicants assert that Section 136 (3) & (5) of the Income Tax Act provides that no tax should be levied on agricultural produce, including the goods in this present case. The Applicants stated the rationale behind this is to stabilize food security.

The Applicants submitted that once an assessment for this type of agricultural produce is done on the system (ASYCUDA), it shows a nil tax. The Applicants wrote letters to the Commissioner Customs complaining about the actions of the Respondent's agents and demanded the release of the suit goods but received no response.

Regarding the Respondent's claim of not having halted the Applicants but only communicated clearance steps on ASYCUDA, the Applicants stated that there is no evidence of such communication on record. The Applicants reaffirmed that the only documented evidence is their unanswered letter.

Therefore, the Applicant stated that they have a prima facie case with a high likelihood of success.

Whether the Applicant will suffer irreparable loss

The Applicants submitted they will suffer irreparable loss that cannot be compensated by an award of damages if the temporary injunction is not granted. The Applicants add that they imported consignment consisting of perishable goods such as groundnuts, beans, maize, sorghum, and rice, imported in large quantities. These goods have been held at the border since 16 April 2025, and their continued detention is causing them to suffer damage and deterioration, losing their freshness.

Further, the continued detention has led to non-payment of suppliers, resulting in a loss of goodwill and business reputation. The 2nd Applicant's representative Mr. Kashaija expounded on this submission adding that their TIN was also suspended and as such have been unable to conduct any business. Furthermore, the Applicants submitted that the goods are attracting demurrage costs at the warehouse in Mutukula on a daily basis while some goods are still loaded on trucks and are accruing transport costs.

The Applicants provided evidence in support of this ground which includes; pictures of the consignment taken by the clearing agent at the border on 26 May 26 2025, showing goods in the warehouse and on trucks; invoices for the rice; and receipts of payment for the trucks transporting the goods and receipts related to clearing charges and payment for the goods.

The balance of convenience

The Applicants submitted that the balance of convenience lies in their favor since their WHT exemption certificates are still valid and running, have not been abused and have never been revoked by the Respondent. The Applicant contended that it is based on this valid exemption that they imported in large quantities these perishable goods which face irreparable loss and damage if detention continues. The Applicants further argued that the Respondent is not mandated to collect WHT from an Applicant who still enjoys an exemption that the Respondent itself granted.

5. Submissions of the Respondent

The Respondent submitted that there is no prima facie case for the Tribunal to determine and that they have not failed to facilitate the Applicants clearance of their goods. The Respondent submitted that in the exercise of their administrative powers, they merely guided the Applicants on the steps to follow to ensure the goods are released.

Prima facie case

The Respondent submitted that the letter the Applicants wrote to the Commissioner of Customs is viewed as merely an attempt to circumvent the requirements that the Respondent communicated to the Applicants for clearance. The Respondent contended that the Applicants do not have a prima facies case as they are not challenging a specific decision of the Respondent. Specifically, there is no formal communication of any decision by the Respondent to the Applicants. Therefore, the Applicants are improperly before the Tribunal.

Irreparable loss

The Respondent also submitted that the Applicants' goods attract WHT, but the Applicants captured them under codes which do not provide for it. The Respondent also submitted that the Applicants have failed to show that they will suffer irreparable damage as there is no proof on record that there are goods the Applicants seek to import are at the border. Specifically, the Respondent submitted that there is no evidence to show that there are any goods in the warehouses.

The Respondent argued that if the Applicants had truly purchased goods, they would expect to see receipts or invoices between the Applicants and the sellers, plus documentation for leasing of premises for warehousing, which the Applicants have not attached. The document attached by the Applicants that looks like a bank transfer was questioned because it did not show with precision who the Applicants were paying and was not certified by the bank. The Respondent argued that the pictures attached by the Applicants do not reflect their origin and could be pictures of a store in Kampala.

The Respondent submitted that the Applicants had failed to show irreparable loss because they had not demonstrated that the goods were purchased by them, are in their custody, and are most likely to perish.

The balance of convenience

The Respondent cited the case of *Alcohol Association V URA Misc. Application 44 of 2019* and argued that this was a situation where the Applicants seek to estop the Respondent from exercising their lawful mandate of revenue collection. The Respondent argued that restraining them impedes their function of collecting revenue, which is to the detriment of the public. Therefore, the Respondent submitted that the balance of convenience was actually in their favour.

30% deposit

The Respondent submitted that in the spirit of balancing interests, if the Tribunal was inclined to grant the temporary injunction, the Applicants be ordered to pay 30% of the disputed tax. The Respondent submitted that this would allow the Respondent to collect a portion of the taxes due, which would help the Applicants clear their goods and enable the Respondent to collect money to fund government services.

When asked by the Tribunal about the exact disputed amount, the Respondent stated they were unable to determine the amount because the amounts only reflect when an assessment is captured on the system.

In rejoinder, the Applicants reiterated their earlier arguments and added that the Respondent did not issue any assessments. Therefore, the 30% deposit cannot be paid in the absence of assessed tax.

6. The determination of the issues

Having carefully considered the submissions, representations, and documentary evidence presented by both parties; this is the decision of the Tribunal.

The conditions for granting a temporary injunction are laid out in the case of *Kiyimba Kaggwa v Hajji Abdul Katende (1983) HCB 43*, namely:

- (i) There must be a prima facie case with a likelihood of success.
- (ii) The Applicant must demonstrate that they will suffer irreparable loss that cannot be compensated for by an award of damages.
- (iii) The balance of convenience favors the Applicants.

Prima facie case

The Tribunal acknowledges that the Applicants were granted WHT certificates and have been denied the benefit of it. The Applicants complained to the Respondent by way of a letter to the Commissioner Customs but have to this day did not receive a response. The Respondent in reply contends that the WHT is payable by the Applicants and such the Respondent provided guidance on the requirements needed by the Applicants to clear their goods. The Tribunal finds that there is a triable issue before this Tribunal, concerning the lawfulness of the denial of the Applicants' use of their certificates as well as the lawfulness of the imposition of WHT on the importation of agricultural produce.

Irreparable loss that cannot be atoned for by an award of damages.

The Applicants imported a large consignment of perishable goods, including ground nuts, beans, maize, sorghum, and rice, which have been held at the border since April 16,

2025. The Applicants stated in their affidavits that the goods will suffer damage and deterioration and some have lost their freshness. The continued detention has led to non-payment of suppliers, causing loss of goodwill and business reputation. The goods are also attracting daily demurrage costs at the warehouse in Mutukula, and some are still loaded on trucks accruing transport costs.

The Applicants wrote to the Respondent informing them that their goods were at the border and the Respondent neither replied disputing the presence of the goods at the border. In addition, in their affidavits in reply, the Respondent does not dispute or contest the Applicant's assertion that the goods are at the border. Therefore, the Applicants have demonstrated that they will suffer irreparable damage if the temporary injunction is not granted.

The balance of convenience

Since the Applicants have satisfied grounds one and two, the Tribunal finds that the balance of convenience is in the Applicants' favour.

The payment of 30% deposit

The Respondent prayed that, if the Tribunal were inclined to grant the injunction, the Applicants be ordered to pay 30% of the disputed tax. The Respondent argued this would allow partial tax collection and facilitate clearance. However, the Respondent admitted they could not state the disputed amount with precision as it depends on system assessment and struggled to identify the legal basis for the WHT.

Specifically, section 15 (1) of the Tax Appeals Tribunal Act provides:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

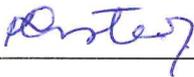
Based on the above provision, an assessment is a pre-requisite for the 30% deposit. In the present case, there is no assessment. In their submissions, the Respondent admitted that they do not know the quantum of tax payable. On what basis then, should the 30% deposit be paid?

We therefore find that the Applicants have ably demonstrated that they meet all the conditions for the grant of a temporary injunction.

The Tribunal hereby makes the following orders:

- (i) The Respondent unconditionally releases the Applicants' consignments held at Mutukula Border Point;
- (ii) The Respondent reinstates the Applicants' TIN and Withholding tax exemption codes to enable them to complete the clearing process; and
- (iii) Costs shall abide in the main suit.

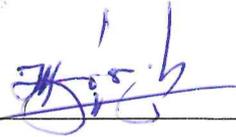
DATED at Kampala this 27th day of May 2025.



CRYSTAL KABAJWARA
CHAIRPERSON



GRACE SAFI
MEMBER



WILLY NANGOSYAH
MEMBER