

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS APPLICATION 182 / 2024

ARISING OUT OF TAT APPLICATION NO. 288 OF 2024

IMBA FOODS (U) LIMITEDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITYRESPONDENT

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

RULING

This ruling is in respect of an application brought under Rule 30 of the Tax Appeals Tribunal (Procedure) Rules, 2012, Order 41 Rule 1, 7 and 9 of the Civil Procedure Rules, section 98 of the Civil Procedure Act and sections 33 and 38 of the Judicature Act seeking orders that:

- (i) The Applicant be granted a temporary injunction restraining the Respondent from enforcing collection of withholding tax levied on importation of rice;
- (ii) The Respondent releases the rice that is in their custody;
- (iii) Costs for the application

1. Background Facts

The application is supported by the affidavit deponed by Mr. Bazaire Bernard, a Manager in the Applicant and sworn on 20 September 2024.

The application is premised on the following grounds:

- (i) The Applicant obtained a valid running withholding tax exemption certificate which expired on 30 June 2022.
- (ii) The Applicant imported certain consignments of rice and was asked by the Respondent to pay withholding tax before the clearing process could begin.

- (iii) The consignments have been held at Mutukula border by the Respondent whose field officers have demanded payment of withholding tax yet the consignments are tax exempted
- (iv) The consignment is in grace and imminent danger of being affected by depreciation and loss of market share if the same is not released.

The Respondent filed an affidavit in reply deponed by Kenan Aruho, a Legal officer in the Respondent's legal department sworn on 11 November 2024 opposing the application on grounds that:

- (i) The purported imports of the Applicant are for a period different from the period in the certificate of exemption
- (ii) The Applicant has not demonstrated that the items as per the entries attached are physically located at the border or held by the Respondent
- (iii) The entries attached by the Applicant bear a date of 2021 and yet the average rice consignment has an expiry period of two years
- (iv) If the Applicant had any grievance against the Respondent, they should have objected or appealed to the Commissioner in line with section 229 of the East African Customs Management Act, 2004.
- (v) Therefore, it is in the interest of justice that the application be dismissed as the balance of convenience lies with the Respondent.

2. Representation

At the hearing of the application, the Applicant was represented by Mr. Olila Isaac while the Respondent was represented by Mr. Sam Kwerit .

The parties were invited to make oral submissions.

3. Submissions of the Applicant

The Applicant prayed that the status quo is maintained until adjudication of the main application based on the principles governing applications for temporary injunctions, namely:

- (i) That there is a prima facie case with a probability of success;
- (ii) The Applicant will suffer irreparable damage that cannot be compensated by an award of damages; and

(iii) The balance of convenience lies with the Applicant.

The Applicant relied on the case of *Kiyimba Kaggwa v Hajji Abdul Nasser [1985] HCB 43* where the court pointed out that a prima facie case isn't one that calls for success but one that presents a triable issue for the adjudication by the honourable court.

On the issue of suffering irreparable damage, the Applicant submitted that to amount to irreparable damage, the damage should be substantial and material in nature and cannot be adequately atoned for in damages. To this end, the Applicant relied on paragraph 11 in support of the Notice of Motion wherein it is stated that the Applicant is likely to suffer irreparable damages arising from loss of business, reputation, clients, goodwill, breach of contract, among others.

Regarding the balance of convenience, the Applicant relied on the case of *James Musinguzi and anor v Dr. Chris Biryomunsi and two others, HCMC no. 817 OF 2016* where the court stated that if the court is in doubt of the degree of irreparable damage to be suffered by the party, the court may consider the application on the balance of convenience.

The Applicant submitted that they had clearly shown the kind of losses that they will suffer as stated in paragraph 11 of the affidavit in support of their notice of motion. The Applicant further submitted that the Respondent on the other hand can collect the tax at any time should it be found payable. Therefore, the balance of convenience is in the Applicant's favour.

4. Submissions of the Respondent

The Respondent raised a preliminary objection regarding the Tribunal's jurisdiction to hear the application.

The Respondent submitted that as the matter concerns a customs dispute, the provisions of the East Africa Customs Management Act apply. The Respondent cited section 229 of the EACMA which provides that any person aggrieved by a decision of the Commissioner should object to the Commissioner. It is only after the Commissioner has issued a decision that the Tribunal has jurisdiction.

In the present case, the Applicant purports to have imported rice in 2021. However, to date, no complaint has been brought to the attention of the Commissioner, Customs. The Respondent submitted that the Respondent has not issued an assessment regarding the tax of Shs. 7,268,212,000 that the Applicant alleges to have been raised against them. Further, there is no objection on record by the Applicant and consequently no objection decision to warrant a review by this Tribunal.

The Respondent cited the case of *Kawuki Matthias v Commissioned Genera, URA, MC 14 / 2014*, where Justice Madrama (as he then was) held that once there is a procedure that is established, it must be exhausted before the matter comes to court.

The Respondent therefore argued that in the present case, the matter is prematurely before the Tribunal as an appeal wasn't filed before the Commissioner.

5. Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant submitted that even though there were no assessments raised, the Respondent had indicated that the Applicant would not be granted the withholding tax exemption.

When pressed by the Tribunal for the assessment, the objection and the objection decision in support of the alleged additional tax of Shs. 7,268,212,000, the Applicant submitted that the Applicant is in the process of obtaining the said documentation from the Respondent.

6. The determination by the Tribunal

Having listened to the submissions of the parties, this is the decision of the Tribunal:

The Respondent has raised a preliminary objection regarding the jurisdiction of the TAT to hear a matter. As the preliminary objection will settle the matter if ruled in favour of the Respondent, the Tribunal decided to determine the preliminary objection before addressing the substantive merits of the dispute.

The Respondent submitted that the dispute in question is not based on an assessment and nor is there an objection decision from the Respondent which warrants review by the Tribunal.

The Applicant has not provided evidence to show that the Respondent issued an assessment, made an objection to the Respondent and an objection decision or no decision by the Respondent.

In the absence of a decision by the Respondent, this Tribunal is not clothed with jurisdiction to hear the matter.

The Applicant alludes to assessments of Shs. 7,268,212,000 but has not adduced the corresponding assessment by the Respondent.

In the case of *Mobi-Tex Engineering Co. Works V Uganda Revenue Authority TAT Application No.91 of 2023*, the Tribunal decided that in the absence of an objection decision, the Applicant has no standing to appear before the Tribunal, nor does the Tribunal have jurisdiction to consider the matter. The Tribunal also held that its authority is limited to reviewing decisions made by the Respondent only when a taxpayer is aggrieved by a decision under a taxing act or by an objection decision.

In the circumstances, the Respondent's preliminary objection succeeds and the Applicant's application for a temporary injunction fails as the Applicant has no standing before the Tribunal.

This matter is hereby dismissed with costs to the Respondent.

Dated this 11th day of November 2024.



CRYSTAL KABAJWARA
CHAIRPERSON



WILLY NANGOSYAH
MEMBER



GRACE SAFI
MEMBER

