THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

MISC.APPLICATION NO. 132 OF 2023

(ARISING FROM APPLICATION NO. 156 OF 2023)

IMPERIAL PAINTS ========== APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ========== RESPONDENT

BEFORE: MR. SIRAJ ALI MS. CHRISTINE KATWE MS. ROSEMARY NAJJEMBA

RULING

This ruling is in respect of an application for a temporary injunction.

The applicant, a partnership, is engaged in the manufacture of paints at its plant at Luteete, Gayaza Road. The applicant filed Miscellaneous Application No. 132 of 2023 for a temporary injunction. Upon the direction of the tribunal both parties filed written submissions. The applicant was represented by Mr. Joseph Angura while the respondent was represented by Ms. Sheba Tayahwe.

The applicant submitted that while the grant of an order of temporary injunction is at the discretion of the tribunal such discretion must be exercised judiciously. In support of this position the applicant relied on the decisions in *Yahaya Kariisa vs. Attorney General & Another S.C.C.A No. 7 of 1994 (1997) HCB 29* and *Equator International Distributors Ltd vs. Beiersdorf East Africa Ltd & Others, Misc. Application No. 1127 of 2014.* Relying on the decision in *Titus Tayebwa vs. Fred Bogere and Eric Mukasa Civil Appeal No. 3 of 2009,* the applicant submitted that it is trite that where there is a legal right either at law or in Equity, the tribunal has the power to grant an injunction in protection of that right. The applicant submitted that the law governing the grant of a temporary injunction is set out under S, 64 (e) of the Civil Procedure Act and Order 41 Rule (1) and (2) of the Civil Procedure Rules and the following principles guide the grant of temporary injunctions.

Firstly, the applicant must show that there is a substantial question to be investigated with a possibility of success. Secondly, it must be shown that the applicant will suffer irreparable injury which cannot be atoned for in damages. Thirdly, the applicant must show that the balance of probability is in its favour.

The applicant submitted that it is trite that a tribunal can only exercise its discretion to grant a temporary injunction in order to safeguard the legal right of an applicant who has made out a prima facie case. The applicant therefore has a duty to demonstrate that its main case raises serious questions to be tried with a high probability of success. The applicant submitted that the affidavit in support of its application raises serious question for trial with a high probability of success, namely; Whether the actions of the respondent to continuously hold the applicant`s documents/computers since 2016 is lawful? Secondly, whether in light of the election the applicant is liable to pay the tax assessed? Thirdly, whether the applicant is entitled to an award of special and general damages?

The applicant submitted that it has paid part of the 30% of the tax in dispute. The applicant submitted that before the reopening of its factory it was required to demonstrate payment of taxes. The applicant submitted that it forwarded the proof of payment of Shs. 28,441,052 to the Commissioner Domestic Taxes and requested to be allowed to pay the balance in six installments. The applicant submitted that it is currently in negotiations with the Commissioner Domestic Taxes to determine how the balance will be paid.

The applicant submitted further that it will suffer irreparable injury if the temporary injunction is not granted. The applicant submitted that if the application is not granted, its factory will be closed or sold which will amount to irreparable injury. The applicant submitted further that the balance of convenience is in a favor of it continuing to operate the factory as the tribunal investigates the allegations set out in the main application.

The respondent relying on the decision in *Kiyimba Kaggwa v. Haji Katende (1985) HCB 43,* submitted that the applicant has not satisfied any of the conditions for the grant of a temporary injunction. The respondent submitted that Application NO. 156 of 2023 does

not disclose a prima facie case with a probability of success on the grounds that the applicant has not paid 30% of the tax in dispute. The respondent submitted that as a result the main application is prematurely before the tribunal and it is futile to consider whether there are any tribal issues to be determined. The respondent submitted that the duty to pay 30% of the tax in dispute is set out under S. 15 of the Tax Appeals Tribunal Act. The respondent submitted that the requirement to pay 30% of the tax in dispute was considered by the Supreme Court in *Uganda Projects Implementation and Management Centre v. URA, SCCA No. 2 of 1999,* wherein the Supreme Court declared that the requirement to pay 30% of the tax in dispute was constitutional and did not infringe on the right to a fair hearing under the Constitution of Uganda. The respondent submitted that accordingly payment of 30% of the tax in dispute is a pre-requisite to filing an application before the tribunal and where 30% of the tax in dispute has not been met, the application for review is deemed to have been filed prematurely. In support of this position the respondent relied on the decision of the tribunal in *Bullion Refinery Limited vs. Uganda Revenue Authority TAT Application No. 36 of 2021.* The respondent submitted that 30% of Shs. 230,413,926, which is the tax in dispute amounts to Shs. 69,124,177 and remains unpaid. The respondent submitted that the main application is therefore premature and has no likelihood of success. The respondent submitted that the applicant was granted an interim application on 28th September 2023 and ordered to pay 30% of the tax in dispute.

Relying on the decision in *Giella v. Cassman Brown & Co. (1973) EA 358,* the respondent submitted that in determining whether the applicant will suffer irreparable injury which cannot be atoned for by damages, the cardinal consideration is whether in fact, the applicant would suffer irreparable injury or damage as a result of the refusal to grant the application. Citing the decision is *Tonny Wasswa v. Joseph Kakooza (1987) HCB 79,* the respondent submitted that irreparable injury does not mean that there must no physical possibility of repairing the injury but that the injury or damage must be a substantial or material one that cannot be adequately atoned for in damages. The respondent submitted that the applicant has not demonstrated the irreparable damage that it will suffer in the event that this application is not granted. The respondent submitted further that taxes are

creatures of statute and any overpaid or wrongly paid tax can be recovered from the respondent in accordance with the law. The respondent submitted further on the basis of the decision in *Carlton Douglas Kasirye v. Sheena Ahumuza Bageine Misc. Application No. 148 of 2020,* that where the court is in doubt in respect of the previous conditions but finds that there is a need to preserve the status quo, then it can decide the matter on a balance of convenience. The respondent submitted that on a balance of convenience all indicators showed that the respondent and the public at large will suffer greatly if this application is granted because the ultimate effect of the temporary injunction would be to interfere with the respondent`s exercise of its statutory mandate. The respondent prayed for the dismissal of the application.

In rejoinder the applicant reiterated its earlier submissions.

Having listened to the evidence and read the submissions of the parties, the following is the ruling of the tribunal.

It is well established that for an applicant to succeed on an application for a temporary injunction the applicant must prove that it has a prima facie case with a high probability of success and that it will suffer irreparable injury if the application is not granted. (See *Kiyimba Kaggwa v. Haji Katende).* It is trite that the application will fail if any of the above conditions are not met by the applicant. It is not in dispute that the applicant has not paid 30% of the tax in dispute as required by S. 15 of the Tax Appeals Tribunal Act.

The tribunal has held in *Bullion Refinery Ltd v. URA, TAT Application No. 36 of 2021 that "The requirement to pay 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a taxpayer files a matter in the Tax Appeals Tribunal. Therefore, a reading of the Act means that by the time a matter is filed in the tribunal 30% ought to have been paid...Where the 30% of the tax assessed or the amount in dispute has not been paid a taxpayer loses its right to access the Tribunal as it shows that it does not have any intention of paying any tax in dispute. It does not come to the Tribunal with clean hands".*

The applicant submitted that it paid part of the 30% of the tax in dispute namely Shs. 28,441,052 with the balance of Shs. 40,683,125 remaining unpaid and requested the Commissioner of Domestic Taxes to be allowed to pay the remainder in six instalments. The applicant has neither provided proof of this payment nor of the agreement between it and the Commissioner authorizing it to pay the remainder of the sum in instalments. In the absence of such evidence we are unable to confirm whether the Commissioner of Domestic Taxes has indeed agreed with the applicant`s request to pay the remainder of the 30% of the tax in dispute in instalments. The decision in *Bullion Refinery* above shows that this application is improperly before the tribunal for non-payment of 30% of the tax in dispute. An application which is improperly before the tribunal cannot be said to raise substantial issues with a high probability of success. On this ground alone this application fails. The application is accordingly dismissed with costs.

Dated at Kampala this 15th day of December 2023.

MR. SIRAJ ALI	**MS. CHRISTINE KATWE.**	**MS. ROSEMARY NAJJEMBA**
CHAIRMAN	**MEMBER**	**MEMBER**