

THE REPUBLIC OF UGANDA  
IN THE TAX APPEALS TRIBUNAL AT KAMPALA  
MISCELLANEOUS APPLICATION NO. 10 OF 2025  
(ARISING FROM TAT APPLICATION NO. 017 OF 2025)

KALUNGI ESTATES COMPANY LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. STELLA NYAPENDI, MS. ROSEMARY  
NAJJEMBA

RULING

This ruling is in respect of an application brought under Section 98 of the Civil Procedure Act, Order 41 Rule 2 and 9 of the Civil Procedure Rules, and under Rules 27(e) and (f), 28, 30, and 31 of the Tax Appeals Tribunal (Procedure) Rules 2012 seeking for the following orders:

- (i) A temporary injunction restraining the Respondent from impounding, advertising, disposing of, auctioning, or otherwise interfering with the Applicant's movable property and equipment pending the determination of the main Tax Appeals Tribunal (TAT) Application; and
- (ii) Costs of the application to abide in the main TAT Application.

**1. Background facts**

This is a ruling in respect of an application filed by the Applicant seeking a temporary injunction against the Respondent. The Applicant filed this application challenging the Respondent's continued enforcement actions, including impounding of the Applicant's machinery and equipment before completing the agreed re-audit for the 2015-2016 period and before issuing a final objection decision for the 2017-2022 period in contravention with the Tax Procedure Code Act. The Applicant prayed for an order restraining the Respondent, its agents, or officers from impounding, advertising, disposing of, selling, or

otherwise interfering with its movable assets pending the determination of TAT Application No. 017 of 2025.

The grounds of this application are stated in the affidavit in support deponed by Mr. Moses Kalungi Kirumira, the Director of the Applicant, sworn on 27 January 2025 stating as follows:

- (i) That by consent judgement dated 27 February 2020, the Applicant agreed to withdraw its then pending application, TAT App No. 70 of 2019 in relation to rental tax obligations for the period 2015-2016 on condition that the Respondent's rental tax office would reaudit the Applicant to determine the true tax liability and any allowable deductions, the Applicant reminded the Respondent about the same but did not respond.
- (ii) The Respondent instead commenced a new investigation of the Applicant's tax affairs for the period 2017-2022. The Respondent then communicated its findings, which were different from the findings that arose from the re-audit 2015-2016.
- (iii) The Applicant objected and the Respondent has not yet issued objection decisions. However, the Respondent has proceeded with the enforcement measures based on the purported outstanding liabilities of 2015-2016 which were never established through the agreed upon re-audit.
- (iv) That by the warrant of distress, the Respondent sought to recover Shs. 1,101,929,563 and on 13 September 2023, the Respondent executed this warrant by attaching the Applicant's movable assets, including Sino trucks, Reg Nos. UBN 154P, UBN 126P, UBN127P, UBN 152P and Excavator CAT (UBN 230) issued before final determination of the 2015-2016 period or resolving the 2017-2022 objections.
- (v) That the Respondent also impounded two Sany brand concrete pumps belonging to the Applicant, placing them at a risk of being auctioned, further aggravating the Applicant's losses.
- (vi) While these disputes were still unfolding, by letter dated 15 October 2024, the Respondent communicated an outstanding rental income liability of Shs. 699,919,386 and the Applicant paid Shs. 480,000,000(hereby referred to as

Annexures G1, G2, G3 of the Affidavit in Support) leaving only interest and penalties waived by the 31 December 2024 waiver.

- (vii) Despite the payments made, the Respondent has continued enforcement actions, including a directive to the Applicant's bonded warehouse halting the release of the consignment under entry number S96349/2024 and the poundage of the two concrete pumps.
- (viii) That the Respondent is obligated under the Tax Procedure code to finalize objections by issuing objection decisions and honor the terms of the consent judgement requiring a re-audit for 2015-2016 prior to enforcement measures which is illegal, premature and procedurally flawed.

The Respondent opposed the Application and filed an affidavit in reply deponed by Mr. Stanley Kabyemera, the Acting Assistant Commissioner, Tax Arrears Management of the Respondent, sworn on 14 February 2025 as follows:

- (i) The Applicant being dissatisfied with the objection decision, filed an application before the Tax Appeals Tribunal, which led to a consent judgement requiring the Respondent to re-audit the Applicant and determine their tax liability.
- (ii) Following the re-audit, the Respondent maintained the assessments in a letter dated 23 June 2023 and commenced recovery of tax areas amounting to Shs.1,101,919,563.
- (iii) On 12 June 2023, a warrant of distress was issued to Richie Bros Auctioneers and Court Bailiffs, which was executed on 13 September 2023. The Respondent impounded the Applicant's movable assets, namely the excavator and four Sino truck concrete mixers which were advertised in the Daily Monitor on the 4 October 2023 for auction.
- (iv) The Applicant obtained an interim order in Civil Suit 369 of 2023, which was later dismissed on the grounds that the suit ought to have been filed before the Tax Appeals Tribunal. On 17 January 2025, the auctioneer readvertised the impounded movable assets in the Daily Monitor for auction to recover the taxes.
- (v) The auction was scheduled for 31 January 2025. However, on 27 January 2025, the Applicant filed TAT App No. 17 of 2025 challenging the enforcement measures.

- (vi) That the unpaid tax liability the Respondent seeks to recover relates to the period 2015-2016 and the respective assessments were upheld after the re-audit.
- (vii) That the Respondent lawfully initiated the distress proceedings against the Applicant.
- (viii) That the Applicant has not paid the mandatory 30% and as such should not be heard.

## 2. Issues for Determination

The main issue for determination by the Tribunal is whether the Applicant is entitled to the grant of a temporary injunction.

## 3. Representation

The Applicant was represented by Mr. Emmanuel Tumuhaise, Ms. Specioza Mure Katette, and Ms. Daisy Adong, while the Respondent was represented by Ms. Gloria Twinomugisha, Mr. George Ssenyomo, and Mr. Agaba Edmond.

## 4. The Submissions of the Applicant

### The Preliminary Objection

In paragraph 20 of the Respondents affidavit in reply, the Respondent contended that the Applicant had not paid the 30% of the tax in dispute and should not be heard. The Applicant submitted that it paid an amount exceeding 30% of the tax in dispute which is approximately Shs. 330,578,869. The Applicant stated that they paid Shs. 480,000,000 which the Respondent does not dispute. The Applicant further contended that the Respondent has since failed to conclude the objection process and establish the Applicant's tax liability. Consequently, the principal dispute concerns the timing and lawfulness of the enforcement measures.

The Applicant submitted that in the case of *Nile Breweries Limited V Uganda Revenue Authority (Misc. App No. 87 of 2024)*, which cited with approval the well-known case of *Kiyimba Kaggwa V Hajji Katende Abdu Nasser Suit No. 2109 of 1984*, it was held that the conditions that must be satisfied for the grant of a temporary injunction as follows:

**a) A prima facie case with possibility of success**

The Applicant submitted that the consent judgement obliging the Respondent to re-audit the Applicant for the period 2015-2016 renders the subsequent enforcement measures premature. The Respondent agrees to having communicated its findings on 23 June 2023 after the enforcement measures had been initiated. The chronology of events raises a serious question as to whether the enforcement measures were premature and in contravention of the consent judgement.

Secondly, the Applicant submitted that the Respondent went ahead to impound and advertise the Applicants assets for auction despite not having issued objection decisions in response to the Applicant's objection. Therefore, the Applicant established a prima facie case with a likelihood of success.

**b) Irreparable Injury**

The Applicant demonstrated that the impounded assets are essential for its hotel project and their loss risks halting the project, causing loan defaults, reputational harm, and disruption of business operations. Furthermore, such harm cannot be adequately compensated for by monetary damages. The Respondent impounded critical construction machinery and vehicles including Sino trucks, an excavator and concrete pumps vital for the Applicant's ongoing construction operations.

The Applicant further submitted that it acquired both local and foreign loans to finance the hotel construction and the lenders have threatened to terminate the loan. The Applicant risk's reputational damage and the ability to secure future funding.

**c) The balance of convenience**

The Applicant argued that it stands to suffer greater harm if the injunction is not granted, including the collapse of a major investment and loss of business reputation.

Conversely, any inconvenience to the Respondent would be temporary, as it could resume enforcement if it prevails in the main application. As observed in *Kiyimba Kaggwa V Hajji Katende Abdu Nasser (supra)* and reaffirmed in *Jover Byaruhanga*

*V Ali Muhoozi & Anor (HCCS No. 122 of 2014)*, the balance of convenience means determining which party stands to suffer the greater injury if the injunction is withheld or granted.

The Applicant submitted that the continued impounding and threatened auction of the Applicant's machinery and equipment will affect the construction project, lead to loan defaults, termination of financing and reputational damage. The Applicant submitted that if the injunction is refused, the entire business could collapse, if granted the Respondent's ability to collect taxes remains protected and can be enforced later. The Applicant prayed that a temporary injunction be granted to restrain the Respondent from interfering with its movable assets until the final determination of the main application and for costs to be provided.

#### **5. The Respondent's Submissions in Reply**

The Applicant filed an application on 27 January 2025, seeking a temporary injunction to prevent the Respondent from auctioning or interfering with its movable property pending determination of TAT Application No. 017 of 2025. The Respondent opposed the application, arguing that it lacks merit and prayed that it is dismissed with costs.

The Respondent submitted that it audited the Applicant for the period 2015-2016, leading to additional tax assessments. The Applicant applied to the Tax Appeals Tribunal for review of the Respondent's decision and the matter was consented. In line with the consent, the Respondent agreed to re-audit the Applicant and subsequently, the assessments were upheld. Subsequently, the Respondent initiated recovery measures, including impounding movable assets and advertising them for auction to recover Shs. 1,101,929,563 in tax arrears.

The Respondent submitted that the previous attempts by the Applicant to block enforcement in the High Court failed, and the Court directed the matter to TAT as the appropriate forum. Therefore, the unpaid liability related to the 2015-2016 period and the objection decisions for 2017-2018 remained pending.

The Respondent submitted that the purpose of the Injunction is to maintain the status quo, which in this case involves assets already impounded by the Respondent. The Respondent also submitted that a temporary injunction is an equitable relief. However, in the present case, the Applicant lacks "clean hands" as the tax liability for 2015-2016 was upheld after a re-audit, and the pending objections pertain to a different period.

The Respondent cited the case of *Ziraguma Emmanuel and Another V The Most Rev. L.M Nkoyoyo (HCT- 00-CV-CS-0282-2003)* where it was held that a temporary injunction should preserve existing conditions rather than alter them.

The Respondent submitted that the Applicant failed to establish a serious case for trial, as the Respondent's actions are lawful, and the application appears to frustrate tax collection. In *Godfrey Sekitoleko and four others V Seezi Peter Mutabazi and two others, C.A. Civil Appeal No. 65 of 2011 [2001 2005] HCB 80*, the Court of Appeal explained a prima facie case means that the claim should not be frivolous or vexatious and must raise serious questions for determination.

The Respondent submitted that the taxes that the Respondent seeks to recover concerns the period 2015-2016. The assessments relating to this period were upheld after the re-audit. Therefore, the application is an attempt to frustrate the Respondent's statutory mandate of collecting revenue.

The Respondent submitted that the Applicant previously attempted to delay tax collection by filing in the High Court Civil Suit No. 369 of 2023 challenging the same enforcement measures. This amounts to forum shopping as the Applicant is simultaneously pursuing parallel litigation in two different forums on the same facts. The Respondent submitted that the Applicant will not suffer irreparable harm as the value of the impounded assets is ascertainable and compensable by damages.

The Respondent submitted that the balance of convenience favors the Respondent, as granting the injunction would obstruct statutory tax collection and public revenue interests. Restraining the Respondent from collecting tax has been confirmed through dispute resolution to not only obstruct the Respondent's statutory mandate but also affect

government revenue and service delivery. The Respondent prayed that this application is dismissed with costs.

Without prejudice to the above, the Respondent submitted that the Applicant failed to meet the Statutory Requirements under Section 15 of the Tax Appeals Tribunal Act which requires the Applicant to pay 30% of the disputed tax (Shs. 330,578,869) before proceeding. This has not been complied with. The Respondent prayed that the application be dismissed with costs as the Applicant has failed to satisfy the conditions for granting a temporary injunction and complying with statutory requirements.

In rejoinder, the Applicant reiterated their position as per their submissions.

## **6. The Determination by the Tribunal**

The Applicant challenged the Respondent's enforcement actions on the grounds that contrary to a consent agreement entered by the parties, the measures were initiated prior to the completion of the re-audit. Furthermore, this raising procedural concerns as the Respondent is yet to finalize the objection process or conclusively establish the Applicant's true tax liability.

### **The Application for a Temporary Injunction**

Before delving in the merits of this application, it is important to summarise the facts that led to this dispute.

On 12 July 2019, the Applicant filed an application before this Tribunal challenging a rental tax assessment of Shs. 1,064,176,204 for the period 2015 – 2016. On 27 February 2020, the parties entered into a consent where in it was agreed that the Applicant would withdraw the application. In return, the Respondent would re-audit the Applicant to ascertain its tax liability and allowable deductions.

On 23 June 2023, the Respondent wrote to the Applicant informing them that they were maintaining the earlier assessment arising from the audit of 2015 – 2016. The letter indicated that the principal tax liability for this period to be Shs. 1,048,058,618.



However, on 12 June 2024, two weeks before the Respondent informed the Applicant of the outcome of the re-audit, the Respondent issued a warrant of distress, seeking to recover an outstanding tax liability of Shs. 1,101,929,563.

On 13 September 2023, two and a half months after the warrant of distress was issued, the Respondent proceeded to distress the Applicant's movable assets, including Sino trucks, Reg Nos. UBN 154P, UBN 126P, UBN127P, UBN 152P and Excavator CAT (UBN 230). The Respondent also impounded two Sany brand concrete pumps belonging to the Applicant, placing them at a risk of being auctioned, further aggravating the Applicant's losses.

In addition to the above events, the Respondent carried out an audit of a subsequent period namely 2017 – 2022. According to the Applicant's affidavit in support of this application, the Respondent took certain positions, which the Applicant objected to. To date the Respondent has not issued their objection decision. Unfortunately, neither party adduced evidence of the assessments issued by the Respondent for the period 2017 – 2022.

However, in a letter dated 28 November 2024 to the Respondent, the Applicant acknowledged an undisputed tax liability of Shs. 440,000,000 and refers to an objection made to the URA. In this letter, the Applicant attached payment receipts for the above undisputed liability.

The Applicant, in Para 15 of their affidavit in support of this application, states that the payments referred to in the above letter of 28 November 2024 were made towards the 2015-2016 tax liability as a show of good faith and intention to settle the principal tax liability. Therefore, we shall need to establish whether the above payment was towards the 2015 – 2016 liability or the liability from the subsequent audit for the period 2017 – 2022. Besides, the Applicant mentions an amount of Shs. 480,000,000, which is different from the Shs, 440,000,000 indicated in the letter of 28 November 2024.

The Applicant now seeks a temporary injunction restraining the Respondent from disposing of the impounded moveable assets pursuant to an advert placed in the Daily Monitor dated 31 January 2025.

#### The principles for the grant of a temporary injunction

The principles governing the grant of a temporary injunction are well-established and have been restated in numerous cases, including *Kiyimba Kaggwa V Haji Abdul Nasser Katende [1985] HCB 43*, *American Cyanamid Co. V Ethicon Ltd. [1975] AC 396*, and *Noor Mohammed Jan Mohamed V Kassamali Virji Madhani & Another [1953] EACA 8*. Where Court stated, a party seeking a temporary injunction must demonstrate the following:

- a. *“A prima facie case with a probability of success.*
- b. *Irreparable harm that cannot be adequately compensated by damages.*
- c. *The balance of convenience favors the Applicant”.*

#### **Prima facie case**

The Applicant argued that the enforcement measures taken by the Respondent were premature as the objection decisions on which the liability was based were still pending. The Applicant also alleged that the Respondent failed to conduct a re-audit pursuant to a consent judgment.

The Respondent, on the other hand, contended that the tax liability in question pertained to the 2015-2016 tax period and was upheld following a re-audit conducted pursuant to a consent judgment. The Respondent argued that the pending objection decisions relate to a different tax period (2017-2022) and are irrelevant to the current enforcement measures.

This Tribunal finds that the Applicant has established a prima facie case as the enforcement measures were initiated before the conclusion of the re-audit. Specifically, the enforcement measures were initiated on 12 June 2023 while the re-audit was concluded on 23 June 2023. This was procedurally improper as it denied the Applicant the opportunity to settle its tax liability voluntarily without the need for enforcement measures.

### **Irreparable Harm**

The Applicant must prove that the harm likely to be suffered cannot be adequately compensated by damages. In *Kiyimba Kaggwa V Haji Abdul Nasser Katende [1985] HCB 43*, irreparable harm was defined as substantial or material injury that cannot be remedied by a monetary award.

The impounded movable assets, an excavator and four Sino truck concrete mixers are commercial equipment with ascertainable financial value. Any harm arising from their sale can be quantified and adequately compensated in damages. The Respondent, being a government entity, has the capacity to compensate the Applicant in the event of a successful claim.

The Applicant contended that it acquired both local and foreign loans to finance the hotel construction and the lenders have threatened to terminate the loan. The Applicant risk's reputational damage and the ability to secure future funding. This Tribunal agrees with the Applicant's submission that it will suffer irreparable harm in this regard.

### **The balance of convenience**

The balance of convenience lies in favor of the party likely to suffer greater harm if the injunction is granted or denied. The Applicant argued that the sale of its assets would cause significant harm to its operations. However, the Respondent submitted that the unpaid tax liability is a legally due debt owed to the Government of Uganda. Restraining the Respondent from collecting this tax would hinder its statutory mandate and negatively impact government revenue, which is essential for public service delivery.

In the case of *GAPCO Uganda Limited Versus Kaweesa H.C. Misc Application No. 259 of 2013*, Hon. Justice Joseph Murangira, stated:

*"It is trite law that if the Court is in doubt on any of the above two principles, it will decide the application on the balance of convenience. The term balance of convenience literally means that if the risk of doing an injustice is going to make the applicants suffer then probably the balance of*

*convenience is favorable to him/her and the Court would most likely be inclined to grant to him/her the application for a temporary injunction”.*

This Tribunal finds that the balance of convenience tilts in favor of the Applicant. The Applicant's machinery is being held and therefore putting the Applicant's work at a standstill. Denying the injunction will obstruct the Applicant's justice as it also has a right to be heard.

### **What Remedies are available to the parties?**

While the Applicant has met the condition for the grant of the temporary injunction, it is important to highlight the following observations:

- (i) The liability giving rise to the current dispute dates back to 2019, when the Applicant filed TAT Application 70 of 2019 before this Tribunal. It is this application that was eventually withdrawn subject to a re-audit by the Respondent.
- (ii) There's a clear letter on record dated 23 June 2023 stating that the Respondent re-audited the 2015-2016 period and maintained their 2019 position.
- (iii) Whilst it was wrong for the Respondent to enforce collection before the re-audit position was communicated to the Applicant, the actual enforcement did not happen until September 2023. The Applicant therefore had two and a half months to pay the outstanding tax of Shs. 1,101,929,563 that was the subject matter of the warrant of distress.
- (iv) It should also be noted that on 17 May 2023, the Respondent gave the Applicant an opportunity to show cause why a warrant of distress should not be issued. However, the Applicant did not make use of this opportunity.
- (v) It is also important to note that the Applicant has not challenged or disputed the liability arising from the re-audit of the period 2015-2016. The Application No. 17/2025, which the Applicant filed on 27 January 2025 before this Tribunal only challenges the lawfulness of the Respondent's enforcement measures.
- (vi) Further, the Applicant claims to have paid 30% of the tax in dispute. However, that is not true. The Shs. 440 million that the Applicant paid was for a subsequent liability which they themselves indicated as undisputed. This is also corroborated by the fact that the amount of Shs. 480 million which the Applicant claims to have paid towards the 2015- 2016 liability does not tally with the Shs. 440 million stated in their letter

of 28 November 2024. We believe that this payment was made towards a subsequent liability, most likely arising from the 2017 -2022 period.


- (vii) The liability of Shs. 1,101,929,563 has been outstanding since 2019. It is now almost six years since the tax was assessed. Surely, the Applicant has had ample time to put their house in order, which they have not.
- (viii) This is clearly a case where a taxpayer bides their time in the hope of frustrating the Revenue Authority's collection efforts.


Therefore, whilst this Tribunal acknowledges that the Applicant will suffer irreparable damage if his assets are auctioned and sold off, we are also mindful of the fact that the Respondent has a critical mandate to collect tax revenue. Yet, the role of this Tribunal is to maintain the delicate balance between the interests of taxpayers and those of the Uganda Revenue Authority. In view of the above, we make the following orders:

- (i) That a temporary injunction is hereby issued restraining the Respondent from impounding, auctioning, advertising or selling the Applicant's assets or dealing with them in any other manner. However, the Respondent should not release the assets to the Applicant until the Applicant has paid the full tax liability as indicated below.
- (ii) The Applicant is hereby ordered to pay the liability of Shs. 1,101,929,563 arising from the tax period 2015 – 2016, which the Respondent confirmed following the re-audit. This should be paid not later than 15 May 2025. This disposes of the preliminary objection.
- (iii) Each party shall bear their own costs.

Dated at Kampala this 7<sup>th</sup> day of March 2025.

  
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CRYSTAL KABAJWARA  
CHAIRPERSON

  
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STELLA NYAPENDI  
MEMBER

  
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ROSEMARY NAJJEMBA  
MEMBER

of 22 November 2024. We believe that the payment was made towards  
 subsequent liability most likely arising from the 2017-2023 period.  
 (iv) The liability of BSA 1 101 924 563 has been outstanding since 2019. It is now almost  
 six years since the tax was assessed. Surely, the Applicant has had ample time to  
 further liaise in order which they have not.  
 (vii) This is clearly a case where a taxpayer takes their time in the hope of frustrating the  
 Revenue Authority's collection efforts.

Therefore, whilst the Tribunal acknowledges that the Applicant was under legitimate  
 damage to his assets are attached and that the Applicant is the law for the  
 Respondent has a critical mandate to collect tax revenue. Yet the role of the Tribunal is  
 to maintain the delicate balance between the interests of taxpayers and those of the  
 State Revenue Authority. In view of the above, we make the following orders:

- (i) That a temporary injunction is hereby issued restraining the Respondent from  
 harassing, questioning, advising or setting the Applicant's assets or dealing with  
 them in any other manner. However, the Respondent should not release the assets  
 to the Applicant until the Applicant has paid the full tax liability as assessed above.
- (ii) The Applicant is hereby ordered to pay the liability of BSA 1 101 924 563 along  
 with the tax debts 2018-2019, which the Respondent confirmed following the re-  
 view. This should be paid not later than 15 May 2025. The balance of the  
 outstanding debt.
- (iii) Each party shall bear their own costs.

Date at Kampala the \_\_\_\_\_ day of \_\_\_\_\_ 2025

		
ROSEMARY NALLEMBA MEMBER	STELLA NYARUNDI MEMBER	CRYSTAL KABAMWARA CHAIRPERSON