

THE REPUBLIC OF UGANDA.
THE TAX APPEALS TRIBUNAL AT KAMPALA.
MISCELLANEOUS CAUSE NO. 16 OF 2025.

KAMBO BUILDING & ELECTRICAL CONTRACTORS(U) LIMITED....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE; MS. CRYSTAL KABAJWARA, MR. WILLY NYANGOSYAH, MS. GRACE
SAFI

RULING

This ruling is in respect of an application brought under Order 52 Rule 1 and 3 of the Civil Procedure Rules S.I 71-1 where the Applicant seeks orders that:

- (i) A declaration that the Respondent violated the Applicant's legitimate expectation when it withdrew its withholding tax exemption.
- (ii) A declaration that the Respondent withdrew the Applicant's withholding tax exemption certificate without affording her any hearing.
- (iii) That the Respondent reinstates the Applicant on the list of withholding tax exemption.
- (iv) The Respondent pays general and aggravated damages to the Applicant of UGX.80,000,000 and 50,000,000/= respectively for its wanton conduct.
- (v) Costs for the application be provided for.

1. Background facts

The Application is supported by an affidavit deposed by Mr. Happy Moses Kaggwa the Director of the Applicant company sworn on 8 December, 2024 stating as follows;

- (i) In 2023, the Applicant applied for the withholding tax exemption from the Respondent.
- (ii) The Respondent after scrutinizing the Applicant's compliance with her tax obligations granted the Applicant the withholding tax exemption.

- (iii) The Applicant armed with the withholding tax exemption certificate entered into various contracts with a number of entities, to wit the Arab contractors and the Uganda National Roads Authority.
- (iv) The Respondent in an unceremonious turn of events stealthily removed the Applicant from the list of withholding tax-exempt entities without notifying the Applicant
- (v) The Respondent equally did not summon the Applicant to appear to answer to any allegation of any breach that she could have occasioned that warranted their removal from the list of the withholding tax exempt entities.
- (vi) The actions of the Respondent were in total disregard to the law that requires those in authority to adhere to the rules of natural justice and fair hearing when undertaking any administrative actions.
- (vii) On 15 August 2024, the Applicant wrote to the Respondent to reinstate the Applicant on the list of the withholding tax exempt entities. However, the Respondent did not reinstate the Applicant.
- (viii) When the Respondent ignored the letter, the Applicant together with their advocate had a face-to-face engagement with the officials of the Respondent responsible for issuance of the withholding tax exemptions where they were verbally informed that the Applicant was removed from the withholding tax exemption list for importing agricultural products from the Republic of Tanzania.
- (ix) The Applicant was verbally told to wait as the Respondent was considering reinstating the Applicant's withholding tax exemption by Thursday, 26 September 2024.
- (x) The Applicant has waited since but the Respondent has neither written in reply or reactivated the Applicant's withholding tax exemption certificate.
- (xi) The Respondent well aware of the unfairness of its decision declined to review its decision and remains so to this date.
- (xii) The Applicant in regard has elected to treat the Respondent's silence as admission of its wrongful acts of unjustly withdrawing the Applicant's withholding tax exemption certificate without notice and a hearing.
- (xiii) The Respondent's decision and actions are unfair, arbitrary and are affront to the principles of taxation that require predictability, consistency and fairness.
- (xiv) The actions of the Respondent have caused the Applicant to suffer great harm and damages as it has failed to fulfil its contractual obligations. Further, the

contract sum severely hampered by the deductions for which the Applicant shall seek to be atoned in damages.

- (xv) The Respondent's conduct of intentionally refusing to reinstate the Applicant's withholding tax exemption well aware that the Applicant did not do anything to violate any law or condition of the grant is a conduct unbecoming of the great institute like the Respondent.
- (xvi) The Respondent's own admission that its actions were egregious, wanton and uncalled for but still refusing to correct its mistake should be highly condemned to deter such being minted on other innocent parties in the future.
- (xvii) The Applicant shall seek for interest of 30% on the award from the date of award until payment in full.
- (xviii) That it is in the interest of justice and equity that this Application is granted with costs.

The Respondent filed an affidavit in reply deponed by Apollo Kamwebaze, a Supervisor in the Domestic Taxes Department sworn on 28 February 2025 opposing the application on grounds that;

- (i) The application is misconceived, brought in bad faith and the orders sought are intended to frustrate the Respondent's statutory mandate.
- (ii) The Applicant applied to the Respondent for a 2024-2025 withholding tax exemption on grounds that its business activity was offering construction, real estate and consultancy services.
- (iii) On 1 July 2024, the Respondent issued the Applicant with VAT and income tax withholding tax exemption certificates for the period July 2024- June 2025.
- (iv) The Respondent reserved the right to revoke the said exemption certificate for non tax compliance.
- (v) That the Applicant misused the exemption certificate by importing rice from Tanzania.
- (vi) That consequently the Respondent revoked the Applicant's certificate.
- (vii) That the Respondent was justified in revoking the Applicant's WHT exemption certificate for misuse.
- (viii) That it is in the interest of justice that the orders prayed for in this application are not granted.
- (ix) That this application should be dismissed.

2. Representation

At the hearing of the application, Mr. Angura Joseph and Mr. Amany David appeared for the Applicant while Ms. Christine Mpumwire and Mr. Agaba Edmond appeared for the Respondent.

The parties were invited to make oral submissions.

3. Submissions of the Applicant

Counsel for the Applicant submitted that the Respondent's revocation of the withholding tax exemption certificate violated the Applicant's legitimate expectation and principles of natural justice as the Respondent failed to provide a fair hearing before taking such action. The Applicant also submitted that they had a reasonable expectation that the exemption certificate would remain valid unless there were clear, lawful grounds for its withdrawal and any such action would require a fair process including an opportunity to be heard. However, the Respondent withdrew the certificate without prior notice or explanation and even failed to respond to the Applicant's written inquiries forcing the Applicant into treating the Respondent's silence as an admission of wrongdoing.

Counsel for the Applicant also submitted that this lack of transparency and communication deprived the Applicant of the basic procedural safeguards afforded under the law. Further, the Respondent acted in total disregard of the lawful procedures set out for the withdrawal of such certificates because there was no valid justification or reasons provided to the Applicant. Consequently, the Respondent's failure to follow due process renders the withdrawal not only unfair but also unlawful.

In light of these circumstances, the Applicant respectfully sought a declaration that the revocation was unlawful and prayed for an order for the reinstatement of the exemption certificate and an award of general and aggravated damages.

4. Submissions of the Respondent

Counsel for the Respondent opposed the grant of this application and submitted that the exemption certificate granted to the Applicant was conditional upon the Applicant engaging in the business of real estate and construction. The Respondent submitted

that the Applicant misused the certificate by importing rice from Tanzania which led to the decision to withdraw it.

Counsel for the Respondent also submitted that according to the terms of the certificate, it can only be withdrawn in cases of non-tax compliance however, the Applicant's conduct breached the conditions under which the exemption was granted thus justifying the withdrawal.

However, having listened to the Applicant's submission, the Respondent submitted that they are amenable to reinstating the certificate. Therefore, they prayed that the order for reinstatement be made without any award of damages or costs to the Applicant as the withdrawal was based on legitimate concerns regarding non-compliance with the conditions of the certificate.

5. Submissions of the Applicant in Rejoinder

In rejoinder, the Applicant agreed to the reinstatement of the WHT exemption certificate within the period of one week.

The Applicant also withdrew their prayer for both general and aggravated damages. However, the Applicant prayed that the costs of the application be awarded to them.

6. Determination by the Tribunal.

Having carefully considered the submissions from both parties, this is the decision of the Tribunal.

This application involves the revocation of a WHT (Withholding Tax) exemption certificate issued to the Applicant by the Respondent. The Applicant contended that the revocation was done in violation of their rights to a fair hearing and transparency since the decision to revoke their exemption certificate was made without affording them an opportunity to be heard and in breach of both constitutional and statutory principles of procedural fairness and administrative justice. The Respondent on the other hand claims that the revocation was justified due to the Applicant's misuse by importing rice from Tanzania.

The main issue for determination is whether the revocation was lawful and whether the Applicant's rights to a fair hearing were violated.

We have studied the withholding tax exemption certificate in question annexed to the application. It is stated on the certificate that it may be withdrawn in cases of non-compliance. The Respondent did not adduce any evidence of non-compliance on the part of the Applicant. Further, the Respondent's argument that the certificate was conditional to the business of real estate and construction and should not have been used for rice importation is not tenable. There is nothing on the certificate to indicate that it was specific to certain business activities. Withholding tax exemption certificates are issued to a taxpayer and not to their business activities.

Further, the Applicant was not given an opportunity to show cause as to why their certificate should be cancelled. This contravened their right to a fair hearing as provided for by Article 42 of the Constitution of the Republic of Uganda.

The article provides as follows:

"Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her."

The revocation of the exemption certificate directly impacted the Applicant's economic rights as it significantly affected their ability to execute their contractual obligations. The failure to afford the Applicant the opportunity to respond to the claims of non-compliance was an unfair administrative decision-making process depriving the Applicant of their rights to be heard.

In the absence of evidence to the contrary, the Tribunal is inclined to believe that the Respondent did not accord the Applicant a fair hearing and therefore the revocation of the WHT exemption certificate was procedurally unfair and unlawful.

Further, the grant of the withholding tax exemption certificate created a legitimate expectation on the part of the Applicant that they would be treated fairly in accordance with their past practice of exemption and that their exemption would not be revoked without being given the chance to explain or rectify any potential non-

compliance. The exemption created a reasonable expectation that this benefit would continue barring any substantial and lawful reason for its revocation.

In **Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374**, a legitimate expectation exists when a public authority has led an individual or group to believe that they will continue to benefit from a particular treatment or benefit unless there is a clear, justifiable reason to alter that treatment.

The Applicant had a legitimate expectation that they would be treated fairly in and that their exemption would not be revoked without being given the chance to explain or rectify any potential non-compliance. The revocation of the WHT exemption certificate in the absence of prior notice went against the Applicant's expectation.

However, we have taken note of the Respondent's prayer that the exemption certificate be reinstated in exchange for the Applicant withdrawing their prayer for general and aggravated damages. The Applicant is in agreement with the Respondent's prayer.

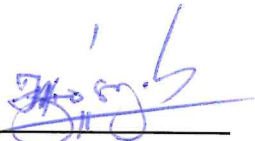
In view of the above, the Tribunal makes the following orders:

- (i) The Respondent reinstates the Applicant's withholding tax exemption certificate for the periods between 1 July 2024 to 30 June 2025 and also reinstates the Applicant on the list of withholding tax exempted entities by 10 March 2025.
- (ii) No damages are awarded to the Applicant.
- (iii) Costs for this application are hereby awarded to the Applicant.

Dated at Kampala this 3rd day of March 2025.



CRYSTAL KABAJWARA.
CHAIRPERSON



WILLY NYANGOSYAH
MEMBER



GRACE SAFI
MEMBER

