

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISCELLANEOUS APPLICATION NO. 207 OF 2024
ARISING FROM TAT APPLICATION NO 359 OF 2024

KAZINGA CHANNEL OFFICE WORLD LTD.....APPLICANT

VERSUS

COMMISSIONER GENERAL, UGANDA REVENUE

AUTHORITY.....RESPONDENT

BEFORE: MS. KABAKUMBA MASIKO, Mr. WILLY NANGOSYAH, MS. ROSEMARY NAJJEMBA.

RULING

This ruling is in respect of an application brought under Section 98 of the Civil Procedure Act and Order 41 Rule 2 & 9 of the Civil Procedure Rules seeking the following orders:

1. An order restraining the Respondent from enforcing the recovery of Shs. 3,853,332,089 pending the determination of TAT Application No. 359 of 2024.
2. Costs of application be in the main cause.

1. Background Facts

The Grounds of this application are stated in the affidavit in support of Mr. Amin Manji, the Applicants Secretary deponed on the 27 November 2024 as follows:

- i. That the Applicant instituted Civil Suit No. 606 of 2014 at the Commercial Division seeking a declaration that the Respondent's Audit Report of 22 April 2014 and the assessments were null and void, orders for fresh VAT assessments, Corporation tax, PAYE, a temporary injunction, general damages and costs of the suit.
- ii. That on the 28 October 2020, Her Lordship Hon. Elizabeth Jane Alividza made a judgment in favour of the Applicant. Despite the judgement, the Respondent refused to review the assessments and their interest for 2007 to 2010 which

are still maintained on the Applicant's ledger and no new assessments have been issued.

- iii. That the Applicant has written to the Respondent and held several meetings, but no steps have been taken to implement the entire court ruling and continued to demand the squashed assessments and to be involved in enforcement measures to collect the same.
- iv. That Applicant objected to these demands and agency notices to no avail. That on the 26 November 2024, the Respondent wrote to the Applicant demanding payment of Shs. 3,853,332,089 and gave Notice for Issuance of Customs Lien which presents real imminent threat to the Applicant's funds.
- v. That the Applicant being dissatisfied with the above taxation decision applied to the Tribunal for a review of the decision vide TAT App No. 3 of 2024 contending that the demand of the assessed tax of Shs. 3,853,332,089 is untenable under the law.
- vi. That the Applicant has a prima facie case in the pending suit with high chances of success and the Applicant is at the risk of losing significant business capital to the tax assessed pending determination of the Application.
- vii. That the Applicant has suffered unnecessary expenses and is likely to suffer substantial loss and irreparable damage as a result of a tarnished reputation among its business associates and clients.
- viii. That it is just and equitable that a temporary injunction be granted against the Respondent restraining it from enforcing collection of the taxes in dispute until determination of the main application.

In the affidavit in reply, of Ms. Christine Mpumwire a legal officer in the Respondent's Legal Services and Board Affairs Department deposed on the 27 January 2025, stated as follows:

- i. The Respondent carried out a comprehensive audit on the Applicant for the period January 2007 to December 2013 and issued assessments amounting to Shs. 2,784,501,279 comprised of Income Tax of Shs. 1,942,434,737, VAT of Shs. 624,497,778 and PAYE of Shs. 217,568,764. 5.

- ii. On 22 May, 2014, the Applicant objected to the assessments. The Applicant being dissatisfied with the Respondent's decision, lodged Civil Suit No. HCT-00-CC-CS-0606 of 2014, where judgment was delivered in the following terms:
 - a. The assessment for VAT on the sale of land was unlawful as it was an exempt supply.
 - b. The audit report was not justifiably extended to 2007 as it was time barred, and therefore the assessments relating to periods before 2009 should be extinguished.
 - c. The respondent rightfully disallowed the deductions of rental income, motor vehicle and marketing expenses as there was no supporting documentation.
 - d. PAYE tax on the Director's income was properly assessed by the Defendant and is the sum that is due.
 - e. That a new assessment be made to determine the correct amount to be paid.
- iii. Following the judgement, the Respondent adjusted the Applicant's ledger by vacating the VAT assessment relating to the sale of land, and the entire assessed amount revised to zero.
- iv. That the assessments to reverse the assessed liabilities for the periods prior to 2009 were also raised on 26 September 2022 revising the entire assessment to zero, and the outstanding tax liability of Shs. 3,906,784,070 comprised of a principal of Shs. 1,709,535,429 and interest of Shs. 2,197,248,641.
- v. The Application for review does not show a prima facie case and has no likelihood of success as the tax as assessed is due and payable.
- vi. That the Applicant will not suffer irreparable damages that cannot be compensated by an award of damages. There is no serious threat from the Respondent to warrant the grant of a temporary injunction.
- vii. That the balance of convenience lies with the Respondent as it is its statutory mandate to collect revenue for the benefit of all Ugandans and this Application is meant to deprive the Respondent from fulfilling its mandate.

- viii. That the Applicant has not paid the mandatory statutory 30% of the tax in dispute which renders the Application premature.
- ix. That it is in the interest of justice that the orders prayed for by the Applicant are not granted.

2. Representation

The Applicant was represented by Mr. Emmanuel Sydney Richard while the Respondent was represented by Ms. Eseza Ssendege Victoria and Mr. Simon Peter Orishaba.

3. Issues for Determination

1. Whether the Temporary injunction should be granted?
2. What remedies are available to the parties?

4. Applicant's Submissions

Whether the Applicant is entitled to a grant of a temporary injunction?

The Applicant submitted that Order 41 Rule 2 of the Civil Procedure Rules provides:

"in a suit restraining the defendant from committing a contract of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgement, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right."

The Applicant submitted that the grant of an interlocutory injunction is an exercise of judicial discretion and should therefore be exercised judiciously. In **Kiyimba Kaggwa v Hajji Abdul Nasser Katende (1985)**, it was noted that the most important purpose of the grant of a temporary injunction is to preserve matters in status quo until the question to be investigated in the main suit are disposed of. The question to be investigated herein is whether the Respondent has already implemented the court order and are entitled to recover the taxes being demanded. Another question that needs courts attention is

whether the taxes being demanded have been assessed as ordered by the court. This application meets all the grounds for the grant of a temporary injunction.

The Applicant cited the case of ***E.L.T KIYIMBA-KAGGWA V. HAJJI KATENDE ABDUNASSER CIVIL SUIT NO. 2109 OF 1984 citing GEILLA V. CASSMAN BROWN & CO. LTD (1973) EA. 358***, the conditions for grant of a temporary injunction were laid down as below:

"The Applicant must show a Prima facie case with a probability of success; such injunction will not normally be granted unless the appellant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages; Thirdly if the court is in doubt, it will decline an application on the balance of convenience."

Prima facie case with a probability of success.

The Applicant submitted that a prima facie case with probability of success is one that presents serious issues for trial and determination and consideration which can only be determined by court through trial. This was defined in the case of Kigongo Edward Nakabale v Kakeeto and Anor HCMA No. 0144 of 2017 as

"No more than court being satisfied that the claim is not frivolous and vexatious. In other words, that there are serious questions to be tried."

The Applicant contended that it sued the Respondent vide Civil suit No. 606 of 2014 for declarations that the assessments raised by the Respondent were null and void wherein judgement was given in its favor however the Respondent failed to honor the Court's direction and has demanded payment of the assessments. There are triable issues as to; whether it is legal for the Respondent to demand a liability that has already been squashed by Court, whether the Respondent has implemented the court order and to what extent and as to whether the Applicant is liable to pay the tax demanded by the Respondent.

Irreparable injury which cannot be compensated by an award of damages.

The Applicant submitted that it would suffer irreparable harm if the Tribunal refuses to grant the injunction and the Respondents were allowed to continue in their course of conduct of recovering the contested demand. That the sum being demanded is greater

than the current capital and capacity of the Applicant and should it be recovered; it would sink the Applicant's business. In the case of *KIYIMBA KAGGWA (supra)* it was held that:

- Irreparable damage does not mean that there must not be physical possibility of repairing injury but means that the injury must be a substantial or material one, that is, one that cannot be adequately compensated for in damages.

The Applicant submitted that it would suffer irreparable injury which cannot be atoned for by award of damages as should the money be recovered, it would surely run out of business. Failure to grant this Application shall cause the Applicant irreparable damage in its commercial reputation and standing and shall cause a restraint to its ability to provide service delivery to its clients leading to damages that cannot be quantified.

Balance of Convenience

The Applicant submitted that it will suffer a lot of inconvenience as it will be definitely run out of business should the Respondent recover the demanded amount. In the case of *COTTON INTERNATIONAL v AFRICAN FARMERS TRADE ASSOCIATION BV and LANGO COOPERATIVE UNION, [1996] HCB, 57*, Justice Akiiki-Kiiza held:

"Before an injunction is granted, court should be convinced that the comparative inconvenience which was likely to issue from withholding the Injunction would be greater than that, which was likely to arise from granting it."

The Applicant submitted that if it were to succeed at trial in establishing that the Respondent cannot legally demand tax that was squashed by Court, the Respondent will not suffer any damages financially or in any way. The Applicant would however lose a lot as it will suffer financial damages because the money in dispute is such a big sum which the Applicant would be using to run its business. The Applicant stands to suffer more inconvenience greater than any of the Respondents if the Application is not granted.

5. The Submissions of the Respondent

Whether the Applicants are entitled to a grant of a temporary injunction?

The Respondent submitted that the governing laws empower it with the power to carry out its statutory mandate which apply to all taxpayers uniformly, where the Applicant seeks to curtail such with this application.

The Respondent submitted that the grant of an interlocutory injunction is an exercise of judicial discretion and should be exercised judiciously. In the case of E.L.T **KIYIMBA-KAGGWA V. HAJJI KATENDE ABDUNASSER CIVIL SUIT NO. 2109 OF 1984** citing **GEILLA V. CASSMAN BROWN & CO. LTD (1973) EA. 358**, the conditions for grant of a temporary injunction were laid down as below:

"The Applicant must show a Prima facie case with a probability of success; such injunction will not normally be granted unless the appellant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages; Thirdly if the court is in doubt, it will decline an application on the balance of convenience."

The Respondent discussed each condition for the grant of a temporary injunction as below:

a) Prima facie case with probability of success:

The Respondent submitted that the Applicant's case does not disclose a prima facie case with a probability of success. The Applicant alleges in paragraphs 3, 4 and 5 of its Affidavit in Support that the Respondent did not enforce the High Court judgement vide HCT-00-CC-CS-0606 of 2014.

The Respondent contended that this would amount to an alleged contempt of Court which should have been instituted in the High Court as that is where the judgement was pronounced, and not in the Tax Appeals Tribunal (TAT) as it ordinarily doesn't have the Jurisdiction to review or interpret Judgements of the High Court.

The Respondent submitted that Section 14 (1) of The Tax Appeals Tribunal Act (TAT Act) provides:

"Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority or committee established under the Tax procedures Code Act, may apply to the Tribunal for a review of the decision".

The Respondent submitted that it is not in doubt that the jurisdiction of the Tribunal is to review of tax decisions of the Respondent. A tax decision is defined under Section 1 (1) of the TAT Act to mean: “any assessment, determination, decision or notice”.

The Respondent submitted that in the instant Application, the Applicant seeks to challenge the alleged non- enforcement of the decision passed by the High Court, which has already stated would amount to contempt of court for which the Tribunal has no jurisdiction over as it can only handle matters concerning a tax decision made by the Respondent.

The Respondent submitted that it is trite law that jurisdiction is a creature of statute as was laid out in the case of ***Uganda Revenue Authority v Rabbo enterprises (U) LTD SCCA No. 12 of 2004.***

The Respondent submitted that the Applicant does not have a prima facie case with a substantial question to be investigated as the Tribunal lacks jurisdiction to entertain such a matter where no taxation decision has been made by the Respondent.

WITHOUT PREJUDICE to the above, the Respondent further submitted that it complied with the Judgement of the High Court as illustrated here-below:

- i. The VAT assessment for the period January 2008 relating to the sale of land was vacated on 26 September 2022, through reference No. LA010214311358.
- ii. The assessments to reverse the assessed liabilities for the periods prior to 2009 were raised on 26 September 2022 revising the entire tax position to zero and the same sent to the Applicant via mail. (Copies of the revised assessments are attached)
- iii. Since the judgement did not affect the PAYE liability on the Director's Income, as well as the disallowed deductions of rental income and marketing expenses, these did not need any adjustments in the ledgers.

The Respondent contended that following the above adjustments, the principal tax liability of the Applicant remains outstanding at Shs. 1,709,535,429 and interest of Shs. 2,197,248,641 which has been accruing since 2020.

The Respondent submitted that the Applicant does not have a prima facie case with probability of success as the Respondent not only complied with the High Court Judgement, but the that also given the circumstances the Tribunal lacks jurisdiction.

Irreparable injury:

The Respondent submitted that in the case of **KIYIMBA KAGGWA (supra)** that:

"Irreparable damage does not mean that there must not be physical possibility of repairing injury but means that the injury must be a substantial or material one, that is, one that cannot be adequately compensated for in damages"

The Respondent submitted that the Applicant has not attached any evidence to prove that it will suffer irreparable damage and simply speculates that its reputation is likely to be tarnished. The instant case concerns tax owing to the Respondent since 2020 amounting to Shs. 3,906,784,070, and if there is any injury to be suffered, it would be by the Respondent, for by the Applicant failing to pay tax, the Respondent's mandate to collect revenue for the benefit of all Ugandans at large is impeded upon. The Applicant will not suffer irreparable damage that cannot be compensated by an award of damages.

Balance of convenience:

The Respondent submitted that in the case of **COTTON INTERNATIONAL AFRICAN FARMERS TRADE ASSOCIATION BV and LANGO COOPERATIVE UNION, [1996] HCB, 57**, Justice Akiiki-Kiiza held:

"Before an injunction is granted, court should be convinced that the comparative inconvenience which was likely to issue from withholding the Injunction would be greater than that which was likely to arise from granting it. "

The Respondent submitted that the risk it stands to suffer is that it will be hampered from collecting tax that is due from the Applicant. This limits the responsibilities of the Respondent in enforcing the law for the benefit of the public at large.

In **Alcohol Association of Uganda, Nile Breweries Limited & 38 Others Versus Attorney General and Uganda Revenue Authority HCMA No. 744 Of 2019**, the Learned Hon. Justice Ssekaana Musa held:

"The Courts should be slow in granting injunctions against government projects which are meant for the interest of the public at large as against the private proprietary interest or otherwise for a few individuals."

The Respondent submitted that the balance of convenience tilts in its favor. The Applicant has failed to prove that it fulfills the conditions for the grant of temporary injunction and prayed that this Application be dismissed with costs to the Respondent.

6. Applicant's Submissions in rejoinder

In rejoinder, the Applicant reiterated its prayers and further submitted that whereas it is the Respondent's mandate to collect revenue due to it, the Applicant has a right to object in response to tax decisions and to expect the Respondent to consider their dispute promptly and fairly. The Tribunal is vested with powers under the law to grant such remedies that may be necessary to make ends meet which includes the grant of a temporary injunction.

The Applicant submitted that it meets all the conditions for the grant of a temporary injunction just as they are set out in not only the above cited case by the Respondent but also as set in many other precedents. The Applicant submitted that it has come to this Tribunal to vindicate her rights and stop illegal exercise of the power of the Respondent.

The Tribunal has powers to review any taxation decision in respect of which an application is made.

The Applicant submitted that as long as there is taxation decision by the Respondent against a taxpayer, the Tribunal has the jurisdiction to review. The Applicant submitted that the Respondent's deliberate omission to review the nullified assessments and eventual issuance of agency notices and demand notices for the same assessments amounts to a taxation decision which this Tribunal has powers to review.

The Applicant submitted that a taxation decision is defined in Section 1 (1)(k) of the TAT Act to mean any assessment, determination, decision or notice. The Applicant averred that this is further elaborated in the case of Century Bottling Company Ltd v URA, TAT App No. 33 OF 2010, wherein this Tribunal held that a taxation decision means either a tax assessment or decision on any matter left to the discretion, judgement, opinion,

approval, satisfaction or determination of the Commissioner other than a decision made in relation to a tax assessment.

The Applicant further submitted that TAT App No. 359 of 2024 seeks to challenge the issuance of demand notices and agency notices by the Respondent against it. The Respondent in its discretion disregarded the High Court Judgement and issued agency and demand notices against the Applicant which decision the Applicant is seeking review for before the Tribunal.

The Applicant submitted that the fact that there are triable issues, that need to be investigated, a taxation decision made through issuance of agency notices, then it is subject for review by the Tribunal. The Applicant maintained that it has meet all the conditions and requirements for the grant of a temporary Injunction and costs of this application.

6. Determination by the Tribunal

This is a ruling in respect of an application filed by the Applicant seeking a temporary injunction restraining the Respondent, its agents and servants from enforcing collection of a sum of Shs. 3, 853, 332, 089 until TAT App No. 359 is determined. The Applicant filed Civil Suit No. 606 of 2014 at the Commercial Division seeking a declaration that the Respondent's audit report and assessments were null and void, orders for fresh VAT, corporation tax, PAYE assessments, a temporary injunction, general damages and costs of the suit which was held in its favour.

The Applicant contends that the Respondent has failed to comply with that judgment and are currently seeking to enforce collection of the quashed assessments through constant demand notices and custom lien. The Respondent opposes the application, arguing that the Applicant has failed to meet the conditions for the grant of a temporary injunction.

Whether the Temporary injunction should be granted?

In the case of *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. 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 contended that it sued the Respondent vide Civil suit No. 606 of 2014 however the Respondent failed to honor the Court's direction and has demanded payment of the assessments that were declared null and void. The Respondent however, submitted that it complied with the Judgement of the High Court in that the VAT assessment was vacated, the assessments to reverse the assessed liabilities for the periods prior to 2009 were also raised on 26 September 2022 revising the entire assessment to zero, and the remaining outstanding tax liability of Shs. 3,906,784,070 comprised of a principal of Shs. 1,709,535,429 and interest of Shs. 2,197,248,641. The Respondent submitted that the Applicant does not have a prima facie case with probability of success.

The Tribunal notes that it is in the interest of justice that the Tribunal maintains the status quo to determine whether there is a triable issue. The Applicant alleges that there is decision that the Respondent went ahead and issued demand notices. The Temporary injunction is meant to ensure that the final determination does not come up negatory. The Tribunal finds that the injunction will allow it to determine the merits of this matter

Irreparable damage

The Applicant submitted that it would suffer irreparable injury which cannot be atoned for by an award of damages and will surely run out of business. Failure to grant this Application shall cause the Applicant irreparable damage to its commercial reputation and standing and shall cause a restraint on its ability to provide service delivery to its clients leading to damages that cannot be quantified.

The Respondent alleged that the tax owing to the Respondent since 2020 amounting to Shs. 3,906,784,070, and if there is any injury to be suffered, it would be by the Respondent, for by the Applicant failing to pay tax, the Respondent's mandate to collect

revenue for the benefit of all Ugandans at large is impeded upon. The Tribunal finds that the Respondent will not suffer irreparable damage after the Tribunal has found whether or not the tax is payable. However, the Applicant's commercial reputation will suffer and also affect their service delivery to their clients. This kind of reputation cannot be restored with compensation.

Balance of Convenience

The Applicant submitted that if it were to succeed at trial in establishing that the Respondent cannot legally demand tax that was squashed by Court, the Respondent will not suffer any damages financially. The Applicant will instead suffer financial damages because the money in dispute is such a big sum which the Applicant would be using to run its business. The Applicant will suffer more inconvenience. The Respondent submitted that the risk it stands to suffer is that it will be hampered from collecting tax that due.

In the case of *Kalungi Estates v URA Misc App No. 10 of 2025*, while granting a temporary injunction, the Tribunal relied on 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".

In the present case, the Tribunal finds that the Applicant is likely to suffer more damage if this Injunction is not granted. The Applicant claimed that failure to grant this would cause it irreparable damage in its commercial reputation service delivery.

In the Circumstances, the Tribunal grants the Temporary injunction to be able to determine the main issue and also maintain status quo until determination of the main dispute.

Jurisdiction

The Respondent submitted that the Applicant's case does not disclose a prima facie case with a probability of success. The Applicant submitted that the Respondent did not enforce the High Court judgement vide HCT-00-CC-CS-0606 of 2014. The Respondent contended that this would amount to an alleged contempt of Court which should have been instituted in the High Court as that is where the judgement was pronounced, and not in the Tax Appeals Tribunal (TAT) as it ordinarily doesn't have the Jurisdiction to review or interpret Judgements of the High Court.

The Applicant submitted that the Respondent's deliberate omission to review the nullified assessments and eventual issuance of agency notices and demand notices for the same assessments amounts to a taxation decision which this Tribunal has powers to review.

It is not disputed that the Tax Appeals Tribunal is the Court of first instance of tax matters in line with the decision in **URA v Rabbo Ent Ug Ltd, Civil; Appeal No. 12 of 2004**, where Supreme court ruled:

"I therefore respectfully disagree with the conclusion and reasoning is of the Court of Appeal to the effect that a finding that a tax dispute should start with the Tribunal and only go to the High Court as an appeal would tantamount to an Act of Parliament taking away the constitutionally given powers of the High Court."

Section 14 of the TAT Act provides:

“(1) Any person who is aggrieved by a decision made under a taxing act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision”.

In this case, the dispute before us arises from the demand issued by the Respondent to the Applicant. A demand is a taxation decision, and the Tribunal is embedded with powers to review this demand coming for the first time, then can be appealed in cases where the parties are not pleased with the decision.

However, it is also not disputed that the Respondent issued a demand notice on the 26 November 2024, on the Applicant demanding the tax assessed of Shs. 3, 853, 332, 089 and went ahead and issued a notice of lien. The Notice “annexture E” of the affidavit in

support requested the Applicant to pay the outstanding amount to avoid further accumulation of interest and enforcement measures and failure to do so would result in issuance of a customs lien due to noncompliance.

The Tribunal notes that although the Respondent contended that there's no threat from their side, this notice is enough to put any business at risk of inconveniences.

Section 1 of the Tax Apples Tribunal Act, defines a taxation decision as:

"Any assessment, determination, decision or notice".

The Notice for custom Lien issued on the applicant and the subsequent demand of Shs. 3, 853, 332, 089 amount to a notice under Section 1 of the TAT Act and therefore a taxation decision.

The Tribunal will grant this application to allow parties to produce evidence and determine whether or not the application is tenable.


In the Circumstances, The Tribunal orders as follows:

- i. The Temporary injunction is hereby issued against the Respondent restraining her and her agents from enforcing the recovery of Shs. 3,853,332,089 pending the determination of TAT Application No. 359 of 2024.
- ii. Costs in the main cause.

Dated at Kampala this.....28th.....day of.....March.....2025.



KABAKUMBA MASIKO
CHAIRPERSON



WILLY NANGOSYAH
MEMBER



ROSEMARY NAJJEMBA
MEMBER

