

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 03 OF 2024.
(ARISING OUT APPLICATION 287 OF 2024)

KUKU FOODS UGANDA LIMITED.....APPLICANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. PROSCOVIA R. NAMBI, MS. STELLA NYAPENDI

RULING

This ruling was brought under Section 98 of the Civil Procedure Act, Order 41 Rule 2 & 9 of the Civil Procedure Rules, Rule 30 of the Tax Appeals Tribunal (Procedure) Rules.

The Applicant seeks the following orders:

- (i) A temporary Injunction doth issue restraining the Respondent, and all those acting under the authority or with instructions from the Respondent from adjusting the Applicant's tax losses as reflected /indicated in the income tax returns filed.
- (ii) The costs of this application be provided for.

1. Background Facts

The grounds of this application are contained in the affidavit deponed by Mr. Edgar Kabulidde, the Financial Controller of the Applicant and sworn on the 23 December 2024, stating as follows:

- (i) The Applicant is engaged in the management of quick service restaurants as a franchisee of the KFC brand. The Respondent revised the Applicant's tax losses of Shs. 16,800,266,960 to Shs. 8,287,456,708 for the period March 2018 to February 2022.

- (ii) On 13 June 2024, the Applicant objected, and the Respondent issued objection decisions dated 13 September 2024 partially allowed one of the Applicant's objections and disallowed three objections.
- (iii) The Applicant seeks to file its income tax returns and make use of its tax losses.
- (iv) The Applicant filed an application contesting the adjustment and seeking a declaration that the Applicant is entitled to tax losses to the tune of Shs. 16,800,266,960 and not Shs. 8,287,456,708
- (v) The Applicant will suffer irreparable damage and loss, through payment of taxes, if the Respondent adjusts its losses and yet it is operating in a loss position, which is likely to cripple and inconvenience its business
- (vi) That the main application filed before this Tribunal will be rendered nugatory and that since there is no tax assessed in the reduction of its tax losses balance, there is no requirement to make a payment of 30% of the tax assessed.

The Respondent opposed the application by way of an affidavit in reply deposed Mr. Joseph Ronald Ssemambo, a Supervisor in the Independent Review Objections, the Domestic taxes Department of the Respondent, where he states that:

- (i) The Respondent's conducted an audit on the Applicant for the period March 2018 to February 2022. Following the audit, the loss of Shs. 21,278,341,124 was reduced to Shs. 8,287,456,709 arising from disallowed expenses and undeclared income.
- (ii) That the Respondent's audit team also issued VAT and Withholding Tax Assessments of Shs. 3,390,323,507 which the Applicant objected to, and the Respondent issued objection decisions disallowing the objections.
- (iii) The Applicant applied for consideration under ADR and the VAT and WHT liability was revised from Shs. 3,390,323,507 to Shs. 1,827,539,267. Part of the ADR decision was that Shs. 7,621,017,442 was not undeclared income.
- (iv) During the review of the objection, the Respondent made an adjustment to reduce the undeclared income to Shs. 262,300,054. Consequently, the loss was revised upwards from Shs. 8,287,456,709 to Shs. 15,646,174,096.
- (v) In September 2024, the Respondent conducted a returns examination on the Applicant, wiping out the Applicant's entire loss and putting the Applicant in a

payable position of Shs. 4,235,796,668.96. On 14 October 2024, the Applicant filed TAT Application No. 287 of 2024 from which this application arises.

- (vi) The Applicant objected to the September assessments and in February 2025, the Respondent disallowed the objections.
- (vii) There was no tax loss at the time of filing this Application.
- (viii) The Application does not show a prima facie case and has no likelihood of success as the adjusted tax losses arose from a lawful and proper audit.
- (ix) The application for a temporary injunction should be dismissed with costs.

2. Issue for determination

The issue for determination by the Tribunal is whether the application for a temporary injunction should be granted?

3. Representation

The Applicant was represented by Mr. Emmanuel Kasamba while the Respondent was represented by Ms. Gloria Twinomugisha, Ms. Charlotte Katuutu and Mr. Simon Peter Orishaba.

4. The Submissions of the Applicant

The Applicant submitted that the purpose of this temporary injunction is to maintain the current status quo until the final determination of the main application. A change in the status quo would ultimately render the main application moot and nugatory and prejudicial to the tax affairs of the Applicant.

The Applicant submitted that Order 41 Rule 2 of the Civil Procedure Rules permits an application to restrain any Respondent from committing any breach of contract or injury complained of after the commencement of a suit and either before or after judgement.

The Applicant submitted that the rationale was firmly buttressed by ***Odoki, J in Kiyimba Kaggwa v. Hajji Katende (Civil Suit No. 2109 of 1984)***, where he stated: *"The granting of a temporary injunction is an exercise of Judicial Discretion and the purpose of the granting it is to*

preserve matters in status quo until the question to be investigated in the suit can finally be disposed of".

The Applicant submitted that it currently has a tax loss of Shs.16,800,266,960.47 which it seeks to maintain until the final determination of App No. 287 of 2024. This is vital to the economic affairs of the Applicant as it is currently in the process of preparing its income tax returns and will be liable to excessive tax liability if it uses the Respondent's revised tax figures. The Respondent's revised tax losses will severely impact the Applicant's capital mobilization strategies since it will be reducing its assets and ultimately, valuation.

Courts have pronounced themselves on the grounds necessary to warrant a grant of a temporary injunction. These include:

- (i) A prima-facie case with a high probability of success;
- (ii) Irreparable injury which would not adequately be compensated by an award of damages;
- (iii) If the court is in doubt, it will grant an application if the balance of convenience is in favour of the Applicant.

A prima facie case with a probability of success

The Applicant submitted that in the case of ***American Cyanamide v. Ethicon [1975] AC 396***, Lord Diplock espoused that in order to show a prima facie case with a probability of success,

"The Applicant must satisfy the court that the claim is not frivolous or vexatious in other words that there is a serious question to be tried".

The Applicant contended it filed TAT App No. 287 of 2024 before the Tribunal where challenges the Respondent's reduction of its tax losses from Shs. 16,800,266,960.47 based on the Respondent's erroneous inclusion of assumed sales, the disallowance of total operational and other expenses and the denial of capital deductions. The Applicant submitted App No. 287 of 2024 raises serious questions of law and has triable issues.

Irreparable damage

The Applicant submitted that it is a player in a highly competitive and capital-intensive fast-food industry. The Respondent's enforcement of the reduction of the Applicant's tax losses will distort the Applicant's financial reporting and create unnecessary accounting expenses to adjust the Applicant's books of accounts.

The Applicant submitted that the adjustments would affect its overall valuation since it reduces its assets hindering its capital mobilization efforts consequently impairing the Applicant's ability to effectively compete against other players in the fast-food industry. Owing to the competitiveness of the market, if the Respondent is not halted it would result in a reduced market share which cannot be compensated by damages.

The Balance of Convenience

The Applicant cited the case of ***Victor Construction Works Ltd v. Uganda National Roads Authority HCMA No. 601 of 2010***, where Justice Lugayizi while citing with approval the decision in ***J. K. Sentongo v. Shell (U) Ltd [1995] 111 KLR 1*** observed:

"If the Applicant fails to establish a prima facie case with likelihood of success, irreparable injury and need to preserve the status-quo, then he/she must show that the balance of convenience was in his favor".

The Applicant submitted that the Applicant will be more disadvantaged than the Respondent. Whereas the Respondent is a governmental authority clothed with wide statutory powers to enforce any actions, the Applicant is a private limited liability company holding a franchise license and engaging in the business of fast foods.

The Applicant submitted that it has severally relied on those financial accounts which reflect tax losses to the tune of Shs. 16,800,266,960.47 for purposes of valuations and capital raising strategies. The revised tax loss impairs the Applicant's ability to compete against other players.

Requirements of Section 15 of the Tax Appeals Tribunal Act

The Applicant submitted that its objection in Application No. 287 of 2024 is seeking a review of the Respondent's decision to revise downwards the Applicant's tax losses balances, of Shs. 16,800,266,960.47 to Shs. 8,287,456,708.90. In the circumstances, the requirement under Section 15(1) of the Tax Appeals Tribunal Act to pay 30% of tax assessed does not arise as there is no dispute on any tax assessment.

The Applicant prayed that the Tribunal issues a temporary Injunction restraining the Respondent from enforcing the tax loss revision arising from their audit until the final determination and disposal of the main application.

The Applicant also prayed for costs of this application.

5. The Submissions of the Respondent

The Respondent submitted that the rationale of this remedy is to preserve the status quo until final determination of the main Application. This was the position in ***E.L.T KIYIMBA-KAGGWA V. HAJJI KATENDE ABDUNASSER CIVIL SUIT NO. 2109 OF 1984***, where it was stated:

"The granting of a temporary injunction is an exercise of judicial discretion and the purpose of the granting is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed of".

The Respondent contended the Applicant seeks to alter the status quo contrary to the principles for the grant of a temporary injunction. In ***Humphrey Nzeyi Versus Bank of Uganda and Attorney General Constitutional Application No.01 of 2013***, Hon. Justice Remmy Kasule noted that an order to maintain the status quo is intended to prevent any of the parties involved in a dispute from taking any action until the matter is resolved by court. It seeks to prevent harm or preserve the existing conditions so that a party's position is not prejudiced in the meantime until a resolution by court of the issues in dispute is reached. It is the last, actual, peaceable, uncontested status which preceded the pending controversy.

The Respondent also cited the case of ***Nived Enterprises Limited V URA, HCMA No. 301 of 2023***, where it was held:

"The question here now is: what was the status quo at the time of the filing of this application. It is undisputed that the Applicant's withholding tax exemption certificate was revoked by the Respondent on the 29 March 2023. It is further undisputed that this application was filed before this court after the 22 June 2023. At that material time, the status quo prevailing was the revocation of the withholding tax exemption certificate of the Applicant and the latter's liability to pay withholding tax on its rice imports... From the reading of this, the status quo sought to be maintained, I would suppose; is the revoked withholding exemption tax certificate and the Applicant's withholding tax liability since this was the situation as at the time of filing this Application. As such, there is no status quo to be maintained in the circumstances before Court to warrant the issuance of the mandatory injunctive orders."

The Respondent submitted that it is important to answer the question of what the status quo was at the time of the filing of this Application. According to the Affidavit in Reply of Joseph Ronald Ssemmanda, he states that during the audit for the period March 2018 to February 2022 the Applicant's tax loss was reduced to Shs. 8,287,456,709 following adjustments such as disallowed expenses and undeclared income.

The Applicant objected and the Respondent issued objection decisions revising the Applicant's loss upwards to Shs. 15,646,174,096. Later in September 2024, the Applicant's entire loss was wiped out, leaving the Applicant in a tax payable position of Shs. 4,235,796,669

The Respondent submitted that an order seeking to give the Applicant a tax loss would amount to a distortion of the status quo.

The Respondent relied on the case of ***E.LT 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 Respondent submitted that the Applicant's case does not disclose a prima facie case with a probability of success. The adjustment of the assessed losses in the present case was a result of an audit conducted by the Respondent with a purpose of reviewing the Applicant's tax declarations to ascertain their accuracy, correctness, and completeness for compliance purposes. The Respondent submitted that the findings justified adjusting the claimed losses.

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. The losses had already been justifiably adjusted following the audit which is in issue in TAT 287 of 2024 as well as the September 2024 assessments.

The 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 contended that the balance of convenience lies with the Respondent as the Applicant's entire loss has been wiped out following the September 2024

assessments and the objection decisions issued in February 2025. The Respondent submitted that the balance of convenience tilts in the Respondent's favor.

The Respondent submitted that the Applicant seeks to use the process of a temporary injunction to alter status quo, this would amount to using the process for an improper purpose. The Respondent prayed that the Tribunal finds that the Applicant does not meet the conditions for grant of a temporary injunction and award costs to the Respondent.

6. Applicant's Submissions in Rejoinder

In rejoinder, the Applicant while reiterating its submissions stated that the purpose of the temporary injunction is to maintain and freeze the status quo until the main application is determined. The status quo to be frozen is not at the time when the Tribunal hears the matter, gives a ruling but at the time of filling the Application for a temporary injunction. In the case of ***Nived Enterprises Ltd V URA, HCMA No. 301 of 2023***, the High Court found that the status quo sought to be maintained or preserved is the status quo at the time of filling of the application for the temporary injunction. The Applicant seeks to maintain or preserve the status quo which was present on 23 December 2024 when this application was filled.

The Applicant reiterates that it is contesting revision of its tax losses from Shs16,800, 266,960 to Shs. 8,287,458,709. The Applicant contended that the Respondent averred that as of September 2024, while there was an ongoing objection process by the Applicant, the Respondent went ahead to issue assessments that wiped out the entire tax loss of the Applicant. The Respondent concedes that they issued assessments and triggered their enforcement mechanism which saw the Applicant's tax losses wiped without giving the Applicant an opportunity to exercise its right to object.

The Applicant cited the case of ***Ndimwibo & Anor v URA, Civil Suit 424 of 2012***, where it was held that the Respondent cannot enforce their assessments before the objection is resolved. The court stated:

"... doing so would deprive a taxpayer of the right to fair hearing and it would defeat the purpose of objections regime in the tax laws."

The Applicant submitted that the tax losses could not be legally wiped out at any date before February 2025 when the objection decision to those assessments was made, way after this application was filed. This application was filed in December 2024. Permitting the unlawful act of the Respondent to wipe out the Applicant's tax losses the moment they issued assessments or before they issue an objection decision or after an application for a temporary injunction would amount to sanctioning illegalities.

The Respondent has not demonstrated in which way the Applicant's losses were wiped. The Applicant prayed that the Tribunal finds that the status quo of the Applicant's tax losses at the time of filing this application on 23 December 2024 when the Applicant had losses up to Shs.16,800,266,960 which the Applicant seeks to maintain.

The Applicant submitted that it has severally relied on those financial accounts which reflect tax losses to the tune of Shs. 16,800,266,960.47 for purposes of valuations and capital raising strategies. The Applicant will be forced to restate its Financial Statements without including the tax losses. The adverse effect of restating books would include loss of investor confidence, legal and regulatory consequences including penalties from the Respondent, increased audit and compliance costs, management and employee distrust, potential loss of creditworthiness, shareholder lawsuits among others. This is an inconvenience that can only be suffered by the Applicant.

The Applicant prayed that this Tribunal grants the temporary injunction until the final determination of the main application. The Applicant also prayed for costs of the application.

7. Determination by the Tribunal

The Applicant filed this application seeking a temporary Injunction restraining the Respondent from adjusting the Applicant's tax losses as reflected /indicated in the income tax returns filed. The Applicant contended that it had a tax loss of Shs.16,800,266,960.47 which it seeks to maintain until the final determination of the main application vide App No. 287 of 2024. The Applicant submitted that the Respondent reduced their losses to Shs. 8,287,456,708.90. However, the Respondent contends that by the time the Applicant

filed this Application, there was no status quo to maintain as the Applicant no longer had losses.

Both parties have submitted on the conditions that must be satisfied for the grant of a temporary injunction. These are discussed below to determine whether the Applicant meets the conditions.

A prima facie case with a probability of success

The Applicant filed TAT Application No. 287 of 2024 and challenged the Respondent's reduction of its tax losses from Shs. 16,800,266,960.47 to Shs. 8,287,456,708.90. The Respondent submitted that the Applicant does not disclose a prima facie case with a probability of success as the adjustment of the assessed losses was a result of an audit conducted by the Respondent.

The Tribunal notes that the Applicant has proved a prima facie case. This is because there is a serious question to be tried regarding whether the Respondent was justified in adjusting the Applicant's loss position.

Irreparable injury

The Applicant submitted that the Respondent's reduction of the Applicant's tax losses for the years starting 2018 will affect its overall valuation since it will reduce its assets and hinder its capital mobilization efforts. This will impair the Applicant's ability to effectively compete against other players in the fast-food industry. The Respondent submitted that the Applicant has not attached any evidence to prove that it will suffer irreparable damage.

We do not agree with the Applicant's submission that they will suffer irreparable damage. It is important to note that:

1. The Respondent's mandate is to collect tax revenue. This is partly done through periodic review of taxpayers' declarations. Upon the completion of a review or audit and an assessment is issued, the Respondent updates the taxpayer's ledger. The ledger is the system that the Respondent uses to track changes and movements in taxpayers' tax compliance positions. The Applicant's request to injunct the

Respondent from adjusting the Applicant's losses would be an interference of the Respondent's ability to execute their mandate. Besides, once the Tribunal has determined the matter, the Respondent will either reverse or maintain the adjustment in the ledger as the case may be.

2. Further, Uganda operates a self-assessment / declaration regime. Therefore, an adjustment by the Respondent of the Applicant's loss position in the Applicant's ledger does not prevent the Applicant from continuing to file their returns based on their self-assessment, pending the resolution of the dispute by this Tribunal.
3. Lastly, we do not agree that the Respondent's adjustment of the Applicant's loss position will require the Applicant to restate their financial statements. Save for disclosures as per IAS 37 depending on the materiality of the amounts relative to the financial statements, the impact on the financial statements will only materialize after the Tribunal has determined the matter and depending on the outcome of such determination.

Balance of convenience

As indicated above, it would greatly disadvantage the Respondent if the injunction is granted as this would interfere with the execution of their mandate. Adjusting the Applicant's tax loss position in its ledger will not hinder its operations. Further, the Applicant is free to continue filing their returns on the basis of their self-assessment, pending final resolution of the dispute by the Tribunal. The arguments made by the Applicant regarding loss of market share and inability to raise capital, while possible, are remote relative to the event.

The thirty percent deposit

The Applicant submitted that its objection in App No. 287 of 2024 is seeking a review of the Respondent's decision to revise the Applicant's tax losses balances of Shs. 16,800,266,960 to Shs. 8,287,456,708. Therefore, the requirement under Section 15(1) of the TAT Act does not arise as there is no dispute on any tax assessment.

Section 15 of the Tax Appeals Tribunal Act, provides:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

We have perused the record and established that:

- a) On 13 June 2024 the Applicant objected to the Respondent's reduction of its losses from Shs. 16,800,266,960 to Shs. 8,287,456,708
- b) On 13 September 2024, the Respondent disallowed the objection.
- c) On 14 October 2024, the Applicant filed TAT Application 287 / 2024 contesting the reduction of the loss.

Therefore, as at 14 October 2024 when the Applicant filed this application, the position was that the Applicant's loss had been reduced to Shs. 8.3 billion. In other words, the Applicant was not in a tax paying position.

As the Applicant was not in a tax paying position, it then follows that there was no tax liability upon which to compute the 30% deposit. Therefore, in these circumstances, the 30% deposit does not arise.


We note that the Respondent subsequently carried out a returns examination, which wiped out the Applicant's losses and gave rise to a new liability of Shs. 4,235,796,669. This was objected to by the Applicant in February 2025 and an application has since been filed before this Tribunal vide TAT Application 054/2025. Consequently, the liability of Shs. 4,235,796,669 which the Respondent seeks to rely on for purposes of computing the 30% deposit is not part of this application.


In conclusion, we find that the Applicant has not met all the conditions necessary for the grant of the temporary injunction.

The Tribunal orders as follows:

- (i) The application for a temporary injunction is hereby denied.
- (ii) The 30% deposit is not payable in respect of TAT Application 287 / 2024.
- (iii) Costs shall abide in the main application.

Dated at Kampala this 31st day of March 2025.


CRYSTAL KABAJWARA
CHAIRPERSON


PROSCOVIA R. NAMBI
MEMBER


STELLA NYAPENDI
MEMBER