

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**TAT APPLICATION NO. 259 OF 2022**

NGUVU DAIRY.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MS. PROSCOVIA.R.  
NAMBI

**RULING**

This ruling is in respect of an application challenging a VAT assessment of Shs. 346,147,110 arising from the treatment of yoghurt as a taxable supply for VAT purposes.

**1. Background Facts**

The Applicant processes and manufactures dairy products. The Respondent audited the Applicant for the period 1 July 2017 to 30 June 2021, following which the Respondent registered the Applicant for VAT effective 1 November, 2017 and issued a VAT assessment of Shs. 346,147,110.

The Applicant objected to the assessments on the ground that the company deals in processed milk products which are exempt supplies. The Respondent issued an objection decision disallowing the objection on the ground that yoghurt is not processed milk and is therefore not an exempt supply.

**2. Issues for Determination**

The key issue is whether the Applicant is liable to pay the assessed VAT.

**3. Representation**

The Applicant was represented by Ms. Jackie Aturinda and Ms. Linda Mugisha while the Respondent was represented by Mr. Kenan Aruho, Ms. Nakku Mwajuma, Ms. Patricia Ndagire and Mr. Derrick Nahumuza.

The Applicant's witness was Mr. Moses Walter Ojok, its Team Lead (AW1). AW1 explained the operational and technical processes undertaken by the Applicant. He stated that the Applicant has been engaged solely in the production of yoghurt, which it considered an exempt supply under the VAT Act.

AW1 further testified that the Respondent had fundamentally misunderstood the nature of the Applicant's product. He stated that yoghurt retains milk as its principal ingredient and by undergoing the production steps the Applicant employs, it becomes a processed form of milk and not a completely new product.

AW1 further stated that the Respondent failed to provide a scientific basis for its reclassification of yoghurt as a taxable product.

He also testified that the Applicant is engaged in the business of processing and manufacturing dairy products, particularly yoghurt. He explained that the process of making yoghurt involved several stages, that is, raw milk is collected from farmers, tested for quality, pasteurized to eliminate harmful microorganisms, and then bacterial cultures are added to initiate fermentation. Following fermentation, he stated that the flavouring agents are introduced, and the final product is then packaged and refrigerated for distribution.

The witness further testified that this process constituted the processing of milk, and that the resulting product, yoghurt, should be regarded as processed milk, which is an exempt supply under the Second Schedule to the VAT Act.

The Respondent's witness was Mr. Kasirye Rogers Pavlov, a Supervisor in its Domestic Taxes Department. The witness testified that he had previously served as the Supervisor of Compliance in the Respondent's Gulu office and was directly involved in the examination of the Applicant's tax affairs.

The witness stated that during a routine tax return examination, the Respondent found that the Applicant, a yoghurt processing and manufacturing company in Gulu City, had consistently filed presumptive income tax returns from 1 July 2017 to 30 June 2021. Despite the scale and nature of its business exceeding the presumptive tax threshold, the company did not register for VAT as required.

The witness further testified that upon engagement with the Applicant, the Respondent concluded that the Applicant had been making taxable supplies in the form of yoghurt and was, therefore, eligible for VAT registration.

The witness also stated that the Applicant was retrospectively registered for VAT effective 1 November 2017 in accordance with Section 8(6) of the VAT Act. The witness further stated that the Respondent wrote to the Applicant on 11 March 2022, informing them of their VAT obligations and confirming their registration status.

Following registration, the Respondent issued VAT assessments on 18 March 2022, totalling Shs. 346,147,110, for undeclared VAT on the Applicant's supplies during the audit period. The witness stated that the assessments were based on verified sales volumes and financial records obtained during the audit. A tax demand notice reflecting the assessed liability was subsequently issued on 7 April 2022.

The witness also stated that yoghurt, although derived from milk, is not classified as processed milk under the VAT Act. He went ahead to state that processed milk refers to minimally treated forms like pasteurized, UHT, or powdered milk.

Further, the witness contended that, yoghurt undergoes fermentation, contains additives, and is marketed as a separate dairy product. This distinction is key for VAT classification and aligns with statutory and commercial practices in Uganda and similar jurisdictions.

#### **4. Submissions of the Applicant**

The Applicant submitted that the central legal issue for determination is whether the supply of yoghurt by the Applicant constituted the supply of "processed milk" and therefore qualified as an exempt supply under the Value Added Tax Act, Cap. 349.

The Applicant argued that Section 19(1) of the Value Added Tax Act, which governs the dispute, provides for exempt supplies which are listed in the Second Schedule (currently, the Third Schedule and hereafter referred to as such). The Applicant also highlighted Paragraph 1(au) (formerly 1(i), which explicitly lists "processed milk" as an exempt supply. The Applicant contended that yoghurt, derived from milk through fermentation and preservation, falls within this exemption.

The Applicant argued that the VAT Act does not define “processed milk” and challenged the Respondent's definition in its letter dated 11 March 2022. He stated that this definition, formed by the Respondent's Business Policy Unit, was an internal position rather than a legal standard.

The Applicant went ahead to state that the Respondent's interpretation limited “processed milk” to milk powder, UHT milk, and fresh milk, excluding products like butter, cheese, ghee, and yoghurt.

The Applicant argued that taxation must be grounded in law, not administrative interpretations. He cited Article 152(1) of the Constitution of Uganda, which requires taxes to be imposed only through an Act of Parliament.

The Applicant argued that the Tribunal should apply the plain meaning of the words “processed milk” rather than the Respondent's discretionary interpretation. Citing the Oxford Concise Dictionary, they noted that “processed” refers to treating raw material to alter or preserve it. Since yoghurt undergoes pasteurization, fermentation, flavoring, and packaging, it clearly qualifies as processed milk.

The Applicant cited Regulation 3 of the Dairy Regulations, 2003, which defines milk processing as treatment by heating, fermentation, or mechanical means to extend shelf life or create a desired product.

He emphasized that fermentation, a key step in yoghurt production, is explicitly included in this definition. Additionally, Exhibit A6 outlined the Applicant's production process, including collection, pasteurization, culture addition, incubation, flavouring, packaging, and refrigeration, further supporting the argument.

The Applicant submitted that yoghurt is about 98% milk, with added sugar, flavouring, and bacterial cultures. He argued that its transformation is comparable to powdered or UHT milk, both classified as processed milk by the Respondent. Therefore, the Respondent's distinction between yoghurt and processed milk was arbitrary and lacked legal basis.

The Applicant countered the Respondent's argument that other industry players remit VAT on yoghurt, asserting that taxation is governed by law, not precedent or

commercial practice. He argued that widespread non-compliance or misinterpretation by taxpayers does not render an otherwise exempt product taxable. He urged the Tribunal to evaluate the Applicant's case based on statutory language and evidence.

The Applicant concluded its submissions by arguing that yoghurt qualifies as processed milk and that the VAT registration and assessment were unlawful.

## 5. Submissions of the Respondent

The Respondent submitted that the Applicant operated outside the VAT framework while making taxable yoghurt sales from 1 July 2017 to 30 June 2021. A returns examination revealed that the Applicant had filed presumptive income tax returns despite exceeding the turnover threshold for VAT registration.

The Respondent argued that it lawfully registered the Applicant for VAT under Section 8(6) of the VAT Act. This provision allows the Commissioner General to register a person if there are reasonable grounds to believe they should be registered but have failed to do so.

The Respondent further stated that once registered, the Applicant became a taxable person under Section 6 of the VAT Act and was required to account for VAT on all standard-rated supplies from the effective registration date.

The Respondent argued that yoghurt is not "processed milk" for VAT exemption as the term refers to milk treated for preservation, like pasteurization, UHT, or drying into powder. Yoghurt, however, is a fermented product with added ingredients, making it distinct in classification, marketing, and consumption.

The Applicant cited *Shurik Limited vs Uganda Revenue Authority (TAT Application No. 101 of 2021)* where it was held that tax exemptions must be explicitly stated in law. He argued that the VAT Act does not list yoghurt as an exempt supply, placing the burden of proof on the Applicant.

The Respondent relied on Section 28(a) of the Tax Procedures Code Act (TPCA) which places the burden of proof on the taxpayer to demonstrate that a tax assessment is incorrect. The Respondent also cited section 19 of the Tax Appeals Tribunal Act

and Section 101 of the Evidence Act, which affirm that the party making a claim must provide supporting evidence.

However, the Applicant had failed to meet this burden, as no statutory or scientific basis was provided to classify yoghurt as processed milk under the Second Schedule.

Further, the Respondent argued that Regulation 3 of the Dairy Regulations broadly defines milk processing but does not override the VAT Act or grant tax exemption. He emphasized that food industry regulations focused on quality and safety should not be used to justify VAT exemptions under a separate statute. He urged the Tribunal to interpret VAT exemptions strictly within the VAT Act.

The Respondent therefore urged the Tribunal to dismiss the application with costs, uphold the assessment of Shs. 346,147,110, and affirm the Respondent's legal position.

In rejoinder, the Applicant reiterated their arguments that yoghurt is processed milk.

## **6. Determination of the issues by the Tribunal**

The dispute revolves around the classification of yoghurt – whether it is processed milk for VAT purposes. Under section 19 (1) of the VAT Act, read together with paragraph 1 (au) of the third schedule, the supply of processed milk is exempt from VAT purposes. Since 2017, the Applicant manufactured and sold yoghurt and did not charge VAT on the grounds that their supplies are VAT exempt as yoghurt is “processed milk”.

Therefore, the Shs. 346,147,110 question is – is yoghurt processed milk?

The VAT Act does not define the term “processed milk”. However, it is trite law that where a term is not defined, the words must be given their natural and ordinary meaning (*Crane Bank v URA, Court of Appeal Civil Appeal No. 18 of 2010*).

What is milk? Milk is the white liquid produced by cows, goats, and sheep and used by humans as a drink (<https://dictionary.cambridge.org/dictionary/english/milk>).

The term “process” means to prepare, change, or treat food or natural substances as a part of an industrial operation (<https://dictionary.cambridge.org/dictionary/english/process>).

Therefore, definition of the words “processed milk” can be derived from the above two definitions to mean the white liquid from cows, goats and sheep that has undergone some form of preparation, change or treatment.

The above definition is similar to the one that has been advanced by the Applicant.

The Applicant invited the Tribunal to consider the definition of “processing of milk” as provided for in the ***Dairy (Marketing and Processing of Milk and Milk Products) Regulations, 2003***, which are made under the **Dairy Industry Act**. Since the Dairy Industry Act seeks to regulate the dairy industry, it is fitting to address our minds to the definition.

Regulation 3 defines “processing of milk as:

*“The treatment of raw milk by approved heating, fermentation or mechanical means to either increase its shelf life or turn it into a desired milk product.”*

The above definition recognizes that milk can be processed to:

- a) increase its shelf life; or
- b) transform the milk into milk products.

Processes that increase shelf life such as pasteurization, homogenization, and skimming are primary processing methods. They do not change or transform the milk into another product.

On the other hand, secondary processing of milk transforms raw milk into various dairy products. For example, fermentation changes milk into another product, called yoghurt. Therefore, while yoghurt is processed from milk, it is not milk. Similarly cheese, butter, ice cream, eshabwe and ghee are not milk.

It is important to note that the definition in the above regulation clearly shows that milk processing can leave milk in its natural form or it can result in a milk product.

AW1, in his testimony, stated that the yoghurt manufacturing process involves various steps. These are:

- (i) Raw milk is collected from farmers and tested for quality
- (ii) It is pasteurized to eliminate harmful microorganisms,
- (iii) Bacterial cultures are added to initiate fermentation.

Based on the above testimony, step (i) is the primary processing, which leaves the milk in its natural state. However, step (ii) is the secondary processing of the “processed milk” to obtain yoghurt, a fermented drink.

Yogurt is not milk. It was once milk, just like a butterfly was once a caterpillar. One does not look at a butterfly and exclaim – “oh! What a beautiful caterpillar!”

When live bacteria culture is added to milk, it ferments and becomes yoghurt, a different product. Yoghurt does not taste like milk; it does not look like milk. It cannot even be used to make a cup of the Ugandan delicacy - spiced African tea.

No one goes to a shop or supermarket to purchase milk and is given yoghurt and vice versa. Similarly, when you order for a cup of milk at a restaurant, what are the chances that you will be served yoghurt?

Further, if parliament’s intention was to exempt yoghurt from VAT, it would have explicitly stated as much because yoghurt is a common product.

The history of this exemption is also telling. Until 2002, the “supply of milk, including milk treated in any way to preserve it” was exempt under paragraph 1 (p) of the second schedule of the VAT Act. The provision was repealed by the VAT (Amendment) Act, 2002, which then moved it verbatim to the zero-rated schedule under paragraph 1(h). The zero-rated status was subsequently repealed 2014 by the VAT (Amendment) Act, 2014. There was a five-year gap before the provision was re-introduced by the VAT (Amendment) Act, 2020 under paragraph 1(jjj) of the second schedule of the VAT Act in its current form which reads – “the supply of processed milk.”

What this tells us is that for all intents and purposes, the exemption or zero-rating status was always in respect of milk, whether treated or not. It was never extended to milk products. The supply of milk lost its exempt status in 2014 until 2020 when it was restored as the “supply of processed milk”.

Therefore, we agree with the Respondent that yoghurt is not processed milk and Applicant ought to have charged VAT at the standard rate of 18% on its yoghurt

supplies. Therefore, the Respondent lawfully registered the Applicant for VAT effective from the time they ought to have registered as a VATable person.

This was done in accordance with section 8 (6) of the VAT Act which empowers the Commissioner to register a person if there are reasonable grounds for believing that the person is required to apply for registration under section 7 but has failed to. Further, the registration takes effect from the date specified in the certificate of registration.

In sum, the application is hereby dismissed and the Tribunal makes the following orders:

- (i) The supply of yoghurt is not a supply of processed milk. Therefore, it is not an exempt supply within the meaning of section 19 of the VAT Act read together with paragraph 1 (au) of schedule three of the Act;
- (ii) The tax as assessed by the Respondent stands;
- (iii) Costs are hereby awarded to the Respondent.

Dated at Kampala this 16<sup>th</sup> day of May 2025.

  
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**CRYSTAL KABAJWARA**  
**CHAIRPERSON**

  
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**SIRAJ ALI**  
**MEMBER**

  
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**PROSCOVIA R. NAMBI**  
**MEMBER**

