THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

MISCELLANEOUS APPLICATION NO. 12 OF 2026

ARISING FROM TAT APPLICATION NO. 019 OF 2026

NILE BREWERIES LIMITED ....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..RESPODENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. PROSCOVIA REBECCA NAMBI, HON. STELLA NYAPENDI CHOMBO

RULING

I. Introduction

1. This application is brought under Rule 20 of the Tax Appeals Tribunal (Procedure) Rules, Order 41 Rule 9 of the Civil Procedure Rules, Sections 15 (1) and 22 (6) of the Tax Appeals Tribunal Act, seeking orders that:

(i) A temporary injunction doth issue restraining the Respondent, its officers, agents or assignees from enforcing, implementing or otherwise giving effect to the Local Excise Duty assessments totalling Shs. 57,654,969,550 for the period January 2018 to December 2022, including any action to collect or recover the said taxes or any portion of the 30% thereof, until the final determination of the main TAT Application.

(ii) A declaration that the obligation to pay 30% of the tax assessed does not arise in this application and the main TAT Application.

(iii) A declaration that the Respondent's collection of the Shs. 17,296,490,865, being the 30% of the assessed tax by way of agency notices, was done illegally and was invalid.

(iv) An order that the Respondent refund to the Applicant for the Shs. 17,296,490,865.

(v) Costs be awarded to the Applicant.

II. Background Facts

2. This Application is supported by an affidavit in support by Ms. Faith Mirembe, the legal and compliance manager/company secretary of the Applicant, deponed on 12 February 2026 and states as follows:

   (i) The Applicant manufactures alcoholic beverages in Uganda. The Respondent issued the Applicant with tax assessments of Shs. 57,654,969,550 for the period January 2018 to December 2022 on the grounds that:

      a) Where the Applicant's products met the criteria under both Items 2(b) and (c) Schedule 2, Part 1 of the Excise Duty Act, the Applicant had elected to pay the lower LED under Item 2(b), as opposed to the higher one in Item 2(c). The Respondent interpreted Item 2(b) as a general provision of the law and Item 2(c) as a specific provision of the law, and that on that basis, Item 2(c) should have been applicable.

      b) The Respondent opined that the correct rate of LED which was applicable to the Applicant's beer was that in Item 2(c), on the basis that the beer was produced from barley grown and malted in Uganda. This is as opposed to the rate in Item 2(b), which is applicable to beer whose local raw material content, excluding water, is at least 75% by weight of its constituents.

   (ii) Being dissatisfied with the interpretation of the law under which the assessments were issued, the Applicant filed online objections, which were supported by a letter detailing the grounds of objection dated 4 September 2025.

   (iii) The Applicant objected to the Respondent's interpretation of Item 2(b) as a general provision and Item 2(c) as a specific provision and argued that Item 2(b) was applicable because it was specific to its circumstances. The Applicant also argued that the law was ambiguous and therefore ought to have been interpreted in the Applicant's favour, without intendment or presumption.

   (iv) Since the law has undergone a clarificatory amendment in 2025, it must be interpreted to apply to the assessed periods of 2018 to 2022,

which predated the amendment. In addition, the assessments raised by the Respondent are time-barred, given that they are outside the applicable statutory limitation period. On 6 January 2026, the Respondent disallowed all the Applicant's objections.

(v) The Applicant applied for Alternative Dispute Resolution, which the Respondent declined to entertain on the ground that the "matter relates to interpretation of the law".

(vi) On 3 February 2024, the Applicant wrote to the Respondent seeking confirmation that, given the nature of this matter, the legal requirement to pay 30% of the assessed tax would not be applicable to the Review Application and awaits a response from the Respondent.

(vii) On 5 February 2026, the Applicant lodged 3 applications before the Tribunal. These included an application challenging the LED assessments of Shs. 57,654,969,550, an interim and a temporary injunction to restrain the Respondent from collecting the assessed tax or 30% pending the determination and a declaration that 30% of the assessed tax was not payable.

(viii) The Applicant was informed by its bankers that on 7 February 2026, they received agency notices from the Respondent, under Section 31 of the Tax Procedures Code Act, requiring them to immediately remit Shs. 17,296,490,865 as tax payable by the Applicant, and the same was remitted. The Respondent did not serve the Applicant with any notice to pay the said amount or any of the agency notices.

(ix) On 10 February 2026, the application had been fixed for 11 February 2026 after hearing of the Temporary Injunction and the Respondent had been duly served.

(x) On Tuesday, 11 February 2026, when they appeared before the Tribunal for a hearing of the temporary injunction, the Tribunal was informed of the above facts.

(xi) The additional tax assessments raised by the Respondent result solely from the Respondent's contrary interpretation of the law, and not from any omission or underreporting by the Applicant.

(xii) In the absence of confirmation from the Respondent that the requirement to pay 30% of the assessed tax is not applicable, the

Applicant had a reasonable apprehension that the Respondent would move to enforce the collection of the assessed tax, which has since materialised. There is still an imminent threat of enforcement of the assessments before the determination of the Applicant's Application for review of the objection decision.

(xiii) The status quo as at the filing of all 3 applications is that the amounts assessed by the Respondent had not been collected yet. The Applicant is in a business in which cash flow is of great importance to the running of the business, and payment of the same is a detriment to the business of the Applicant. The Applicant will suffer irreparable injury if the application is not granted, and the main Application for review of the objection decision will be rendered nugatory.

(xiv) The balance of convenience tilts in favour of the Applicant whose business operations need to remain standing to be able to continue remitting taxes to the Respondent in future. That the instant Application meets the criteria for the grant of a temporary injunction.

(xv) The Tribunal has the power to declare that there is no obligation to pay 30% of the tax assessed where the review application is based on questions of law and order, and that the collected 30% be refunded as it is in contravention of the Constitution of Uganda.

(xvi) As an alternative, the review of the application is a fit and proper case for an order to pay the 30% of the assessed tax by way of a bank guarantee.

3. In the affidavit in reply deponed by Simon Peter Orishaba, an Officer in the Legal Services and Board Affairs Department of the Respondent, sworn on 23 February 2026, the Respondent stated as follows:

(i) The Respondent opposes paragraphs 2,3,4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,31,32,33,34,35,36 and 37 of the Affidavit in support of the application and prayed for this application to be dismissed with costs on grounds that the same has no merit whatsoever and is an abuse of court process.

(ii) The Applicant had not made any application to the Respondent not to pay 30% of the tax in dispute or alternatively pay the same by way of a Bank Guarantee, to enable the Respondent to make a taxation decision that can be objected to if the Applicant is not satisfied, and the Respondent to make an objection decision.

(iii) The Applicant indicated in TAT Form 1 the amount of tax in dispute to be Shs. 57,654,969,550. The main Application does not show a prima facie case and has no likelihood of success.

(iv) That the Applicant shall not suffer such irreparable injury which cannot adequately be compensated for by an award of damages.

(v) The Applicant ought to have paid 30% of the tax in dispute at the point of objection. Further, the Respondent has a statutory mandate to collect taxes due from the Applicant.

(vi) Therefore, the Application is bad in law, without merit, and ought to be dismissed with costs.

III. Issues

The following are the issues for determination:

(i) Whether the Applicant has satisfied the conditions that warrant a temporary injunction.

(ii) Whether the 30% collected should be refunded?

(iii) What remedies are available?

IV. Representation

4. The Applicant was represented by Mr. Bruce Musinguzi and Ms. Charlotte Ahabwe while the Respondent by Mr. Tonny Kalungi, Mr. Sam Kwerit, Ms. Gloria Twinomugisha and Mr. Franklin Kamagyezi.

V. Submissions of the Applicant

5. The Applicant submitted that the Respondent admitted that the dispute is one of interpretation of the law. The Applicant cited the case of ***Aggreko International Services Ltd v URA, TAT Application No. 103 Of 2025,*** where the Tribunal, with approval of its earlier decision in **James Mansa v URA, MA 23 of 2025,** held:

> *"The fuelex case established a critical exception...section 15 (1) is only applicable to cases that concern the arithmetic accuracy of the tax amounts as*

assessed. It is unconstitutional when it compels a taxpayer whose challenge is not regarding the tax assessed to pay the deposit...It is therefore our considered view that the dispute entirely concerns a question of the interpretation and application of section 41 of the TPCA to the Applicant's tax payments. In the circumstances, the preliminary objection fails and is hereby dismissed ..."

6. The Applicant submitted that similarly, the dispute here concerns a question of the interpretation and application of items 2(b) and 2(c), Schedule 2, Part 1 of the excise duty. The Applicant prayed that the Tribunal is pleased to find that the Respondent occasioned an unconstitutionality by issuing and enforcing agency notices for the collection of 30% of the assessed tax without having responded to the Applicant's application to the Respondent requesting confirmation of non-payment of 30% or allowing the Applicant to first be heard by the Tribunal on whether 30% should or should not be payable.
7. The Applicant contended that it has been paying excise duty at the lower rate under item 2 (b) based on its interpretation of the law, in reliance on the fact that its beer products met the 75% local raw material threshold. The Respondent argues that the higher rate under item 2(c) should be applied. Therefore, the dispute concerns the legality of the assessment and the rate applied.
8. The Applicant submitted that the collection of the 30% was premature and inconsistent with the principles in the Fuelex case and amounted to an improper exercise of enforcement powers because it rendered pending Tribunal proceedings nugatory. The Respondent's collection of the 30% flouted the procedural requirements set by law.
9. The Applicant argued that the Respondent, having declared that the Applicant's matter as one of statutory interpretation as shown in annexure "E" of the Affidavit in support, the Respondent scrambled to collect the 30% of the assessed tax prior to responding to the Applicant's letter seeking confirmation that the 30% of the assessed tax was not payable.
10. The Applicant further submitted that the Respondent issued agency notices on 6 February 2026, one day after the Respondent had been served with the applications on 5 February 2026 and was aware that the Applicant was

seeking confirmation from the Tribunal that the 30% of the assessed tax was not payable. The Applicant submitted that the agency notices were issued in error and that the Applicant was not served, contrary to section 29 of the TPCA.

11. The Applicant submitted that the 30% was collected prior to the hearing of the application before the Tribunal for a declaration that 30% was not payable, which hearing had been fixed within less than a week from filing and service of the application. The interim application had been fixed for 9 February 2026, and the application for a temporary injunction on 11 February 2026. The Respondent, in a show of bad faith, flouted the Applicant's rights to a fair hearing and to fair and just treatment in administrative decisions.

An order for a refund of the collected 30% and restoration of the status quo

12. The Applicant submitted that it is seeking to restore the status quo as it was on 5 February 2026, the date of filing the Applicant's 3 applications, which were distorted by the Respondent after having been served with the Applications. Further, at the filing of this application, the Respondent had not collected the 30% deposit.

13. The Applicant submitted that the Respondent's actions, if left to stand, would defeat this application. The interest of justice demands that an interlocutory injunction be issued to restore the status quo that existed at the time of filing the application.

Temporary Injunction

14. The Applicant seeks a temporary injunction restraining the Respondent from collecting and refunding the 30% already collected. The Applicant submitted that in the case of ***Kiyimba Kaggwa V hajji Abdu Nasser Katede [1985] HCB 43***, the following conditions are necessary for the grant of a temporary injunction:

(i) A prima facie case with probability of success;

(ii) Irreparable injury which would not adequately be compensated by an award of damages; and

(iii) If the Tribunal is in doubt after considering the above 2 grounds, it should decide the application on the balance of convenience.

Prima facie case

15. The Applicant submitted that its review is premised on questions entailing interpretation of the law indicated therein, namely;
    (i) Whether item 2 (b) or 2 (c), schedule 2, Part 1 of the Excise Duty Act is a general or specific provision of the law, and which one is applicable where the Applicant's products meet the requirements of both items; and
    (ii) Whether item 2 (c), schedule 2, Part 1 of the Excise Duty Act is ambiguous and should be interpreted in the Applicant's favour.
16. The Applicant submitted that these are serious triable issues that go to the foundation of the assessments. It is purely a question of which legal provision governs the payment of excise duty for the Applicant's beer and at what rate excise duty should have been charged during the relevant period.

Irreparable Injury

17. The Applicant submitted that the assessed tax and the deposit are so significant that they will suffer severe cash-flow disruption, impairment of its trading capacity and potential operational distress that could affect its ability to continue serving the Ugandan Market.
18. Furthermore, the court's ability to render meaningful decisions will be jeopardised, the integrity of the adjudication undermined, and success at trial rendered hollow or academic because the enforcement steps taken in the interim cannot be revised.

Balance of Convenience

19. The Applicant submitted that the Respondent will only suffer a delay in collection, and if it succeeds in the main application, it can recover the full amount; therefore, the fiscus will not be prejudiced.
20. The Applicant further argued that the harm to the Applicant is both immediate and irreversible, whereas the harm to the Respondent is minimal

and entirely remediable through an award of interest if the Respondent ultimately succeeds. If the Applicant's interpretation is correct (as the 2025 amendment suggests), then the Respondent's enforcement would be contrary to the public interest. The Applicant submitted that the balance of convenience favours the grant of a temporary injunction and the refund of the 30% collected.

Preservation of the status quo

21. The Applicant submitted that at the filing of this application on Thursday, 5 February 2026, the Respondent had not yet issued any agency notice and no amount had been recovered. At the time, the Respondent had not yet issued any agency notice, and no amount had been recovered.
22. The Applicant seeks to maintain the status quo as it was before the filing of the application until the hearing and determination of the review application. This necessitates a grant of a temporary injunction to bar the collection of the entire assessed amount or any part thereof, and an order for the refund of the 30% of the tax assessed wrongly collected by the Respondent.

23. The Applicant prayed that the Tribunal be pleased to order that the Respondent refund the full amount recovered from the Applicant through agency notices during the period between the filing of this application and its hearing.
24. Additionally, the Tribunal grants a temporary injunction, restraining the Respondent from collecting the assessed tax or any part thereof.

VI. The Submissions of the Respondent

25. The Respondent submitted that the collection of the 30% was lawful and mandatory pursuant to section 15 of the Tax Appeals Tribunal Act and under the pay now, argue later principle upheld by the Ugandan courts.
26. The Respondent further submitted that the Applicant seeks to rely on the case of Fuelex Uganda Limited v URA, Constitutional Appeal No. 03 OF 2009, to argue that the 30% was not payable. The correct ratio in Fuelex is that section 15 is constitutional but must not be applied so as to unjustifiably deny access to justice under Article 28 and 44 of the Constitution, where

the dispute is purely legal and does not concern the assessment of quantum.

27. The Respondent submitted that the constitutional court did not strike down section 25, it affirmed its validity subject to proper application. In the present case, the Applicant challenges the assessment and the amount of tax assessed. The Respondent cited Article 152 (1) of the 1995 Constitution of the Republic of Uganda. It provides that:

    "No tax shall be imposed except under the authority of an Act of Parliament".

    The above provision indicates that every assessment involves applying a statute to the facts.

28. The tax liability is determined by applying legal provisions to the taxpayer's circumstances. An assessment of dispute is therefore inherently statutory and cannot be separated from interpretation. The Applicant's attempt to characterise the dispute as purely interpretational is therefore legally untenable.

29. The Respondent submitted that the 30% deposit payment is a requirement under section 15 of the Tax Appeals Tribunal Act (TAT Act). The Fuelex exception is narrow and does not apply to disputes which challenge the assessment and its quantum. This dispute concerns liability and the quantum arising from the assessment, and therefore falls squarely within the general rule requiring payment of 30%.

30. The Respondent submitted that the ADR letter dated 29 January 2026, issued by the ADR office, which suggested that the dispute relates to the interpretation of the law, is legally inadmissible and incapable of supporting the Applicant's argument. This is because the letter is marked "without prejudice" and that it is settled in law that the communications made without prejudice are privileged and are inadmissible as evidence in court proceedings.

31. The Respondent contended that the same could not be relied on to establish a binding determination regarding the applicability of Section 15 of the Tax Appeals Tribunal Act. The Respondent argued that the interpretation of section 15 is a matter for this Tribunal and superior courts,

not ADR correspondence. The Respondent further submitted that annexure E cannot override clear statutory provisions.

32. The Respondent further submitted that once an assessment is issued and remains unpaid, the tax becomes a statutory debt due and payable by the government. The mere filling of an application, interim or temporary injunction does not extinguish that debt or amount to a stay of enforcement.

33. The Respondent submitted that until an order has been issued or served, it remains legally entitled and obligated to enforce tax collection. In this case, no injunction had been issued, and no order restraining enforcement had been served on the Respondent. The Respondent was legally entitled to proceed to recover 30% of the tax assessed.

34. The Respondent further argued that it lawfully invoked section 34 of the Tax Procedures Code Act that empowers the Commissioner to issue an agency notice as a statutory enforcement mechanism for recovery of the unpaid tax. The Applicant failed to pay the 30% of the assessed tax as required under section 15 of the Tax Appeals Tribunal Act.

Whether the Applicant has satisfied the grounds warranting the grant of a temporary injunction

35. The Respondent submitted that the grant of an interlocutory injunction is an exercise of judicial discretion. The rationale is to preserve the status quo obtained. The Applicant in this case did not seek to maintain the status quo, contrary to the principles for the grant of a temporary injunction.

36. The Respondent cited the case of ***Nived Enterprises Limited v URA, HCMA No. 301 of 2023***, the High Court held as follows:

> *"...from reading 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 this court to warrant the issuance of the mandatory injunctive orders."*

37. The Respondent submitted that the undisputed position is a lawful assessment of Shs. 57,654,969,550 had been issued, the statutory obligation to pay 30% had arisen, and it had been lawfully collected through

agency notices. The factual position is that the 30% had already been collected.

38. The Respondent submitted that the prayer seeking a refund of the 30% already collected and restoration of the position as of 5 February 2026, does not seek tp preserve the status quo. It seeks to reverse it. It was the Respondent's position that for this reason alone, this application fails on the fundamental principle governing temporary injunctions.

Grounds of a Temporary Injunction

39. The Respondent submitted that the present case does not meet the conditions for the grant of a temporary injunction as set out in the ***Kiyimba Kaggwa case (supra).***

40. The Respondent argued that the application did not disclose a prima facie case with a probability of success. The grant of a temporary injunction in this case would amount to restraining the Respondent from performing its legal duty of tax collection, given the antecedents of the Applicant. The Respondent submitted that the Applicant has failed to establish a preface case with a probability of success because they failed to demonstrate any illegality, ultra vires conduct or procedural impropriety by the Respondent.

41. Secondly, on irreparable injury, the Respondent submitted that these are monetary claims which are quantifiable and compensable. Mere assertions of cash flow constraints do not amount to irreparable harm. The Respondent submitted that, should the Applicant succeed in the main application, there are statutory procedures available for a refund of any tax found not to have been payable.

42. The Respondent submitted that the outstanding tax is a legally due and payable debt owed by the Applicant to the Government. Restraining the Respondent from collecting tax lawfully assessed obstructs its statutory mandate, interferes with public revenue collection and undermines the "pay now, argue later" doctrine affirmed by superior courts. Tax revenue is the lifeblood of government operations. The Government of Uganda relies on timely tax collection to finance public services and discharge constitutional

obligations. Any delay in lawful tax collection directly affects national interests and public service delivery.

43. The Respondent submitted that if the injunction is granted, government revenue will be delayed, the Respondent will be prevented from performing a statutory duty; a precedent will be set allowing taxpayers to delay compliance by filing interlocutory applications.

44. The Respondent submitted that if the injunction is refused, the Applicant suffers only temporary monetary outlay, refund mechanisms remain available should the Applicant succeed, and no irreparable harm arises. Stopping enforcement would prejudice not only the Respondent but the public at large. The inconvenience clearly weighs in favour of allowing statutory collection to proceed.

Whether the Tribunal can order a refund and restoration of the status quo in the circumstances of this case

45. The Respondent submitted that the Applicant seeks an order directing the Respondent to refund the 30% of the assessed tax already collected, prior to the determination of the main Application for Review. The Respondent submitted that such relief is legally untenable because the refund sought amounts to final relief at an Interlocutory Stage. The order sought by the Applicant is not preservative in nature. It is substantive and determinative.

46. The Respondent further submitted that to compel a refund of the 30% already collected would effectively determine, at an interlocutory stage, the very issue that is pending before the Tribunal in the main Application, namely, whether the tax assessed is lawfully due. It is a settled principle that interlocutory proceedings are the proper forum for granting final relief unless exceptional circumstances exist.

47. The Respondent argued that no such exceptional circumstances have been demonstrated in this case. Once the assessment was issued and remained unpaid, the tax became a statutory debt recoverable by the Respondent. The collection of 30% was undertaken pursuant to express statutory authority. There is therefore no legal basis for a refund.

48. The Applicant's argument that the relevant status quo to be preserved is the position as at 5 February 2026, before the issuance of agency notices,

is flawed. This is because even as at that date a lawful assessment had already been issued, the statutory obligation to pay 30% had already arisen. The assessed tax constituted a debt due to the Government. The Respondent submitted that the legal status quo was therefore the existence of a recoverable statutory tax debt.

49. The Respondent submitted that the preserving or restoring status quo cannot operate to defeat express statutory provisions. An order restoring the Applicant to a pre-enforcement position would effectively suspend or override these statutory provisions. The Applicant's prayer for a refund and restoration of the status quo is legally unsustainable and ought to be dismissed.

50. The Respondent prayed that the application be dismissed and for the following reliefs:
    (i) The 30% statutory requirement under section 15 of the Tax Appeals Tribunal Act was lawfully due and payable.
    (ii) The Respondent lawfully exercised its powers in collecting the said amounts.
    (iii) No stay order existed restraining enforcement.
    (iv) The Applicant has failed to fulfil the conditions for the grant of a temporary injunction.
    (v) The prayer for refund amounts to final relief at an interlocutory stage and is legally untenable. The Respondent prayed that the application be dismissed with costs.

VII. The Applicant's Submissions in Rejoinder

51. In rejoinder, the Applicant reiterated their earlier submissions. However, regarding the application for a temporary injunction, the Applicant submitted that it is not alien for the court to grant a temporary injunction to restore the status quo as it was at the date of filing the application.

52. The Applicant cited the case of ***Sudhir Ruparelia V. Crane Bank (U) Ltd & Anor (SC Misc. Application No. 39 of 2020)***, at pages 11-12, the Supreme Court held as follows in relation to the grant on an interlocutory mandatory injunction:

"The Applicant further prayed for an interlocutory mandatory injunction and the principles upon which Court grants a mandatory interlocutory injunction are well established. I cite with approval the High Court decision of ***Themi Nakibuuka Sebalu Vs Peter Sematimba & 2 others Misc. Application No.52 of 2014,*** *where the Court observed as follows:*

"Binod Mohan Prasad in Mulla the Code of Civil Procedure seventeenth edition, at pages 254 to 257, states that courts can in exceptional cases grant a mandatory injunction on an interlocutory application. Such injunctions can be issued only in case of extreme hardship and compelling circumstances, mostly in those cases when the status quo existing on the date of the institution of the suit is to be restored. He cites a Calcutta case, Indian Cable Co Ltd V Sumira Chackraborty AIR 1985 Cal 248, where the tenant was in peaceful possession, but had been wrongfully thrown out. His possession was restored on an interlocutory application. In other words, if it has to be granted at all on interlocutory application, a mandatory injunction is granted mostly to restore the status quo, and not to establish new state of things."

53. The Applicant submitted that the application fits squarely within the circumstances described in the above-quoted case, given that the Applicant is indeed seeking to restore the status quo as it was on 5 February 2026 (the date of filing of all 3 of the Applicant's applications), which status quo was distorted by the Respondent after having been served with the Applications.
54. The Applicant prayed for a similar remedy as was granted in the Sudhir case. An order that the Respondent refund to the Applicant Shs. 17,296,490,865, which it collected from the Applicant's bankers by way of agency notices, following the filing of this application, thereby restoring the status quo as at 5 February 2026.

VIII. The Determination

55. This application presents three central questions for us to determine, namely:
    (i) whether the Applicant was obliged to pay the 30% deposit;
    (ii) whether the Respondent lawfully enforced its collection; and
    (iii) whether the conditions for the grant of a temporary injunction have been satisfied.

Whether the 30% deposit is payable?

56. The starting point is section 15(1) of the Tax Appeals Tribunal Act, which provides:

"A taxpayer who has lodged a notice of objection to an assessment shall pending the 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."

57. The provision reflects the long-established principle that tax disputes do not ordinarily suspend the obligation to pay - a principle grounded in the public interest in ensuring the continuous flow of revenue. Furthermore, in the case of ***Uganda Projects Implementation and Management Centre v Uganda Revenue Authority,*** Supreme Court, Constitutional Appeal No. 2 of 2009. Justice C.N.B KITUMBA stated:

"...according to Article 17 of the Constitution, a citizen has a duty to pay taxes and to do so promptly, so that government business can go on. This is what was discussed in the Metcash Trading Co. Ltd case. "The principle of pay now and argue later". The taxpayer has to pay his tax, then argue later..."

58. Similarly, in the case of ***Bullion Refinery limited v URA*** **App No. 36 of 2021,** the Tribunal ruled:

"The requirement to pay the 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a taxpayer files a matter in the Tax Appeals Tribunal. This means that by the time the matter is filed in the tribunal, the 30% ought to have been paid.......".

59. The Applicant relies on the decision in ***Fuelex Uganda Ltd v URA, Constitutional Reference No. 03 of 2009***, arguing that this dispute falls within the exception recognised by the Constitutional Court, where payment of the 30% deposit would unjustifiably impede the right to a fair hearing and access to justice.

60. In ***Fuelex Uganda Ltd v URA,*** the Court made it clear that section 15 remains constitutionally valid but must not be applied in a manner that denies a taxpayer access to a hearing where the dispute raises a foundational legal question as to a liability. The Constitutional Court held:

"Section 15........does not, in my humble view, extend to a situation where the taxpayer, for example, contends that he or she is exempted from a tax upon which the assessment is based or where a waiver has been obtained or the objector is not a taxpayer in Uganda, or where the tax was assessed under a wrong or non-existent law. In those instances, the Tax Appeals Tribunals Act is required first to determine the question as to whether or not the taxpayer lodging the objection is indeed a "taxpayer" within the meaning of that law or under the head item assessed. If, for example, the tax assessed is Value Added Tax (VAT), and the objection is that the objector is not liable to pay VAT at all, then in my view, Section 15 would not apply. The Tax Appeals Tribunals Act would be required first to resolve the issue as to whether or not the objector is liable to pay that tax. When that question is answered in the affirmative, then the provisions of Section 15 would apply, but not before."

61. We must therefore establish whether the present dispute falls within the Fuelex exception. In our view, this inquiry turns on two considerations: whether the dispute challenges the existence of liability itself, and whether its resolution depends primarily on legal interpretation rather than factual determination.

62. In a letter from the Respondent, marked annexure "A" of the affidavit in support of the Application, the Respondent stated that:

"During review of your production records, it was established that when your products met the criteria under both general and specific provisions under item 2, Part 1, Schedule 2 of the Excise Duty Act, these were classified under the general provision rather than the specific."

63. In Annexure "C", an email from the Respondent dated 6 January 2026, stated that:

"We have concluded the review of your LED objections for the periods 2018 to 2022 and below is our response:

LED assessments were raised to re-classify the beer products, namely: Eagle Extra Lager, Nile Special and Club Pilsner, from 2(b) of Part 1 of Schedule 2 of the Excise Duty Act (EDA) to Item 2(c) of Part 1 of Schedule 2 of the EDA in the LED declarations. This is because the beer fell under both provisions of the EDA.

Item 2 (b) of Schedule 2 of the EDA provides for 30% or Shs. 650 per litre, whichever is higher, for beer whose raw materials content (excluding water) is at least 75% by weight, whereas item 2 (c) provides for excise duty at 30% or Shs. 950 per litre, whichever is higher, on the basis that the beer is produced from barley grown and malted in Uganda".

64. Furthermore, in Annexure "E", the Appeal decision to the objection notice dated 29 January 2026, the Respondent in paragraph 3 stated that:

"We have analysed your application and noted that the matter relates to the interpretation of the law. Section 6(4)(b) of the Tax Procedures Code (Alternate Dispute Resolution Procedure) Regulations, 2023 provides that: The Commissioner shall reject an application to resolve the dispute using alternative dispute resolution procedure where the matter in dispute is in regard to interpretation of the law".

65. From the above evidence, it is clear that the dispute is not about whether the Applicant is liable for excise duty or not. In fact, the Applicant does not dispute its liability to excise duty. Instead, the dispute is on the applicable rate under Items 2(b) and 2(c) of Schedule 2 to the Excise Duty Act. Item 2 (b) applies to beer whose raw materials content (excluding water) is at least 75% by weight, and the applicable rate is 30% or Shs. 650 per litre. Item 2 (c) applies to beer produced from barley grown and malted in Uganda, and the applicable rate is 30% or Shs. 950 per litre. This in itself does not make the dispute one of legal interpretation (despite averments of the Respondent to the contrary).
66. The resolution of the dispute requires, in addition to interpretation of the statutory provisions, factual determination as to whether the Applicant's products meet the conditions prescribed under each provision, including the composition of raw materials and the source of production. The dispute is therefore a mixed question of law and fact, and it goes to the quantification of tax payable rather than to the existence of the tax liability itself. For that reason, we find that the dispute does not fall within the narrow exception contemplated in the ***Fuelex case***. It remains within the general scope of section 15(1).

67. Therefore, we find that the Applicant was subject to the statutory obligation to pay the 30% of the tax in dispute.

Payment of the 30% deposit by bank guarantee

68. The current legal framework does not provide for payment by bank guarantee. This was established in the case of ***Vivo Energy v Uganda Revenue Authority, Misc. App., No. 78 of 2024,*** where this Tribunal held that the requirement under section 15 of the TAT Act above is for a payment to be made and not a guarantee. Therefore, the application would not have succeeded on this issue.

Enforcement of the 30% deposit

69. The Applicant further challenges the manner in which the Respondent enforced the collection of the 30% deposit, contending that the use of agency notices without prior notice was unlawful.
70. There is no doubt that the Respondent is vested with wide enforcement powers under the Tax Procedures Code Act, including the power to recover unpaid tax through agency notices. Those powers are necessary for the effective administration of the tax system. However, they are not at large. They must be exercised in accordance with the law and in a manner that is fair, orderly and consistent with the rule of law.
71. Section 29(2) of the Tax Procedures Code Act requires the Commissioner to issue a notice of demand before resorting to enforcement measures. That requirement is not a mere technicality. It is an integral part of the statutory scheme, intended to give the taxpayer notice and an opportunity to comply.
72. In the present case, no satisfactory evidence was placed before the Tribunal to demonstrate that such a demand notice was issued and served prior to the issuance of the agency notices. The timing of the enforcement is also of concern. At the material time, the Applicant had already invoked the jurisdiction of this Tribunal and had specifically sought a determination on the applicability of the 30% requirement. The Respondent was aware of these proceedings.

73. While the filing of proceedings does not, of itself, operate as a stay, a public authority is expected to exercise its powers with restraint where a dispute has been placed before a competent forum, particularly where the issue in question goes to the enforceability of the obligation being pursued. In those circumstances, the resort to immediate enforcement, without a clear demonstration of noncompliance with statutory prerequisites, cannot be said to have been procedurally sound.

74. We therefore find that while the Respondent was entitled in principle to recover the 30% deposit, the manner in which it enforced that recovery was procedurally irregular. Agency notices should only be resorted to when there has been a clear failure by a taxpayer to pay a tax liability following the Commissioner's issuance of a demand notice. They should not be used indiscriminately, especially in cases such as this, where a taxpayer sought legal redress or clarification within the confines of the law, in full knowledge of the Respondent. Such behaviour undermines the credibility and legitimacy of tax administration, which is a prerequisite for a functioning tax system.

75. This finding, however, does not negate the underlying statutory obligation to pay the deposit. Nor does it, at this interlocutory stage, justify an order for refund. To grant such relief would be to determine, in substance, part of the dispute reserved for the main application. The appropriate course is to regulate the position going forward, rather than to reverse what has already occurred.

Whether a temporary injunction should issue

76. The Applicant applied for a temporary injunction to restrain the Respondent, its officers, agents or assignees from enforcing, implementing or otherwise giving effect to the Local Excise Duty assessments totalling Shs. 57,654,969,550 for the period January 2018 to December 2022, including any action to collect or recover the said taxes <u>or any portion of the 30% thereof, until the final determination of the main TAT Application.</u>

77. Having determined that the Applicant is liable to pay 30% of the tax in dispute, we shall restrict the evaluation of the application to the remainder of the assessed tax (after amounts collected by agency notice). This also

means that the status quo to be preserved is to maintain the current position until the main application is disposed of.

78. The conditions for the grant of a temporary injunction have long been established in the case of ***Kiyimba–Kaggwa v Hajji Katende (supra)***. It was held as follows:

> *"The Applicant must show a prima facie case with a probability of success; such an 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

79. The Applicant challenges the interpretation and application of items 2(b) and 2(c) of Schedule 2, Part 1 of the Excise Duty Act, specifically whether the lower or higher excise duty rate applies where a product arguably meets the requirements of both provisions. The Tribunal therefore finds that the Applicant has established a prima facie case with a probability of success.

Irreparable injury

80. The Applicant contended that recovery of the remainder of the assessed tax after filing the Tribunal applications has caused and threatens severe cash-flow disruption, operational distress and potential irreparable harm to its business operations in Uganda.

81. While tax disputes are ordinarily compensable in monetary terms, there are cases where enforcement of substantial sums may disrupt the operations of a going concern in a manner that cannot be adequately remedied by a later refund. The amount in the present dispute is considerable. The risk of operational disruption is real.

Balance of convenience

82. The Respondent has already secured 30% of the assessed tax. Granting an injunction would not deprive it of protection entirely. On the other hand, continued enforcement of the remaining balance carries a risk of

disproportionate prejudice to the Applicant if the main application ultimately succeeds.

83. Further, there is a real and imminent threat of collection, as already demonstrated by the fact that the Respondent can enforce the collection of tax without a demand notice and in disregard of a pending suit.

84. The Applicant has also sought a refund of the 30% already collected. That relief is in the nature of a mandatory order and would effectively determine part of the dispute at an interlocutory stage. No exceptional circumstances have been demonstrated to justify such an order. We therefore decline to grant a refund at this stage.

Obiter

85. Before leaving this matter, the Tribunal considers it appropriate to make certain observations, albeit obiter, on the operation of section 15(1) of the Tax Appeals Tribunal Act, with a view to informing its continued development in law and practice.

86. The requirement for payment of 30% of the assessed tax pending the resolution of a dispute plays an important role in safeguarding public revenue. It reflects the established principle that tax disputes should not unduly disrupt the State's fiscal operations. However, as tax systems evolve and the scale and complexity of disputes increase, it becomes necessary to ensure that such mechanisms remain aligned with broader constitutional and economic objectives, including fairness, access to justice, and the sustainability of the tax base.

87. Experience in the application of section 15(1) suggests that, while the provision serves a legitimate purpose, its current operation may, in certain circumstances, produce outcomes that are insufficiently responsive to the realities of modern commercial activity. In disputes involving substantial assessments, the immediate requirement to part with significant sums may place considerable strain on business operations, with potential consequences not only for the taxpayer but also for future revenue generation. A framework that is perceived as overly rigid may, therefore, in some cases, undermine the very revenue interests it is intended to protect.

88. There is accordingly scope for consideration of a more calibrated approach to the deposit requirement, one that preserves the Government's legitimate interest in securing disputed revenue while allowing for flexibility in appropriate cases. Such an approach could include, for example, recognising alternative forms of security, introducing proportional limits in cases involving exceptionally large assessments, or developing clear criteria to guide the exercise of discretion in exceptional circumstances. These are matters that may appropriately fall within the domain of legislative or policy reform.

89. The Tribunal further observes that the manner in which the 30% deposit is treated within revenue administration frameworks is of particular importance. Where deposits are assimilated into ordinary revenue collection metrics without distinction, there is a risk of blurring the line between provisional recovery and confirmed tax liability. This may have the unintended effect of distorting performance indicators and, more importantly, creating incentives that are not fully aligned with the objective of fair and accurate tax assessment. A clearer distinction between provisional deposits and final tax collections would enhance transparency, strengthen accountability, and support sound revenue governance.

90. Equally important is the need for an efficient and predictable system for the refund of deposits where taxpayers ultimately succeed. The legitimacy of the deposit mechanism depends, in no small measure, on the assurance that funds will be returned promptly once the dispute has been resolved. Delays in the refund process risk converting a temporary safeguard into a lasting financial burden, thereby eroding confidence in the fairness of the system. Establishing clear timelines, streamlined procedures, and appropriate compensation in the form of interest for delayed refunds would significantly enhance the overall balance and integrity of the regime.

91. These observations are made in recognition of the fact that section 15(1) operates at the intersection of revenue protection and taxpayer rights. Its continued effectiveness will depend not only on its enforcement but also on its ability to adapt to changing legal, economic, and administrative contexts. A balanced and forward-looking approach, informed by both principle and

practical experience, will best ensure that the provision serves its intended purpose in a fair, transparent, and sustainable manner.

92. In light of the foregoing, we make the following orders:

    (i) The Applicant was subject to the obligation under section 15(1) of the Tax Appeals Tribunal Act to pay 30% of the assessed tax.

    (ii) The enforcement of that obligation by the Respondent, through agency notices issued without demonstrated compliance with the requirement for a prior demand notice, was procedurally irregular.

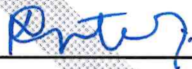
    (iii) Notwithstanding that irregularity, the Applicant is not entitled to a refund of the 30% deposit at this interlocutory stage.

    (iv) A temporary injunction is hereby granted restraining the Respondent, its agents or assignees from enforcing or collecting the remainder of the assessed tax pending the determination of the main application.

    (v) Costs shall abide by the outcome of the main application.

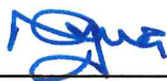
    (vi) The main application is hereby fixed for hearing on 12 and 13 August 2026 from 9-11 AM on both days. The parties are directed to file their trial documents by 6 August 2026.

Dated at Kampala this......30th......day of......April......2026.



HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. PROSCOVIA REBECCA NAMBI
MEMBER



HON. STELLA NYAPENDI CHOMBO
MEMBER