

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
MISC APPLICATION NO. 74, 76 & 80 OF 2025
(ARISING FROM TAT APPLICATION NO. 115,116 AND 119 OF 2025)

1. RABIKA FASHIONS LTD

2. NYANGA OBUROFA ENTERPRISES LTD

2. DESERT BREEZE HOTEL LTD APPLICANTS

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. GRACE SAFI, MR. WILLY NANGOSYAH

RULING

This ruling is in respect of an application brought under S.98 Civil Procedure Act Cap 71, Order.41 R 1(2) and Order.52 Rule 1(2) and Rule 3 Civil Procedure Rules S.I 71-1 and Rule 30 of the Tax Appeals Tribunal (Procedure) Rules 2012 seeking the following reliefs:

- (i) A temporary injunction restraining the Respondent and its agents from collecting withholding tax in respect of the Applicants' goods pending the determination of the main Application No. 115,116 & 119 of 2025.
- (ii) To allow the Applicants' goods captured vide the different C1 entries listed be allowed into the country.

1. Background facts

The Tribunal heard all three Applications at the same time as the facts were the same or similar, and the representatives of the parties were the same in the three applications.

The grounds of this application are contained in the affidavit in support of the notice of motion sworn by:

- (i) Mr. Andrew Rwashande and deponed on 23 April 2025 in respect of the 1st Applicant;
- (ii) Mr. Mukunane Michael and deponed on 23 April 2025 in respect of the 2nd Applicant;
- (iii) Mr. Arnold Kagwa and deponed on 25 April 2025 in respect of the 3rd Applicant.

The summary of the grounds contained in the applications is as follows:

- (i) In March and April 2025, the Applicants sought to import large quantities of perishable agricultural goods (rice, groundnuts, beans, millet, onions, cassava, Daga and maize, millet, sorghum, onions, Irish potatoes and rice) from Tanzania into Uganda.
- (ii) Upon making declarations for purpose of bringing their goods into the country, the Respondent demanded the Applicants' pay withholding tax (WHT).
- (iii) The Applicants possess valid and running WHT exemption certificates. The certificates were granted by the Respondent on 24 January 2025 for 1st Applicant, 1 July 2024 for the 2nd & 3rd Applicants respectively. All the certificates expire on 30 June 2025.
- (iv) The Respondent has refused to release the goods to the Applicants despite the request to do so, insisting on the Applicants paying WHT.
- (v) The Respondent is denying the Applicants the benefit of the exemption without reasonable cause and is unlawfully imposing WHT.
- (vi) The products being held by the Respondent are perishable and delay in determination of this dispute will lead to significant loss to the Applicants.
- (vii) If the temporary injunction is not granted, the Applicants will suffer irreparable injury that cannot be compensated.

In reply, the Respondent presented their grounds opposing the applications in affidavits in reply sworn by Mr. Kenan Aruho a Legal officer in the Respondent's Legal Services & Board Affairs Department deponed on the 21 May 2025 in respect of the 1st, the 2nd and the 3rd applications. The Respondent's grounds were as follows:

- (i) That the Application is premature, misconceived and an abuse of court process.
- (ii) The Applicants do not demonstrate there is a prima facie case with likelihood of success.
- (iii) That the Applicants made declarations under codes which do not cater for WHT as required by the law.
- (iv) That the Applicants' imports attract WHT per the Income Tax Act.
- (v) That the assessed WHT is payable by the Applicants, and the Applicants are obligated to meet all their tax obligations as they fall due.
- (vi) That the Respondent did not deny the Applicants the benefit of exemption but only guided the Applicants how to proceed and capture the entries so to pay the outstanding tax liability.
- (vii) However, the Applicants did not heed to the Respondent's advice.
- (viii) The 1st, 2nd and 3rd Applications are barred by law since the Applicants did not object/appeal to the Commissioner in line with Section 229 of EACCMA, 2004 and have not paid 30% of the tax in dispute.

2. Representation

At the hearing of this Application, Mr. Sydney Ojwee represented the Applicants while Mr. Mr. Samuel Oseku and Ms. Mpumwire Christine appeared for the Respondent. The parties were invited to make their oral submissions, which they did and the same was considered by the Tribunal.

3. Issues for determination

The issue for determination is whether the Applicants meet the grounds for the grant of a temporary injunction.

4. Submissions of the Applicants

The Applicants submitted that they are seeking an order for a temporary injunction to stay an arbitrary order and harmful imposition of WHT on the importation agricultural pending determination of the main TAT Application no.115.116 1& 119.

The Applicant submitted that they meet the conditions for the grant of a temporary injunction as espoused in the case of *Kiyimba Kaggwa v Hajji Katende*, which are shown below.

Prima facie case

The Applicants contend that they have a prima facie case with a high likelihood of success in the main suit. This is evidenced by the fact that they possess a valid and running WHT exemption certificate, granted by the Respondent and expiring on 30 June 2025. Therefore, there is a triable issue before the Tribunal as to whether the Respondent acted lawfully in denying the Applicants the WHT exemption.

Whether the Applicant will suffer irreparable loss/imminent threats

The Applicants submitted they will suffer irreparable damages because they have purchased goods that are perishable in nature and the goods will be harmful for human consumption if held for long. When asked by the Tribunal on the current location of the goods in question, the Applicant replied that the goods are still in the country of origin despite having already been purchased, and are awaiting the Respondent's clearance before they can leave for Uganda.

The balance of convenience

The Applicants submitted that the Respondent will not be inconvenienced since they had already given WHT exemption certificates to the Applicants. Therefore, the Respondent was not planning to utilize taxes from the Applicants.

5. Submissions of the Respondent

The Respondent opposed the Application and relied on the decision in *Alcohol Association V URA Misc. Application 44 of 2019*, where it was held:

“...there must be a substantial question to be tried by court and the Applicant should demonstrate they will suffer grave irreparable injury which is not capable of being atoned for in damages.”

Prima facie case

The Respondent submitted that there's no substantial question to be tried by the Tribunal, simply for the reason this Application is improperly before this Tribunal as there is no decision by the Respondent. The perusal of the Applicants' application does not illustrate or demonstrate any decision from the Respondent.

Irreparable injury

The Respondent submitted that while the Applicants contend that their goods have been denied entry by the Respondent, there is no evidence to show that the Applicants have actually purchased these products. There are no receipts or invoices or any evidence to show these goods are in the custody of the Applicants' or in the applicants' stores or at the border. Therefore, the Applicant has failed to prove purchase and ownership and have failed to satisfy the ground they will suffer irreparable injury .

Balance of convenience

The Respondent submitted that the balance of convenience is in the Respondent's favour because the Respondent is merely excising its statutory mandate and the grant of this order will frustrate the mandate of the Respondent.

In rejoinder, the Applicants reiterated their earlier arguments.

6. The determination of the issues

Having carefully considered the submissions, representations, and documentary evidence presented by both parties, this is the decision of the Tribunal. The conditions for granting a temporary injunction are laid out in the case of *Kiyimba Kaggwa v Hajji Abdul Katende (1983) HCB 43*, namely:

- (i) *There must be a prima facie case with a likelihood of success;*
- (ii) *The Applicant must demonstrate that they will suffer irreparable loss that cannot be compensated for by an award of damages; and*
- (iii) *The balance of convenience favors the Applicants.*

Prima facie case

The Applicants were granted a WHT exemption certificate and has been denied the benefit of the same. The Respondent does not deny it. The affidavits in reply clearly speak to this and the Respondent also submitted that a decision was made to halt the use of WHT exemption certificates as they were being abused. Therefore, by their own admission, there is a decision and there is a triable issue before this tribunal.

An irreparable loss that cannot be atoned for by an award of damages.

The Applicants must show that they will suffer irreparable damage - this connotes damages or injuries which cannot be adequately compensated for by an award of damages or any other monetary compensation. However, the Applicants have failed to demonstrate that they will suffer irreparable damage. There is no proof that the Applicants purchased the commodities that they seek to import. A receipt or other document that serves as confirmation that one has paid for a particular item. In the 1st and 2nd Application, the Applicants adduced invoices. However, an invoice is not sufficient proof of purchase, an invoice may be used as a proof of having requested goods or service. The Applicants ought to have adduced evidence of payment, for example, bank transfers as evidenced by bank statements, receipts from suppliers to acknowledge and confirm plus a proof of warehousing regarding where they are keeping the goods. One cannot

suffer loss arising from goods one does not own nor purchased. Therefore, the Applicants have not demonstrated that they will suffer irreparable loss.

The balance of convenience

Where the court is in doubt, it will look at the balance of convenience - the Applicants must show that if the temporary injunction is granted the Respondent will not suffer injury compared to that the Applicants will suffer if the temporary injunction is not granted. The Applicants have not proved purchase therefore they will not suffer a great inconvenience.

IT IS HEREBY ORDERED THAT:

- (i) The applications fail and are hereby dismissed.
- (ii) Costs shall abide in the main suit.

DATED at Kampala this 27th day of May 2025.



CRYSTAL KABAJWARA
CHAIRPERSON



GRACE SAFI
MEMBER



WILLY NANGOSYAH
MEMBER

