

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL REGISTRY AT KAMPALA**  
**APPLICATION NO.TAT 215 OF 2023**

SHUMUK PROPERTIES LTD .....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY ..... RESPONDENT

**BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MR. WILLY NANGOSYAH**

**RULING**

This ruling is in respect of preliminary objection raised by the Respondent that this Application is premature before the Tribunal and that the Applicant has not paid the mandatory 30% of the tax in dispute.

**1. Background Facts**

The Applicant is engaged in the hotel and hospitality business. The Applicant was assessed by the Respondent for tax liabilities totalling to Shs.215,981,549 for the period September 2017 to January 2019 in respect of VAT, rental tax and PAYE.

On 11 October 2023, a notice was issued to the Managing Director of the Applicant, demanding that the Applicant show cause why a warrant of distress should not be issued. The Applicant did not respond to this notice and on 20 November 2023 a warrant of distress was issued to M.S Bailiff Masters Ltd to recover the taxes owed by the Applicant.

The Applicant filed this application challenging the warrant of distress issued by the Respondent. The Respondent contends that the application is premature as there has been no objection decision issued regarding the tax assessments nor has the Applicant paid the statutory 30% of the disputed tax.

## 2. Issues for determination

The main issue for determination is whether the Application is properly before the Tribunal

## 3. Representation

At the hearing, the Applicant was represented by Mr. Badru Bwangu and Only the Respondent filed written submissions.

## 4. Submissions of the Respondent on the preliminary objection

The Respondent submitted that the Section 14(1) of the Tax Appeals Tribunal Act, Cap 345 ("TAT Act") allows any person who is aggrieved by a decision made under a taxing Act by Uganda Revenue Authority to apply to the Tribunal for review of the said decision.

The Respondent submitted that Section 26 of the Tax Procedures Code Act ("TPCA") requires a person dissatisfied with a tax decision to lodge an objection with the Commissioner within 45 days after receiving notice of the tax decision. Whereas the Applicant was issued with three assessments, the Applicant only lodged an objection in respect to one assessment which was consequently allowed and therefore should not form the basis of the dispute.

The Applicant however, failed and or neglected to object to the other two assessments which form the basis of the dispute. Accordingly, there has never been any objection nor objection decision in respect of the two disputed tax assessments as presented to the Tribunal by the Applicant.

The Respondent submitted that under Section 27 of the Tax Procedures Code Act, a person who is dissatisfied with an objection decision is supposed to lodge an application for review before the Tax Appeals Tribunal. In the present case, as there is no objection decision emanating from impugned tax assessments, the Application should be rejected for having been lodged prematurely.

The Respondent cited the case of ***Gakou Brothers Enterprises Limited Vs URA TAT Application No.20 of 2020*** where the Tribunal held:

*"Where a statute sets out a procedure to be followed in the event of a dispute, the said procedure should be exhausted before coming to the Tribunal."*

The Respondent submitted that in the case of ***Precise Engineering Services Ltd v URA TAT Application No.84 of 2022***, the Tribunal held that coming to the Tribunal without an objection decision is illegal and should not be entertained.

In addition, the Respondent submitted that the Applicant has not fulfilled the requirement to pay 30% of the tax in dispute as a prerequisite for filing an application before the Tax Appeals Tribunal. This requirement is enshrined in Section 15 of the Tax Appeals Tribunal Act (TAT Act) which governs proceedings before the Tribunal.

The Respondent submitted that Section 15 of the TAT Act provides:

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

The Respondent submitted that the requirement to pay 30% of the tax in dispute is rooted in the TAT Act and applies once an application is lodged before the Tax Appeals Tribunal as is the case in the present matter.

The Respondent relied on ***Uganda Projects Implementation Management Centre (UPIMAC) V Uganda Revenue Authority, Constitutional Appeal No.02 of 2009***, the constitutionality of the 30% requirement was examined. The court ruled that an application to the Tax Appeals Tribunal without the payment of 30% of the assessed tax was premature.

#### **5. Submissions of the Applicant in reply to the preliminary objection**

The Applicant did not file submissions in reply to the preliminary objections raised by the Respondent.

#### **6. The determination of the preliminary objection by the Tribunal**

The law on preliminary points of law is provided for under ***Order 6 Rule 28 of the Civil Procedure Rules*** which states:

*“Any party shall be entitled to raise by his or her pleadings any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of court on the Application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing.”*

In ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA Sir Charles Newbold***, the court held:

*“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”*

**Section 26 of the Tax Procedures Code Act states:**

*“A person dissatisfied with a tax decision may lodge an objection with the Commissioner General within forty-Five days after receiving notice of the tax decision.”*

The Respondent submitted that the Applicant did not object to two out of three of the assessments that formed the basis of the dispute. Further, the objection which the Applicant filed in respect to one of the assessments was allowed by the Respondent and does not form part of this application. Therefore, with regard to the current application, there is no objection decision that warrants this matter to be heard by the Tribunal.

The Applicant neither attached an objection decision as part of its application before this Tribunal nor filed written submissions challenging the Respondent’s assertion.

In the case of ***Mobitex Engineering Company Works Limited v URA, TAT Application 92 of 2023***, the Tribunal stated:

*“The jurisdiction granted to the tribunal to review decisions of the Respondent only arise where a taxpayer is aggrieved by a decision made by the Respondent under a taxing Act or by an objection decision issued by the Respondent. In the absence of a decision by the Respondent the tribunal has nothing to review.”*

Therefore, based section 26 of the TPCA read together with the decision in Mobitex (supra), in the absence of the objection decisions, the Applicant has no standing before this Tribunal.

Therefore, the Respondent succeeds on the first preliminary objection.

Regarding 30% deposit, **Section 15(1) of the TAT Act** states:

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

In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority SCCA No.2 of 2009*, the Supreme Court affirmed that the requirement to pay 30% of the assessed tax was not unconstitutional when balanced with the citizen's duty to pay taxes. The court also stated that taxes must not only be paid but they must be paid promptly for the public good.

In *Bullion Refinery Limited v URA Application No.36 OF 2021*, the Tribunal held:

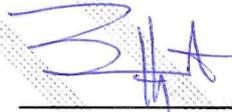
*"Where the 30% has not been paid, the taxpayer loses its right to access the tribunal as it shows it does not have any intention of paying any tax in dispute. Hence it doesn't come to the tribunal with clean hands."*

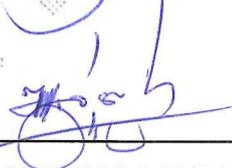
There is no evidence to show that the Applicant has made effort to pay 30% of the tax in dispute from the time the application was filed in 2023. Therefore, the Respondent also succeeds on the second preliminary objection.

In the circumstances, this application is dismissed with costs to the Respondent.

Dated at Kampala this 11<sup>th</sup> day of July 2025.

  
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CRYSTAL KABAJWARA  
CHAIRPERSON

  
\_\_\_\_\_  
SIRAJ ALI  
MEMBER

  
\_\_\_\_\_  
WILLY NANGOSYAH  
MEMBER

