

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 265 OF 2020
(ARISING OUT OF MISCELLANEOUS CAUSE NO.109 OF 2020)

- 1. CAPITAL SHOPPERS LTD**
- 2. QUALITY UGANDA LIMITED T/A QUALITY SUPERMARKET**
- 3. KENJOY ENTERPRISES LTD T/A KENJOY SUPERMARKET**
- 4. JAZZ SUPERMARKETS LTD**
- 5. MEGA STANDARD SUPERMARKET LTD-----APPLICANTS**

VERSUS

UGANDA REVENUE AUTHORITY----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This application is brought by way of chamber summons against the respondent under Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act Order 41 rule 1 and 9, and Order 52 rule 1 of the Civil Procedure Rules for orders that;

- a) A Temporary Injunction doth issue against the Respondent, its employees, agents and all persons acting under the authority **from enforcing the decision of experimenting on the Applicants as ‘Pilot Candidates for the pilot exercise’** for the implementation of the **Electronic Fiscal Receipting and Invoicing Solutions (EFRIS)** until final disposal of the main Cause for Judicial Review.

- b) A Temporary Injunction issues restraining the Respondent, its agents and all persons working under it **from proceeding with the selective roll out and discriminatory enforcement of the *Electronic Fiscal Receipting and Invoicing Solutions (EFRIS)*** on the 1st day of July 2020 until all businesses in Uganda have been on boarded and registered onto the ***EFRIS*** system/platform.

- c) A Temporary Injunction issues restraining the Respondent, its agents, employees and all persons working under it **from gazetting the Applicants as mandatory taxpayers to issue e-invoices or e-receipts or employing electronic fiscal devices** that are linked to a centralized invoicing and receipting system or devices authenticated by the Respondent until the underlying issues such as discriminatory selection and enforcement are addressed by the Respondent by on-boarding and registering all businesses onto the ***EFRIS*** system/platform.

- d) A Temporary Injunction issues restraining the Respondent, its agents, employees and all persons working under it from subjecting the Applicants to penal tax for not using the e-receipting and e-invoicing system until the underlying issues such as discriminatory selection and enforcement are addressed by the Respondent by on-boarding and registering all businesses onto the ***EFRIS*** system/platform.

- e) Costs of the Application are provided for.

The grounds in support of this application are set out in the affidavit of Ponsiano Ngabirano, Founder, Chairman and CEO of the 1st applicant and other affidavits by Apollo Mutungi, Michael Dondo Mwebesa, Manish Bheriyani, and Ambrose Rangoga who are CEOs and Founders of the Applicants respectively which briefly state that;

1. On 9th February 2018, URA wrote a letter to Quality Uganda Limited informing it that URA was undertaking initiatives that would allegedly further enhance ease of doing business in Uganda and ultimately improve service delivery. The letter requested for a face to face engagement with our Client on 1st March 2018 at 10:00am the agenda of the intended meeting included among others implementation of Electronic Fiscal Devices/e-invoicing across business spectrum.

2. On 29th April 2020, URA wrote a letter to Mega Supermarket Ltd informing it of URA's intention to roll out the Electronic Fiscal Receipting and Invoicing Solution (EFRIS) in accordance with section 73A of the Tax Procedures Code Act, 2014 with effect from 1st July 2020. The 5th applicant was informed that it had been selected to participate in a pilot phase of implementation scheduled to commence on 15th May 2020. 5th applicant was requested to nominate two staff for the training on the use of the solution scheduled to take place on 7th May 2020. And that the pilot exercise will culminate into full rollout of the solution to all taxpayers effective 1st July 2020.

3. On 18th May 2020, URA wrote a letter to Capital Shoppers Ltd informing it of URA's intention to roll out the Electronic Fiscal Receipting and Invoicing Solution (EFRIS) in accordance with section 73A of the Tax Procedures Code Act, 2014 with effect from 1st July 2020. 1st applicant was informed that it had been selected to participate in a pilot phase of implementation scheduled to commence on 15th May 2020. The 1st applicant was also requested to nominate two staff for the training on the use of the solution scheduled to take place on 7th May 2020. And that the pilot exercise will

culminate into full rollout of the solution to all taxpayers effective 1st July 2020.

4. On 19th May 2020, URA wrote a letter to Quality Uganda Limited (2nd applicant) informing it of its intentions to implement the Electronic Fiscal Receipting and Invoicing Solution (EFRIS) per the Government's Domestic Resource Mobilization Strategy 2019/20-2023-24 and the Tax Procedure Code Act, 2014 and informing it that it had been selected as a pilot candidate for the pilot exercised that commenced on 15th May 2020.
5. The letter further requested 1st applicant to nominate two staff for the training on the use of the solution scheduled to take place at URA towers on 25th May 2020 at 8:00am-4:00pm for two days.
6. On 25th May 2020, the Applicants wrote a letter to URA objecting to the selective implementation and appointment as pilot candidates for the pilot exercise in the implementation of the EFRIS on grounds that there is no legal basis for appointment as pilot candidates, discrimination, lack of clear an implementation strategy, and availability of other more efficient alternative to the pilot exercise.
7. On 23rd June 2020 after the case had been filed and scheduled for hearing, the Respondents gazetted SI No. 82, the Tax Procedures Code (E-Invoicing and E-Receipting) Regulations, 2020 and General Notice No. 595 of 2020 designating all VAT-registered tax payers (including the Applicants) as mandatory users of the e-invoice or e-receipts system.

In opposition to this Application the Respondent through Christa Namutebi an Officer in the Legal Services and board Affairs Department of the respondent filed an affidavit in reply wherein he opposed application for temporary injunction briefly stating that;

- (1) The applicants' prayers for temporary injunction seek to deter the respondent from performing her statutory duties by enforcing tax laws, namely Tax Procedure Code Act, 2014 as Amended and the Tax Procedures Code (E-Invoicing and E-Receipting) Regulations, 2020.
- (2) That under the Tax Procedures Code (E-Invoicing and E-Receipting) regulations, 2020, the respondent is mandated to use centralized invoicing and receipting system to monitor and manage the issuance of fiscal documents for purposes of among others carrying out efficient tax administration purposes.
- (3) That the respondent has already published in the gazette a Public Notice specifying that it is mandatory to issue e-invoices or employ electronic fiscal devices which shall be linked to the centralized invoicing and receipting system.
- (4) The Electronic Fiscal Receipting and Invoicing System is a government solution that shall be used by all businesses to transmit transaction details to the Respondent in real time and issue e-receipts and e-invoices. The system encourages record book keeping and real time authentication of business transactions and shall aid the Respondent in confirming the accuracy of self-assessments made by taxpayers including all the applicants.
- (5) The EFRIS project was piloted with 58 selected taxpayers and the applicants nominated and set representatives who attended the training on EFRIS.
- (6) The applicants on 25th May 2020, filed an objection with the Respondent against selective implementation as pilot candidates for the implementation

as pilot candidates and the respondent is yet to issue an objection decision as provided under the law, and the timelines within which to issue such ruling have not yet lapsed.

In the interest of time the respective counsel filed written submissions and i have considered the respective submissions. The applicants were represented by *Mr. Kayondo Silver* for 1st 2nd 3rd and 5th applicants *and Mr. Agaba Edmund* for the 4th Applicant while the respondent was represented *Ms. Nakku Mwajuma Mubiru, Mr. Ssali Alex Aliddeki , Ms. Barbara Nahone Ajambo.*

The applicants' counsel submitted that the legal principles to be considered in an Application for a temporary injunction are elementary and were stated in See *Giella v. Cassman Brown & Co. Ltd.* [1973] EA. 358 (CA-U). This was cited with approval by the Supreme Court in *Robert Kavuma v. Hotel International Ltd.* [1993] 11 KALR 73 as;

The grant of an interim or temporary injunction is an exercise of judicial discretion. The whole purpose of a temporary injunction is that parties ought to be preserved in status quo until the question to be investigated in the suit can be finally disposed of.

Likelihood of “irreparable” damage or injury. By irreparable injury, it is meant injury which is substantial and could not be adequately remedied or atoned for by damages.

Secondly, an applicant for a temporary injunction must show a prima facie case with a probability of success. There ought to be a triable issue, which ought to go to a tribunal for adjudication, not necessarily one that must succeed.

Thirdly, if the court is in doubt it will decide the application on a balance of convenience.

The Applicants contest the process leading to their nomination and selection as “pilot candidates” for the EFRIS .The Respondent has not availed any law or Regulations providing for a pilot study in enforcement of the EFRIS. This is an arguable point of law in the main Application with probability of success on the basis of illegality.

Furthermore, the Applicants challenge the process of gazetting them as entities for which it shall be mandatory to use the e-receipts and e-invoices yet section 73A(1) of the Tax Procedure Code (Amendment) Act, 2018 gives the tax payer discretion to issue an e-invoice or not. The Applicants contend that by gazetting all VAT-registered entities in Uganda (including the Applicants), the Respondent acted *ultra vires* and a Statutory Instrument cannot arrogate more power than the Parent Act.

The Applicants also challenge lack of informed public/stakeholder engagement and consultation in the EFRIS process and Regulation enactment as procedural impropriety devoid of informed consent.

The respondent’s counsel submitted that ***The Applicant must show that there is a substantial question to be investigated with chances of winning the main suit on his part;***

The Applicants seek to restrain the Respondent from performing her statutory duty which powers are granted to her by an Act of Parliament.

The phrase “substantial question to be investigated” has been extended in the case of **AMERICAN CYNAMIDE (Supra)** by LORD DIPLOCK thus;

“The Court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried.”

According to Black’ s law dictionary, 11th edition on page 811, the word *frivolous* is defined to mean;

1. *Lacking in high purpose; trifling, trivial, and silly.*
2. *Lacking a legal basis or legal merit; manifestly insufficient as matter or law”*

The word *vexatious* according to the same Dictionary on page 1876 is defined to mean: *“without reasonable or probable cause or excuse; harassing; annoying.”*

The Tax Procedure Code Act (Amendment) Act, 2018 provides Section 73A, it states;

- (1) ***A taxpayer may issue an e-invoice or e-receipt, or employ an electronic fiscal device which shall be linked to the centralised invoicing and receipting system or a device authenticated by the Uganda Revenue Authority.*** (Emphasis on discretion of tax payers to issue e-invoices or e-receipts or employ an electronic fiscal device ours)
- (2) *The Commissioner shall, by notice in the Gazette, specify taxpayers for whom it shall be mandatory to issue e-invoices or e-receipts or employ electronic fiscal devices which shall be linked to the centralised invoicing and receipting system or devices authenticated by the Uganda Revenue Authority.*
- (3) *A taxpayer specified by the Commissioner under subsection (2), shall issue electronic invoices or e- receipts or employ an electronic fiscal device in all business transactions.*

Section 1 of the **Tax Procedure Code Act (Amendment) Act, 2018** provides that; *“this Act shall come into force on publication”.*

The respondent submitted that, from the above, the Respondent has powers to specify which tax payers for whom it shall be mandatory to issue e-invoices or e-receipts or employ electronic fiscal devices under Section 73A (2) of the Amendment Act. The Respondent has also gone ahead to gazette the **General No. 595 of 2020** making it mandatory for all VAT registered tax payers (including the Applicants) to issue -invoices or e-receipts or employ electronic fiscal devices.

The 1st, 2nd, 3rd, 4th and 5th Applicants are all VAT registered and therefore by the notice General No. 595 of 2020 which is already gazetted, the Applicants are

already bound to abide by the law to issue e-invoices or e-receipts or employ electronic fiscal devices. What the Applicants seem to be doing is to seek for a favourable exclusion to the Application of the Law. Since the Applicants are VAT registered, then they are statutorily mandated to issue e-invoices or e-receipts. If this Honourable Court grants the Orders prayed for by the Applicants, then this Court would have dressed itself with the powers to alter application of the Law without having found and or declared the said Statute to be unlawful.

The powers to declare/specify the taxpayers who shall be mandated to issue e-receipts and e-invoices is a preserve of the Commissioner as per S. 73A of the TPCA. The Commissioner has indeed gone ahead to specify that all VAT registered taxpayers fall within this category. The Applicants, being VAT registered taxpayers certainly fall within this category. If this Court grants these Orders, this would amount to the Court curtailing the Respondent from performing her statutory duties through eliminating a group of people from the application of the law, which is also discriminatory in nature against the rest of the VAT registered taxpayers.

Determination

An injunction is by its very nature a coercive order, and compliance with the court order will often have adverse economic as well as institutional consequences for the respondent and the country at large.

The main question for this court establish is whether in such circumstances the temporary injunction can still be justified. See ***Regent Oil Co Ltd v JT Leavesley (Lichfield) Ltd*** [1966] 1 WLR 1210. The applicant's counsel has submitted that the order of temporary Injunction being sought is to stop the coming into effect or implementation Tax Procedure Code Act on issuance of e-invoices and e-receipts.

The Applicants contend that by gazetting all VAT-registered entities in Uganda (including the Applicants), the Respondent acted *ultra vires* and a Statutory Instrument cannot arrogate more power than the Parent Act.

The granting of a temporary injunction is an exercise of judicial discretion as was discussed in the case of ***Equator International Distributors Ltd v Beiersdorf East Africa Ltd & Others Misc.Application No.1127 Of 2014***. Discretionary powers are to be exercised judiciously as was noted in the case of ***Yahaya Kariisa vs Attorney General & Another, S.C.C.A. No.7 of 1994 [1997] HCB 29***.

It should be noted that where there is a legal right either at law or in equity, the court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as his legal right is invaded ***Titus Tayebwa v Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009***.

It is trite law that for an application to be maintained three conditions must be satisfied by the Applicant as was discussed in the case ***Behangana Domaro and Anor vs Attorney General Constitutional Application No.73 of 2010*** that is; - The applicant must show a prima facie case with a probability of success, that the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages and if the court is in doubt, it would decide an application on the balance of convenience.

The legal principle upon which Court exercises its discretion to grant a temporary injunction in all actions pending determination of the main suit is now well settled as seen in the wealth of authorities.

The law for granting a temporary injunction is section 64(e) of the Civil Procedure Act and general considerations for the granting of a Temporary Injunction are set out under **Order 41 Rule (1) & (2) CPR**.

For a temporary injunction to be granted, court is guided by the following as was noted in the case of ***Shiv Construction versus Endesha Enterprises Ltd Civil Appeal No.34 of 1992***

The Courts should be slow in granting injunction against government projects which are meant for the interest of the public at large as against the private proprietary interest or otherwise for a few individuals. Public interest is one of the paramount and relevant considerations for granting or refusing to grant or

discharge of an interim injunction. See ***Uganda National Bureau of Standards vs Ren Publishers Ltd & Multiplex Limited HCMA No. 635 of 2019***

Injunctions against public bodies can issue against a public body from acting in a way that is unlawful or abusing its statutory powers or to compel the performance of a duty created under the statute.

The courts should be reluctant to restrain the public body from doing what the law allows it to do or to execute its core mandate or function. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold or apply. See ***Alcohol Association of Uganda & Others vs AG & URA HCMA No. 744 of 2019***

The main rationale for this is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation. See ***R v Secretary of State for Transport ex.p Factortame Ltd [1990] 2 AC 85.***

In the case of ***Shell Petroleum Development Company of Nigeria Limited & Another v The Governor of Lagos State & Others*** 5 ALL NTC- Lagos High Court ; Rhodes-Vivour, J held that;

“Suspending the operation of a law that has not been declared unconstitutional is a very serious matter. The grant of this application would amount to just that, and this would be without hearing evidence. Laws are made for the good of the State and the power to tax as quite rightly pointed out by the Attorney General is a power upon which the entire fabric of society is based. A restraining order on the defendants from implementing the provisions of LAW No. 11 of 2001 would seriously impair their responsibilities to residents of Lagos State.”

The courts should consider and take into account a wider public interest. The public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good.

Therefore Courts of law should be loath or slow to grant an injunction when a public project for the beneficial interest of the public at large is sought to be delayed or prevented by an order of injunction, damage from such injunction would cause the public at large as well as to a Government is a paramount factor to be considered. Between the conflicting interests, interest of the public at large and the interest of a few individuals, the interest of the public at large should or must prevail over the interest of a few individuals. See ***ACP Bakaleke Siraj v Attorney General HCMA No. 551 of 2018***

The circumstances of the case are that Parliament enacted **The Tax Procedure Code Act (Amendment) Act, 2018** provides Section 73A, it states;

- (1) ***A taxpayer may issue an e-invoice or e-receipt, or employ an electronic fiscal device which shall be linked to the centralised invoicing and receipting system or a device authenticated by the Uganda Revenue Authority.***
- (2) ***The Commissioner shall, by notice in the Gazette, specify taxpayers for whom it shall be mandatory to issue e-invoices or e-receipts or employ electronic fiscal devices which shall be linked to the centralised invoicing and receipting system or devices authenticated by the Uganda Revenue Authority.***
- (3) ***A taxpayer specified by the Commissioner under subsection (2), shall issue electronic invoices or e- receipts or employ an electronic fiscal device in all business transactions.***

Section 1 of the **Tax Procedure Code Act (Amendment) Act, 2018** provides that; *“this Act shall come into force on publication”*.

The respondent’s counsel has rightly submitted, the Respondent has also gone ahead to gazette the **General No. 595 of 2020** making it mandatory for all VAT registered tax payers (including the Applicants) to issue -invoices or e-receipts or employ electronic fiscal devices.

The Applicants are all VAT registered and therefore by the notice General No. 595 of 2020 which is already gazetted, the Applicants are already bound to abide by the law to issue e-invoices or e-receipts or employ electronic fiscal devices. This court should exclude the applicants from the Application of the Law. Since the Applicants are VAT registered, then they are statutorily mandated to issue e-invoices or e-receipts.

An order of temporary injunction is intended to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing.

The court would have to preserve the status quo prevailing at the moment but this would not stop the court from quashing or giving any orders sought in the main application. The main application will not be rendered nugatory since in matters of judicial review the court is at liberty to grant any remedies that fits the circumstances of the case. It does not mean that since the Statutory Instrument has already come into force, then the court cannot quash it.

There are no hard and fast rules that can be laid down for granting interim reliefs or temporary injunctions in public law matters or judicial review applications. The exercise of the power to grant temporary injunction must be exercised with caution, prudence, discretion and circumspection. The circumstances of each case will determine whether to grant them or not bearing in mind the various existing factors. The grounds for grant may sometimes defer from the grounds in ordinary civil suits and the same are considered with caution and appropriateness of the case.

This court deprecates the practice of granting temporary injunctions which practically give the principal relief sought in the main application for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, public interest and a host of other considerations. Where there is a serious dispute on the facts, it cannot be said that a prima facie case had been made out for the grant of temporary injunction.

The public interest considerations would justify the refusal to grant a temporary injunction and public interest should prevail over the private rights. See ***Kennaway v Thompson [1981] QB 88 at 93.***

The court should not restrain the respondent in collecting revenue or managing revenue collections save under very exceptional circumstances. The grant of an injunction should be an exception and not a rule.

In the case of ***Asstt. Collector, C.E, Chandan Nagar v Dunlop India Ltd., [1985]AIR SC 330***: The Supreme Court vacated the interim order characterizing it as “wholly unsustainable” and observed:

“...where matters of public revenue are concerned, it is of utmost importance to realize that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be any slightest indication of a likelihood of prejudice to the public interest.”

In sum and for the reasons stated herein above this application fails and is dismissed with no order as to costs.

I so order.

Dated, signed and delivered be email and whatsApp at Kampala this 10th day of July 2020

**SSEKAANA MUSA
JUDGE**