



**Kamau v Commissioner General, Kenya Revenue Authority (Commercial Suit E212 of 2024)
[2024] KEHC 16706 (KLR) (Commercial and Tax) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16706 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E212 OF 2024
BM MUSYOKI, J
DECEMBER 20, 2024**

BETWEEN

AGNES NYAWIRA KAMAU PLAINTIFF

AND

COMMISSIONER GENERAL, KENYA REVENUE AUTHORITY . DEFENDANT

RULING

1. This suit was commenced by way of plaint dated 24th April 2024 in which the plaintiff prayed for the following orders;
 - a. A permanent injunction against the respondent by themselves, their agents and all servants from selling, disposing and dealing with the applicant's assets being land parcel number Ruiru/ Ruiru West Block 3/1957 and motor vehicle registration No KBZ 646B and any alleged tax liabilities.
 - b. The court do direct a forensic audit to be conducted as to the tax affairs of the plaintiff and matters related to her financial status in lieu of this instance claim.
 - c. Costs of the suit.
2. Upon being served, the defendant filed a notice of preliminary objection dated 26th June 2024 to the effect that this court lacked jurisdiction to entertain this matter pursuant to the doctrine of exhaustion based on the defendant's position that the matters should have been filed in the Tax Appeals Tribunal. The aforesaid preliminary objection to which this ruling relates was argued by way of written submissions.
3. The genesis of the matter which is clearly discernable from the plaintiff's pleadings are that the defendant on 2-03-2022 issued a demand letter to the plaintiff after identifying variances in the



plaintiff's income tax and VAT declarations. Following the demand, the defendant issued the plaintiff with assessment for Kshs 6,811,326.00 as additional income tax and Kshs 8,177,151.00 as additional assessment for VAT. The plaintiff raised an objection to the assessment dated 14th November 2023 and in its letter dated 26th January 2024, the defendant dismissed the objection and confirmed its assessment. The plaintiff did not appeal the decision of the defendant to the Tax Appeals Tribunal and upon learning that the defendant had filed caveat against her properties, she brought this suit praying for the orders enumerated above.

4. It is indisputable that this matter involves a dispute over tax payable following assessment carried out by the defendant on the plaintiff for the period between 2016 and 2022. The procedure of disputing assessment of tax is found in Part VIII (sections 49 to 57) of the [Tax Procedures Act](#) Chapter 469B of the Laws of Kenya. The disputes start with an objection to the commissioner once the assessment has been done.
5. Section 52(1) of the said [Tax Procedures Act](#) provides that a person who is dissatisfied with an appealable decision may appeal to the tribunal in accordance with the provisions of the [Tax Appeals Tribunal Act](#). The said [Tax Appeals Tribunal Act](#) under sections 13(1) and (2) gives a period of 30 days for an aggrieved party to file a notice of appeal and thereafter 14 days to file the appeal. The intervention of the High Court in the process can only come after the Tribunal has rendered its decision and there is no avenue for bypassing the tribunal and directly invoking the jurisdiction of this court.
6. The plaintiff has confirmed that she did not file an appeal to the tribunal and she has not told this court whether she intends to file any. The prayers in the plaint are no doubt intended to stop or undo the process or results of the assessment which I have no reservation to hold that it is a function of the Tax Appeals Tribunal. It is true as submitted by the defendant that where the law provides a procedure or avenue within or through which parties should adjudicate their grievances, the court has no jurisdiction to entertain such disputes until that procedure or process has been exhausted. The defendant has cited to me several authorities on this position which I have no reason to depart from. In addition, I have sought guidance in *Mwanzia v Rhodes* (2023) KEHC 2688 (KLR) where the court held that;

Courts have in many occasions reiterated the position that where there are alternative avenues legally provided for in dispute resolutions, there should be postponement of judicial consideration of such disputes until after the available avenues are fully adhered to or unless it is adequately demonstrated that the matter under consideration falls within the exception to the doctrine of exhaustion.'

7. The plaintiff has submitted that the suit is properly before this court because the tax appeals tribunal does not have jurisdiction to grant injunctions. It is true that the tribunal does not have jurisdiction to grant injunctive reliefs but Section 18 of the [Tax Appeals Tribunal Act](#) gives the Tribunal powers to order stay of implementation of the decision under review pending its decision which in my view, would serve the same purpose as the injunction this court is being asked to grant. The said Section provides as follows;

Where an appeal against a tax decision has been filed under this Act, the Tribunal may make an order staying or otherwise affecting the operation or implementation of the decision under review as it considers appropriate for the purposes of securing the effectiveness of the proceeding and determination of the appeal.'

8. Even if the stay under the above Section would not serve the same purpose as an injunction, the courts can only intervene and grant reliefs where the options provided by the law are not sufficient and waiting for the said procedures would render the outcome thereof nugatory. In other words, the court would



only intervene if there was evidence of likelihood of the plaintiff losing her property before an appeal pending before the tribunal is determined. In this case, there is no appeal pending before the tribunal. Placing of caveats does not necessarily mean that the defendant must sell the restricted properties. There are procedures for liquidation of properties restricted under such circumstances which has not been commenced.

9. The inevitable conclusion of the above analysis is that, I find the defendant's preliminary objection dated June 26, 2024 merited and the same is hereby upheld. This suit is struck out with costs to the defendant.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of the Appellant in person and Mr. Muhoro for the Respondent.

