



**Kenya Revenue Authority v NCBA Bank Limited & 6 others; Vine Pack Limited
& 11 others (Interested Parties) (Miscellaneous Application E404 of 2023)
[2023] KEHC 21428 (KLR) (Commercial and Tax) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21428 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E404 OF 2023**

**A MABEYA, J
AUGUST 9, 2023**

BETWEEN

KENYA REVENUE AUTHORITY APPLICANT

AND

NCBA BANK LIMITED 1ST RESPONDENT

KCB BANK LIMITED 2ND RESPONDENT

GUARANTY TRUST BANK (K) LIMITED 3RD RESPONDENT

EQUITY BANK KENYA LIMITED 4TH RESPONDENT

HFC KENYA LIMITED 5TH RESPONDENT

FIRST COMMUNITY BANK 6TH RESPONDENT

ECO BANK KENYA LIMITED 7TH RESPONDENT

AND

VINE PACK LIMITED INTERESTED PARTY

KINGS COMMODITIES LIMITED INTERESTED PARTY

BONIFACE MAINA KAGECHU INTERESTED PARTY

MAHA STORES LIMITED INTERESTED PARTY

IGAAL TRADING COMPANY LIMITED INTERESTED PARTY

BEDER WHOLESALERS LIMITED INTERESTED PARTY

DEIRA COMMODITIES INTERESTED PARTY

HIGHRISE COMMODITIES LIMITED INTERESTED PARTY



TAZAMA COMMODITIES LIMITED	INTERESTED PARTY
TAZAMA DISTRIBUTORS LIMITED	INTERESTED PARTY
SEMA COMMODITIES LIMITED	INTERESTED PARTY
HIGHRISE HAULIERS LIMITED	INTERESTED PARTY

RULING

1. The Motion on Notice dated 22/5/2023 is by the tax authority under section 43 (3) of the *Tax Procedures Act* (TPA) to preserve funds in various accounts belonging to the 12 interested parties in the 7 respondents bank pending assessment of the tax due.
2. The grounds for the application were that on preliminary investigations, it had been established that the 1st interested party was liable to pay tax upon release of uncustomed sugar. The same was meant for industrial ethanol but it was released to the market before payment of the requisite taxes. That the tax authority suspected that the interested parties were engaged in tax evasion or were accessories to tax evasion.
3. That tax had been assessed of Kshs 20,064,000 against the 1st interested party on March 22, 2023. However, the uncustomed sugar disappeared from the warehouses. That the same was under investigation. That as a result, the tax authority suspected that the interested parties were therefore involved in a scheme of tax evasion.
4. That in the premises, it was imperative to preserve the funds in the subject accounts pending the assessments. That the tax authority was apprehensive that the interested parties may frustrate the recovery of taxes if the funds held by the respondents on behalf of the interested parties was not preserved.
5. The application was served upon all the respondents and the interested parties. Save for the 8th interested party, none of the parties responded or opposed the application.
6. In opposing the application, Mr Abdullahi for the 8th interested party submitted that the application was not served upon his client. That in the premises the applicant was in breach of section 43(6) of the TPA. That there were no particulars of the tax claimed which had been supplied. That since no tax due had been communicated the application was premature.
7. I have considered the averments on record. Since all the respondents and the 1st to 7th and 9th to 12th interested parties never responded to the application, the same is hereby considered as unopposed and is allowed as against them as prayed.
8. As against the 8th Interested Party; the opposition was on the ground of non-service of the application and the non-particularization of the taxes due. In terms of section 43(3), I do not see how the authority breached section 43 (6) as alleged. The affidavit of service on record was not challenged. There was no application to cross examine the deponent so as to shift the evidentiary burden to the authority. I reject the contention that the application is in breach of section 43(6) of the *TPA* as alleged.
9. On the issue of non-particularization of the tax due if any, that is not a ground to resist an application under section 43 of the *TPA*. All that the 8th Interested Party was supposed to show but failed to was that, there was no reason for the authority's apprehension that the Interested Party would frustrate the collection of the taxes once assessed. The most crucial issue under that section of the law (S43 of



the *TPA*) is that once taxes are assessed and demanded they would be easily collected and the tax payer would not frustrate the collection of the same.

10. This is a burden laid on a tax payer. Once the tax authority alleges such an apprehension, the evidentiary burden of proof shifts to the tax payer to show that he/it will not frustrate the collection thereof. The 8th Interested Party did not discharge this burden.
11. In the premises, I find that the applicant has proved its case on a balance of probabilities. That if the funds in the subject accounts are not preserved, there is likelihood of the Interested Parties frustrating the collection thereof.
12. Accordingly, I allow the application in terms of prayer No. 2 of the Motion. The order will be in force for 60 days only. The matter will be mentioned on October 4, 2023 to see whether the applicant has assessed the taxes due and for further orders.

It is so ordered.

DATED AND DELIVERED VIRTUALLY THIS 9TH DAY OF AUGUST, 2023.

A. MABEYA, FCIArb

JUDGE

