



REPUBLIC OF KENYA



KENYA LAW
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Commissioner Investigations And Enforcement v Sangyug Enterprises(K) Limited (Income Tax Appeal E056 of 2020) [2022] KEHC 11513 (KLR) (Commercial and Tax) (25 May 2022) (Ruling)

Neutral citation: [2022] KEHC 11513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E056 OF 2020**

DAS MAJANJA, J

MAY 25, 2022

BETWEEN

COMMISSIONER INVESTIGATIONS AND ENFORCEMENT APPELLANT

AND

SANGYUG ENTERPRISES(K) LIMITED RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 31st March 2020 in Tax Appeal No. 351 of 2018)

RULING

1. The respondent in this appeal had moved the court by the notice of motion dated April 25, 2022 under order 42 rule 6 of the [Civil Procedure Rules](#) seeking, inter alia, the following reliefs:
 - [3] That the court be pleased to stay the execution of the Judgment delivered on 4th February 2022 requiring the respondent to pay Kshs. 114,954,728 pending the hearing and determination of this appeal.
 - [4] That the court be pleased to direct that the amount of Kshs. 3,000,000 paid by the respondent to the appellant on June 24, 2019 through payment registration number 2020 167 be held as a guarantee against the orders sought herein.
2. The application is supported by the affidavit of its advocate, Harun Kariuki, sworn on the same day. It is opposed by the Appellant through the affidavit of its officer, Daniel Musibi, sworn on May 13, 2022. At the hearing of the application, the parties made brief oral submissions in support of their respective positions.
3. In essence, the appellant's appeal was successful resulting the Respondent being liable to pay taxes that had been set aside by the Tax Appeals Tribunal. Since the respondent is apprehensive that the appellant



may now proceed to enforce its claim for taxes following the judgment delivered on February 4, 2022, it seeks stay of execution. At the hearing of the application, the only issue of contention was the nature and extent of security the Respondent should furnish pending appeal.

4. As shown in prayer No. 4, the respondent contention is that the court should order the money already paid to the Appellant in 2019 be used as security. In response, the appellant case is that the respondent should pay 70% of the demanded taxes in cash as security.
5. I reject the respondent plea on the ground that it cannot not use the money paid to fulfil its tax obligation as security. On the other hand, security ordered must be reasonable so as not to render exercise of the right of appeal illusory.
6. Considering the circumstances of the case, I allow the notice of motion dated April 25, 2022 on the following terms:
 - a. An order of stay of execution of the judgment herein and in particular collection of taxes due based on the judgment be and is hereby granted pending hearing and determination of the intended appeal therefrom on terms hereunder.
 - b. The respondent shall provide security in the form of a Bank Guarantee for KES. 3,000,000.00 from a reputable bank within 45 days from the date hereof.
 - c. In default of the condition set out above, the order shall lapse and the appellant shall be at liberty to proceed with execution and or collection of taxes.
 - d. This order should remain in force for a period of one (1) year unless extended by this court or varied and/or set aside by the Court of Appeal.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MAY 2022.

D. S. MAJANJA

JUDGE

Ms Mwangera, Advocate instructed by Kenya Revenue Authority for the Appellant.

Mr Kariuki instructed by Thiongo and Partners Advocates for the Respondent.

