



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D.S. MAJANJA J.

TAX APPEAL NO. E116 OF 2021

BETWEEN

MARY WANJIRU KINYUAAPPELLANT

AND

COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT....RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 18th June 2021 in Tax Appeal No. 395 of 2019)

RULING

1. On 18th June 2021, the Tax Appeals Tribunal (“the Tribunal”) dismissed the Appellant’s appeal and affirmed the Commissioner’s tax assessment of Kshs. 163,897,497.00 it issued to the Appellant. The Appellant, having been dissatisfied with this decision, has lodged an appeal to this court. The Appellant has also moved the court by the Notice of Motion dated 5th July 2021 in which she seeks a stay of execution and enforcement of the Tribunal’s judgment and that the Agency Notice dated 7th June 2021 imposed on the Appellant’s account with Equity Bank be lifted, pending hearing and determination of the appeal. The application is supported by the grounds set out on its face and the Appellant’s affidavit sworn on 21st June 2021.
2. The Respondent (“the Commissioner”) has opposed the application through the Grounds of Opposition dated 21st July 2021. The parties have also filed brief written submissions in support of their respective positions.
3. The jurisdiction of this court to grant orders of stay pending appeal under **Order 42 Rule 6** of the **Civil Procedure Rules** in order to secure the substratum of the appeal is not in doubt. The power to grant stay pending appeal is discretionary and must be exercised in such a way that the appeal is not rendered nugatory. It is to be exercised having regard to the circumstances of the case and having regard to the fact that the Appellant is entitled to exercise her statutory right of appeal while the Commissioner is entitled to the fruits of its judgment, in this case to collect the taxes to be paid by the Appellant (see **Keroche Breweries Limited v Commissioner of Domestic Taxes ML HC ITA E012 of 2020 [2020] eKLR**, and **Superior Homes (Kenya) Limited v Musango Kithome MKS HC Civil Appeal No. 91 of 2017 [2018] eKLR**).
4. I have considered the respective arguments put forth by both sides. The Commissioner posits that should this Court be convinced to grant the Appellant stay; this Court should direct the Appellant to provide security for the taxes which have been found due by a competent Tribunal.
5. In the circumstances of this case, I now grant the following reliefs:

(a) An order of stay be and is hereby issued staying execution of the Judgment of the Tax Appeal Tribunal dated 18th June 2021 in Tribunal Appeal No. 295 of 2019 and any further enforcement action thereon pending the hearing and determination of this appeal or until further orders of the court.

(b) In consideration of the stay in (a) above, the Appellant shall provide a Bank Guarantee for KES. 10,000,000.00 from a reputable bank in favour of the Respondent within thirty (30) days from the date hereof whereupon the Agency Notices issued by the Respondent shall be lifted unconditionally.

(c) In default of compliance with the terms aforesaid, the order of stay shall stand discharged.

(d) The costs of this application shall be in the appeal.

(e) The court shall adjourn to issue directions for the hearing and determination of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JULY 2021.

D. S. MAJANJA

JUDGE

Mr Kabugu instructed by Kabugu and Company Advocates for the Appellant.

Mr Wairire, Advocate instructed by Kenya Revenue Authority for the Commissioner of Investigations and Enforcement.