



Home Bridge Limited v Commissioner for Domestic Taxes (Tax Appeal E156 of 2021) [2021] KEHC 43 (KLR) (Commercial and Tax) (24 September 2021) (Ruling)

Neutral citation: [2021] KEHC 43 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E156 OF 2021
DAS MAJANJA, J
SEPTEMBER 24, 2021

BETWEEN

HOME BRIDGE LIMITED APPELLANT

AND

COMMISSIONER FOR DOMESTIC TAXES RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 23rd July 2021 in Tax Appeal No. 43 of 2021)

RULING

1. The Appellant has lodged an appeal with the court challenging and having been dissatisfied with the decision of the Tax Appeals Tribunal (“the Tribunal”) dated 23rd July 2021 where the Appellant was allowed in part. In the judgment the Tribunal disallowed loan interest costs, marketing and advertising costs and start-up costs. Consequently, the Respondent (“the Commissioner”) issued an Agency Notice dated 11th August 2021 for KES. 51,602,837.00 which the Appellant seeks to stay in the Notice of Motion dated 20th August 2021.
2. I have considered the depositions of the Appellant’s director, Peter Murage Karoki, sworn on 20th August 2021 and 2nd September 2021 alongside the grounds of opposition dated 30th August 2021. I have also heard the arguments by both counsel.
3. The parties do not dispute the jurisdiction of this court to order a stay pending appeal under Order 42 Rule 6 (2) of the Civil Procedure Rules. What is in contention is the nature of the security to be ordered as a condition for the stay. The Appellant is of the view that the stay should be unconditional stay since it has paid KES. 31,631,153.00 between October 2016 and 20th December 2019. The Commissioner



on the other hand, states that this amount relates to other taxes and not to this case. It demands that the Appellant deposit at least 50% of the taxes.

4. The court has a duty to weigh both sides; the Appellant's entitlement to exercise its statutory right of appeal and the Commissioner's entitlement to the fruits of its judgment in this case to collect the taxes to be paid by the Appellant bearing in mind that if harsh terms are imposed the appeal will be rendered nugatory. Each case ultimately depends on its own facts.
5. The fact that the Appellant has made payments previously demonstrates that the Appellant is a going concern and may well continue to pay taxes. I also note that part of its appeal before the Tribunal was successful. I therefore order as follows:
 - (a) An order of stay be and is hereby issued staying execution of the Judgment of the Tax Appeal Tribunal dated 23rd July 2021 in Tribunal Appeal No. 43 of 2019 and any further enforcement action thereon including the Agency Notices 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. 5,000,000.00 from a reputable bank in favour of the Respondent within thirty (30) days from the date hereof.
 - (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.

SIGNED AT NAIROBI

D. S. MAJANJA

JUDGE

DATED and DELIVERED at NAIROBI this 24th day of SEPTEMBER 2021.

A. MABEYA

JUDGE

Mr Nyachio instructed by Muchemi and Company Advocates for the Appellant.

Ms Onyango, Advocate, instructed by Kenya Revenue Authority for the Respondent.

