

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D.S. MAJANJA J.

TAX APPEAL NO. E011 OF 2020

BETWEEN

RONGAI TILES & SANITARY WARE LIMITED.....APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

RULING

1. The application for consideration is the appellant's Notice of Motion dated 9th March 2020. It is an application for stay pending appeal following the judgment of the Tax Appeal Tribunal sitting in Nairobi in *Tax Appeal No. 163 of 2017* dated 26th February 2020. The application is supported by the affidavits of Sumar Mohammed sworn on 9th March 2020 and 26th May 2020 respectively. The application is opposed by the replying affidavit of Eugene Wanende, an officer of Kenya Revenue Authority in the Investigation and Enforcement Department, sworn on 28th April 2020.

2. The issue for determination is whether I should grant a stay of enforcement of collection of taxes pending the hearing and determination of the appellant's appeal from the Tribunal which dismissed his appeal. Following dismissal of the appeal, the respondent has demanded Kshs. 410,093,385.00. It is not in doubt that this is a colossal sum by any means and its payment would likely lead to closure of the appellant which is a going concern.

3. As regards security, the respondent has demanded that the appellant provide security for 60% of the taxes amounting to Kshs. 200,000,000.00 while the respondent proposes to provide a bank guarantee for Kshs. 500,000.00. The appellant has shown the nature of its business, which like any other Kenyan business, is undergoing challenges during the COVID-19 pandemic. In order to balance the rights of both parties and to ensure that the business remains a going concern and to secure taxes which may be paid in the future, I now make the following order:

(a) A stay of execution and further enforcement of taxes be and is hereby granted pending the hearing and determination of this appeal on condition that the appellant provide a bank guarantee to the respondent from a suitable bank for Kshs. 800,000.00 within 45 days from the date hereof.

(b) I invite the parties to take direction for the hearing and determination of the appeal.

DATED and DELIVERED at NAIROBI this 6th day of AUGUST 2020.

D. S. MAJANJA

JUDGE

Mr Mola instructed by Mola, Kimosop and Njeru Advocates for the appellant.

Mr Chabala, Advocate instructed by Kenya Revenue Authority for the Commissioner of Domestic Taxes.