IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

MISC. CIVIL APPLICATION NO. E025 OF 2020

IN THE MATTER OF SECTION 43 OF THE

TAX PROCEDURES ACT, 2015

BETWEEN

KENYA REVENUE AUTHORITY.....APPLICANT

AND

PEVANS EAST AFRICA LIMITED.....RESPONDENT

RULING

Introduction and background

1. This matter concerns the application of **section 43** of the ***Tax Procedures Act, 2015*** ("the ***TPA***") which provides as follows:

> *43. Preservation of funds*
>
> *(1) This section applies if the Commissioner reasonably believes—*
>
> *(a) that a taxpayer—*
>
> *(i) has made taxable supplies, has removed excisable goods, or has derived an income, in respect of which tax has not been charged; or*
>
> *(ii) has collected a tax, including withholding tax, that has not been accounted for; and*
>
> *(b) that the taxpayer is likely to frustrate the recovery of the tax.*
>
> *(2) The Commissioner may by notice in writing, in respect of a taxpayer to whom this section applies, require a person—*
>
> *(a) who owes or may subsequently owe money to the taxpayer;*
>
> *(b) who holds or may subsequently hold money for or on account of the taxpayer;*
>
> *(c) who holds or may subsequently hold money for on account of another person for payment to the taxpayer; or*
>
> *(d) who has the authority from some other person to pay money to the taxpayer,*
>
> *to preserve such money, and that person shall not transfer, withdraw, dispose of or otherwise deal with that money except as provided for in the notice for a period of ten working days or until the application by the Commissioner made in accordance with subsection (3) is heard and determined by the High Court.*

(3) The Commissioner shall apply, in the absence of the taxpayer, to the High Court for an order against any person holding funds belonging to the taxpayer, prohibiting that person from transferring, withdrawing, disposing of or otherwise dealing with such funds.

(4) The Court may issue an order under subsection (3) if the Court is satisfied that the conditions specified under subsection (1) have been met.

(5) An order made under this section shall be valid for a period of thirty days but the Commissioner may apply to the Court for an extension of the period beyond the initial thirty days.

(6) The Commissioner shall serve the order under this section on the taxpayer as soon as is practicable and upon service, the taxpayer may, within fifteen days, apply to the Court to discharge or vary the order.

(7) If the order made under this section is not discharged or varied, the Commissioner shall, within thirty days of serving the taxpayer with the order, assess the tax due and payable by the taxpayer, notify the taxpayer of the assessment and commence proceedings for the recovery of the tax.

(8) An order issued under this section shall expire on the service of a notice of assessment under subsection (7) unless the Court extends the order.

(9) Despite the provisions of any written law, contract or agreement, a person who complies with an order made by the High Court under this section shall be indemnified in respect of the actions taken in connection with the order against all proceedings or processes.

(10) A person who, without reasonable cause, fails to comply with an order of the High Court under this section shall be personally liable for the amount specified in the order.

2. It is not disputed that on 20th August 2020, Kenya Revenue Authority ("KRA") invoked **section 43(2)** of the ***TPA*** and issued preservation notices to the Respondent's bank accounts and Paybill/Till numbers held by various commercial banks. KRA claimed that the Respondent was carrying out its business in fraudulent schemes that have denied KRA collection of colossal amount of taxes which it intends to demand. According to its preliminary profiling and data, the Respondent owed Kshs. 14,337,707,048.00 made up of Kshs. 12,347,450,409.00 as principal tax and Kshs. 2,469,490,082.00 as penalties.

3. By an application dated 7th September 2020, KRA applied for and the court did extend the preservation orders on 11th September 2020 for 21 days. The orders were once again extended on 5th October 2020 for another 60 days. It is these orders ("the Preservation Orders") that precipitated the application by the Respondent.

Respondent's Case

4. The Respondent moved the court by a Notice of Motion dated 19th October 2020, *inter alia*, under **section 43(6)** of the ***TPA*** seeking the following orders:

[1] Spent

[2] THAT this Honourable Court be pleased to discharge, vary or set aside the ex-parte order issued on 11th September 2020 and extended on 5th October 2020.

[3] THAT this Honourable Court be pleased to stay these proceedings pending the hearing and determination of Milimani High Court Misc Application No. 045 of 2020.

[4] THAT this Honourable Court be pleased to issue any or any further orders as it may deem just and expedient.

[5] THAT the costs of this application be provided for.

5. The application is supported by the affidavit sworn by the Respondent's Chief Financial Officer, Mwirigi Imungi, sworn on 19th October 2020. The thrust of the application and deposition is that KRA neither served the application nor the Preservation Orders and it only came to know of the order on 9th October 2020 when it was notified by its bankers. It was only served with the order on 13th October 2020 after writing a demand letter to KRA on 12th October 2020.

6. The Respondent argued that the refusal or failure by KRA to serve the application and the Preservation Orders was in breach of the orders made on 11th September 2020 which directed KRA to effect service and was a violation of section 43(6) of the *TPA* which requires KRA to serve the order upon a taxpayer or person affected by a preservation order as soon as is practicable to enable the taxpayer exercise its right to move the Court to discharge or vary or set aside the order. It further argued that the Preservation Order was extended by this Court on 5th October 2020 for a further period of 60 days without KRA disclosing that it had not served the Respondent. The Respondent argued that this amounts to non-disclosure of a material fact.

7. The Respondent also argued that the Preservation Orders issued contravened the provisions of section 43(6) of the *TPA*. The Respondent

also submitted that its right to fair administrative action and the right to a fair hearing under Articles 47 and 50 of the Constitution respectively were violated when KRA failed to serve the application and Preservation Order to enable it apply to discharge the order. It added that it was also denied the right and opportunity to be heard before the Preservation Order was extended.

8. The Respondent also impugned the Preservation Orders on the ground that KRA failed to disclose the fact that the preservation order sought in this case is exactly the same or to the same effect as that sought in *HC COMM Misc Application No. E045 of 2020, Kenya Revenue Authority v Pevans East Africa Limited* ("the First Application") where KRA issued preservation notices dated 11th December 2019 which also form the basis of the notices issued in the current proceedings dated 20th August 2020. The Respondent submitted that KRA's conduct amounts to an outright abuse of the due process of the court and forum shopping. It added that these proceedings are therefore *subjudice* as the same issues raised herein are subject of the First Application which is still pending before this Court.

9. The Respondent urged the court to allow the application as it continues to suffer loss as it is unable to honour its financial and contractual commitments including payment of salaries to its staff.

Applicant's Case

10. In response to the application, KRA relied on the replying affidavit of its officer, Dominic Keng'ara, sworn on 4th November 2020 to oppose the Respondent's application. KRA underpinned its position on its statutory authority to assess and collect revenue and its power to enforce tax laws under section 5(1) of the *Kenya Revenue Authority Act (Chapter 469 of the Laws of Kenya)*. It contended that the *TPA* has salient provisions which empowers it to issue preservations notices to commercial banks and other third parties while undertaking investigations where it is evident that the taxpayer may dissipate the funds and frustrate the collection and recovery of the lost taxes.

11. In relation to this case, KRA contended that preliminary investigations established that the Respondent is suspected of being in intricate and complex tax evasion and money laundering syndicates involving violation of provisions of the *Income Tax Act*, *Value Added Tax Act*, *Excise Duty Act*, *Proceeds of Crime and Anti-Money Laundering Act* amongst other statutes. Following these preliminary findings, KRA invoked section 43(2) of the *TPA* and issued the Preservation Noticeof 20th August 2020 to the Respondents' bank accounts and Paybill/Till numbers held by the Respondents' various commercial banks to ensure that the subject matter of the investigations is safeguarded by prohibiting transfer, withdrawal, disposal of or otherwise dealing with that money.

12. KRA submitted that it is in the public interest that the Preservation Orders remain in force up to the conclusion of the ongoing investigation which has established that there are additional taxes that the taxpayer has not paid, despite the figure being from their self-declaration as per the letters dated 28th June 2019, 8th August 2019 and 21st August 2020.

13. KRA has taken the position that the ongoing investigation may lead to further enforcement action being taken but not limited to recovery of taxes and tracing of the proceeds of crime under the *Proceeds of Crime And Money Laundering Act*, among other options available to KRA in enforcing the tax laws and other economic crimes normally handled under the Multi Agency Team approach.

14. As regards the First Application, KRA stated that the present application is not necessarily tied to the earlier assessments and that case is not related to this case as alleged by the Respondent. It stated that the present case is based on the demand letter dated 21st August 2020 and the ongoing in-depth tax investigations. It added that this matter is the subject of a multi-pronged approach involving the Betting Licensing Control Board who have equally raised serious issues regarding the perceived mischief of the Respondent in its attempt to alter the ownership structure and change the tradenames without following the laid down protocols.

15. KRA stated that the notice dated 20th August 2020 together with the application and Preservation Orders were all served on the Respondent, its bankers and third parties. It urged that it is not sufficient for the Respondent to allege failure to serve the application as section 43(6) of *TPA* provides that the Commissioner shall serve the order as soon as is practicable and upon service, the taxpayer may, within fifteen days, apply to the Court to discharge or vary the preservation order.

16. KRA maintained that it is for sake of public interest and good governance that the Preservation Orders remain in force to allow it complete investigations while the subject matter of the investigations is preserved.

Issues for Determination

17. Due to the nature and urgency of the application, counsel for the parties, waived their right to make submissions and agreed that I should determine the application on the basis of the affidavits which outlined the facts and parties' positions comprehensively. Moreover, the procedural aspects of this case were not in dispute.

18. The issues for consideration are, in my view, relatively straight forward. First, whether KRA complied with section 43 of the *TPA*. Second, whether the Respondent has made out a case for the discharge of the Preservation Orders for want of disclosure of material facts by KRA. Third, whether the Respondent's application is subjudice in light of the existence of *HC COMM Misc Application No. E045 of 2020*.

Compliance with section 43 of the *TPA*.

19. The purpose of section 43 of the *TPA* is to allow KRA to preserve a taxpayer's money in the hands of a third party without notice to the taxpayer for a limited period before moving the court for formal orders of preservation. Since the exercise of the power to collect taxes, in the manner outlined by the statute, is a justifiable limitation on the right to privacy protected by Article 31 of the Constitution, it must be construed strictly. This approach is buttressed by and is consistent with the principle that tax statutes must be interpreted strictly. In *Mount Kenya Bottlers Ltd & 3 others v Attorney General & 3 Others* NRB CA Civil Appeal No. 164 of 2013 [2019] eKLR expressed the view that:

[…], when it comes to interpretation of tax legislation, the statute must be looked at using slightly different lenses. With regard to tax legislation, the language imposing the tax must receive a strict construction. Judge Rowlett in his decision in ***Cape Brandy Syndicate v I.R. Commissioners [1921] 1KB*** *(cited by the appellants), expressed the common law position in this area when he stated '…in a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used'.*

20. It is not disputed the court extended the Preservation Order on 11th September 2020 for 21 days, then on 5th October 2020 for another 60 days. Under section 43(6) of the *TPA*, "*The Commissioner shall serve the order under this section on the taxpayer as soon as is practicable* …" This means that service of the order on the taxpayer is a mandatory requirement. Further, KRA bears the burden of showing that any delay in serving the order was justified hence it must show that it served the order as soon as is practicable.

21. In this case, KRA does not dispute that it served the order on the Respondent, through its advocates, on 13th October 2020. It did not explain why it did not serve the Preservation Orders after the order was issued on 11th September 2020 or so soon after the extension until it was prompted to do so by the Respondent's advocates. KRA did not disclose facts to show that it acted with promptitude or as soon as was practicable as required by the statute. I therefore find and hold that KRA failed to serve the Preservation Orders as required by section 43(6) of the *TPA*.

Material non-disclosure and subjudice

22. The Respondents contention is that KRA failed to disclose the First Application which sought extension of the preservation notices issued on 11th December 2019 to its bankers. According to the Respondent, KRA alleged that it was in the process of conducting investigations involving suspected tax evasion schemes involving amounts of up to Kshs. 14,337,707,048.00 which is the exact amount it has sought to preserve in these proceedings.

23. On 19th February 2020, the application was placed before Muigai J., who declined to grant any preservation orders and directed KRA to serve the application for hearing inter-parties. The Respondent stated that KRA has not prosecuted the application and it is still pending determination. It therefore submits that KRA filed this application in an attempt to secure ex-parte orders when the same orders had been declined by Muigai J. Apart from the fact that this amounts to an abuse of the court process, the Respondent contended that there is a danger of the Courts, being seized of the two proceedings, reaching contradictory decisions on the same subject matter. It urges that it is the interests of justice that the orders made on 11th September and 5th October 2020 be discharged and proceedings herein be stayed pending the hearing and determination of the First Application.

24. The Respondent pointed out that KRA also failed to disclose the fact that the claim for Kshs. 14,337,707,048.00 is a combination of various demands made by KRA to the Respondent in the years 2018 and 2019 for payment of withholding tax on winnings paid to punters/players and is the subject of various cases.

25. The first case is Tax Appeal No. 336 of 2018 where, by a notice of assessment dated 21st June 2018, KRA demanded payment of the sum of Kshs. 10,317,985,966 from the Applicant being the purported withholding tax on winnings paid to punters for the period 2015 and 2016. Following an objection, KRA reduced the amount demanded from Kshs. 10,317,985,966 to Kshs. 9,024,387,818. The Respondent lodged an appeal to the Tax Appeals Tribunal ("Tribunal") which delivered its judgment on 18th December 2019 quashing the tax assessment for payment of withholding tax. KRA then lodged HC Income Tax Appeal No. E004 OF 2020 which is pending determination.

26. Tax Appeals No. 304 of 2019 arose from a demand by KRA dated 24th May 2019 for Kshs. 3,296,532,012 being the purported withholding tax on winnings paid to punters for the period April 2019. The Respondent objected to the demand and in due course, KRA issued an agency notice to the Respondent's bankers. The Respondent challenged the assessment at the Tribunal and in a judgment delivered on 6th November 2019, the Tribunal found that the Respondent had used the wrong formula to compute withholding tax on winnings by erroneously including the stake placed by punters. The appeal filed by KRA; HC Income Tax Appeal No. E003 OF 2020 is pending determination.

27. In light of the pending cases, the Respondent submitted that the amount which KRA alleges to be due on account of purported tax evasion schemes is actually a combination of the amounts claimed in the two cases set out above. The Respondent contended that the amounts claimed by KRA were the subject of litigation before the Tribunal which found that the amount was not due and which are now subject to HC Income Tax Appeals No. E003 & E004 OF 2019 are still pending hearing. The Respondent submitted that owing to those appeals relating to the same subject matter, the proceedings herein are now subjudice.

28. The Respondent also submitted that KRA failed to disclose that KRA has made previous demands and corresponded with it on the issue of payment of the purported arrears on withholding tax on the winning as evidenced by the correspondence annexed to the deposition of Mr Imungi. It added that KRA failed to disclose that on 9th April 2019, it issued to the Respondent a pre-assessment notice stating that the Respondent owed Kshs. 14,987,684,144.00 in tax arrears on account of withholding tax on winnings. It further stated that KRA failed to disclose the fact that it had on 23rd August 2019 demanded payment of Kshs. 14, 337,707,048, now claimed in this application from the Respondent and which it objected to by the letter 29th August 2019. Further, that on 30th August 2019, KRA issued a notice of preservation of funds to the Respondent's bankers in respect of the same amount and that the notice expired after ten days.

29. The Respondent therefore argues that from the demands, notices and correspondence, it is clear that as at August 2019, KRA had in fact completed its investigations and concluded that the outstanding sum due from the Respondent was Kshs. 14,337,707,048 thus the allegation that it is now carrying out investigations is false. The Respondent also disputed the fact that KRA is carrying out investigations as this was the allegation when it filed the First Application in January 2020 yet 10 months later, it has not submitted any progress on the outcome of the alleged investigations.

30. In response to the deposition and submissions by the Respondent, KRA responded that the Preservation Orders issued on 20th August 2020 in this case have no relation to the assessments which are the subject matter of the First Application.

31. As I stated earlier, section 43 of the *TPA* allows KRA to move the court ex-parte after issuing a preservation notices to third parties. The statutory right of KRA to move the court ex-parte is accompanied by an implied duty on KRA to disclose to the court all material facts that have a bearing on the matter. This duty of candour is fundamental where a party approaches the court for ex-parte orders has been buttressed in a catena of decisions by our superior courts (see *Uhuru Highway Development Ltd v Central Bank of Kenya and 2 Others* Civil Application No. NAI 140 of 1995 [1995] eKLR and *Bahadurali Ebrahim Shamji v Al Noor Jamal and 2 Others* NBI CA Civil Appeal No. 210 of 1997 [1998] eKLR).

32. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil Kenya Limited*, the Court of Appeal, cited with approval the following dicta in *The King v The General Commissioners for the Purposes of Income Tax Acts for the District of Kensington: Exparte Princess Edmond De Pligac* [1917] 1 KB 486, where Warrington LJ stated at page 509 that:

> *It is perfectly well settled that a person who makes an exparte application to the Court that is to say, in the absence of the person who will be affected by that which the court is asked to do – is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by him. That is perfectly plain and requires no authority to justify it.*

And at pages 513 to 514, Scrutton L.J who emphasized that: -

> *Now the rule giving a day to the Commissioners to show cause was obtained upon an ex parte application; and it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an exparte statement he should make a full and fair disclosure of all the material facts – facts, not law. He must not misstate the law if he can help it – the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.*

33. In the same case, Nyarangi JA., cited and reiterated the principles elucidated by Ralph Gibson LJ., in *Brink's Mat Ltd v Elcombe* **[1988] 3 All ER 188** as follows:

> *In considering whether there has been relevant non- disclosure and what consequence the court should attach to any failure to comply with the duty to make full and frank disclosure, the principles relevant to the issues in these appeals appear to me to include the following:*
>
> *(i) the duty of the applicant is to make a full and fair disclosure of the material facts.*
>
> *(ii) The material facts are those which it is material for the Judge to know in dealing with the application as made; materiality is to be decided by the Court and not by the assessment of the applicant or his legal advisers.*
>
> *(iii) The applicant must make proper inquiries before making the application. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had such inquiries.*
>
> *(iv) The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including*
>
> > *(a) the nature of the case which the applicant is making when he makes the application*
> >
> > *(b) the order for which application is made and the probable effect of the order on the defendant, and*
> >
> > *(c) the degree of legitimate urgency and the time available for the making of inquiries.*
>
> *(v) if material non-disclosure is established the court will be astute to ensure that a plaintiff who obtains an ex parte injunction without full disclosure is deprived of any advantage he may have derived by that breach of duty.*
>
> *(vi) Whether the fact not disclosed is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depends on the importance of the fact to issues which were to be decided by the judge on the application. The answer to the question whether the non-disclosure was innocent, in the sense that the fact was not known to the applicant or that its relevance was not perceived, is an important consideration but not decisive by reason of the duty on the applicant to make all proper inquiries and to give careful consideration to the case being presented.*
>
> *(vii) Finally, it is not for every omission that the injunction will be automatically discharged. A locus poenitentiae (chance of repentance) may sometimes be afforded. The court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the ex parte order, nevertheless to continue the order, or to make a new order on terms:*
>
> > *'. when the whole of the facts, including that of the original non-disclosure, are before it, (the Court) may well grant such a*

second injunction if the original non- disclosure was innocent and if an injunction could properly be granted even had the facts been disclosed.'

34. In this case, there is no dispute that there were previous cases in relation to tax matters between KRA and the Respondent. KRA argued that the two cases were separate hence there was not duty to disclose the earlier case.

35. I have looked at both cases and I find details that are similar. First, in both applications, KRA contends that it discovered that despite the Respondent being aware of its obligations under the *Income Tax Act*, it deliberately refused to remit withholding taxes as compared to winners who had self-declared under the *Betting Control and Licencing Act*.

36. Second, although KRA disavows the fact that the sum claimed is not the same, the fact that same figure of Kshs. 14,337,707,048.00 forming the basis of both applications is strikingly similar and cannot be a coincidence that over different periods, KRA would be claiming the same sum comprising the principal tax and penalties. Moreover, the correspondence between KRA and the Respondent shows that the same amount is the subject of the claims in both applications.

37. Third, the appeals pending in the High Court from decisions of the Tribunal deal with the subject of withholding taxes on the winning paid to punters. The issue of withholding taxes is the same subject that KRA has stated very clearly is the subject and basis of the two applications. The fact that these appeals are pending is not disputed.

38. Apart from the fact that all these cases were known to KRA, the present application, the First Application and the pending appeals all deal with the same subject matter. The evidence shows that the issue of withholding taxes has been the subject of correspondence between the parties for some time before KRA invoked section 43 of the *TPA*. These are all material facts which KRA ought to have disclosed when it approached the court ex-parte. Further, KRA failed to disclose the fact that it had filed the First Application and that Muigai J., declined to extend the preservation orders. All these instances lead to the irresistible conclusion that KRA deliberately suppressed these facts which would have had a bearing on whether or not I would have granted and extended the Preservation Orders. As the authorities I have cited show, it is not for the applicant to pick and choose what it considers relevant and material, as materiality is a matter for the court not the applicant.

Subjudice

39. The *subjudice* rule is a rule of general application and is spelt out in **section 6** of the ***Civil Procedure Act (Chapter 21 of the Laws of Kenya)*** as follows:

> *6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same time, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.*

40. The purpose of this rule is to prevent courts of concurrent jurisdiction from entertaining parallel proceedings in respect of the same subject matter between the same parties. It is therefore necessary to establish that the issues in the former proceedings are also directly and/or substantially the same issues in latter suit.

41. In this case, KRA has argued that the present application relates to a different assessment and is not tied to an earlier assessment and is based on the demand dated 20th August 2020 hence this matter should be considered separately. I do not accept this argument based on the evidence for the reasons I have outlined above. It is clear that the basis of the First Application and the present application is the same. At the core is the issue of collecting withholding taxes from the Respondent which KRA alleges is subject of investigation.

42. The invocation of section 43 of the *TPA* is not necessarily depended on the issue of a specific demand or assessment. It is invoked in the instances set out in section 43(1) thereof and once KRA satisfies the court that it has a basis for extension of the preservation order, a further application would not have been necessary in light of the fact that the dispute central to the case had been longstanding and once the preservation order was made the preservation orders would achieve the same result sought in the present application. In other words, had the First Application succeeded, the present application would be unnecessary.

Conclusion

43. KRA has emphasized that it is a matter of public interest that the court maintains the Preservation Orders in order to enable it complete investigations. Public interest, as a consideration in the exercise of judicial discretion, does not exist in a vacuum, it must be grounded on and be consistent with the law (see *Christopher Ndarathi Murungaru v Kenya Anti-Corruption Commission and Another* CA Civil Application No. NAI 43 of 2006 [2006] eKLR. This court is enjoined by Article 10 of the Constitution to observe the rule of law and insist at all times that a State Agency such as KRA comply with the letter and spirit of the law.

44. I have found that the application and preservation order was not served as required by section 43 of the *TPA*. I have also found that KRA failed to disclose material facts when it applied to the court ex-parte for extension of the preservation orders. Finally, this application violates the *sub-judice* rule.

Disposition

45. Having considered the facts and circumstances of this case as set out above, I allow the Notice of Motion dated 19th October 2020 on the following terms:

(a) The preservation order issued on 11th September 2020 and extended on 5th October 2020 be and is hereby discharged.

(b) THAT this matter be and is hereby stayed pending the hearing and determination of Milimani High Court Misc. Application No. 045 of 2020 or until further orders of the court.

(c) THAT the applicant shall meet the costs of this application.

DATED and DELIVERED at NAIROBI this 13th day of NOVEMBER 2020.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Karori instructed by instructed by Iseme, Kamau and Maema Advocates for the Respondent

Mr Osoro instructed by the Legal Services Division for Kenya Revenue Authority.