

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PETITION NO. 4 OF 2017

BUSIA TEACHERS TRAINING COLLEGE.....PETITIONER

AND

THE KENYA REVENUE AUTHORITY.....1ST RESPONDENT

THE COMMISSIONER OF DOMESTIC TAXES.....2ND RESPONDENT

RULING

The petitioner has moved this court by Notice of Motion dated 31st May 2017 under Article 23 (3) (c) of the Constitution of Kenya for conservatory orders in the following terms:

1. That pending the hearing of this application inter parties, a conservatory order be issued staying and or suspending the 2nd respondent's decision to attach the petitioner's bank account Nos. 012437672200 at National Bank of Kenya Busia Branch, 112277919 at Kenya commercial Bank Busia Branch and 08811005417 at Barclays Bank Busia Branch and the petitioner be allowed to access the said Bank accounts forthwith.

2. That the costs be in the main petition.

The application was opposed and the respondent prayed for the petitioner to be ordered to furnish an irrevocable banker's guarantee from a reputable bank for the disputed sum.

Article 213 (3) (c) of the Constitution of Kenya provides as follows:

In any proceedings brought under Article 22, a court may grant appropriate relief, including—

(c) a conservatory order;

I have noted that there are issues which both parties have failed to come to a consensus. The matter will require to be determined by calling of evidence. This is an apt case for issuing conservatory orders as follows:

That pending the hearing and determination of the petition, a conservatory order be and is hereby issued restraining the 1st and the 2nd respondents by themselves or their authorised agents from levying distress against the property of the petitioner including their bank accounts and staying the operation of the Agency Notices issued to the National Bank of Kenya, the Kenya commercial Bank and the Barclays Bank claiming or enforcing all or any taxes due arising from the tax audit in issue herein.

The order is granted on the condition that the petitioner shall furnish an irrevocable banker's guarantee from a reputable bank for the sum of Kshs. 8,568455.00 within fourteen (14) days from the date hereof and in default the order currently in force shall stand discharged.

The costs of this application shall abide by the judgment.

DELIVERED and SIGNED at BUSIA this 18th day of October, 2017

KIARIE WAWERU KIARIE

JUDGE