



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MISCELLANEOUS SUIT NO. 285 OF 2015**

**KENYA REVENUE AUTHORITY.....EX-PARTE APPLICANT**

**VERSUS**

**JIMMY MUTUKU KIAMBA.....RESPONDENT**

**RULING NO. 2**

1. On 1<sup>st</sup> October 2015 I delivered a Ruling through which I ordered that the respondent, **JIMMY MUTUKU KIAMBA** be prohibited from transferring, withdrawing, disposing of or in any other way dealing with the money in his 10 Bank Accounts. The said order was to remain in force until the applicant, **KENYA REVENUE AUTHORITY**, concluded the assessment of the tax payable by the respondent, and recovers such tax from the respondent's bank accounts.
2. The court was fully alive to the fact that any prolonged freeze on the respondent's bank accounts could occasion serious prejudice to the respondent.
3. Therefore, in an endeavour to do justice to both the parties, I directed that the process of the assessment of the taxes payable by the respondent be completed within 30 days.
4. I made it clear that the order for the preservation of the funds in the respondent's bank accounts could not be of a permanent nature.
5. I also made it clear that as soon as the court was satisfied that the applicant had had sufficient time and opportunity to carry out the task of assessing the tax which was payable by the respondent, the court would discharge the preservation orders.
6. The respondent has now urged me to discharge the preservation orders.
7. In the alternative, the respondent asked the court to impose terms pursuant to which he could provide security for the taxes which might ultimately be found to be due and payable by him.
8. It is the respondent's position that he had done everything possible, on his part, to try and enable the applicant finalise the assessment of tax. However, the respondent finds it difficult to have the task

finalized because, in his view, the applicant kept on changing its position on the quantum of taxes.

9. The respondent has come to the conclusion that the only way to resolve the dispute would be through Alternative Dispute Resolution mechanisms, as opposed to through the court process.

10. The applicant outrightly rejects the aspersions cast by the respondent, that it does not desire to quickly resolve the dispute.

11. According to the applicant, the respondent's tax liability is Kshs. 262,774,327/-, for the period between 2007 and 2014.

12. After the applicant had given the tax computation to the respondent, the respondent filed Notices of his intention to appeal to the Local Committee against the assessments for the years 2010, 2011, 2012 and 2013.

13. The cumulative tax computation for those years amounted to Kshs. 172, 597,315. By necessary implication, I understand the applicant to be implying that there was no dispute over the tax amounting to over Kshs. 90,000,000/-.

14. That is, however, not necessarily the position, as the respondent was also of the view that some of the claims for tax were already time-barred.

15. At this moment in time, it cannot therefore be said that the respondent had accepted the correctness of the tax assessment in the sum of Kshs. 90 million.

16. The only sum which the respondent had admitted owing, in taxes, is Kshs. 17 million.

17. Much as the respondent believes that he is right, that belief alone does not mean that he is necessarily correct.

18. The converse is also true; that the applicant could be wrong even though it believes that its tax assessments for the respondent, were correct.

19. The fact that each of the parties holds firmly to its position cannot be interpreted to mean that he was being obstructive.

20. Should I release Kshs. 100 million to the respondent now, even though there is still a big dispute over the assessment of tax? That is what the respondent has urged me to do.

21. If I accepted that request, it would imply that there were no other funds which were readily available for use to pay taxes, if the final assessment exceeded Kshs. 17 million.

22. The respondent has offered 3 properties as security. However, the respondent has not provided the court with valuation reports for the said properties.

23. Meanwhile, the other real properties belonging to the respondent appear to have been utilized as security for a substantial loan which was borrowed from Equity Bank.

24. In the circumstances, it appears that the only realistic security available to the applicant is the funds in the respondent's bank accounts.

25. Therefore, whilst I appreciate the fact that the respondent may be undergoing serious financial challenges because he cannot access the money in his bank accounts, the justice of the case militates against the release of the funds to him, at the moment.

26. I now direct that the disputed tax assessments be resolved through Alternative Dispute Resolution

mechanisms. The court will give further Directions on the exact format of ADR and th

27. The time assigned for that purpose. The said Directions will be given immediately after the parties address the court, which will be done shortly after this Ruling is delivered.

28. In the meantime, the preservation orders are extended until further orders.

**DATED, SIGNED and DELIVERED at NAIROBI this 20<sup>th</sup> day of January 2016.**

**FRED A. OCHIENG**

**JUDGE**

***Ruling read in open court in the presence of***

Okelo for the Ex-parte Applicant

No appearance for the Respondent

Collins Odhiambo – Court clerk.