



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
JUDICIAL REVIEW NO. 2 OF 2016

SILVER CHAIN LIMITED.....APPLICANT

VERSUS

THE COMMISSIONER INCOME TAX.....1ST RESPONDENT

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

THE KENYA REVENUE AUTHORITY.....3RD RESPONDENT

GEORGE N. MUIRURI T/A LEAKEY AUCTIONEERS.....4TH RESPONDENT

RULING

The application dated 9.5.2016 seeks the following orders: -

- i. An Order of Certiorari to remove to the High Court and quash the decision of the 1st, 2nd and 3rd respondents of 22.11.2015 to arbitrarily levy unreasonable taxes against the applicant;
- ii. An Order of Certiorari to remove to the High Court and quash the decision of the 1st, 2nd and 3rd respondents of 26.1.2016 to issue notice to enforce recovery measures;
- iii. An Order of Certiorari to remove to the High Court and quash the decision of the 1st, 2nd and 3rd respondents of 19.3.2016 to issue a Notice of Distress;
- iv. An Order of prohibition to prohibit the 1st, 2nd and 3rd respondents, whether by itself, its officers, employees and/or agents, from distressing, levying distress or otherwise distressing the goods and assets of the applicant pursuant to the Notice of Distress;
- v. Costs of and incidental to the application be provided for;
- vi. Such further or other relief as the Honourable Court may deem just and expedient to grant.

The application is supported by the affidavit of **Mario Mele** sworn on the same date. The respondents filed a replying affidavit sworn by **Gradus Ogando** on 13.6.2016. Counsel for both parties filed written submissions in respect to the applications.

The applicant submits that it is a limited liability company carrying on restaurant and catering business in Malindi sub-county in Kilifi County. The respondents wrote a letter addressed to the applicant dated 2.11.2015 purporting that a compliance check had been carried out for the period June 2013 to October 2015. The applicant was not aware of the source of the financial report relied upon by the respondents. The respondents claim that the applicant has accumulated tax arrears amounting to Kshs.40,619,379/=.

The applicant contends that he has severally tried to make a follow up with the respondents to find out the basis of the computed tax but all in vain. The applicant provided his own accounts which shows that it was not operating between June, 2013 to July 2014. On 19.3.2016, a tax demand notice was issued by the respondents without any justification. The applicant's goods have now been proclaimed by an auctioneer.

Counsel for the applicant submit that the applicant was served with a tax demand letter dated 22.1.2016 without any explanation. The letter did not meet the statutory requirements in the Tax Procedure Act. The subsequent letter of 19.3.2016 only indicated certain figures of arrears with no explanations. The demand letters were not done in good faith. It is contended that the applicant's rights to a fair administrative process under Article 47 were violated. The applicant's properties have been attached. This is a breach of the applicant's right to property.

The applicant's case is summarized by paragraph 24 of its counsel's submissions which make the following statement: -

The applicant's case is that the Tax Demand dated 26.1.2016 which forms part of the applicant's Exhibit marked MM5 does not satisfy the requirement of a proper notice consistent with Article 47 (1) of the Constitution. It contends that after the tax assessment it was not issued with a tax assessment Notice in accordance with the provisions of section 29 of the Tax Procedures Act to enable it exercise its right under section 51 of the Tax Procedures Act No. 29 of 2015 to move the Tax appeals Tribunal to contest the assessment.

Counsel for the applicant relies on the case of **KENYA ANTI-CORRUPTION COMMISSION V LANDS LIMITED & OTHERS, Nairobi Misc. Application No. 583 of 2006** and that of **GEOTHERMAL DEVELOPMENT CO. LTD V ATTORNEY GENERAL & 3 OTHERS, Nairobi Petition No. 352 of 2012 [2013] eKLR**. It is also submitted that the assessment was solely based on the sales records from the applicant's sales machines and this is not in line with the Income Tax Act and Value Added Tax Act.

The respondents vehemently oppose the application. Miss Odundo, counsel for the respondents observed that the application raises six main issues namely: -

- i. Whether the application is fatally defective.
- ii. Whether the respondents are entitled to demand taxes from the applicant.
- iii. Whether the respondents have deliberately violated the principles of natural justice by demanding outstanding taxes without giving the applicant an opportunity to be heard.
- iv. Whether the respondents have violated the applicant's rights by instructing the fourth respondent to proclaim and attach the applicant's assets.
- v. Whether respondents' demand for taxes and subsequent levying of distress is malicious, arbitrary and oppressive.
- vi. Whether the applicant is entitled to the reliefs being sought.

It is submitted that the respondents are empowered by the law to demand taxes. Section 5 (1) of the Kenya Revenue Act Cap 469 empowers the Kenya Revenue Authority to collect and receive all the revenue on behalf of the Government of Kenya. The Kenya Revenue Authority enforces all the

provisions of that Act. The applicant operates a restaurant in Malindi town and was formerly trading as Pata Pata Lounge but is currently trading as Mario's Lounge. On 21.7.2015 the respondent wrote to the applicant notifying them of the intended compliance check for the period January 2012 to July 2015. The check was based on records provided by the applicant as required by section 43 of the Value Added Tax Act Cap 476 and section 54A of the Income Tax Act Cap 470. The two sections requires the applicant to maintain records for purposes of computation of tax. The records were checked and it was noted that the applicants filed returns for 2011 and 2012 but had not filed returns for 2013. After evaluating the records, it was found that Kshs.40,619,379/= was in arrears. On 12.11.2015 the respondents sent a letter informing them of the tax arrears and calling upon the applicant to settle the debt within 30 days from the date of the letter as provided for under section 84 of the Income Tax Act and 50 of the VAT Act 2013. Subsequently on 14.12.2015 another demand note was sent. This was followed by two reminders dated 13.1.2016 and 26.1.2016.

It is further submitted that on 19.3.2016 another demand letter was sent to the applicant and a distress notice was also served. The applicant had no known bankers or debtors. A director of the applicant Mario Mele visited the respondents' offices and all the procedures were explained. On 3.5.2016 the respondents were served with an objection notice dated 25.4.2016. The respondents replied to the objection via his letter dated 20.5.2016 indicating that the objections had not been validly lodged as required by section 51 of the Tax Procedure Act 2015. The applicant proceeded to the court and filed the current suit.

It is further submitted that the application is fatally defective as it does not comply with the provisions of Order 53 Rule 1 (2) of the Civil Procedure Rules. Counsel relies on the case of **KENYA NATIONAL CHAMBER OF COMMERCE V COUNTY COUNCIL OF MAKUENI Machakos HCCC No. 159 of 2002 [2003] eKLR**. It is contended that the respondents followed all the required procedures under the law. The assessment was based on sales records from the applicant's sales machines, the profits from the financial statements audited by a registered auditor and filed tax returns which the applicant failed to file. The respondents determined the taxes payable by the applicant as required under the law. The respondents ought to be allowed to collect the outstanding taxes. Article 209 of the Constitution empowers the National Government to impose taxes which taxes include income tax, value added tax, custom duties and other duties. Article 210 of the Constitution prohibits imposition of waiver on taxes except under certain conditions. The applicants were afforded every opportunity to be heard as evidenced by the several correspondences between the parties. The applicant was expected to raise objection within 30 days of being notified of the decision on the tax arrears. The decision was contained in the letter dated 12.11.2015 whereas the objection was dated 20.5.2016, a period of over 4 months (120 days). This was outside the allowed period. Further, the objection failed to state precisely its grounds.

It is also submitted that the respondents have not breached any rules of natural justice. The tax payer was given every opportunity to responded to the audit findings. The applicant was given the right to lodge an objection against the tax assessment but failed to do so on time. The correspondences are proof that the respondents were following the procedures. Counsel relies on the case of **KAPA OIL REFINERIES LTD V KENYA REVENUE AUTHORITY, COMMISSIONER OF INCOME TAX, and COMMISSIONR OF VALUE ADDED TA & COMMISSIONER OF DOMESTIC TAXES. Nairobi JR Misc. Application No. 283 of 2009**. The decision to demand the taxes is not malicious, oppressive or irrational. The orders being sought cannot be granted as whatever has been done is sanctioned by statute. The respondents did not act in excess of their powers and therefore there is nothing to quash. The decision to demand the tax has already been made and there is nothing to prohibit.

Counsel for the respondent submit that Judicial Review orders do not extend to the merits of the decision but only extends to the process of which the decision was made. All the processes were followed. No fault can be attributed to the respondents. Section 56 of the Income Tax Act and 48 of the VAT Act empowers the respondents to issue a compliance check notice. Section 41 of the Tax Procedures Act was used to levy the distress upon the applicant's goods. Section 102 of the Income Tax and 24 of the VAT Act also allows the respondents to levy distress against the tax payer. The respondents were within the law when they demanded the outstanding tax.

The main issues being raised by the application are whether the application is fatally defective, whether the respondents followed the correct procedures in assessing the amount of tax due from the applicant, whether the respondents violated the principles of natural justice, whether the demand for the tax is malicious, irrational and oppressive and whether the reliefs being sought should be granted.

The respondents contend that the application is fatally defective for want of compliance with Order 53 Rule 1 (2) of the Civil Procedure Rules. Rule 53 (1) and (2) provides as follows: -

- 1. No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.**
- 2. An application for such leave as aforesaid shall be made ex-parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.**

The only contention by the respondents is that the applicant only served the substantive motion without the statement that was filed with the application for leave. According to the respondents, the applicant is supposed to serve the statement when serving the substantive motion. The authority of the case of **KENYA NATIONAL CHAMBER OF COMMERCE** (supra) dealt with the issues as to whether other prayers can be included in an application for leave to seek Judicial Review orders. The court was of the view that only an order seeking the leave of the court as well as orders of stay should be in an application seeking leave of the court under Order 53 of the Civil Procedure Rules. I have seen the order extracted in Miscellaneous Civil Application Number 25 of 2016. The order granted the applicant leave to apply for Judicial Review orders. The granted leave was to operate as a stay. The applicant was to file the substantive application within 21 days.

The record shows that the orders granting leave were issued on 19.4.2016. The substantive application was filed on 10.5.2016 within the twenty-one (21) days period. The only requirement under Rule 53 (1) is that the application for leave shall be accompanied by a statement which gives the relevant details. There is no requirement that the statement that was used to obtain leave to apply for Judicial Review must be served upon the respondents. Ordinarily, the file used to apply for leave to seek Judicial Review orders become spent and a substantive Judicial Review application is filed. I see no defects in the current application. In the case **REPUBLIC V COMMISSIONER OF POLICE ex-parte KARIA (2004) 2 KLR** the court held as follows: -

- 1. Once leave is granted, it does not become a pending suit. The applicant must move to the next level and file a substantive motion in accordance with the rules, after which it can then be said that there is a pending suit. Leave on its own cannot sustain a suit.**

The next issue relates to the procedure followed by the respondents to demand the tax. The replying affidavit of Gradus Ogando has exhibited the correspondences relevant to the application. The process started on 21.7.2015 when the Kenya Revenue Authority wrote to the applicant indicating that it wanted to carry out a compliance check of the applicant's records. That letter was duly received by one Steven on behalf of the applicant. On 12.11.205, the 3rd respondent wrote to the applicant informing them about the compliance check. The letter indicates that there was corporation tax arrears of Kshs.11,537,152/=, VAT arrears of Kshs.6,771,761/= and pay as you earn (PAYE) arrears of Kshs.22,299,318/=. A schedule of the computation was annexed.

On 14.12.2015, a tax arrears demand note for Kshs.40,509,954/= was sent to the applicant. The tabulation is as follows: -

| <u>Tax head</u> | <u>Year</u> | <u>Principal</u> | <u>Tax Interest and Penalty</u> | <u>Total</u> |
|-----------------|-------------|------------------|---------------------------------|--------------|
| Corporation | 2014 | 8,133,466 | 3,403,686 | 11,537,152 |

| | | | | |
|-------|------|------------------------------|--------------------------|--------------------------|
| PAYE | 2013 | 1,139,794 | 972,797 | 2,112,591 |
| PAYE | 2014 | 7,680,596 | 4,353,796 | 12,034,332 |
| PAYE | 2015 | 5,984,741 | 2,176,880 | 8,161,621 |
| VAT | 2013 | 1,218,442 | 769,748 | 1,988,190 |
| VAT | 2014 | 2,398,398 | 877,279 | 3,275,677 |
| VAT | 2015 | <u>1,270,088</u> | <u>130,303</u> | <u>1,400,391</u> |
| TOTAL | | <u>KSH.27,825,525</u> | <u>12,684,429</u> | <u>40,509,954</u> |

A reminder was sent on 13.1.2016. Further reminders was sent on 10.1.2016, 19.1.2016 and 26.3.2016. There seems to have been no replies from the applicant and this led to the issuance of the Notice of Distress on 19.3.2016. On 25.4.2016, the applicant's counsel responded to the letter dated 2.11.2015 and lodged an objection to the amount demanded. On 20.5.2016 the respondent replied to that letter and indicated that the objection was not valid as it did not comply with section 51 of the Tax Procedure Act, 2015.

Section 43 (1) of the Value Added Tax Act provides as follows: -

1. Every registered person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.

The above section elaborates the specific records to be kept under section 43 (2). Such records include tax invoices, credit and debit notes, purchase invoices, custom entries, receipts for customs duty tax among other documents.

Similarly, section 54A (1) of the Income Tax Act, Cap 470, states as follows:-

1. A person carrying on a business shall keep records of all receipts and expenses, goods purchased and sold and accounts, books, deeds, contracts and vouchers which in the opinion of the Commissioner, are adequate for the purpose of computing tax.

Section 51 of the Tax Procedures Act No. 29 of 2015 provides an elaborate process to be followed when a tax payer objects to tax decisions made against him. The outcome of such a decision escalates to an appeal to the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act No. 40 of 2013. A decision of the Tribunal can be subject to an appeal to the High Court (section 53). An appeal to the Court of Appeal can follow (section 54).

The applicant contends that it did not operate during the period June 2013 to July 2014 and that it provided its accounts to that effect. The letter by M/s Gicharu Kimani Advocates dated 25.4.2016 indicate that the building where the business is operating was not complete by June 2013. The applicant annexed its statement of accounts showing its operations for the period July 2014 to June 2015. The documents provided by the respondents give operational figures from June 2013. The only period not captured is January to May 2013 which has nil returns. It is not clear whether the figures provided by the respondents were supplied to them by the applicant.

As far as the procedure requiring checking of the records of a tax payer is concerned, I do find that the respondents cannot be faulted. They followed the laid down procedure and the applicant could have engaged the respondents and give explanation of its operations. The unfortunate thing is that the tax assessment was done without the applicant's input in terms of explanation.

The next issue is whether the principles of natural justice were violated. The record shows that the process started on 21.7.2015. The compliance check was to take place at the applicant's premises on 5.8.2015. There was no correspondence until 12.11.2015 when the respondents notified the applicant about the outcome of the compliance check. The letter dated 12.11.2015 raised the demanded sum of Kshs.40,509,954/=. It is not established whether the respondents engaged the applicant in discussions while checking the records. From the pleadings, what can be deduced is that the respondents unilaterally checked the records and made its own tax assessment. That is why there is a claim for taxes for 18 months ending December, 2014. According to the applicant, it was not operating up to June, 2013. The tax liability for corporation tax for that period is Kshs.11,537,152/=. The respondents indicate in their letter dated 12.11.2015 that the tax was estimated from the monthly sales reports.

From the pleadings, herein, I am satisfied that the applicant was not given an opportunity to explain his position on the sales reports or the entire operations of the company. What is being demanded as tax is what was unilaterally computed by the respondents. Although the respondents are empowered by the law to assess what a tax payer ought to pay, it is prudent that while undertaking such an exercise, the tax payer be given an opportunity to explain its position. The volumes of sales do not dictate the profit margins. It all depend on the type of business. The applicant is running a restaurant. If one only computes the sales volume without knowing the costs of those sales as well as other outgoings such as water, electricity and garbage collection bills, then the amount of tax demanded may not reflect the truth.

With regard to the notice of distress dated 19.3.2016, section 41 of the Tax Procedures Act provides for distress orders. Section 41 (1) and (2) of the Act states as follows:

1. The Commissioner or authorized officer may issue an order (referred to as a “distress order”) in writing, for the recovery of an unpaid tax by distress and sale of the movable property for a taxpayer.

2. A distress order shall specify –

a) The tax payer against whose property the order is issued;

b) The amount of the unpaid tax liability;

c) The property against which the distress proceedings are to be executed; and

d) The location of the property against which the distress proceedings are to be executed.

It is therefore lawful for the Kenya Revenue Authority to issue a distress notice or order against a tax payer's property. The presumption is that all lawful procedures would have been followed before the distress notice or order is issued.

The applicant contends that the distress notice is malicious, oppressive and arbitrary. The respondents were undertaking their statutory duties when they initiated the process of assessing the applicant's taxes. According to the respondents, there was no malice in the decision to assess the taxes. The Oxford Dictionary defines the term “**arbitrary**” to mean “**based on random choice or personal whim**”. The same dictionary defines the term “**oppressive**” to mean “**harsh and authoritarian**”. It is not the intention of the law that the respondents should take away a tax payer's records, evaluate them without involving the tax payer and then impose the amount of tax to be paid. When the tax payer raises objection, the response be that the objection is late or that it is not valid since it does not state the grounds upon which it is raised. Tax payment is a constitutional requirement and the country cannot meet its obligations without receiving taxes from the tax payers. Articles 209 and 210 of our Constitution gives powers to the government to impose tax.

The respondents are within their lawful mandate when their officers visit business premises and evaluate the records for tax compliance purposes. It is a known fact that most tax payers would take advantage of any laxity on the part of the respondents and either under assess themselves or completely avoid paying

the taxes. Be that as it may, enforcement of tax compliance processes should be carried out within the confines of the law. The Constitution under Article 47 calls for fair administrative process. When a tax payer is called upon to pay Kshs.40,619,379/=, such a person should be given all the opportunities to have all his queries and doubts answered and the assessment clearly explained to him. That is why the law has set up a procedure whereby those dissatisfied with the assessment can pursue appeals up to the Court of Appeal. In the case of Commissioner of **INCOME TAX V MENON; [1985] KLR 104**, the Court of Appeal held that the determination of an assessment of tax on appeal under section 88 of the Income Tax Act is aimed at giving fiscal finality for the purpose of collecting tax and it does not overrule the right of a third appeal to the Court of Appeal provided under the law.

From the pleadings, it is not clear when the applicant started paying taxes. At least payment for previous years could act as a guide when subsequent years are assessed. Of course, one has to take into account instances of deliberate self under assessment by tax payers. According to the respondents' compliance check dated 12.11.2015, no withholding tax was due. My view is that any tax assessment by the respondents should involve the tax payer. The task of collecting taxes should not lead to discouraging tax payers from carrying on with their businesses. If the tax payers close shop, there will be no taxes to be collected. On the other hand, if no taxes are paid, there will be no funds to run government operations. This calls for a balance between the tax collectors and tax payers whereby the process becomes inclusive as opposed to being unilateral. There must be fairness in the process of tax assessment. If the court is of the view that the process used to assess the tax being demanded was not fair, orders of Judicial Review will be granted.

In the case of **R. V INLAND REVENUE COMMISSIONER ex-parte PRESTON [1985] A.C. 835**, cited by Justice Nyamu in **KEROCHE INDUSTRIES LIMITED V KENYA REVENUE AUTHORITY & 5 OTHERS; [2007] 2 KLR 240 at 278** Lord Scarman stated as follows: -

“I must make clear my view that the principle of fairness has an important place in the law for judicial review; and that in an appropriate case, it is a ground upon which the court can intervene to quash a decision made by a public officer or authority in purported exercise of a power conferred by law.”

My view is that disputes involving tax assessment should be dealt with under the legal procedures set up by the law. The respondents are expected to discuss their assessment with a tax payer. If the tax payer is not satisfied with the assessment, an objection form which could be standardized should readily be available to the tax payer to lodge his objection to the assessment. The commissioner of that particular tax stream should make his/her decision within the permitted period. Appeals to the Tax Appeals Tribunal should be allowed and if any party is dissatisfied by the decision of the Tax Appeals Tribunal, the matter can be brought to the courts. The courts are ill-equipped to know whether the tax assessment is proper or not. Judicial Review cases do not delve deep into the computations or assessment made by the tax collector. The domain of Judicial Review concerns itself with the process.

In the case of **R V INLAND REVENUE COMMISSIONERS, ex-parte OPMAN INTERNATIONAL UK [1986] 1 ALL ER, 328**, the court held that **“in Revenue matters it was unusual to apply for Judicial Review because there were clear and well established procedures for appeal provided by the Taxes Management Act, 1970”**. The court however further observed that the fact that there is an alternative procedure available does not mean that an application for Judicial Review should never be made. **“Judicial Review is, however, the procedure of the last resort and is a residual procedure which is available in those cases where the alternative procedure does not satisfactorily achieve a just resolution of the applicant's claim”**.

Given the fact that the applicant's objection was considered to be invalid and time barred, the applicants last resort was the court. The applicant is of the view that the assessment is oppressive and arbitrary. That does not mean that the applicant does not wish to pay the taxes. All what it is seeking is a fair assessment of the payable taxes. The assessment could give same results but he has to be explained how the computation was done. It is indicated that a director of the applicant visited the respondents' offices and was explained the genesis of how the case ended up to the time distress measures were taken. On his

part, the applicant avers in the supporting affidavit that it has severally tried to follow up with the respondents on the basis of the computation but no response has been forthcoming. I have not seen any letter making reference to a meeting between the parties herein.

The record shows that several letters were written to the applicant. According to the respondents, a tax demand notice was sent on 12.11.2015. Section 29 of the Tax Procedures Act provide for default assessment. It gives the information that has to be indicated to a tax payer when the commissioner is notifying the tax payer on the assessed taxes. The information includes the manner of objecting to the assessment (Section 29 (2) (f)). The letter dated 12.11.2015 is titled **“compliance check June 2013 to October 2015.”**

The above letter in its last paragraph informs the applicant that it is entitled to object to the assessment subject to section 84 of the Income Tax Act and section 50 of the VAT Act, 2013. Section 50 of the VAT Act was deleted by Act No. 29 of 2015 (Tax Procedures Act, 2nd schedule item No. 18). Although Act No. 29 of 2015 came into force on 19.1.2016, the law was in a transition process. Similarly, sections 84 to 91A of the Income Tax Act were deleted by the Tax Procedures Act (2nd Schedule item No. 5).

The subsequent communication from the respondents is the letter dated 14.12.2015. This is a tax arrears demand notice and not a proper tax assessment notice. Since the compliance check letter dated 12.11.2015 is not a proper tax assessment notice and in view of the fact that it made reference to some two sections of the law, that is section 50 of the VAT Act and section 84 of the Income Tax Act, which sections were deleted from the statutes the following month, I do find that during this transition period, it was difficult for the applicant to know how the objection was to be pursued. I have seen the respondents' delivery note book and the letter dated 12.4.2015 is recorded as part of the delivered letters. The date of receipt of the letter is not clear. The column for the receiving person does to give a date of receipt of 12.11.2015. Indeed, the dates on that column starts from 12.2.2016. There is no 2015 date indicated. I do find that by the time the applicant received the letter dated 12.11.2015, which letter made reference to legislation that was deleted, the law had changed. Section 29 of the Tax Procedures Act became operational from 16.1.2016. The Act was assented to on 15.12.2015.

The totality of my above evaluation is that the applicant was not accorded the right to fair administrative action. The assessment of the tax was unilateral, arbitrary and oppressive. He was entitled to a clear explanation as to how the computation was made. The respondents' own documents indicate that during the period June 2013 to 31.7.2015, the applicant's total sales were Kshs.55,139,701/=. The amount of principal tax demanded is Kshs.27,825,525/=. This is almost 50% of the sales. The costs of the sales and operating expenses are not included. That is why I find the assessment to be oppressive. This is a Judicial Review application which does not delve deep into the decision itself but the court has to be satisfied that there is fairness in the whole process. The respondents are of the view that the time for raising objection lapsed. That would mean that the applicant has no any other option but to pay the assessed tax. The letters dated 10.2.2016 and 19.3.2016 called upon the applicant to contact two officers of the respondents (Mr. A.K. Salim and Mr. Muthenya) if further clarification was required. In essence therefore objection could still be raised had the applicant sought the clarification and felt dissatisfied. That would be in line with the spirit of the law requiring fair administrative action.

The upshot is that the application dated 9.5.2016 is merited and is hereby granted as prayed. Orders of certiorari shall issue in terms of prayers (1) (2) and (3) of the application. An order of prohibition in relation to the levy of distress shall issue in terms of prayer (4). I do wish to add that since the applicant is obligated to pay taxes, the respondents do issue the applicant with a fresh notice as required under the Tax Procedure Act. The respondents are at liberty to re-assess the tax payable once again and issue such notices as they deem necessary under the law. The applicant shall be in a position to either pay the tax or file an objection. Each party shall meet their own costs.

Dated and delivered in Malindi this 24th day of November, 2016.

S.J. CHITEMBWE

JUDGE