



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**JUDICIAL REVIEW NO. 79 OF 2016**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW FOR ORDER OF  
CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF: INCOME TAX ACT CAP 470**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**VERSUS**

**KENYA REVENUE AUTHORITY.....RESPONDENT**

**ELSEK & ELSEK(K) LTD.....EX PARTE APPLICANT**

**RULING**

1. Leave was granted to the ex parte Applicant to commence Judicial Review Proceedings against the Respondent by orders made on 7<sup>th</sup> November, 2016 for orders of certiorari and this being a revenue matter, I directed counsel for the ex parte Applicant to serve the Respondent with the substantive motion and return on 16<sup>th</sup> November, 2016.
2. When the matter was called out on 16<sup>th</sup> November, 2016 there was no counsel for the Respondent and the matter was taken out and fixed for hearing on 17<sup>th</sup> November, 2016 at 11.00 a.m. In the event Miss Odundo, counsel for the Respondent who appeared in court was not briefed on the matter and sought more time to receive instructions.
3. Mr. Wameyo, counsel for the ex parte Applicant urged that in light of the breaches by the Respondent of the provisions of Section 84, 85 and 86 of the Income Tax Act [Cap 470, Laws of Kenya], the court should stay the implementation of the agency notices to the ex parte Applicant's Bankers.
4. In light of the fact that Ms. Odundo had no brief on the matter, she sought directions on how to progress with the matter.

**Determination**

5. Tax and therefore revenue issues are complex. The law keeps changing. In this case, Sections 89–91A of the Income Tax [Cap 470, Laws of Kenya] were repealed by item 5 of the Second Schedule to the Tax Procedures Act 2015 (No. 29 of 2015) which came into force on 19<sup>th</sup> January, 2016. Reference to Sections 89 – 91A of the Income Tax Act may therefore be inappropriate. The agency notices were issued under Section 42 of the Tax Procedures Act, 2015 and the procedures prescribed in that Section must be complied with by the agency Banks, and the Respondent.

6. It looks to me therefore that the proper course for the ex parte Applicant is to comply with the relevant provisions of the Tax Procedures Act, 2015 including its objection and appeals procedure. A stay of the agency notices is therefore declined.

**Dated, Signed and Delivered at Mombasa this 17<sup>th</sup> day of November, 2016.**

**M. J. ANYARA EMUKULE, MBS**

**JUDGE**

In the presence of:

No Appearance for Applicant

Mr. Chabala for Respondent

Mr. Kaunda Court Assistant