



IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

JUDICIAL REVIEW DIVISION

JR. MISC. APPL. NO. 419 OF 2012

BETWEEN

REPUBLIC APPLICANT

AND

THE COMMISSIONER OF DOMESTIC TAXES,

KENYA REVENUE AUTHORITY RESPONDENT

AND

BANK OF INDIA (KENYA)

LIMITED 1ST INTERESTED PARTY

KENYA NATIONAL HIGHWAYS

AUTHORITY 2ND INTERESTED PARTY

EX-PARTE

CONSULTING ENGINEERING SERVICES (INDIA)

PRIVATE LIMITED

RULING NO. 1

1. By the Notice of Motion dated 28th November 2012 the *ex-parte* applicant moved the court for;
 - a. *An order of certiorari to bring into this court and quash the decision of the Respondent contained in the letter dated 12th November 2012 and any other letter thereto demanding payment of tax by the Applicant and or any action undertaken thereto.*
 - b. *An order of prohibition prohibiting the respondent through itself, agents and or servants from attaching and or freezing any sums from the Applicant's account numbers 2252199101 and 2252169501 held with the interested party based on the letter dated 12th November 2012 and or*

any other letter thereto.

2. The court did grant leave to operate as a stay of any further proceedings and or execution of the respondent's letter dated 12th November 2012. The letter was an agency notice issued to the 1st interested party to recover taxes from the *ex-parte* applicant's account.
3. The matter was not heard substantively as the parties opted to negotiate an out of court settlement. The parties now agree that the principal sum of taxes demanded by the respondent has been settled and only the interest due is remaining. The outstanding interest is now the subject of an application for waiver of interest and penalties to the Treasury Secretary under **section 94** of the ***Income Tax Act (Chapter 470 of the Laws of Kenya)***. Such an application is a statutory right of a party.
4. In my view, this matter has been exhausted as the substance of the claim has been dealt with. It is therefore not necessary to keep mentioning the matter further. In the event the application for waiver is rejected by the Cabinet Secretary, the *ex-parte* applicant and 1st interested party shall be at liberty to pursue further remedies available to them.
5. In order to close the matter, I order as follows;
 1. **The Notice of Motion dated 20th March 2012 is marked as settled as the 1st interested party has applied for a waiver of interest and penalties under section 94 of the *Income Tax Act*.**
 2. **The enforcement of the agency notice subject of this matter shall be stayed pending the resolution of the application for waiver referred to in (1) above.**

DATED and DELIVERED at NAIROBI this 29th May 2014

D.S. MAJANJA

JUDGE

RULING NO. 2

I have marked this matter as settled on the basis that the issues have been resolved amicably between the principal contenders, the respondent, Kenya Revenue Authority and the 2nd interested party, Kenya National Highways Authority. Both parties are government institutions. In the circumstances, I deviate from the normal rule regarding costs and I make no order as to costs.

DATED and DELIVERED at NAIROBI this 29th May 2014

D.S. MAJANJA

JUDGE

Ms Mate instructed Iseme, Kamau and Maema Advocates for the *ex-parte* applicant.

Mr Wanderi, Advocate instructed by the Kenya Revenue Authority.

Ms Cheruiyot instructed by Kiplagat and Company Advocates for the 2nd interested party.