



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW 710 OF 2008

REPUBLIC APPLICANT

AND

COMMISSIONER OF CUSTOMS & EXCISE 1ST RESPONDENT

COMMISSIONER GENERAL KENYA REVENUE AUTHORITY 2ND RESPONDENT

COMMISSIONER OF DOMESTIC TAXES 3RD RESPONDENT

EX PARTE

MASTERMIND TOBACCO LIMITED

RULING

1. The application before me today is the *ex-parte* applicant’s Chamber Summons dated 27th September 2012 and it seeks a conservatory or stay order suspending recovery of excise duty amounting to Kshs.442,205,324/= pending hearing and determination of the intended appeal from the judgment I delivered on 21st September 2012.

2. Both parties concede that the court has jurisdiction to grant conservatory orders pending appeal and that the court may impose such terms as it deems fit and just in the circumstances.

3. I have considered the arguments made and my duty is to balance the interests of the two parties. On the one hand, the applicant has an appeal which may or may not succeed and in view of the large sum due it should not suffer undue hardship that will result if the orders sought are not granted. It’s business may collapse and the intended appeal will be rendered nugatory. On the other hand, the respondents have the constitutional and statutory authority to collect taxes and they now have a judgment in their favour after waiting since 2008.

4. Having considered the brief submissions by counsel and the circumstances of this case, I now make the following orders;

(a)There shall be a stay of recovery of taxes arising for the judgment delivered in this matter on 21st September 2012 pending the hearing and determination of the intended appeal to the Court of Appeal on the following terms;

(i) The applicant shall pay to the 1st respondent the sum of Kshs.50,000,000/00 within 30 days from today.

(ii) The applicant shall secure a further sum of Kshs. 50,000,000/00 by way of a bank guarantee in favour of the 1st respondent from a reputable bank within 30 days from today.

(iii) In default of compliance with conditions (i) and (ii) or either of them, the orders of stay hereby issued shall lapse forthwith without further orders of the court.

(b)Costs shall be borne by the applicant.

DATED and DELIVERED at NAIROBI this 16th October 2012

D. S. MAJANJA

JUDGE

Mr T. Macharia instructed by Mbugua, Atudo and Macharia Advocates for the exparte applicant.

Mr G. Oraro instructed by Oraro and Company Advocates for the respondents.