

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Miscellaneous Civil Application 779 of 2009

EQUATORS BOTTLERS LIMITED APPLICANT

VERSUS

THE COMMISSIONER GENERAL

KENYA REVENUE AUTHORITY RESPONDENT

RULING

The applicant filed the Constitutional Review Application seeking for leave to operate as a stay. This court considered the exparte application on 10th September 2009 and in my exercise of discretion granted leave on condition that the applicant will deposit a sum of Ksh.100 million. The applicant has now applied for the review of the condition that they should deposit a sum of Ksh.100 million on two grounds. Firstly it was submitted the amount is disproportionate because the entire imposition of the taxes is challenged.

Secondly, the matter is fixed for hearing before the Constitutional Court on 11th November 2009, and the applicant does not intend to delay the matter.

This application is opposed; I have considered the arguments by counsel for the respondent. The reasons why the court in its own discretion imposed the condition was to ensure the applicant does not enjoy the order of stay indefinitely while also considering the matter involves a colossal sum of money demanded by the respondent as taxes and the fact that taxation is a matter of utmost public interest for the proper functioning of the Government.

I have taken into account that the suit is now scheduled for hearing on 11th November 2009 before the Constitutional Court, the applicant has also shown they do not wish to employ delaying tactics, accordingly, I hereby exercise my discretion and review the order of 10th September 2009 and substitute it with a stay of proceedings subject to the applicant depositing an insurance guarantee in the sum of Kenya shillings Thirty million (30 million). That guarantee should be executed in favor of the Registrar of the High Court within seven (7) days. The sum shall remain as security until the determination of the Constitutional review application.

Costs of this application shall be in the cause. This file be returned to the Constitutional Judicial Review Division.

RULING READ AND SIGNED ON 27TH OCTOBER 2009 AT NAIROBI.

M.K. KOOME

JUDGE