



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Civ Suit 547 of 2004

**IN THE MATTER OF: AN APPLICATION BY CENTURY
ADVERTISING LIMITED FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND
PROHIBITION**

AND

IN THE MATTER OF: THE AGENCY NOTICES DATED 31/3/2004; 2/3/2004; 19/2/2004;

**19/2/2004 ISSUED BY D. N. KORONGO, SENIOR ASSISTANT
COMMISSIONER OF INCOME TAX AND DISTRESS ORDERS/NOTICE DATED 4/3/2004
ISSUED AGAINST CENTURY ADVERTISING LIMITED.**

CENTURY ADVERTISING LIMITED.....APPLICANT

-versus-

THE COMMISSIONER OF INCOME TAX.....RESPONDENT

***EX PARTE*..... CENTURY ADVERTISING LIMITED**

RULING

By Notice of Motion dated and filed on the 18th May 2004, the Respondent/Applicant sought (*inter alia*) orders varying the *ex-parte* orders granted on the 6th May 2004. The application is opposed upon the facts and grounds contained in the affidavit of Victor Grado made on the 8th June 2004.

I have considered the application in conjunction with the respective submissions of both counsel and the judicial authorities to which they have respectively referred me.

Firstly, I am satisfied that I have jurisdiction under order 53 rule 1 (4) to vary my orders of the 6th May 2004 in the manner in which I did on the 24th May 2004 when the application was heard *ex-parte* in the first instance.

Secondly, I have perused my handwritten order of the 6th May 2004 which was in the following terms:-

“ B) grant of leave to operate as a stay upto and
**including the 3rd June 2004 unless extended
by the court when the main application shall
be heard *inter parties*.”**

When the order was extracted and issued on the same day, the following words were added:-

“ of the proceedings in question, to wit, the removal and/or cancellation of the agency, notices and the distraint notices issued by the Commissioner against the Applicant dated 31/3/04, 2/3/04, 19/2/04, 19/2/04 4/3/04.....”

I did not order the removal and/or cancellation of the agency, notices and the distraint notices. I deliberately declined to do so as otherwise, I would have been usurping the functions of the trial judge before whom the substantive Notice of Motion for judicial review will be brought for hearing. It is for this reason, and for this reason alone, that I varied my said orders *ex parte* on the 24th May 2004 as the order annexed to the affidavit of Daniel Ngugi made on the 18th May 2004 in support of the application was at variance with the orders I had actually granted on the 6th May 2004.

Accordingly, the application dated the 18th May 2004 is allowed and the orders granted on the 24th May 2004 shall remain and continue in force until the hearing and final determination of the application for judicial review or until the court orders otherwise.

It is so ordered and also that each party shall bear its own costs of the application.

Dated and delivered at Nairobi this 22nd day of June 2004.

P. Kihara Kariuki

Ag. Judge