



**Muigua t/a Kariuki Muigua & Company Advocates v  
Commissioner of VAT & 2 others (Commercial Case 243 of 2012)  
[2025] KEHC 737 (KLR) (Commercial and Tax) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 737 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 243 OF 2012  
A MABEYA, J  
FEBRUARY 3, 2025**

**BETWEEN**

**KARIUKI MUIGUA T/A KARIUKI MUIGUA & COMPANY  
ADVOCATES ..... PLAINTIFF**

**AND**

**COMMISSIONER OF VAT ..... 1<sup>ST</sup> DEFENDANT**

**COMMISSIONER OF INCOME TAX ..... 2<sup>ND</sup> DEFENDANT**

**KENYA REVENUE AUTHORITY ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff filed the following applications: -
  - a) Notice of Motion application dated 6/4/2022;
  - b) Notice of Motion application dated 3/10/2022; and
  - c) Notice of Motion application dated 30/10/2023.
2. In the first application 6/4/2022, the plaintiff sought the following orders:
  - “ a) Spent;
  - b) Spent;
  - c) The Commissioner General, KRA, Commissioner of Domestic Taxes, Eunice Ngendo Kamau and Christine Awino Aganyo be summoned to appear before



this Honourable Court and show cause why each should not be committed to civil jail for contempt of court;

- d) The Commissioner General, KRA, Commissioner of Domestic Taxes, Eunice Ngendo Kamau and Christine Awino Aganyo do comply with the court order made on 15th June 2016 in Court of Appeal Civil Application No. NAI 9 of 2013 and the court order made in Civil Appeal No. 302 of 2013 on 31st October 2018 forthwith;
- e) This Honourable Court be pleased to commit the Commissioner General, KRA, Commissioner of Domestic Taxes, Eunice Ngendo Kamau and Christine Awino Aganyo to civil jail for a period of six months for disobeying the court order made on 15th June 2016 in Court of Appeal Civil Application No. NAI 9 of 2013 and the court order made in Civil Appeal No. 302 of 2013 on 31st October 2018.
- f) This Honourable Court be pleased to direct the Commissioner General, KRA, the Commissioner of Domestic Taxes, Eunice Ngendo Kamau and Christine Awino Aganyo to immediately suspend, cancel and/or stop any audit activities in respect of any of the Plaintiff/Applicant's tax obligations, cease or refrain from issuing any agency notice, refrain from interfering with the Plaintiff/Applicant's business in any way or to take any action in respect of the Plaintiff/Applicant's tax obligations pending the hearing and determination of this suit.
- g) The Officer in Charge of Central Police Station, Nairobi ensure compliance with this Honourable Court's orders;
- h) Costs of this application be in the cause."

3. The grounds for the application were that the respondents were served with the orders made on 15/6/2016 and 31/10/2018 in [CA No. 302 of 2013](#) and Civ. Appln No. NAI 9 of 2013 together with the requisite penal notices. However, they disobeyed the said orders by issuing the applicant with an Audit Commencement Letter and scheduling an audit of its Tax Obligations on 5/4/2022. The applicant contended that the actions of the respondents were in contravention of the orders of 15/6/2016 and 31/10/2018.
4. In opposition to the first application, the respondents relied the replying affidavit sworn on 11/4/2022 by Christine Awino Aganyo, an officer of KRA on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondent.
5. She averred that the applicant filed an application together with this suit seeking an injunction to restrain the respondents from re-assessing, effecting recovery or enforcement of VAT for the years 2000 to 2003 and income tax for the years 1995 to 2009 pending determination of the suit.
6. That the said application was dismissed by Ogola J and the applicant subsequently filed an application before the Court of Appeal being Civ. Appln. No. NAI 9 of 2013 seeking an injunction pending an intended appeal to challenge the aforementioned ruling. It then filed [CA No. 302 of 2013](#) seeking to challenge the said ruling.
7. That the parties filed a consent on 2/3/2016 in Civ. Appn No. NAI 9 of 2013 to the effect that pending the determination of [CA No. 302 of 2013](#), there be a stay of enforcement and or execution of the demand issued on 7/3/2012 and restraining the respondents from taking any further action in respect of the alleged tax arrears, the subject of the suit.



8. That [\*CA No. 302 of 2013\*](#) was settled via a consent order made on 31/10/2018 wherein the appeal was allowed with no orders as to costs; that the court order of 31/10/2018 was only limited to the issues in dispute in that instant suit and that the respondents have not disobeyed the order of the Court of Appeal which was made by consent since no demand had been made for the taxes, the subject of the suit herein.
9. It was averred that, the 4<sup>th</sup> and 5<sup>th</sup> respondent issued an audit commencement letter to the applicant on 24/3/2022 which audit was to commence on 5/4/2022 and was to cover income tax, VAT and PAYE for the period of January 2016 to December 2020 which is not the subject of the suit before this court and therefore the respondents have not disobeyed any court orders.
10. It was further averred that the contempt of court proceedings herein are meant to stop the respondents from executing the audit which is lawful and within the statutory mandate of the respondents.
11. In the second application dated 3/10/2022, the plaintiff sought the following orders:
  - a) Spent;
  - b) Spent;
  - c) The Commissioner General, KRA, Commissioner of Domestic Taxes, Weldon Ngeno, Jane Kagunyi, Rosemary Kithinji and Rebecca Onyango be summoned to appear before this Honourable Court and show cause why each should not be committed to civil jail for contempt of court;
  - d) The Commissioner General, KRA, Commissioner of Domestic Taxes, Weldon Ngeno, Jane Kagunyi, Rosemary Kithinji and Rebecca Onyango do comply with the court order made on 15th June 2016 in Court of Appeal Civil Application No. NAI 9 of 2013 and the court order made in Civil Appeal No. 302 of 2013 on 31st October 2018 forthwith;
  - e) This Honourable Court be pleased to commit the Commissioner General, KRA, Commissioner of Domestic Taxes, Weldon Ngeno, Jane Kagunyi, Rosemary Kithinji and Rebecca Onyango to civil jail for a period of six months for disobeying the court order made on 15th June 2016 in in Court of Appeal Civil Application No. NAI 9 of 2013 and the court order made in Civil Appeal No. 302 of 2013 on 31st October 2018.
  - f) This Honourable Court be pleased to direct the Commissioner General, KRA, the Commissioner of Domestic Taxes, Weldon Ngeno, Jane Kagunyi, Rosemary Kithinji and Rebecca Onyango to immediately suspend, cancel, withdraw and/or stop the intended verification exercise in respect of any of the Plaintiff/Applicant's tax obligations, cease or refrain from issuing any agency notice, refrain from interfering with the Plaintiff/Applicant's business in any way or to take any action in respect of the Plaintiff/Applicant's tax obligations pending the hearing and determination of this suit.
  - g) The Officer in Charge of Central Police Station, Nairobi ensure compliance with this Honourable Court's orders;
  - h) Costs of this application be in the cause."
12. The grounds for the second application are similar to those of the 1st application.



13. The second application was opposed vide a replying affidavit sworn on 5/10/2022 by Rebecca Onyango, an officer of KRA. Her averments were similar to those of the replying affidavit sworn on 11/4/2022 by Christine Awino Aganyo. She averred further that the respondents issued a notice of intention to verify income tax and VAT declarations dated 29/9/2022 for the years 2019 to 2021 in accordance with section 59 of the [Tax Procedures Act](#) which period is not the subject of this suit and therefore the respondents have not disobeyed and court orders.
14. In the third application dated 30/10/2023, the plaintiff sought the following orders: -
- “a) Spent;
  - b) Spent;
  - c) This Honourable Court be pleased to issue an order restraining the Respondents either by themselves their employees, agents, servants or any other person or body from interfering with or disrupting the Applicant’s business, interfering with or closing the Applicant’s personal and business accounts, or in any way undertaking investigations into the Applicant’s tax affairs pending the hearing and determination of this suit.
  - d) This Honourable Court be pleased to join the 4th Respondent in these proceedings to participate as the 4th Defendant.
  - e) Costs of this application be in the cause.”
15. The application was premised on the grounds that the 4th respondent served the applicant with a notice dated 26/10/2023 indicating that the office was undertaking an investigation relating to its tax affairs and that the notice issued by the 4th respondent was meant to stifle the ongoing negotiations which were intended to settle the differences between the parties.
16. The application was opposed vide a replying affidavit sworn on 5/12/2023 by Ruth Marita, an officer of KRA. She averred that the 4th respondent issued a notice to the applicant on 26/10/2023 pursuant to section 59(1) of the [Tax Procedures Act](#) relating to two companies; My Plate Limited and Zailo Limited and its directors including David Kariuki Muigua.
17. That the investigation that was to be undertaken was not connected to this suit as it only touched on tax periods of 2018 to date and related to the two aforementioned companies which are not parties to the suit for which the applicant is a director.
15. Ms Marita averred that there is no connection between the intended investigation and the discussions meant to amicably resolve this suit herein the tax periods, the taxpayers involved and the 3rd respondent’s departments are separate and distinct and that the respondents have not in any way interrupted the applicant’s business and have called for documents which they are legally required to keep and therefore the apprehension is unfounded and unsupported by evidence.
16. In a further affidavit sworn on 23/4/2024, it was averred that the attempt to resolve the dispute through the respondents’ alternative dispute resolution mechanisms did not materialize therefore the dispute herein is not under any discussion in ADR.
17. A supplementary affidavit was sworn on 27/7/2024 by Professor Kariuki Muigua who averred that negotiations between the parties were held on a without prejudice basis therefore the further affidavit was filed in bad faith as the negotiations and correspondence could not be adduced in court.



18. The applicant filed submissions dated 27/6/2024 and 8/8/2014 while the respondent's submissions are dated 9/7/2024. The court has considered the same together with the pleadings and annexures filed in this matter.
19. The first issue for determination is whether the respondents are guilty of contempt of court for disobeying the court orders of 15/6/2016 and 31/10/2018.
20. In *Sheila Cassatt Issenberg & Another v Antony Machatha Kinyanjui* [2021] eKLR, it was stated of contempt of court thus: -

“As was again stated by the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & Others* 1 A NO. 10 of 2010 (13th October, 2011):

In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis).”
21. The order of 15/6/2016 was issued in Civ. Appln. No.NAI.9 of 2013 whereby the parties consent dated 2/3/2016 was adopted. The parties agreed to stay the enforcement of the demand issued on 7/3/2012 and restrained the respondents herein from taking any further action in respect of the alleged tax arrears, pending the determination of the plaintiff's [CA No.302 of 2013](#).
22. The order of 31/10/2018 was issued in [CA No.302 of 2013](#) whereby the court adopted the consent of the parties which allowed the appeal. This meant that the ruling of Ogolla J made on 7/12/2012 in this suit was set aside and the injunction order issued to restrain the respondents from enforcing the demand dated 7/3/2012 or taking any other action in respect of the alleged tax arrears the subject of this suit until the determination of the suit. Copies of the two court orders were annexed as “KM1” and “KM2” in the plaintiff's supporting affidavit of 6/4/2022.
23. The effect of the said orders was that there is an injunction currently in operation restraining the respondents from executing the demand dated 7/3/2012 or taking further action in respect of the alleged tax arrears pending the determination of this suit.
24. Have the respondents acted in contempt of the said orders? The plaintiff contended in the first application that the respondents disobeyed the orders as they issued him with an Audit Commencement letter and scheduled an audit of its tax obligations which they are restrained from conducting pending determination of this suit.
25. The audit commencement letter (annexed as ‘KM 5’ in the applicant's supporting affidavit sworn on 6/4/2022) indicated that the plaintiff would be audited for income tax and value added tax for the period 1/2016 to 12/2020.
26. The basis of this suit herein are two demand letters dated 7/3/2012 whereby the respondents issued tax demands to the plaintiff for VAT for the years 2000, 2001, 2002 and January to June 2003 and income tax for the years 1995-2009. The demand letters were produced as ‘CAA 2’ in the respondents' replying affidavit.
27. In view of the foregoing, it is clear that the proposed audit of the plaintiff's tax affairs did not cover the period in the demand letters which the respondents are barred from taking any action pending the determination of this suit. I find therefore that the respondents are not in contempt of the court as pleaded in the first application.



28. In the second application, the applicant averred that the respondents had disobeyed the orders of 15/6/2016 and 31/10/2018 by issuing him with the notice of intention to verify income tax and VAT declarations for the years 2019 to 2021.
29. I have looked at the notice which is annexed as 'RO10' in the respondent's replying affidavit of 5/10/2022. I find that the period covered in the notice is not the subject of the suit before this court by dint of the tax demands dated 7/3/2012, therefore the respondents have not disobeyed the said orders by issuing the notice.
30. In the third application, the applicant prayed for an order to restrain the respondents from interfering with or disrupting the applicant's business, interfering with or closing the applicant's personal and business accounts, or in any way undertaking investigations into the applicant's tax affairs pending the hearing and determination of this suit.
31. The basis of the application was that the respondents served the applicant with a notice dated 26/10/2023 indicating that investigations were underway relating to the applicant's tax affairs. The applicant argued that the notice would stifle the negotiations that were ongoing between the parties which were meant to settle all their differences.
32. The record shows that the respondents issued a notice to the applicant herein on 26/10/2023 pursuant to section 59(1) of the *Tax Procedures Act* relating to two companies; My Plate Limited and Zailo Limited and its directors including David Kariuki Muigua.
33. The view the Court takes on this matter is that, the continued pendency of this suit does not augur well for either of the parties. The plaintiff feels that he is protected by an interim injunction while the respondent argues otherwise. The suit is yet to be determined and the defendants are desperately looking to carry out audits on the plaintiff which has led to multiple applications. Unless the suit is determined there may never be an end to this circus.
34. In this regard, the Court's view is that the defendants desist from issuing notices of carrying out or threatening audits against the plaintiff while the plaintiff concludes this suit expeditiously. If the parties are able to settle the matter through ADR, the better.
35. Accordingly, the plaintiff only succeeds partially to stop the audits but that part of the applications citing the defendants and the alleged contemnors for contempt is dismissed. However, the defendants are restrained from issuing notices or carrying out or threatening to carry out audits on the plaintiff until this suit is determined. This restraint does not extend to entities that are not parties to this suit.
36. In the meantime, the matter be forthwith listed for pre-trials before the deputy registrar within 30 days of this ruling and the suit be listed for hearing immediately thereafter but in any event not later than 180 days.

It is so ordered.

**SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED and DELIVERED at Nairobi this 3<sup>rd</sup> day of February, 2025.**

**F. GIKONYO**

**JUDGE**

