



Nastaceen Trading Company Limited v Commissioner of Domestic Taxes (Income Tax Appeal E136 of 2025) [2025] KEHC 10677 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E136 OF 2025**

F GIKONYO, J

JULY 3, 2025

BETWEEN

NASTACEEN TRADING COMPANY LIMITED APPELLANT

AND

THE COMMISSIONER OF DOMESTIC TAXES RESPONDENT

RULING

AGENCY NOTICE ISSUED BEFORE APPEAL TIME LAPSE

1. The appellant filed the notice of motion dated 9th June 2025, seeking that pending the hearing of the application inter partes, a temporary order be issued staying and/ or suspending the Agency Notice dated 26th May 2025 issued to Kenya Commercial Bank requiring the appellant's bankers to pay the sum of KES. 498,012,849.00 or any other enforcement action taken by the respondent whether by itself, its officers, employees and/ or agents, be stopped from taking any steps to collect any money pursuant to the said Agency Notice.
2. The basis for the prayer is that the respondent issued the agency notice before the appellant exhausted its right of appeal.
3. The issue is whether the temporary stay of the agency notice pending the hearing of the application should be granted.
4. At the mention of the matter on 20th June 2025, Ms. Almadi for the respondent opposed the application. She asserted that the agency notices were placed as taxes crystallised. She urged that the applicant provide security.



5. Mr. Mburu stated that the appellant had a right of appeal and time had not lapsed when they issued the agency notices. He urged the court to lift the agency notices since the appellant has now appealed. He indicated that the appellant wishes to pursue alternative dispute resolution (ADR).
6. Ms. Almadi maintained that while the respondent is also willing to pursue ADR, the provision of security is key because KES. 498,012,849.00 is owing. She indicated that the respondent is willing to accept 30% of the amount as security in cash.
7. Mr. Mburu was firm that the appellant cannot raise more than KES. 10,000,000/- as it does not owe more than that.

Analysis and determination

8. It appears there is no contest on the granting of stay of the Agency Notice, except, the issue of the amount of security.
9. But, in such matters the purport of Section 42 of the *Tax Procedures Act* will always come to bear. In particular, Section 42 (14) of the *Tax Procedures Act*, which provides as follows: -

“(14) The Commissioner shall not issue a notice under this section unless—

SUBPARA (a) the taxpayer has defaulted in paying an instalment under section 33(2);

(b) the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;

(c) the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;

(d) the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or

(e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.”
10. The prohibition in this provision applies, inter alia, to the period when a party should file appeal, and during the pendency of the appeal in the Tribunal or court.
11. There is need to interrogate this provision in depth to establish its implication, application or relevance to the remedy of stay of execution pending appeal in the High Court.
12. The foregoing notwithstanding, the appellant is willing to deposit security pending appeal in the sum of KES. 10,000,000.
13. The disputed tax is KES. 498,012,849.00. The respondent proposed a deposit respondent of 30% of the disputed tax which comes to KES. 149,403,854.7 as security.
14. In the upshot, I stay the Agency Notice dated 26th May 2025 issued to Kenya Commercial Bank requiring the appellant’s bankers to pay the sum of KES. 498,012,849.00 or any other enforcement action taken by the respondent whether by itself, its officers, employees and/ or agents.
15. In light of the proposal by the parties, I direct the appellant to deposit, within 30 days, a sum of KES. 30,000,000/- with KRA to hold as security pending determination of the appeal.



16. The hearing of the appeal be fast-tracked.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 3RD DAY OF JULY, 2025**

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F. GIKONYO M.

JUDGE

In the presence of: -

Ms. Chepsiror for respondent

Mburu for appellant absent

Kinyua C/A

