



**Seven Seas Technologies Limited v Commissioner for Domestic Taxes (Income Tax Appeal E034 of 2024) [2024] KEHC 2272 (KLR) (Commercial and Tax) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2272 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**INCOME TAX APPEAL E034 OF 2024**  
**JWW MONG'ARE, J**  
**MARCH 5, 2024**

**BETWEEN**

**SEVEN SEAS TECHNOLOGIES LIMITED ..... APPELLANT**

**AND**

**COMMISSIONER FOR DOMESTIC TAXES ..... RESPONDENT**

**RULING**

1. By a Notice of Motion application brought under Certificate of Urgency and filed on 12<sup>th</sup> February 2024 filed under Rule 4 of the *Tax Appeal Tribunal (Appeals to the High Court) Rules*, 2015 Section 32 of the *Tax Appeal Tribunal Act*, Order 42 Rule 6 of the *Civil Procedure Rules*, 2010, Article 159 of the *Constitution of Kenya*, 2010, the Applicant has moved this Honourable Court seeking the following orders:-
  1. Spent
  2. Spent
  3. That pending the hearing and determination of the Appeal, inter-partes there be a stay of execution of the Judgment and decree of the Tax Appeal dated 26<sup>th</sup> January 2024 in TAT No. 1245 of 2022 and consequential orders.
  4. That pending the inter-partes hearing and determination of this Application and the Appeal, the Respondent be directed to lift the agency notices dated 31<sup>st</sup> January 2024 directed to the Applicant's banker Co-operative Bank Limited or issuing any other agency notices against the Applicant.
  5. That the Appellant be at liberty to amend its record of Appeal once typed proceedings from the Tax Appeal tribunal and certified copy of the judgment is obtained.



6. That this Honourable Court be pleased to issue such further orders or directions that it may deem fit to grant.
7. That the cost of this Application be provided for.
2. The application was supported by the grounds set on its face and the supporting affidavit of Michael Macharia, the Chief Executive Officer of the Applicant Company. The Application was opposed and both the Applicant and the Respondent filed their written submissions and appeared before the court on 19<sup>th</sup> February 2024 to highlight the same.
3. In a nutshell, the Applicant is displeased with the judgment of the Tax Appeals Tribunal(TAT) in respect of TAT Appeal No. 1245 of 2022 in which the Appellant has been found liable for payment of the sum Kshs.900,443,330/= in tax arrears to the Respondent. The Applicant has alongside this application filed a memorandum of appeal seeking to challenge the TAT's decision and argues that it stand to suffer irreparable loss if the said judgment is allowed to stand. The Applicant further argues that the said judgment sum is a colossal amount that will cripple its operations and drive it out of business. The Applicant further reiterates that the application has been filed without inordinate delay and urges the Court to stay the execution of the judgement thereto and lift the agency notices placed by the Respondent against their banker Co-operative Bank of Kenya.
4. The Respondent opposed the application. The Respondent argues that the application for stay pending appeal can only be issued once the conditions set by order 42 Rule 6(1) of the Civil Procedure Rules, 2010, have been complied with. Accordingly, the Respondent argues that the Applicant must demonstrate that it stands to suffer substantial loss if the orders are not granted and that the Application has been brought without inordinate delay and Appellant must provide security for costs for the due performance of the decree or orders. The Respondent urged the court to order a security equivalent of 70% of the decretal amount or to pay 50% of the same as taxes. The Respondent further reiterated that any funds paid as costs by the Applicant can always be refunded if the Appeal is successful.

### **Analysis and Determination**

5. I have read carefully and considered the application as filed by the Applicant together with the supporting affidavit and the Memorandum of Appeal filed alongside the same. I have equally considered the rival submissions by the parties. The application is brought under 42 Rule 6(1) which provides as follows:-
  - No orders of stay shall be made under subrule (1) unless-
    - a. The court is satisfied that substantial loss may result to the Applicant unless the order is made.
    - b. The application has been made without inordinate delay; and
    - c. Such security has been made for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.
6. I have considered the rival arguments put forward by both parties. I note that the judgment whose execution is sought to be stayed is in excess of Kenya Shillings Nine Hundred Million. By any stretch of imagination, the amount is colossal. I also note that the Applicant has filed a Memorandum of Appeal and has sought time to file amendments thereto once it is able to obtain the judgement of the TAT and the typed proceedings. The Respondent opposes the application and argues that the findings by the



TAT was correct one. The Respondent however argues that the Applicant should be made to pay the taxes as per the said judgment instead and has argued that if the Applicant is successful the Respondent has capacity to refund the fund so paid and being charged with duty to collect taxes on behalf of the public, the court should be a hindrance in realization of that right.

7. Having heard the arguments by both parties and being cognisant of the decisions emanating from these courts, I am alive to the duty imposed upon the court to consider that a successful litigant has a right to the fruits of their judgment while at the same a party should not be denied to prosecute their appeal to the highest level available to them. The court has therefore a duty to balance the competing interest of both parties. To recap the words of the court in *RWW v EKW* [2019]eKLR:-

“the purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safe guarded and the appeal if successful is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called to ensure that no party suffers prejudice that cannot be compensated by an award of damages.”

8. Guided by the above I am satisfied that the application before me is merited and I shall allow the same.

9. Final disposition:-

- a. The application dated 12<sup>th</sup> February 2024 is allowed under the following terms:-
- i. That the Applicant shall pay to the Respondent the sum of Kshs.300,000,000/=(the equivalent of 30% of the decretal sum) as security for costs as security for costs pending the hearing and determination of this Appeal.
  - ii. That upon payment of the said funds to the Respondent, all agency notices placed by the Respondents in the accounts of the Applicant shall stand vacated and or lifted.
  - iii. That each party shall bear their own costs of this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5<sup>TH</sup> DAY OF MARCH, 2024.**

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

- 1. Mr. Kirui for the Appellant.**
- 2. Ms. Kinyua holding brief for Ms. Njuguna for the Respondent.**
- 3. Amos - Court Assistant**

