



REPUBLIC OF KENYA



**KENYA LAW**  
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**Commissioner of Investigations and Enforcement v Mwangi (Tax Appeal E059 of 2020)  
[2022] KEHC 3176 (KLR) (Commercial and Tax) (13 May 2021) (Judgment)**

Neutral citation: [2022] KEHC 3176 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
TAX APPEAL E059 OF 2020  
DAS MAJANJA, J  
MAY 13, 2021**

**BETWEEN**

**COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT**

**AND**

**DAVID NDII MWANGI ..... RESPONDENT**

*(Being an appeal from the Judgment of the Tax Appeals Tribunal at Nairobi  
dated 27th March 2020 in Tax Appeal Tribunal Appeal No. 35 of 2018)*

**JUDGMENT**

1. On March 17, 2021, the court delivered judgment where it set aside the decision of the Tax Appeals Tribunal dated March 27, 2020 and upheld the Appellant's ("the Commissioner") tax assessment of the Respondent on Value Added Tax in the sum of KES 2,807.758.00. The Respondent has evinced his intention to appeal the court's judgment and has already filed an appeal to the Court of Appeal. He has moved this court by the Notice of Motion dated April 1, 2021 and made, inter alia, under Order 42 Rule 6 of the *Civil Procedure Rules* seeking a stay of execution of the court's judgment as he prosecutes his appeal at the Court of Appeal; Civil Appeal No. E163 of 2021.
2. The application is grounded on the facts set out on its face together and the Respondent's supporting affidavit sworn on 1<sup>st</sup> April 2021. In response, the Commissioner has filed a replying affidavit sworn on April 12, 2021 by its Manager, Essie Gikuhi. The parties have also filed written submissions in respect of their supporting arguments.
3. I have considered the parties' arguments and I note that the Commissioner does not oppose the grant of orders of stay pending appeal provided a suitable and sufficient security is ordered to protect its interest in the taxes due and affirmed by the court.



4. The Respondent has offered security by way of bank guarantee in the sum of KES 500,000.00, which sum is to cover the tax demand of KES 2,807.758.00. The Commissioner though, prays for a higher security sum commensurate with the amount of tax taking into account the time that has elapsed since the initial demand to the Respondent was made.
5. Considering the circumstances of the case, I allow the Notice of Motion dated 1<sup>st</sup> April 2021 on the following terms:
  - (a) An order of stay of execution of the judgment herein and in particular collection of taxes due based on the judgment be and is hereby granted pending hearing and determination of Civil Appeal No. E163 of 2021 on terms hereunder.
  - (b) The Respondent shall provide security in the form of a Bank Guarantee for KES. 1,000,000.00 from a reputable bank within 45 days from the date hereof.
  - (c) In default of the condition set out above, the order shall lapse and the Appellant shall be at liberty to proceed with execution and or collection of taxes.
  - (d) This order should remain in force for a period of one (1) year unless extended by the court or varied and/or set aside by the Court of Appeal.

**DATED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MAY 2021.**

**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr M. Onyango.

Ms Gitau instructed by Kenya Revenue Authority for the Commissioner of Investigations and Enforcement.

Mr Mbaye instructed by Humphrey and Company Advocates for the Respondent.

