



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D.S. MAJANJA J.

TAX APPEAL NO. E002 OF 2020

BETWEEN

LEAH NJERI NJIRU.....APPELLANT

AND

COMMISSIONER OF INVESTIGATIONS

AND ENFORCEMENT.....1ST RESPONDENT

CHIEF MANAGER, DEBT COLLECTION

ENFORCEMENT AND ENFORCEMENT

KENYA REVENUE AUTHORITY.....2ND RESPONDENT

RULING NO. 2

1. By the Judgment dated 26th March 2021, I dismissed the Appellant’s appeal against the decision of the Tax Appeal Tribunal allowing the appellant’s appeal partially and revising her tax liability to KES. 18,006,461.00 being the principal tax exclusive of interest and penalties to date. As a result, the Appellant has moved this court by the Notice of Motion dated 13th April 2021 made under Order 42 rule 6 of the Civil Procedure Rules seeking a stay of execution of the judgment pending the hearing and determination of her appeal to the Court of Appeal. In addition, the Appellant seeks an order that the security provided in the form of a guarantee in the sum of KES 2,000,000.00 issued in favour of the 2nd Respondent as a result of the order made by this court on 28th July 2021 be utilized as security for the appeal.
2. The application is supported by the Appellant’s affidavit sworn on 13th April 2021. It is opposed. The 1st Respondent (“the Commissioner”) has opposed the application through the Grounds of Opposition dated 11th June 2021.
3. The Appellant states that she has an arguable appeal with a high probability of success and that unless the orders for stay are granted, there is a likelihood that the Commissioner may execute the judgment, prejudice her and render the appeal moot.
4. On its part, the Commissioner argues that the Appellant has enjoyed stay since the matter was filed at the Tribunal in 2017 and that it is in the interest of the Appellant to pay the said assessed taxes as the said sum continues to accumulate penalties and interest. However, the Commissioner submits that should the court be inclined to grant stay, then the Appellant should be directed to provide security of taxes of 100% of the principal taxes due. Further, the Commissioner states that the Appellant has not tabled any evidence as proof of her inability to pay the assessed taxes or security.
5. As this stage, it is the duty of the court to weigh the Appellant’s entitlement to exercise its statutory right of appeal and the Commissioner’s entitlement to the fruits of its judgment in this case to collect the taxes to be paid by the Appellant and in addition to ensure that the appeal is not rendered nugatory by imposing substantial loss on the Respondent rendering the appeal itself nugatory (see ***Keroche Breweries Limited v Commissioner of Domestic Taxes ML HC ITA E012 of 2020 [2020] eKLR***).
6. I am aware that there is in force a security for part of the amount demanded by the Commissioner. As this is now the 2nd appeal and considering the circumstances of the case, I now order as follows:

(a) A stay of execution and further enforcement of taxes of the decision of the Tax Appeal be and is hereby granted pending the hearing and determination of the appeal to the Court of Appeal on condition that the Appellant's Bank Guarantee for KES. 2,000,000.00 ordered by this court on 14th June 2020 shall remain force as security for the appeal for a period of one year unless otherwise extended by this court or the Court of Appeal

(b) In addition, the Appellant shall pay the Commissioner KES. 2,000,000.00 within a period of 60 days from the date hereof.

(c) In default of any of the condition, the order of stay issued herein shall stand discharged.

(d) Costs of this application shall be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF JUNE 2020.

D. S. MAJANJA

JUDGE

Mr Thiong'o instructed by Thiong'o and Partners Advocates for the Appellant.

Mr Mutua, Advocate instructed by Kenya Revenue Authority for the Commissioner of.

Investigations and Enforcement.