

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 100 OF 2016

LTI KISII SAFARI INNS LIMITED

t/a KASKAZI BEACH HOTEL.....PLAINTIFF

VERSUS

KENYA REVENUE AUTHORITY.....DEFENDANT

RULING

1. By a Notice of Motion dated 6/10/2016 and filed in court the same day, the plaintiff/Applicant sought from the court one substantive order of an injunction pending suit to restrain the defendant from attaching and or carting away the plaintiffs movable Assets in execution of the proclamation served by the Defendant.

2. That application was supported by the supporting Affidavit of DR. CHRISTA MARRIANE OTARA and supplementary Affidavit (titled FURTHER AFFIDAVIT) sworn on 27/3/2017 with leave of the court.

3. The gist and grounds in the Application and Affidavits for seeking the orders are primarily that the taxes being demanded by the Respondent in the sum of Kshs.59,260,680/= is computed and based on salary earned by staff but have not been paid and that the plaintiff is keen to pay the arrears of taxes from other sources owing to cash crunch in the tourism sector but the defendant has refused to agree on terms hence the plaintiff would be exposed to suffer loss and damages if orders are not granted. To the Affidavit in support the plaintiff exhibited the proclamation, Notice of distress, and a Board resolution resolving to sell a property known as KWALE/DIANI BEACH BLOCK 1655 to pay the tax arrears. Essentially that Affidavit in support does not dispute the tax arrears but acknowledges same and seeks time to pay.

4. The Further Affidavits on its part equally admit the arrears and exhibits attempts by the plaintiff to pay by showing some three payment receipts all totaling Kshs.2,500,000/= and an agreement to sell a disclosed parcel of land at Kshs.57,344,000/=.

5. The Application was opposed by the Replying Affidavit of one ASHA SALIM whose thrust is that the demanded tax arrears are based on self-assessment for the period of January 2013 to March 2016 and that even if the salaries have not been paid the law mandates taxes upon such salaries are payable by the plaintiff/Applicant once earned even if not paid. That Affidavit exhibited the calculation of the tax arrears and a letter dated 28/5/2016 referring to a meeting between the parties and a commitment by the plaintiff to pay the arrears of tax by the 30/9/2016. With such being the history and common facts of the dispute, the Defendant contended that it had validly and lawfully exercised its powers under section 41, Tax Procedures Act, to issue a distress over the plaintiffs movable assets and that there had not been preferred any valid reason to interfere with the lawful process.

6. Having looked at the totality of the material availed and this being an application for a temporary injunction, I am in no doubt that there is no prima facie case disclosed. There cannot be a prima facie case when it is in black and white in the hands of the plaintiff itself that the tax is due and the only reason it has not paid is the hard economic times for which it has been given more than one year to sell a disclosed property and settle but no meaningful steps have been taken to settle the taxes.

7. Without a prima facie case these cannot be a basis to grant the sought injunction for which reason I do find no merit in the application dated 6/10/2018 and I therefore order it dismissed with costs.

Dated and delivered at Mombasa this 11th day of June 2018.

P.J.O. OTIENO

JUDGE