



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**PETITION NO.14 OF 2015**

**MILIMAN RESORT HOTEL LIMITED.....PETITIONER**

**VERSUS**

**THE KENYA REVENUE AUTHORITY.....RESPONDENT**

**RULING**

1. The application dated 31.2.12 by the applicant prays for the following reliefs:

a. **Pending the hearing and determination of the petition a conservatory order do issue restraining the respondent by themselves agents assigns or any other government department from taking any agitated action against the directors and the principals of the petition company in furtherance of their assessment notice that is the subject of the petition.**

2. The application is supported by the affidavits of **WALTER EDWIN OMINDE** the applicant director sworn on the said date. The issues raised there are clear and straightforward. It appears that there has been a history of demands for taxes from the respondent between the years 2007-2014 and the parties have heard various correspondences. Apparently due to bad economic times the applicant lost his hotel business when the same was sold by M/S Diamond Trust Bank Limited to Le-Savanne Hotel & Lodges Limited in the year 2014.

4. On 17.6.15 the respondent issued a notice to the petition/applicant containing an assessment for the period between 2001-2014 estimated at about Kshs.78 million. This prompted the filing of the petition and the motion herein. The applicants states that the said estimated assessment was wrong as there was no adequate notice by the petitioner and that in any case there have been previous audit by the respondent and certificates of compliance granted.

5. In short the applicant felt that its fundamental right had been infringed hence the need to seek protection from the court.

6. One **JAMES WAINAINA** the supervisor in the respondent's investigations and Enforcement Department Western Region filed a replying affidavit in opposition to the application. The substance thereof is that the applicant has failed to comply with the notice to supply the respondent with various documents required and this therefore forced the respondent to issue the tax estimates notice. That if the applicant intended to object to the tax estimate it ought then to have filed an objection pursuant to Section 84 of the Income Tax Act.

7. The respondent concluded by praying that should this court grant the applicant its request then it ought

to demand security pending the determination of the petition.

8. Having carefully perused the application and the attached responses and the submissions by the counsels representing them, it is apparently clear that the parties have had a long history of engagement. The respondent's statutory duty is to collect taxes on behalf of the government and that duty is anchored within the constitution. That duty is underpinned by the relevant statutory guidelines and ought to be fair to the tax payers.

9. The question herein is whether the notice issued by the respondent was actually received by the applicant. Nothing essentially was shown that the notice was illegal.

10. Although it is claimed by the applicant that it never received the notice dated 22.8.14 there is a stamp and a signature of the said date. The same goes for the one dated 17.6.15.

11. Be it as it may, the proper recourse taking into consideration the history before the parties herein is to allow the respondent undertake its statutory duty of collecting taxes on behalf of the government. This however should be done fairly and in a reasonable manner. The applicant must be protected from any unwarranted procedures by the respondent, Yet at the same time it ought to be obligated to pay the relevant taxes if any.

12. Consequently I shall allow the application dated 31.7.15 as follows:

**a. Pending the hearing and determination of the petition herein, a conservatory order restraining the respondent from taking any action against the petitioner/applicant herein or its proprietors is issued on condition that the petitioner do provide a bank guarantee of Kshs.50,000,000/- within the next 21 days from the date herein.**

**b. Costs shall abide the outcome of the petition.**

**Dated, signed and delivered this 2nd day of Dember 2015.**

**H. K. CHEMITEI**

**J U D G E**

In the presence of:

.....**for petitioner**

.....**for respondent**