

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 127 OF 2013

KENYA REVENUE AUTHORITY..... APPLICANT/APPELLANT

VERSUS

HUSSEIN IBRAHIM NUNI

RICCARDO EPZ INTERNATIONAL LTD. RESPONDENTS

RULING

The application before the court is a Notice of Motion dated 8th March, 2013 and filed by the applicant, the Kenya Revenue Authority. It seeks: -

That this court grants a stay of execution of the order of the lower court dated 27th February, 2013 in suit No. CMCC no. 7407 of 2012 pending the hearing and final determination of the appeal dated 8th March, 2013 and filed on the same date.

Other reliefs sought have already been dealt with except costs. This court earlier granted an interim stay of execution.

I have carefully perused the contents of the file including the ruling appealed from. I have also carefully considered the application after taking into account the written submissions from both sides, and the grounds of appeal recorded in the Memorandum of Appeal.

I am satisfied that the appeal raises not only arguable but weighty issues which require proper investigation during the trial of the appeal. These include possible or probable violation of taxation laws which may have led to or amounted to criminal liability on the part of some persons being or related to parties through the law of agency. There is also a possibility that conduct against prevention of breach of laws related to this Republic's economic welfare may be involved.

It is also probable that if execution of the orders of the lower court is not stayed until the appeal is finally disposed off, the Applicant is indeed likely to suffer irreparable loss and damage in that the goods seized under taxation laws are likely to be disposed of by the Respondent on the face of the large sum of taxes of over Ksh.41,000,000/- remaining unpaid by the party in whose name the goods were imported.

Furthermore, it is observed that the order by the lower court against the Applicant to force it to assist in the change of ownership of the consignment, may possibly amount to an illegality, especially where the Appellant had nothing to do with the person, manner and reason which led to consignment of the goods being made in the name of a third party.

Finally, this court having become aware from the facts on the record that some of the transactions involved in the consignment of the goods involved in this case may be illegal and against public policy, cannot without caution, give reliefs that might aid in illegal and/or unlawful conduct of the parties who appear before it.

In the circumstances and taking the facts before the court and the appeal records as mere allegations to be proved on the balance of probability during the trial of the appeal, this court finds that the applicant's application for stay of execution is merited. To that end a stay of execution of the lower court

decree, is hereby ordered until the appeal is finally determined with an order aimed at the Appellant to the effect that, the prosecution of the appeal to be completed within six months or the appeal shall stand dismissed. Costs to be in the cause. Orders accordingly.

Dated and delivered in Nairobi this 4th day of June, 2013.

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D A ONYANCHA

JUDGE