

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION

ITA E099 OF 2020

[Coram: Gikonyo]]

BLUEJAY LIMITED
APPELLANT/ APPLICANT

VERSUS

COMMISSIONER OF DOMESTIC
TAXES.....

.....RESPONDENT

RULING

1. The appellant/ applicant filed the notice of motion dated 3.6.2025 seeking release of the security deposited in court pending the appeal, following the determination of the appeal.
2. The application is made under **section 1A, B, C and 3A of the Civil Procedure Act.**
3. The background to this matter is that the applicant lodged an appeal against the judgment of the Tax Appeals Tribunal (TAT) at Nairobi delivered on 18.9.2020 in

TATA No. 87 OF 2019. The applicant also filed an application for stay of execution of the judgment pending the hearing and determination of the appeal.

4. The court issued a stay on 5.10.2020, on condition that the applicant deposits Kshs. 70,000,000 as security.

5. The applicant deposed that it deposited the security on 11.11.2020. It also deposed that the court delivered judgment in its favour on 22.5.2025. It submitted that the need to hold the security has now been extinguished in view of the judgment.

No response

6. There was no response by the respondent despite service evidenced by the affidavit of service sworn by Brian Mwenda on 30.7.2025.

Analysis and Determination

7. The security in issue was deposited pending the hearing and determination of the appeal. Is there any or any lawful reason for holding the security? This question constitutes the issue for determination in this application.

8. In the judgment dated 22.5.2025, the court allowed the appeal, in the applicant's favour.

9. The final orders of the court are as below: -

“20. In the end, the Appeal is hereby allowed, with the consequence that:

a. The decision of the Tax Appeals Tribunal dated 18th September 2020 is hereby set aside.

b. The Respondent's tax assessment dated 1st November 2018, was null and void hence unenforceable; while the Appellant's Objection thereto is deemed to have been allowed by operation of law under section 51(11) of the Tax Procedure Act.

c. The Appellant shall have the costs of this Appeal.”

10. The security was deposited pending the hearing and disposal of the appeal. By that incidence of the final judgment in the appeal, there is no any or any legal basis for holding the security. Accordingly, the security should be released to the depositor.

Disposal

11. In the upshot, the subject application is allowed in terms of prayers 3 and 4.

12. No orders as to costs.

Dated, signed and delivered at Nairobi through Microsoft teams online application this 4th day of December, 2025

F. Gikonyo M

Judge

In the presence of: -

Ms. Nduta for Dr. Kamau for Appellant

KRA Absent

CA Kinyua