



**Flippah General Stores (K) Limited v Commissioner of Domestic Taxes (Income Tax Appeal E125 of 2025) [2026] KEHC 1564 (KLR) (Commercial and Tax) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1564 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E125 OF 2025  
BK NJOROGE, J  
FEBRUARY 12, 2026**

**BETWEEN**

**FLIPPAH GENERAL STORES (K) LIMITED ..... APPLICANT**

**AND**

**THE COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT**

**RULING**

1. This Ruling is in respect to the Appellant/Applicant's application under a Certificate of Urgency by way of a Notice of Motion dated 4<sup>th</sup> June, 2025. It is supported by the affidavit of David Mutinda Mwaura sworn on 4<sup>th</sup> June 2025.
2. It seeks the following orders;
  - a. Spent.
  - b. Spent.
  - c. That there be a stay of the execution of the objection decision dated 9<sup>th</sup> September 2024 by the Respondent and any future enforcement action emanating thereon pending the hearing and determination of the Appeal herein as filed same being Milimani High Court Tax Appeal No. E125 of 2025.
  - d. That pending the hearing and determination of this application and Appeal, the Court gives an order granting the Appellant access to his Bank Account No. 01101XXXX held at Co-operative Bank and Account No. 034028XXXX held at Equity Bank.



- e. That cost of and incidental to this application do abide the outcome of the Appeal.
3. The Application is opposed by the Respondent through a Replying Affidavit of Nahashon Ndungu sworn on 18<sup>th</sup> June, 2025.
4. The Applicant has filed a further affidavit sworn by David Mutinda Mwaura on 7<sup>th</sup> July 2025.

### **Background Facts**

5. By a letter dated 21<sup>st</sup> December, 2023, the Appellant wrote to the Respondent requesting to review its returns for April, May and July 2023. It stated that they had been made without its knowledge and during a period when it could not access its iTax account. The Respondent by a letter dated 14<sup>th</sup> February, 2024 requested the Appellant to provide VAT returns for the month of April, May and July, 2023 for review and the supporting documents for verification.
6. On 14<sup>th</sup> June, 2024 the Respondent raised additional assessments on the iTax system and issued its findings and demand notice on 18<sup>th</sup> June, 2024. The Appellant lodged its objection notice on 12<sup>th</sup> July, 2024 against the assessment orders. The Respondent issued an objection decision confirming the additional assessments on 9<sup>th</sup> September 2024. This was for the months of June, July and September 2024. The principal tax amounted to Ksh.4,663,387.52.
7. The Applicant proceeded to file an appeal to the Tax Appeals Tribunal against the Assessment decision of 9<sup>th</sup> September, 2024. The Notice of Appeal dated 26<sup>th</sup> September, 2024 was filed on 3<sup>rd</sup> December 2024.
8. The matter proceeded before the Tax Appeals Tribunal where the Respondent defended its decision. The Tax Appeals Tribunal delivered a judgment on 2<sup>nd</sup> May, 2025 dismissing the Appeal and upholding the Objection Decision dated 9<sup>th</sup> September 2024. Each party was directed to bear its own costs.
9. It is the intended execution of the objection decision dated 9<sup>th</sup> September 2024 and further enforcement action that has triggered this application.

### **Issues for determination**

10. The Court has considered the written submissions by the Applicant, as well as the Respondent's. Having considered the application as well as the response, the Court frames the following two (2) issues for determination.
  - a. Whether the Court should grant an order of stay of execution pending hearing of this appeal.
  - b. Whether the Court should unfreeze the Applicant's Bank Accounts and grant it unconditional access to the funds therein.

### **Analysis**

11. This Application is premised on Order 42 rule 6(2) of the *Civil Procedure Rules*, which states as follows:
  6. Stay in case of appeal [Order 42, rule 6.]
    - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of



such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (2) No order for stay of execution shall be made under subrule (1) unless—
  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

12. Section 17 of the *Tax Appeals Tribunal (Appeals to the High Court) Rules 2015* states as follows:

17. Ancillary applications

- (1) Ancillary applications to the Court, if not made at the time of hearing, shall be made by notice of motion and titled in the matter of the tax appeal, supported by affidavit.
- (2) If no appeal has been filed, the motion shall be titled in the matter of the intended tax appeal

**a. Whether the Court should grant an order of stay of execution pending the hearing of this appeal.**

13. The Applicant submits that it has already filed a Notice of Appeal against the judgment of the Tax Appeal Tribunal dated 2<sup>nd</sup> May 2025. The Notice of Appeal was filed on 16.5.2025. The Records of Appeal has also been filed 5<sup>th</sup> June 2025.
14. It is the Applicant's prayer that the substance of the Appeal, being the amount being demanded by the Tax Authority be preserved. The amount demanded is said to be colossal at Kshs.5,534,600/=. It is submitted that if the Respondent proceeds to recover this amount, the Applicant will suffer substantial loss. That reversing such payments already made will cause immense hardships to the Applicant.
15. On the other hand, the Respondent submits that it is entitled to recover the fruits of the judgment. That taxes being for public benefit, the Respondent should not be restrained from collecting the same. That ultimately is the public who stands to suffer if the orders sought are made and the Applicant is at a later date, unable to settle the taxes due.
16. The Court is therefore called upon to balance the rights of a Tax Payer to challenge the objection decision of the Respondent, in this appeal. This is against the right of the Tax authority to collect taxes, which are ultimately to be used for the benefit of the Kenyan Public.



17. The Court is called upon to exercise its discretion and each case is to be determined upon its own specific facts and circumstances.
18. The Court follows the decision in *Antoine Ndiaye v African Virtual University* [2015] KEHC 6783 (KLR). Gikonyo J. stated as follows,

“The relief of stay of execution pending appeal is governed by Order 42 Rule 6 of the *Civil Procedure Rules*. The relief is discretionary although, as it has been said often, the discretion must be exercised judicially, that is to say, judiciously and upon defined principles of law; not capriciously or whimsically. Therefore, stay of execution should only be granted where sufficient cause has been shown by the Applicant. And in determining whether sufficient cause has been shown, the court should be guided by the three prerequisites provided under Order 42 Rule 6 of the Civil Procedure Rules, that:

- a. The application is brought without undue delay;
- b. The court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered; and
- c. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”

19. The Court also takes note of the decision of H. Namisi J. in *Damasa Wholesalers Limited v Commissioner of Investigations and Enforcement* [2025] KEHC 3643 (KLR). The Court citing another decision stated as follows.

“In *RWW v EKW* [2019] eKLR, considered the purpose of a stay of execution order pending appeal, in the following words:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

20. The Court notes the Appeal was filed without any delay.
21. The Applicant alleges that execution or enforcement of the objection decision has already commenced. This is by way of freezing of the Applicant’s Bank Accounts by the Respondent.
22. It is this very Bank accounts that the Applicant’s wishes to access for purposes of withdrawing funds. That funds are said to be for purposes of running the Applicant’s business.
23. The Respondent opposes the granting of such orders. To the Respondent, there is no telling whether the Respondent will not withdrawal all the funds; leaving accounts bare. Any enforcement subsequent thereto may be faced with difficulties if the Bank Accounts are empty.



24. The Court is persuaded of substantial loss should the execution be completed.
25. Looking at this matter as a whole, the Court notes that the Appeal is ripe for hearing. The order that commends itself to this Court is that let there be a stay of execution. The freezing orders on the Bank Accounts are to remain in place to preserve substance of the Appeal. In this manner the Respondent is equally not prejudiced, as the funds will be preserved.

**b. Whether the court should unfreeze the Applicant's Bank Accounts and grant it unconditional access to the funds therein.**

26. The Court has already pronounced itself on this issue. This is by declining to grant the order for unfreezing the accounts as sought, for reasons stated. It is only fair and safe to hold the frozen funds in situ. The Applicant has not indicated the exact amount of funds held in the accounts. Perhaps were the balances held in excess of the tax claimed, the Court would have been persuaded to make suitable orders. For that reason, the Court cannot pronounce itself more on this issue at this point in time.
27. As to costs, the Court is of the view that let the costs of the Application abide the outcome of the Appeal.

**Determination**

28. The Applicant's application by way of a Notice Motion dated 4<sup>th</sup> June 2025 is allowed in the following terms:
  - a. That there be a stay of the execution of the objection decision dated 9<sup>th</sup> September 2024 by the Respondent and any future enforcement action emanating thereon pending the hearing and determination of the Appeal herein as filed same being Milimani High Court Tax Appeal No. E125 of 2025. That this is on condition that the freezing orders by the Respondent on the Applicant's Bank Accounts Nos Bank Account Nos. 01101XXXX held at Co-operative Bank and Account No. 034028XXXX held at Equity Bank do remain in place pending the hearing and determination of this Appeal.
  - b. That the costs of the application do abide the outcome of the Appeal.

24. Parties are directed to take directions for the hearing and disposal of the Appeal.
25. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

Mr. Wafula holding brief for Miss Macharia for the Appellant/Applicant

Miss Ng'ang'a for the Respondent

Mr. Peter Wabwire - Court Assistant

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