

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

INCOME TAX APPEAL NO. E331 OF 2025

MAKUTANO CYCLEMATT LIMITED.....APPELLANT

VERSUS

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

RULING

1. This ruling concerns the Respondent's Notice of Motion dated 24th April 2025 seeking, inter alia, the dismissal of the appeal for failure by the Appellant to comply with a conditional order issued by this Court on 17th December 2024.
2. The Respondent further seeks orders that the Appellant be cited for contempt of court, that the Respondent be at liberty to recover the disputed taxes, and that costs be awarded.
3. The application is grounded on the affidavit of **Hellen Njoroge**, an authorised officer of the Respondent. It was contended that the Appellant had filed an appeal challenging the decision of the Tax Appeals

Tribunal dated 5th July 2024. The Court, in the exercise of its discretion, allowed the application but imposed a condition requiring the Appellant to deposit thirty percent (30%) of the disputed tax within thirty (30) days.

4. It was averred that the Appellant failed, refused and/or neglected to comply with the said order, thereby rendering the appeal incompetent and an abuse of the court process. It was further contended that such conduct amounted to contempt of court and warranted dismissal of the appeal.
5. The Respondent maintained that it was in the interest of justice that the appeal be dismissed to uphold the dignity of the court and prevent further delay in tax recovery.
6. The Appellant, through the replying affidavit sworn by **Nahashon Wainaina Ndegwa on 9th May 2025**, opposed the instant application and urged the court to reject it. He deposed that the application was predicated on no juridical provisions and that the court lacked jurisdiction to entertain it.
7. It was contended that under the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015, no jurisdiction was conferred upon the court to dismiss an appeal for failure to deposit security, cite a party for contempt in respect of such failure, or grant the Respondent liberty to proceed with recovery of the disputed taxes.

8. The Appellant further averred that the Respondent had failed to file a statement of facts as required under Rule 8 of the said Rules for over five months, rendering the appeal uncontested and disentitling the Respondent from audience. It was thus urged that the application be dismissed with costs and the appeal be allowed. Additionally, it was contended that the application was bad in law as it was supported by an affidavit sworn by counsel on contested matters.
9. The Appellant therefore prayed that the motion be rejected with costs.

Analysis and determination

10. The Appellant and Respondent both filed submissions dated 3rd September 2025 and 10th July 2025, respectively, which the Court had duly considered. From the pleadings and submissions, the sole issue for determination is whether the Appellant's failure to comply with the conditional order renders the appeal incompetent.
11. The background of the matter is that the Appellant filed an application dated 21st November 2024 in Miscellaneous Application No.E978 of 2024 seeking a stay of execution pending appeal against the judgment of the Tax Appeals Tribunal in Nairobi Tax Appeal No.E456/2023 Makutano Cyclematt Limited v Commissioner of Domestic Taxes, which was delivered on 5th July 2024. The Appellant also sought leave to file its appeal out of time against the Tribunal's decision.

12. Upon considering the application, Mabeya J gave the following order:

13. *“There be a stay of execution on condition that the Applicant deposits with the Respondent 30% of the disputed taxes within 30 days.”*

14. The application and order were produced in the Respondent’s supporting affidavit as ‘HN-1’. It is undisputed and unfortunate that the Appellant did not adhere to the terms of the order by paying the 30% deposit within 30 days of its delivery to the Respondent.

15. Litigants have the obligation to obey a court order unless it is set aside and no longer in effect. This was stated in the case of Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ) (18 February 2015) (Ruling) whereby the Court held:

“As stated by Romer, L.J. In Hadkinson –vs- Hadkinson, (1952) ALL ER 567, ‘It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

Lord Cottenham, L.C., said in Chuck –vs- Cremer (1) (1 Coop. temp.Cott 342):

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.” The above pronouncements of law ring true now as they did over sixty years ago when they were made in Hadkinson’s case. Unfortunately, what we have now is persons both ordinary mortals and persons in authority treating Court orders with unbridled contempt with blatant impunity.”

16. The Court concurs with the authority above. In this case, the conditional stay of execution granted by the court lapsed automatically after the non-compliance by the Appellant herein. The Respondent argued that the appeal filed herein ought to be struck out and the Appellant ought to be held in contempt of court due to its non-compliance with the court order.

17. However, a plain reading of the order, as reproduced hereinabove, indicates that the stay of execution order was given solely as a condition for a grant of stay of execution but was not a condition for the survival of the appeal in court. The effect of the Appellant’s non-compliance with

the court order was that the Respondent obtained the liberty to execute the tribunal's judgment even though the present appeal lies against it.

18. The upshot of the analysis above is that the application lacks merit and is dismissed with costs.

19. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI
THIS 17TH DAY OF APRIL 2026

A handwritten signature in blue ink, appearing to read 'Moses Ado', is written over a rectangular stamp area. The signature is stylized and somewhat illegible.

HON. MR. JUSTICE MOSES ADO
Judge of the High Court

In the presence of: -

C/A – *Moses*

Wambua..... for the Appellant

Ms. Masai.....for the Respondent