



Commissioner of Domestic Taxes v Sturrock Shipping (Kenya) Limited (Civil Appeal (Application) E328 of 2021) [2022] KECA 579 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KECA 579 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E328 OF 2021
KI LAIBUTA, JA
APRIL 28, 2022

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPLICANT

AND

STURROCK SHIPPING (KENYA) LIMITED RESPONDENT

((Being an application for review of the Ruling and Orders of the Court of Appeal in Nairobi (Dr. K. I. Laibuta, J.A.) delivered on 3rd December 2021 in Civil Appeal (Application) No. E328 of 2021))

RULING

1. The applicant's Notice of Motion dated 17th February 2022 comes for hearing before me for orders that the Court do set aside the Ruling of 3rd December 2021; and that costs incidental to this application and the costs of the appeal be awarded to the respondent.
2. The applicant's Motion comes by way of Reference under Rule 55 of the [Court of Appeal Rules](#) seeking orders to rescind or vary my Ruling delivered on 3rd December 2021. The orders for rescission would be in exercise of powers conferred by Rule 57(1) (a) of this [Court's Rules](#).
3. The Motion is supported by the annexed affidavit of George Ochieng (learned counsel for the applicant) sworn on 17th February 2022. It is also made on the grounds set out on the face of the application. Though served on 5th April 2022 with the requisite hearing notice calling upon the applicant and the respondent (Sturrock Shipping (Kenya) Limited) to file and serve their written submissions prior to today's hearing, the respondent has not filed any affidavit in reply or written submissions. Accordingly, the application stands unopposed. However, I must nonetheless address myself to the merits of the applicant's Motion.



4. According to the applicant, my Ruling and orders made on 3rd December 2021 dismissing its Notice of Motion dated 16th June 2021, and made under Rules 4, 42 and 47 of this [Court's Rules](#) for extension of time to file a memorandum of appeal and the record of appeal out of time, contradicts the Orders given on 22nd November 2021 by the Hon. Lady Justice J. Mohammed.
5. It is noteworthy that the applicant's Motion dated 16th June 2021 was dismissed for want of a memorandum of appeal a copy of which is now annexed to the applicant's Motion dated 17th February 2022. Also annexed to the Motion is Lady Justice J. Mohammed's Order given on 22nd November 2021 in which she directed inter alia that Civil Appeal Application Nos. E328 of 2021 for extension of time and striking out of the appeal be listed together before the same three-judge bench; and that the Order made in Civil Appeal Application No. E195 of 2021 to apply in E328 of 2021, among others.
6. Having carefully considered the applicant's Notice of Motion dated 17th February 2022, the grounds on which it is anchored, the annexed affidavit in support thereof, the annexed Memorandum of Appeal filed on 6th June 2021, and the order and directions of the Hon. Lady Justice J. Mohammed, and being satisfied that the applicant had filed a memorandum of appeal herein, and that the Notice of Motion dated 16th June 2021 may now proceed to hearing and determination on its merits, I hereby order and direct that –
 - a. the orders made on 3rd December 2021 dismissing the applicant's Motion dated 16th June 2021 are hereby rescinded;
 - b. the applicant's Motion aforesaid be listed for hearing together with the respondent's pending application for striking out the appeal by a three-Judge bench as directed by the Hon. Lady Justice J. Mohammed in the Ruling and Orders given on 22nd November 2021; and
 - c. the costs of this application be in the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2022

DR. K. I. LAIBUTA

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

