



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KOOME, JA (IN CHAMBERS))

CIVIL APPLICATION NO. 321 OF 2019

BETWEEN

SUZAN GENERAL TRADING JLT T/A

SUZAN DUTY FREE.....APPLICANT

AND

KENYA REVENUE AUTHORITY.....1ST RESPONDENT

THE COMMISSIONER OF DOMESTIC TAXES.....2ND RESPONDENT

KEYSIAN AUCTIONEERS.....3RD RESPONDENT

(Being an application for injunction pending the determination of an intended appeal from the Judicial Review Division of the High Court of Kenya at Milimani (P. Nyamweya, J.) dated 23rd September, 2018

in

JUD. REV. MISC. CIVIL APPL. NO. 287 OF 2018)

RULING

[1] *Susan General Trading JLT t/a Susan Duty Free (applicant)* filed a Certificate of urgency which came before me for certification on 2nd October, 2019. Upon considering it, I declined to certify it urgent directing the Notice of Motion filed on 1st October, 2019 under Certificate of urgency be heard in the normal manner.

[2] *Mr. Nyiha Mukoma*, Advocate for the applicant, wrote a letter on 3rd October, 2019 seeking an *inter parties* hearing on the issue of urgency which took place before me on 15th October, 2019. *Mr. Nyiha* emphasized that the matter was urgent as they had filed on behalf of the applicant, a Notice of appeal and a motion seeking an order of injunction restraining the respondents from dissolving or attaching the applicants property pursuant to a warrant and notice of distress dated 9th July, 2018 issued by the respondents to *Diplomatic Duty Free Company* which is a different company. Counsel emphasised that unless the matter is heard urgently, the respondents are demanding a whooping sum of Kshs. 2 billion which is disputed and the effect thereto will be to render the intended appeal and the notice of motion nugatory. The urgency aspect was opposed by the respondents represented by *Mr. Nyongo*, learned counsel teaming up with *Ms. Beatrice Odundo* and *Ms. Gitau*. *Mr. Nyongo* argued that the applicant’s suit before the High Court by way of Judicial Review was dismissed because the learned Judge held that the proper forum to ventilate the dispute is the Tax Appeals Tribunal. Moreover, the applicant is merely forum shaping having filed several matters before the Tax Appeals Tribunal, a **Constitutional Petition No. 391/2019** before the High Court Nairobi and the present application that the applicant is seeking certification. It was counsel’s view that the application is an abuse of the court process.

[3] I have considered the arguments for and against the order certifying the matter as urgent. I am still not persuaded that this matter deserves to be certified as urgent for reasons that the applicant has invoked multiple jurisdictions in that, a matter has been determined in the High Court on Judicial Review, there is a constitutional petition pending hearing which was also filed under Certificate of urgency almost at the same time with the present application and there is an appeal before the Tax Appeals Tribunal.

[4] I therefore decline to exercise my discretion to certify the Notice of Motion dated 1st October, 2019 as urgent which I direct be given a hearing date in the normal manner.

Dated and delivered at Nairobi this 18th day of October, 2019

M.K. KOOME

.....

JUDGE OF APPEAL

I certify that this is a true
copy of the original.

DEPUTY REGISTRAR