



Kenya Revenue Authority v Alnoor Al Mustaqueen General Traders Ltd & 2 others (Miscellaneous Civil Appeal E002 of 2024) [2025] KEHC 5387 (KLR) (Civ) (29 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5387 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
MISCELLANEOUS CIVIL APPEAL E002 OF 2024
SC CHIRCHIR, J
APRIL 29, 2025**

BETWEEN

KENYA REVENUE AUTHORITY APPLICANT

AND

ALNOOR AL MUSTAQUEEN GENERAL TRADERS LTD 1ST RESPONDENT

OCS GARBATULLA POLICE STATION 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. What is coming up for determination is the Notice of Motion dated 11th April, 2024. It seeks for enlargement of time to file the Appeal, and a stay of Execution pending the intended Appeal.
2. The Respondent did not file any response. However, during the hearing, Ms Gikundi for the 1st respondent informed the court that she was not opposed to the Application as long as the Applicant provides the prerequisite security.
3. The only issue remaining for determination therefore is whether the Applicant should deposit the decretal sum pending the intended Appeal.
4. In this regard, counsel for the Applicant argued that pursuant to the provisions of Order 42 Rule 8 of the Civil procedure Rules, as a Government entity, it is not required to provide security in terms of Order 42 Rule 6. He further stated that there were two defendants against whom the judgment was entered at the lower court and it is not known how much each defendant is to deposit, as the court did not apportion liability.



Determination

5. Rule 6 of Order 42 of the Civil procedure Rules makes granting of stay pending Appeal conditional upon the Intended Applicant providing security for due performance of the decree in the event that the Appeal fails. Rule 8 of the same order then provides: “No such security as is mentioned in rules 6 & 7 shall be required from the Government where the Government has undertaken the defence of a suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.” The imperative question then is, whether the Applicant herein is “Government” within the context of Order 42 rule 8.
6. The applicant is established under Section 3 of the [Kenya Revenue Authority Act](#). The section provides as followings;
 - “ 1. There is established an Authority to be known as Kenya Revenue Authority.
 2. The Authority shall be a body corporate with perpetual succession and common seal and shall subject to this Act, be capable in it corporate name of:
 - a). Suing and being sued; Provided that any legal authority arising from the functions of the exercise of any of the powers of the Authority under section 5 shall be deemed to be legal proceedings against the Government within the meaning of the Government proceedings Det (Cap 40).
 - b). Taking, purchasing or otherwise acquiring holding charging or disposing movable and immovable property;
 - c). Borrowing or lending money.
 - d). Doing or performing all other things or acts for the furtherance of the provisions of this Act, which may be lawfully done or performed by a body corporate.”
7. Thus the Applicant is a legal entity, having a personality of its own , and independent of the Government as we know it. It is capable of suing or being sued , in its own name .Indeed if the Applicant was “the Government” then the proviso to section 2(a) above would not have been necessary . I therefore disagree with the Applicant’s submissions that the Applicant is part of government.
8. However I have considered the past superior courts decision in this regard.
9. In Kenya Revenue Authority v Jackson Ruiru [2019] KEHC 7522 (KLR), the high court was of the view that the fact that the Applicant herein is capable of suing and being sued implies that it can also be directed to deposit money in satisfaction of a decree if it seeks to Appeal against the decree in question.
10. In the case of KRA Vs Eric Ogola Adula (2021) KEHC 6625 (KLR) the high court took the view that being the country’s tax collector, and funds due from it can easily be recovered it need not provide security. In Kenya Revenue Authority Vs Gatuma Kaumbi Kioga & Anor (2021) the court of Appeal granted stay without any order on provision of security. The same court did not order for security also in the case of KRA Vs Ayoo [2024] KECA 429 (KLR).



11. In Kenya Revenue Authority Vs Matakwa (2023) KECA 285 (KLR). The Court of Appeal stated “The Applicant is a statutory body with perpetual succession under the law and it is in our view capable of satisfying the decree of this court in the event that its intended Appeal is Unsuccessful”.
12. What I get for the decisions of the High Court and Court of Appeal is that the Applicant is capable of satisfying a decree bearing in mind its financial status .
13. Essentially security is to ensure due performance of such Decree or Order as may ultimately be binding on the Applicant. I associated myself with the view that as the country’s tax collector, the Applicant’s financial standing is in such a way that it can satisfy the decree herein if the appeal fails.
14. In conclusion;
 - a). The Applicant herein is granted leave to file Appeal out of time. The Appeal to be filed within the next 14 days from the date of this ruling.
 - b). There shall be a stay of execution of the judgment and decree delivered on 11th December, 2023 in Isiolo Chief Magistrate Court Civil Suit No. E005 of 2021 pending the hearing and determination of the intended appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 29TH DAY OF APRIL 2025

S. CHIRCHIR

JUDGE.

In the presence of:

Kashane Gollo- Court Assistant

Mr. Muhoro for the Applicant.

