

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 517/20 of 2020

SHOPRITE CHECKERS (T) LIMITED..... APPLICANT

And

**COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY.....RESPONDENT**

**(Application for stay of execution of the decree of Tax Revenue Appeals
Tribunal, at Dar-es-Salaam)**

(Hon. R. M Ngimilanga, Vice Chairperson)

Dated the 30th day January, 2020

In

Tax Appeal No. 11 of 2019

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EX PARTE ORDER

10th & 14th December, 2020

KOROSSO, J.A.:

The applicant is seeking among others, an *ex parte* order to stay execution of the decree of Tax Revenue Appeals Tribunal in Tax Appeal No. 11 of 2019 pending the hearing of the application for stay of execution *inter partes*. The application is by way of notice of motion made under Rule 11 (3), (4), (4A), (5) (a) and (b), (6) and (7) (b), (c) and (d) and 48 (1) of the Tanzania Court of Appeal Rules, 2009 ("the Rules") and is supported by the affidavit sworn by Wilson Kamugisha Mukebezi, the applicant's advocate. The affidavit is accompanied by various documents including a copy of the notice of appeal dated

07/02/2020, the impugned judgment and decree and the agency notice from TRA to Citi Bank (T) Limited for immediate payment of contested debt TZS. 27,519,037.36 in the pending Civil Appeal No. 307 of 2020. According to the averments in the affidavit supporting the chamber summons, this notice from TRA directing Citi Bank (T) for immediate payment of contested tax amount is in effect a notice of intention to execute the impugned Decree.

The brief facts of the application are that, the applicant was a company registered in Tanzania operating a chain of retail stores (supermarkets). The stores were located in Arusha and Dar es Salaam. In 2014 the Tanzania Revenue Authority (TRA) conducted a tax audit on the applicant. On 14/11/2014 the respondent issued the audit findings and Assessment No. F13730 for the year of income 2012 and No. F13731 for the year 2013. The said assessment subjected the applicant to Alternative Minimum Tax (AMT) in terms of section 4 (1) of the Income Tax Act, 2004 read together with item 3 of the First Schedule to the Income Tax Act, 2004. The applicant resisted the assessment arguing that, section 4(1) of the Income Tax Act, 2004 read together with item 3 of the first schedule to Income Tax Act, 2004 is inapplicable, because the company's financial status was not occasioned by any tax

incentives given under the certificate of incentives from Tanzania Investment Centre as claimed by respondent. That the amendment which was made on section 4 of the Income Tax Act by the Finance Act, 2012 should not apply to the applicant in the year 2013, even if the applicant had not utilized the incentives, the company would still be in a tax loss position.

On 22/06/2016, TRA issued its final stand maintaining its decision on the AMT. The applicant was aggrieved by the said decision of TRA and preferred an appeal to the Board which was dismissed. Unperturbed, the applicant appealed to the Tax Revenue Appeal Tribunal, an appeal which was also not successful. Still unsatisfied, he initiated the appeal process to this Court by lodging the notice of appeal against the impugned decision of the Tax Revenue Appeal Tribunal.

At the hearing of this application, being an ex parte proceedings only Mr. Wilson Kamugisha Mukebezi learned advocate, appeared for the applicant.

The learned counsel commenced his submissions by first adopting the notice of motion and the affidavit in support thereof so as to form part of his oral submission. In elaborating the application, he contended that, the notice of motion and affidavit collectively satisfies the

requirement of Rule 11 (6) of the Court of appeal Rules, 2009 (“the Rules”). He further contended that the respondent on 18th November, 2020 issued agency notice to Citi Bank Tanzania Limited for immediate payment of TZS 27,519,037.36 in respect of outstanding tax liability which is the contested tax in the pending Civil Appeal No. 307 of 2020 and that, the respondent in issuing the agency notice has relied on his general powers under the law to recover the disputed amount. The counsel argued that unless there is an intervention by the Court by issuing an order staying execution, the respondent will execute the impugned taxes causing the applicant to suffer substantial loss and the outcome of Civil Appeal No. 307 of 2020 before the Court will be rendered nugatory.

The applicant’s counsel further averred that, on balance of convenience, on their side they will suffer greater hardship and mischief if an order for stay of execution is not granted and that the applicant has already deposited TZS 611, 150, 894/= to the respondent and which is still in the hand of respondent, while the contested amount as averred in paragraph 11 of the affidavit supporting the application is 27,518,037.36. Despite this fact, Mr. Mukebezi also alluded to the fact

that the applicant is willing to provide security in the form of a bank guarantee as security.

The applicant has also filed other documents accompanying the application to support averments in the affidavit supporting the chamber summons. He submitted that the application has been filed promptly without undue delay since the applicant was informed by the banker of the respondent's notice for recovery of the contested tax on the 19th November, 2020 while the current application was filed on the 2nd December, 2020 within the 14 days specified by the law, stating that they have fulfilled all the conditions precedent to support the application.

Having heard the submission by the learned advocate for the applicant and considering the notice of motion and the supporting affidavit, I am satisfied that, the application for *ex parte* order pending the hearing of the application for stay of execution *inter partes* has merit. I am satisfied that the applicant has fully complied with the provision of Rule 11 (6) of the Rules and find this is a proper case for the Court to intervene at this juncture otherwise, the applicant may have to be exposed to suffer substantial loss. I also find that no prejudice will

be caused to the respondent since they will be heard during the hearing of the application *inter partes*.


For the foregoing reasons, it is ordered that the intended execution of the decree of the Tax Revenue Appeals Tribunal in Tax Appeal No. 11 of 2019 (Hon. R. M Ngimilanga, Vice Chairperson) dated the 30th day January, 2020, be stayed pending the hearing of the application *inter partes*. Order accordingly.

DATED at **ZANZIBAR** this 12th day of December, 2020.

W. B. KOROSSO
JUSTICE OF APPEAL

The Ex-Parte order delivered on this 14th day of December, 2020 in the presence of Mr. Wilson Mukebezi, learned counsel for the Applicant and is hereby certified as a true copy of the original.




H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL