Case Summary:

KENYA REVENUE AUTHORITY V BRISTOL ESTATE LIMITED & 3 OTHERS (MISCELLANEOUS APPLICATION E049 OF 2023) [2026]- HIGH COURT RULES THAT OUTSTANDING TAX LIABILITIES SURVIVE A COMPANY'S DISSOLUTION

BACKGROUND

Bristol Estate Limited ("the Company") was struck off the Register of Companies pursuant to Gazette Notice No. 3876 of 5 June 2020, following a voluntary application for striking off.

At the date of dissolution, the Company owed outstanding tax liabilities of Kshs. 475,870,227.30, comprising unpaid Income Tax and Value Added Tax, exclusive of accruing interest and penalties.

The Kenya Revenue Authority ("KRA"/"the Applicant") sought restoration of the Company to the Register on the basis that it was a creditor entitled to apply under the Companies Act, 2015, and that the striking-off process had been procured without proper notice to it as a creditor.

FINDINGS AND HOLDING

On the KRA's status as a creditor

The Court held that Sections 916 and 918 of the Companies Act, 2015 confer jurisdiction on the Court to order restoration of a struck-off or dissolved company, and that Section 916(2) provides a non-exhaustive list of eligible applicants, including a creditor of the company at the time of striking off or dissolution.

Relying on the Company's iTax ledger, which was uncontroverted, the Court found that the tax liabilities constituted a debt due to the Government. The Court further held that, a tax debt arises by operation of law once a taxable event crystallises, and the resulting failure to pay gives rise to a right of recovery. On this basis, the Court found that the KRA had established that it was a creditor of the Company.

On procedural validity of the striking off

The Court found that Section 900(1) of the Companies Act mandatorily requires an applicant for striking off to serve notice on every creditor within seven days of making the application.

This requirement exists to protect creditors from prejudice arising from dissolution without notice or an opportunity to be heard. As the KRA's averment that it received no such notice was unrebutted, the Court held that the striking off of the Company did not comply with Section 900(1).

On survival of tax liabilities post-dissolution

The Court observed that permitting dissolution to extinguish tax liabilities would create a perverse incentive, effectively allowing companies to obtain an extra-legal waiver of taxation through voluntary striking off. Accordingly, liabilities accrued during the Company's active existence survive its dissolution and remain due, payable, and recoverable under the Tax Procedures Act and the Companies Act, unless successfully challenged through the available legal avenues.

OUTCOME

The Court granted the orders sought, restoring Bristol Estate Limited to the Register of Companies, on the basis that the KRA had standing as a creditor, the striking off was procedurally defective for want of notice, and the Company's tax liabilities survived dissolution and remain enforceable.

CONCLUSION

The lesson is clear: dissolution or deregistration does not extinguish accrued tax liabilities, which remain recoverable against a company upon its restoration to the Register.

HOW WE CAN ASSIST

Our team of experienced tax consultants and legal experts provides comprehensive tax advisory services to help you achieve and maintain full compliance with applicable tax laws. We review and advise on tax filings, audits, and assessments, and offer strategic guidance to mitigate tax risks before they escalate.

We also represent and assist clients in tax dispute resolution, including engagements with the KRA and proceedings before the Tax Appeals Tribunal. let us help you stay compliant, manage your tax obligations effectively, and keep your business running smoothly. For any queries regarding the foregoing, please contact the contributors at taxteam@cmadvocates.com.

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