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LEGAL ALERT



**The Agency Notice: A Means to Recovering Unpaid
Taxes in Kenya**



The Agency Notice: A Means to Recovering Unpaid Taxes in Kenya

Introduction

Few events can unsettle a business, such as an unexpected call from the bank confirming that its accounts have been frozen. Payroll deadlines approach, supplier commitments go unfulfilled, and carefully structured transactions come to a halt unexpectedly. In Kenya, this disruption is increasingly linked not to insolvency or internal mismanagement, but to a single enforcement tool. This is the issuance of an agency notice by the Kenya Revenue Authority (KRA) as the tax administrator.

One of the most effective instruments in Kenya's tax enforcement tools is an agency notice, which enables KRA to collect claimed, alleged tax liabilities by attaching funds held by third parties. Despite their statutory footing, the use of agency notices frequently lies at the intersection between effective or efficient revenue collection and the protection of taxpayer rights. In this case taxpayer includes a non-resident person who is subject to tax in Kenya. Accordingly, understanding or knowing how to respond to them is not simply a matter of compliance. Any taxpayer operating in today's enforcement climate must consider governance, financial continuity, and legal strategy.

In this article, we examine the legal framework governing agency notices in Kenya and outline some of the strategic considerations for taxpayers confronted with their issuance.

Legal Underpinning of Agency Notices in Kenya

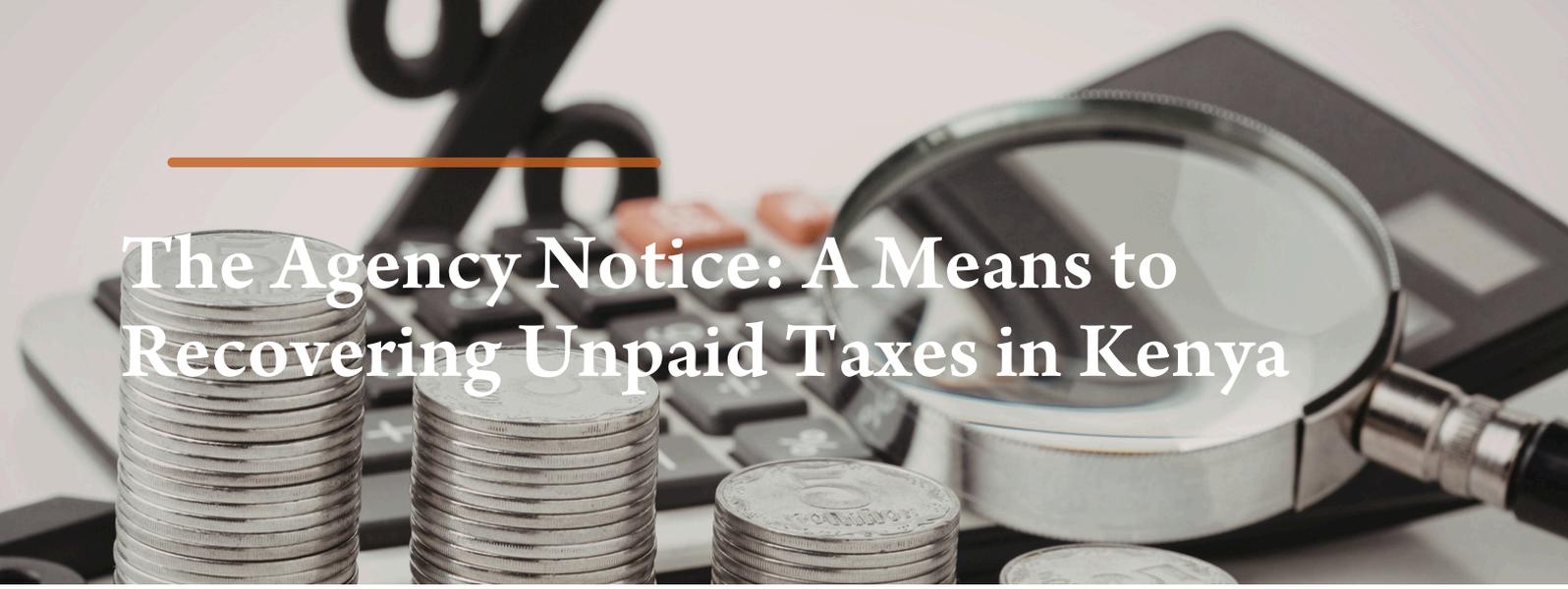
The legal architecture governing agency notices in Kenya is anchored in Section 42 of the Tax

Procedures Act, Cap 469B of the Laws of Kenya (TPA). The provision empowers KRA to appoint any person holding money for, or on account of, a taxpayer as an agent for the purpose of recovering unpaid taxes. Once appointed, that agent is required to remit to KRA any monies held on behalf of the taxpayer, up to the amount specified in the notice. The agency notice is simultaneously served on the taxpayer.

Section 42(2) of the TPA enumerates persons who may be an agent and who may be required to comply with an agency notice, and this includes the following persons:

- a. who owes or may subsequently owe the taxpayer, e.g., employer or debtors;
- b. who holds or may subsequently hold money, for or on account of the taxpayer, e.g., banks, trustees or escrow agents;
- c. who holds or may subsequently hold money on account of some other person for the taxpayer, e.g., financial advisors or executors of an estate; or
- d. who has authority from some other person to pay money to the taxpayer as specified in the notice, but this amount shall not exceed the amount of the unpaid tax or the amount the Commissioner believes will be paid by the taxpayer, e.g., holder of power of attorney, accountants, or trustees of a trust.

In practice, and despite having the various agents listed above, agency notices are frequently served on banks holding taxpayers' deposits. Our understanding is that they are easy to reach and strictly apply the requirement to withhold funds in compliance with Section 42 of TPA. Upon receipt,



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the bank is required to ring-fence the affected accounts and remit funds to KRA until the tax liability is paid up. An agency notice, therefore, operates as a statutory demand directed at a third party, effectively interposing KRA between the taxpayer and its funds.

Given the immediacy and commercial disruption occasioned by agency notices, a structured response strategy is essential.

Navigating Agency Notices in Kenya

1. Settlement of the Tax Demand

The first consideration for a taxpayer is whether the tax liability is undisputed or contested. If the taxes are not in dispute, the most direct solution is to settle the outstanding amount or negotiate a payment plan with KRA. Under Section 42(8) of the TPA, KRA is required to revoke or amend an agency notice once the tax is paid in full or satisfactory payment arrangements have been made. In practice, confirmation of payment or approval of a payment plan typically results in the lifting of the notice and the release of frozen funds, restoring access to the affected accounts, and mitigating commercial disruption.

2. An Agency Notice is an Appealable Decision

Where the tax liability is disputed, the taxpayer's next recourse is to challenge the agency notice through the statutory dispute-resolution framework as elucidated under the TPA. Jurisprudence confirms that an agency notice is not procedurally insulated from challenge, rather, it is considered an appealable decision under the TPA.

In *Commissioner of Domestic Taxes vs. Pevans East Africa Ltd & 6 others* [2022] KEHC 10392, the Late Justice Majanja DAS (as he then was) affirmed that the issuance of an agency notice constitutes an appealable decision within the meaning of Section 3 of the TPA.

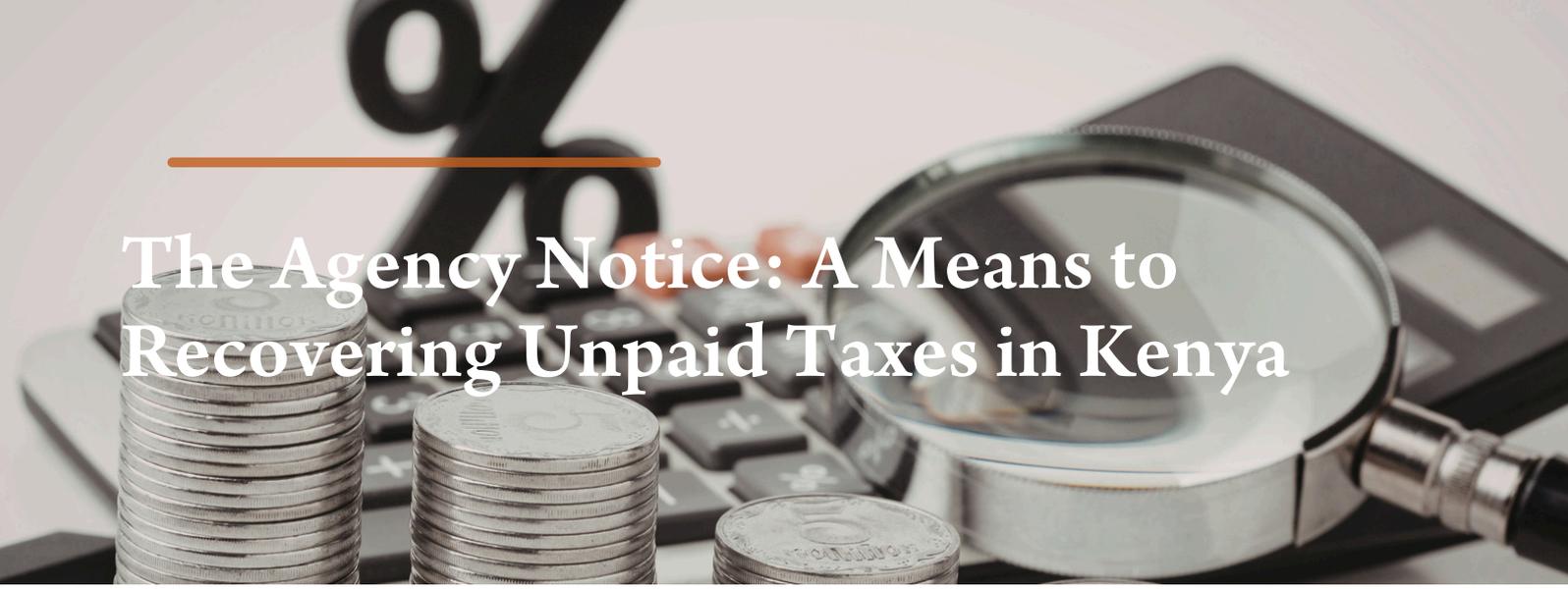
This position was further reinforced in *Mubea Group Ltd vs. Kenya Revenue Authority* [2025] KEHC 12003, where the High Court struck out judicial review proceedings on the ground that an agency notice is a statutory appealable decision. The Court emphasized the doctrine of exhaustion of remedies, highlighting that where Parliament has provided a clear mechanism for objection and appeal, taxpayers must pursue that route before invoking the supervisory jurisdiction of the High Court under a judicial review. Therefore, the first point of call is to file an appeal with the Tax Appeals Tribunal.

3. Procedural Fairness and Conditions Precedent

Closely linked to the option of appealing to the Tax Appeals Tribunal is the requirement for procedural compliance. Courts have held that agency notices must be issued in accordance with the law.

Section 42(14) of the TPA sets out the specific conditions that must be satisfied before KRA can issue an agency notice. The provision ensures that agency notices are not issued arbitrarily and provides a clear statutory framework for enforcement.

Under this section, KRA is directed not to issue an agency notice unless one of the following



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conditions is met:

- The taxpayer or non-resident subject to tax in Kenya has defaulted in paying an instalment after extension of time to make payment as agreed under Section 33(2) of the TPA.
- KRA has raised an assessment, and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period.
- The taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines.
- The taxpayer has submitted a self-assessment and filed a return but has failed to pay the taxes due before the payment deadline.
- The taxpayer has not appealed against an assessment specified in a decision of the Tribunal or Court.

These conditions collectively ensure that KRA exercises its powers judiciously and only after statutory avenues for compliance, assessment and objection have been exhausted.

4. Application for Stay

Once a taxpayer has lodged a substantive appeal, a critical strategic consideration is whether to seek a stay of enforcement of the agency notice pending the outcome of the appeal. The TPA does not automatically treat the filing of an appeal as a stay of execution, making it imperative for the taxpayer to proactively seek interim relief, which, if granted will

allow a taxpayer to access funds when the appeal is pending hearing and determination.

5. Obligations of the Agent

The agent is obligated to notify KRA within 14 days of receiving the agency notice if they do not hold any monies on behalf of the taxpayer as provided for under Section 42(6) of the TPA. Upon receipt of this communication, Section 42(7) of the TPA requires KRA to respond within 30 days to the agent by either accepting the notification and canceling or amending the notices or rejecting the notification.

The above provisions confirm that the agent is under a statutory obligation to honor the agency notice and a notification of lack of sufficient funds does not automatically extinguish the notice. Where the notice is rejected, the taxpayer must still seek intervention of the court to have the agency notice lifted, as any funds received by the agent in the future will be attached and utilized towards settlement of the demanded taxes.

Conclusion

Agency notices are among KRA's most potent enforcement tools, capable of immediately impacting a taxpayer's liquidity and operations, and should never be ignored. Jurisprudence confirms that such notices are appealable decisions, enforceable against third parties, yet subject to both procedural safeguards and constitutional scrutiny.

For taxpayers, the key lies in a balanced strategy which includes promptly assessing the underlying

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decision, pursuing the statutory objection and appeal process, seeking interim relief where necessary, and engaging constructively with your legal representatives. In doing so, taxpayers can protect their interests while ensuring compliance with Kenya's evolving tax enforcement landscape.

DISCLAIMER

This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the authors Lilian Renee Omondi, Partner (renee@oraro.co.ke), and Melanie Mwenda, Associate (melanie@oraro.co.ke) – or your usual contact at our firm for legal guidance.



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