

Supreme Court stays the judgement of the Court of Appeal against Finance Act 2023

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Background

On 31st July 2024 the Court of Appeal (CoA) rendered a judgement in the CIVIL APPEAL NO. E003 OF 2023 declaring the Finance Act 2023 unconstitutional. The basis of this judgement was that the (18) eighteen amendments that were introduced on the floor of the National Assembly were unconstitutional for lack of public participation among other reasons.

The genesis of the appeal was that President William Ruto assented to the Finance Bill 2023 on June 26, 2023. Resulting in a consolidated petition filed at the High Court by several parties that sought prayers stopping the implementation of the Finance Act 2023 in its entirety.

The petitioners at the High court claimed that the Finance Act 2023 was unconstitutional due to lack of following procedures in the passage of the Finance Bill 2023, among the issues cited by the petitioners was lack of public participation. On 28th November, 2023 the High Court issued a judgement granting some of the requests by the petitioners while refusing other prayers. Consequently the National Assembly being aggrieved by the decision of the High Court filed an appeal at the Court of Appeal.

Judgement of the Court of Appeal declaring Finance Act 2023 unconstitutional;

The CoA in its judgement rendered on 31st July 2024 determined that the Finance Act was unconstitutional for the following reasons;

- That despite the fact that the Cabinet Secretary as at 15th June, 2023 had not presented the Budget proposals, the Finance Bill 2023 had already been introduced in the National Assembly and was already at the second reading stage which was a violation of Article 220(1) (a) and 221 which provides for budget-making process and sections 37, 39 and 40 of Public Finance Management Act (PFMA).
- That the process of passage of Finance Bill 2023 violated the principle of public participation, as the Finance Bill 2023 was amended post-public participation by introduction of 18 new amendments that were not previously included in the Finance Bill 2023 proposals and hence not subjected to public participation. For the above reasons the CoA declared the Finance Act 2023 unconstitutional.



What next after Finance Act 2023 declared unconstitutional

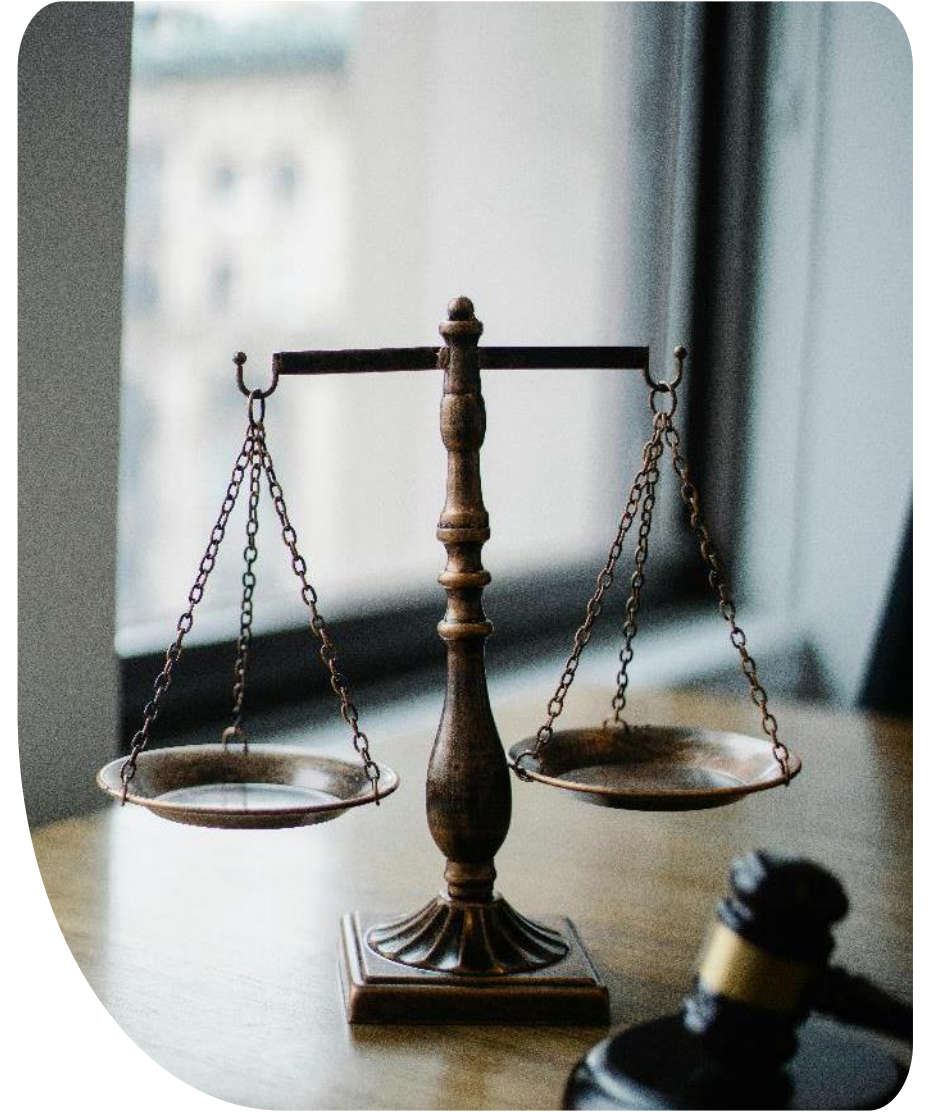
The decision of court of appeal declaring the Finance Act 2023 unconstitutional reverted the country to the revenue raising measures of the Finance Act 2022. This was informed primarily because the President did not assent to the Finance Bill 2024 due to backlash from the public on various clauses of the Finance Bill 2024.

Current Status

We note that after the decision of the Court of Appeal, the Cabinet Secretary for National Treasury and Planning together with other government entities went to the Supreme Court on 1st August 2024 seeking a stay of the judgement of the Court of Appeal.

The Supreme Court in a ruling dated 20th August 2024 has granted the order of stay essentially setting aside the decision of the Court of Appeal until it hears the main appeal and make a determination as to whether the Court of Appeal was wrong in stating that the Finance Act 2023 was unconstitutional.

The Supreme Court has further set a hearing date for the main appeal on the 10th and 11th September 2024 at 9.am each day.



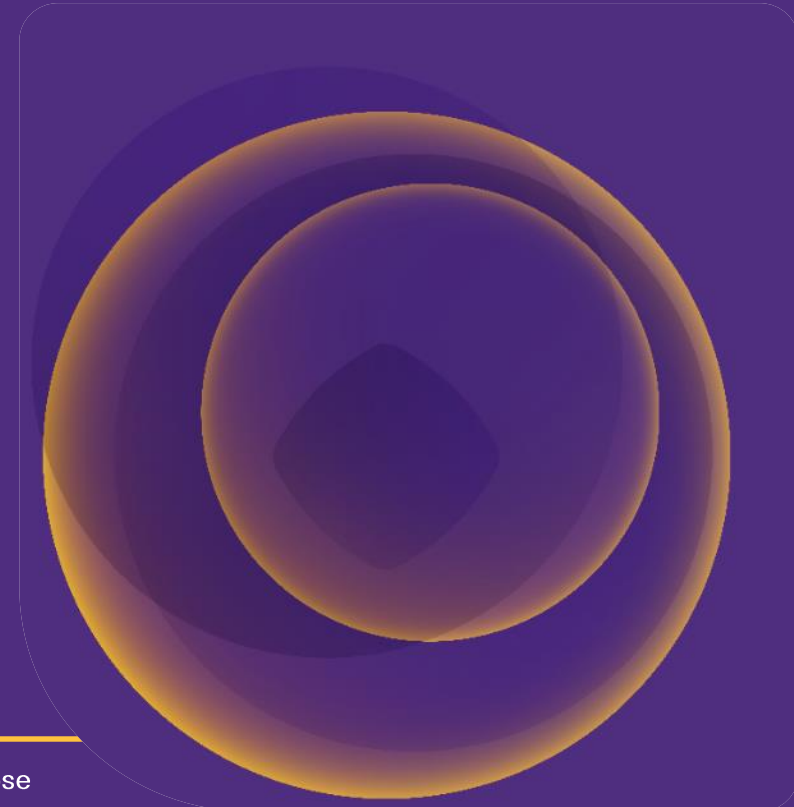
Our Comment

Following the decision of the court on 20th August 2024 we note that taxpayers should continue adhering to the rates introduced by Finance Act 2023 until the Supreme Court issues its decision.



How Can Grant Thornton Assist You?

For further discussion on this alert or any other tax concern, please contact any of the team members below policies effectively.



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