Commissioner of Domestic Taxes v Citibank N.A. Kenya Branch (Tax Appeal E127 of 2021) [2023] KEHC 18380 (KLR) (Commercial and Tax) (31 May 2023) (Judgment)

Neutral citation: [2023] KEHC 18380 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

TAX APPEAL E127 OF 2021

DAS MAJANJA, J

MAY 31, 2023

BETWEEN

COMMISSIONER OF DOMESTIC TAXES ..... APPELLANT

AND

CITIBANK N.A. KENYA BRANCH ..... RESPONDENT

(Being an appeal against the Judgment of the Tax Appeals Tribunal at Nairobi dated 13th May 2021 in Tax Appeal No. 15 of 2019)

JUDGMENT

Introduction and Background

1. Before the court for determination is an appeal filed by the Appellant ("the Commissioner") against the decision of the Tax Appeals Tribunal ("the Tribunal") dated 13th May 2021 where the Respondent's appeal was allowed and the Commissioner's Objection Decision dated 4th December 2018 ("the Objection Decision") demanding Kshs. 127,157,588.39 was set aside. The Respondent was also at liberty to initiate the process for the refund of Kshs. 57,287,331.49 reimbursable in respect of charges levied on the United Nations (UN) and its agencies.

2. The appeal concerns the interpretation and application of Excise Duty on various bank transactions under the Customs and Excise Act (Repealed) as amended under Part III of the Fifth Schedule by the Finance Act, 2012, the Finance Act, 2013 and the Excise Duty Act, 2015. In order to give context to this appeal, it is important to set out the statutory framework under which Excise Duty is charged on banking transactions. It is common ground that section 117(1)(d) of the Customs and Excise Act (Repealed) provided the basis of charging Excise Duty as follows:

   Subject to provisions of this Act, there shall be charged —

(d) in respect to excisable goods and services specified in the second column of the Fifth Schedule, excise duties at the respective rates specified in the Schedule.

3. Excise duty on financial services was introduced by the Finance Act, 2012 through amendments to Part III of the Fifth Schedule to the Customs and Excise Act (Repealed) as follows under Paragraphs 7 and 8:

> 7. Excise duty on fees charged for money transfer services by cellular phone service providers, banks, money transfer agencies and other financial service providers shall be ten percent.
>
> 8. Excise duty on other fees charged by financial institutions shall be ten percent.

4. Subsequently, the Finance Act, 2013 amended the said Part III of the Fifth Schedule to the Customs and Excise Act (Repealed) by deleting the words "financial service providers" appearing in Paragraph 7 above and substituting therefor the words "financial institutions". The said Finance Act, 2013 also introduced a new Paragraph 9 as follows:

> 9. For the purposes of items 7 and 8— “financial institutions” means—
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> a. a person licensed under—
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> (i) the *Banking Act* (Cap. 488);
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> (ii) the *Insurance Act* (Cap. 487);
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> (iii) the *Central Bank of Kenya Act* (Cap. 491); or
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> (iv) the *Microfinance Act*, 2006 (Cap. 493D);
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> b. a Sacco Society registered under the 2008/14 Sacco Societies Act, 2008 (No. 14 of 2008); or
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> c. the Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act (Cap. 493B).
>
> “other fees” includes any fees, charges or commissions charged by financial institutions, but does not include interest.

5. The Respondent is the registered Kenyan branch of Citibank N.A., a federally chartered national banking Association organized and existing under the laws of the United States of America. Sometime in 2018, the Commissioner conducted an Excise Duty assessment of the Respondent’s records for the period between 2013 and 2015 and communicated its findings through the letter dated 7th September 2018.

6. The Respondent objected to the said assessment through its letter dated 4th October 2018. After considering the objection, the Commissioner issued the Objection Decision resulting in a demand for outstanding tax amounting to Kshs. 127,157,588.39 comprising of principal tax, penalties and interest on Excise Duty.

7. The Respondent was dissatisfied with the Objection Decision and lodged an appeal with the Tribunal which after considering the parties’ arguments rendered a decision on 13th May 2021. The Tribunal identified five issues for its determination; whether the Commissioner erred in charging the Respondent Excise Duty for the period January to July 2013, whether the Commissioner

erred in levying Excise Duty on other fees charged by the Respondent to the UN and it agencies, whether reimbursable expenses were correctly computed, whether the Commissioner's treatment of commission income was proper in law and whether the Commissioner was entitled to apply a tax shortfall penalty of 20%. After considering these issues, the Tribunal made dispositive orders allowing the appeal and setting aside the Objection Decision giving the Respondent liberty to initiate the process of the refund of the sums paid as Excise Duty in respect of charges levied on the UN and its agencies.

8. The Tribunal's Judgment precipitated this appeal based on the Commissioner's Memorandum of Appeal dated 9th July 2021. The Respondent has responded to the appeal by filing the Statement of Facts dated 27th August 2021. The Appeal was canvassed by way of written submissions. I shall consider the parties' submissions and the findings of the Tribunal.

Analysis and Determination

9. This appeal concerns the interpretation and application of the law on Excise Duty. In resolving it, the court appreciates the limits on its jurisdiction under section 56(2) of the Tax Procedures Act, 2015 that, "An appeal to the High Court or to the Court of Appeal shall be on a question of law only". In dealing with matters of law, the court must pay fealty to the findings of fact by the Tribunal but only intervene if such findings are perverse (see Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others NRB CA Civil Appeal No. 300 of 2013 [2014]eKLR).

10. Turning to the appeal, I note that the Commissioner has raised 14 grounds in its Memorandum of Appeal but it has condensed them into the following 6 grounds which I shall now consider:

    1. Whether the Finance Act was ambiguous in so far as its failure to properly identify the tax base and that it failed to definitively identify the parameters of "other fees to enable the Respondent charge and remit taxes on the same
    2. Whether the Commissioner applied the law retrospectively by demanding for Excise Duty prior to 18th June 2013 when the Finance Act 2013 came into effect
    3. Whether the Tribunal erred in making a determination that the Commissioner charged Excise Duty on services rendered by the Respondent to the UN and its affiliates
    4. Whether reimbursable expenses were correctly computed
    5. Whether the Tribunal erred in faulting the Commissioner's treatment of the commission earned by the Respondent on the KPC syndicated loan
    6. Whether the Commissioner was justified in imposing the tax shortfall penalty provided for under section 84 of the TPA

Ambiguity of the Finance Act, 2012

11. In objecting to the assessment for the period between January to July 2013, the Respondent stated that the amendments introduced by the Finance Act, 2012 brought significant uncertainty on the scope of institutions and transactions subject to Excise Duty as well as the commencement date and that because of this uncertainty, various stakeholders engaged the Commissioner in consultative forums which yielded further amendments to the *Customs and Excise Act* (Repealed) through the Finance Act, 2013 which addressed some of the ambiguous provisions. That subject to amendments brought about by the Finance Act 2012, the *Customs and Excise Act* (Repealed), did not define what "financial

institutions" are or what "other fees" means and that this brought about the uncertainty on who was to excise and what other fees were excisable. The Tribunal agreed with this position.

12. The Commissioner faults the Tribunal and the Respondent by stating that since the Respondent is a bank, it cannot purport to allege ambiguity and lack of understanding in the amendments of the Finance Act, 2012 and that the Finance Act, 2013 only served to clarify that any fee is chargeable to Excise Duty with the exception of interest. Without prejudice to the foregoing, the Commissioner submits that even if there was ambiguity the Tribunal should have found excisable all other fees assessed from 18th June 2013 which it did not. The Commissioner thus invites the court to find the assessments of excise from 2013 due and payable.

13. The interpretation and effect of the amendments introduced above are not novel and have been discussed by the court in previous decisions. The argument raised by the Respondent is that the Finance Act, 2012 did not define ''financial institutions'' or ''other fees'' and that it is when the Finance Act, 2013 was enacted that it resolved the meaning of the provision by providing clarity. In National Bank of Kenya Ltd v Commissioner of Domestic Taxes (Income Tax Appeal E155 & 533 of 2020 (Consolidated)) [2022] KEHC 10549 (KLR) (Commercial and Tax) (26 May 2022) (Judgment)] and Commissioner of Domestic Taxes v Co-operative Bank ML ITA No. E095 of 2020 (UR) the court dealt with an aspect of this argument as regards the issue of interest and whether interest prior to the Finance Act, 2013 was included in the meaning of ''fees''. The court adopted the natural and ordinary meaning in place of the meaning ascribed to the Income Tax Act (Chapter 470 of the Laws of Kenya).

14. The Finance Act, 2012 identified the rate of tax payable, it did not clearly identify the service or the income to be taxed nor the tax payer. It did not define what "Financial Institutions" were or what "other fees" was. By failing to define these terms, can it be said that the legislation was ambiguous? I think not. The ultimate duty of the court is to give effect to the legislative intent as expressed first and foremost by giving those terms their natural and ordinary meaning. Nyamu JA., in Stanbic Bank Kenya Limited v Kenya Revenue Authority NRB CA Civil Appeal No. 77 of 2008 [2009] eKLR stated as follows:

> In my interpretation of the law, it is quite evident that I have not sought any assistance from outside a dictionary in ordinary use. Moreover, I have not strained the meaning of the words in order to achieve any particular result. I have simply adopted the ordinary meaning of the words used in the relevant tax statute. This is because as regards tax law the issue of intention or intendment does not arise. If there is any ambiguity, and I did not detect any in my analysis, the same must be construed in favour of the tax payer. In tax law, the converse is also true that if the meaning is clear, that tax is chargeable, the issue of what was intended is not the function of the court and where tax liability is expressed and located by law the courts must uphold the taxman's position.

15. In essence, the Court of Appeal stated that in the interpretation of tax statutes the court ought to adopt the ordinary meaning of the words used in the said statute and that any ambiguity therein ought to be resolved and construed in favour of the taxpayer. It cannot be gainsaid that a financial institution is any institution that offers financial services like a bank. I cannot see how the Respondent can claim it is not a financial institution yet it renders financial services for which it is licenced.

16. On the issue of fees, it cannot be argued that the meaning of the word "fee" was unknown or ambiguous. According to Blacks Law Dictionary (10th Ed), a fee is, "A charge or payment for labor or services ..." Simply stated it is the consideration for the service rendered. This is the natural and ordinary meaning of a fee understood in normal parlance. The Commissioner was thus entitled to charge Excise Duty on the Respondent's financial transactions as long as they constituted fees. It is only by the Finance Act, 2013 that the change was introduced to exclude "interest" from the meaning

of other fees. As I stated earlier, this was the ambiguity resolved when the court decided that interest did not bear the meaning ascribed by the ITA but was interest in its ordinary and natural meaning (see National Bank of Kenya Ltd v Commissioner of Domestic Taxes (Supra)). In all other respects, the use of the word fee captures any transaction of the nature and substance of a fee.

17. I therefore hold that the Commissioner was entitled to charge Excise Duty of ''other fees'' at a rate of 10% upon enactment of the Finance Act, 2012. The Finance Act, 2013 only clarified the meaning of fee by excluding therefrom interest. At this stage I would only point out that prior to the Finance Act, 2013, interest would, by its ordinary meaning, be excluded from the meaning of fee in any case (see National Bank of Kenya Ltd v Commissioner of Domestic Taxes (Supra)).To state, as the Respondent seems to argue, that the ambiguity meant that there could be no liability to pay Excise Duty before 18th June 2013 would amount to nullification of the intent of Parliament to levy Excise duty on transactions of specific and named financial institutions and on other fees

18. I reject the position taken by the Tribunal on this issue hence the Commissioner succeeds on this ground. It follows and I find and hold that the Commissioner could apply the provisions of the Finance Act, 2013 and collect the Excise Duty from the Respondent for the period before 18th June 2013, therefore, the Excise Duty assessment between January – June 2013 was payable in so far as it did not include interest within the meaning explained above.

Excise Duty on the Respondent's charges to the UN and its agencies

19. The Commissioner submits that the Tribunal erred by making a determination on Excise Duty on fees charged to UN and its agencies, when this issue was not raised in the objection, the Objection Decision and the memorandum of appeal filed before the Tribunal. The Respondent and the Tribunal, while faulting the Commissioner stated that the Commissioner in its findings of 7th September 2018, stated that, "We have analysed the evidence availed and have noted that included in the fees and commissions revenue stream were incomes relating to the services to the UN, commission on Treasury Bonds sold, reimbursable expenses and share of income from the KPLC syndicated loan. These have thus been dropped." The Respondent submits that despite this acknowledgment, the computation of the taxes due still retained the excise duty computed on services to the UN and that in its objection, the Respondent set out in a table, among other things, revenue streams that were not subject to Excise Duty including Kshs. 741,869,636.00 that related to income from services provided by the Respondent to the UN.

20. The Tribunal in its judgment, noted that in the schedule of breakdown of taxes demanded by the Commissioner, it made a point of indicating that, 'no excise duty payable by the taxpayer' against the entries relating to Treasury Bonds, reimbursable expenses and the Kenya Pipeline Company(KPC) syndicated loan but the same was not made against the entry of services to the UN. A perusal of the said schedule indicates that this is the actual position. The Tribunal also looked at the objection at item no. 4 on 'tax not in dispute' and noted that the tabulation table thereunder clearly removed services to the UN and also found that from the Commissioner's computation of the taxes due, the component of the Excise Duty on the services to the UN was still retained. My further perusal of the objection indicates that this is the correct position as the Respondent clearly indicates that the taxes not in dispute do not include, inter alia, income from services to the UN.

21. Once again, I restate that this is a court of appeal dealing with matters of law which includes determining whether the Tribunal came to a conclusion that was not perverse and in line with the evidence before it. Indeed, I cannot fault the Tribunal for coming to this conclusion after going through the evidence as it did. The Commissioner, in its findings of 7th September 2018, had indicated and advised that it had dropped the Excise Duty demands relating to the commission income from services

to the UN, commission on Treasury Bonds sold, reimbursable expenses and share of income from the KPLC syndicated loan. The Respondent had also indicated in its objection that its conceded taxes did not include the aforementioned streams of income. Going through the record, it appears like the taxes demanded by the Commissioner on 7th September 2018 and when it issued the Objection Decision on 4th December 2018 were not different so as to exclude the demand from the income earned from the services to the UN as the sum demanded in the former was Kshs. 128,968,791.39 while that in the latter was Kshs. 127,157,588.39. This means that there were no adjustments to the demand as had been stated by the Commissioner in its 7th September 2018 letter. The Tribunal was thus right to conclude that the Excise Duty demand on the Respondent's charges to the UN were retained in its computation in as much as it had mentioned in its earlier letter that they will be dropped and adjusted accordingly. The record of proceedings also shows that the Commissioner conceded that the Respondent paid it Excise Duty in error of around Kshs. 57 million in respect of services it rendered and charged the UN and that this Excise Duty was paid within the subject period under review.

The reimbursable expenses

22. The Commissioner submits that the Tribunal contradicted itself on this issue by stating that the Respondent did not support its claim that the Commissioner had erroneously understated thein amount of reimbursable expenses by Kshs. 100,001.00 but then proceeded to stated that the Commissioner erred in computing the aforestated expenses. On its part, the Respondent submits that the Tribunal correctly and duly found in favor of the Respondent since the understatement of the reimbursable expenses by Kshs. 100,000.00 was an arithmetic error apparent on the face of the record. That in its objection, the Respondent provided documentation in respect of reimbursable expenses indicating that the adjustment on account of reimbursable expenses ought to have been Kshs. 79,510,932 but that in the Objection Decision, the Commissioner erroneously took into account an amount of only Kshs 79,410,931. Thus, the Respondent states that the understatement of Kshs. 100,000 by the Commissioner is an error apparent on the face of the record since the documentation provided to the Commissioner at the objection stage supported reimbursable expenses of Kshs. 79,510,932.00.

23. In making a determination on this issue, the Tribunal, at Para. 44 of its judgment held as follows:

> (44) We have reviewed the documents on record before us and are in agreement with the Respondent. The Appellant did not categorically attach documents in support of its contention on this issue. As whatever documents that have been adduced by the Appellant were adduced with the Appellant's submissions thus denying the Respondent the opportunity to exercise the said documents. The Tribunal reaffirms the position that the Appellant bears the burden of proof. Seeing as the Appellant aptly support its claim, the Tribunal finds that the Respondent erred in computing the Appellant's reimbursable expenses.

24. A reading of the aforesaid passage leaves no doubt that the Tribunal contradicted itself when it found, on one hand, that the Respondent did not adduce proof to prove all its reimbursable expenses but on the other hand goes ahead to conclude that the Respondent had proved the same and that the Commissioner erred in its computation.

25. I hold that if there is any error to be corrected, it is the Tribunal's conclusion that the Respondent had proved its case. Even if I am to go by the Respondent's submission that the understatement of Kshs. 100,000 by the Commissioner is an error apparent on the face of the record since the documentation provided to the Commissioner at the objection stage supported reimbursable expenses

of Kshs. 79,510,932 and that the same was provided in a schedule on reimbursements in its bundle of documents, I find that a schedule of payments is not sufficient proof of expenses. In Commissioner Investigations and Enforcement v Kidero (Income Tax Appeal E028 of 2020) [2022] KEHC 52 (KLR) (Commercial and Tax) (4 February 2022) (Judgment), the court held that expenses ought to be ascertained, verified and/or confirmed by the Commissioner through the presentation of primary documents. A schedule or tabulations of expenses cannot suffice. Therefore, I agree with the Commissioner that the Tribunal erred in finding that the Respondent had proved its claim and that the Commissioner had erred in computing the reimbursable expenses.

The KPC syndicated loan

26. The Commissioner faults the Tribunal for finding that the Commissioner erred in charging Excise Duty on the commission earned from the KPC syndicated loan as one transaction in 2016. In its decision, the Tribunal found that there was evidence before it that the Respondent had earned commissions in 2015 and 2016 and that the Respondent had attached supporting documentation to this effect. The Commissioner refutes that such documents were availed and states that in its own objection, the Respondent admitted that there was an underpayment in 2015 as the tax calculated on the loan was in 2016.

27. In its objection, the Respondent was emphatic that "there was no underpayment in 2015" and goes on to state that, "The apparent underpayment in 2015 is because of the tax calculated on Kenya Pipeline Syndicated loan (KPC Kshs. 66,891,938 in 2015 and not 2016 as indicated on the assessment". I accept that the Respondent, in its objection, clarified that the tax calculated ought to have been for the year 2015 and not 2016.

28. On the evidence of the commission income, the Respondent submits that what it provided the Tribunal was a schedule reflecting that Kshs. 66,891,938.10 of the commission income from the KPC syndicated loan was earned in 2015 while Kshs. 58,489,622.26 was earned in 2016 and that the schedule clearly indicates that the commission income was received in 2015 and 2016. As stated, primary documents, rather than a schedule is what can be deemed as evidence before the Commissioner and the Tribunal. I agree with the Commissioner that the Respondent did not submit any primary documents to support its assertion that the syndicated loan payment of Kshs. 66,891,938.00 related to 2015 and that of Kshs. 58,627,310.00 related to 2016. The Commissioner also stated as much in the Objection Decision. In the absence of this proof, the Commissioner could not be faulted for treating these transactions as a single transaction. This ground by the Commissioner therefore succeeds.

The shortfall penalty under section 84 of the TPA

29. The Commissioner stated that it charged the Respondent a tax shortfall penalty as provided for under section 84 of the TPA on the basis that the Commissioner was able to determine a difference between the tax liability computed as per the monthly statements (returns) filed and the actual liability computed as per the monthly excisable revenue streams as per the ledgers and financial statements.

30. At the material time, section 84 of the TPA provided in part as follows as follows:

> 84. Tax shortfall penalty
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> (1) This section applies to a person—
>
> a. if that person knowingly makes a statement to an authorised officer that is false or misleading in a material particular or knowingly omits from a

statement made to an authorised officer any matter or thing without which the statement is false or misleading in a material particular; and

b. if the tax liability of that person or of another person computed on the basis of the statement made by that person is less than it would have been had the statement not been false or misleading (the difference being referred to as the "tax shortfall").

(2) Subject to subsections (3) and (4), a person to whom this section applies shall be liable to a tax shortfall penalty of—

a. seventy-five per cent of the tax shortfall when the statement or omission was made deliberately.

b. Twenty per cent of the tax shortfall in any other case

(3) .....

(4) .....

(5) A tax shortfall penalty shall not be payable under subsection (2) when—

(a) the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular;

(b) the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer's circumstances in submitting a self-assessment return; or

c. the failure was due to a clerical or similar error, other than a repeated clerical or similar error.

(6) A position taken by a taxpayer in making a self-assessment shall not be regarded as a reasonably arguable position for the purposes of subsection (5)(b) if it contradicts any of the following where they are in force at the time the self-assessment is made—

a. a public ruling; or

b. a private ruling issued by the Commissioner to the taxpayer.

(7) Despite subsection (5), the Commissioner or authorised officer may impose a late payment interest in respect of a tax shortfall when the tax is not paid by the due date for payment.

(8) For the purposes of this section, a statement made to an authorised officer includes a statement made, in writing or orally—

a. in an application, certificate, declaration, notification, return, objection, or other document submitted or lodged under a tax law;

b. in information required to be provided under a tax law;

c. in a document provided to an authorised officer;

d. in an answer to a question asked of a person by an authorised officer; or

e. in a statement to another person with the knowledge or reasonable expectation that the statement would be passed on to an authorised officer.

31. The Commissioner submits that the Tribunal took a very narrow approach to this section as the Commissioner had already established a variance between the tax due and tax paid and that the Respondent, having failed to remit the appropriate taxes due was therefore liable to a penalty. The Commissioner submits that it had already made a ruling on the various issues they had engaged in and that even if the Respondent took an arguable position on the issue of other fees prior to 18th June 2013, it ought to have charged and remitted the Excise Duty after that date, but that it failed to do so. The Commissioner thus contends that the Tribunal ought not to have afforded the Respondent protection under subsection 5 of section 84 as not only did the Respondent issue a false return, it also went against the Commissioner's Ruling.

32. In response, the Respondent submits that the Commissioner has not specified any instance where the Respondent made a false or misleading statement or omission in a statement especially having regard to the prevailing Excise Duty law during the assessment period. It states that the issue of a ruling being issued by it is an entirely new argument that was not made at the Tribunal and that conspicuously, the Commissioner has not produced the ruling alleged to have been made.

33. The Tribunal found that the Commissioner had not specified any misleading or false information or statements made by the Respondent in the audit process. Moreover, seeing as its analysis on the foregoing issues entirely agreed with the Respondent's position, the Tribunal was more inclined to find that the Respondent did not make any false or misleading statements to the Commissioner. It was persuaded that the shortfall penalty did not apply to the Respondent as it fell within the exception envisaged under section 84(5)(b) which exempts the imposition of the shortfall penalty in the circumstances where the tax shortfall arose as a result of a taxpayer taking a reasonably arguable position on the application of a tax law to the taxpayer circumstances in submitting a self-assessment return. The Tribunal thus found the Respondent's arguments in respect of implosion of the Excise Duty, especially in light of the ambiguities arising from the Finance Act, 2012 to be fairly reasonable arguments.

34. I entirely agree with the Tribunal. Having gone through the arguments of the Respondent before the Commissioner and the Tribunal, I cannot say that they were argued from a point of trying to intentionally mislead or deceive them. The positions taken by the Respondent are actually reasonable and arguable and the fact that they might not succeed does not necessarily mean that they were knowingly uttered to mislead. The Commissioner had itself stated that some of those revenue streams of income were not Excisable and thus, all the Respondent was to do was provide proof of the same. The Respondent must have thought that a schedule would suffice but then this was not the case as the court has found.

35. I also agree with the Respondent that the issue of the Commissioner having issued a private ruling is an entirely new ground that was not before the Tribunal and thus undeserving of the court's attention and determination. This ground by the Commissioner therefore fails.

Disposition

36. For the reasons I have set out above, the Commissioner's appeal is allowed on three grounds. First, that the Commissioner was entitled to charge and collect Excise Duty in respect of "other fees" for the period between January – July 2013 in so far as the same did not include interest within the plain and ordinary meaning enunciated above.

37. Second, the Tribunal erred in holding that the Respondent had sufficiently proved its claim in respect of the reimbursable expenses and third, that the Tribunal erred in finding that the commission income from the KPC syndicated loan was from two transactions in 2015 and 2016. I accordingly set aside these findings.

38. There shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF MAY 2023.

D. S. MAJANJA

JUDGE

Court Assistant: Mr Michael Onyango.

Ms Ng'ang'a, Advocate instructed by the Kenya Revenue Authority for the Appellant.

Mr Kimani, SC with him Mr Ruto instructed by Hamilton, Harrison and Mathews for the Respondent.