REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISC. CAUSE NO. 455 OF 2014

REPUBLIC…….....APPLICANT

VERSUS

KENYA REVENUE AUTHORITY.....1ST RESPONDENT

COMMISSIONER OF CUSTOMS SERVICES…….……...……2ND RESPONDENT

EX- PARTE

PWANI OIL PRODUCTS LIMITED

JUDGEMENT

1. Through the notice of motion dated 18th December, 2014, the ex parte Applicant, Pwani Oil Products Limited prays for orders:

> **"1. THAT the Honourable Court be pleased to grant AN ORDER OF CERTIORARI to bring to the High Court, for purposes of being quashed, the decision of the Respondents through their officer namely P. Mutwol dated 01/10/3014, 15/10/2014 and 20/11/2014 demanding from the Applicant a sum of Kshs.134,883,572.00 in additional taxes.**
>
> **2. THAT the Honourable Court be pleased to grant AN ORDER OF PROHIBITION directed at the Respondents and prohibiting them by themselves, their agents, officers, servants and/or any other person whomsoever from demanding, issuing agency notices, or in any other way howsoever from effecting the collection of additional taxes demanded vide the Respondents' letters dated 01/10/2014, 15/10/2014 and confirmed on 20/11/2014 amounting to Kshs.134,883,572.00 or any part thereof.**
>
> **3. THAT costs of this application be provided for."**

2. Kenya Revenue Authority (KRA) is the 1st Respondent and the Commissioner of Customs Services is the 2nd Respondent.

3. From the papers filed in court by the Applicant, it emerges that the Applicant is in the business of importing and refining/processing edible oils for both local and export markets. Sometimes in 2012 and 2013 the Applicant applied for, and was granted remission for Value Added Tax (VAT) in respect of crude palm oil products imported for the manufacture of oil products for export. Among the designated finished products for purposes of the remissions were fully refined vegetable oils/fats, laundry bar soap and glycerine.

4. The grant of the remission was conditional on the Applicant duly executing a security bond for the due performance of the obligations under the remission scheme. The Applicant was required to utilise the raw materials imported under the remission scheme for the manufacture of goods for export. It is the Applicant's case that the purpose of the security bond is to enable the respondents recover any taxes arising from the Applicant's failure to abide by the conditions for remission.

5. The Applicant accordingly executed several security bonds for the due performance of the obligations under the remission scheme. Thereafter, the Applicant imported raw materials in form of crude palm oil and manufactured products for export.

6. The Applicant's averment is that upon importing the raw materials it manufactured and duly exported products to various destinations outside the country and was issued by the respondents with various documents including certificates of export, endorsed export entries and inspection and verification reports evidencing the fact of export. In addition to these documents, the Applicant also kept other documents such as bills of lading, cargo manifests and customer invoices as proof of export. Further, that the Applicant, as required under the remission scheme, submitted reconciliation reports to the respondents showing how the materials imported had been utilised.

7. Upon fulfilling the conditions of the remission scheme, the Applicant applied for the cancellation of the security bonds and the respondents being satisfied with the Applicant's compliance duly cancelled the bonds thus confirming that the products had indeed been exported and no taxes were payable by the Applicant in respect of the relevant remissions.

8. The Applicant deposed that notwithstanding the foregoing, the respondents through the letters dated 1st October, 2014 and 15th October, 2014 purported to demand additional taxes totalling Kshs.144,941,583 comprising of VAT, Import Declaration Fees (IDF), penalties and interest alleging that the Applicant had not exported products manufactured using raw materials imported under the remission scheme.

9. The Applicant wrote back to the respondents furnishing it with several documents evidencing export and seeking a review of their decision. Through a letter dated 20th November, 2014 the respondents rejected the application for review and insisted that Kshs.134,883,572 was due from the Applicant. In rejecting the documents supplied by the Applicant, the respondents insisted that only certificates of export were acceptable as proof of export. According to the Applicant, the respondents also rejected several certificates of exports contending that the same were not relevant.

10. The Applicant's averment is that the respondents' argument that only certificates of export are acceptable as proof of export lacks basis in law and is therefore *ultra vires.* The Applicant argues that there are other documents which can be used to verify export of products. It is thus the Applicant's case that it met all the conditions under the remission scheme and the respondents' demand for additional taxes is unlawful, unreasonable and irrational.

11. The Applicant asserts that having cancelled the security bonds, the respondents are estopped from demanding taxes. Further, that the respondents' action breached the Applicant's legitimate expectation that the respondents would not demand further taxes as it had complied with the law.

12. Another ground relied upon by the Applicant as per the statutory statement dated 3rd December, 2014 is that the process of exportation is supervised by the respondents' officers, right from the loading point and the process is documented. Thus, the Applicant submits, that the respondents cannot reject the documents generated during the exportation process.

13. The respondents opposed the application. Their case is brought out by the replying affidavit sworn on 16th January, 2015 by Phylis Mutwol, a supervisor with the 2nd Respondent. She averred that the 1st Respondent is established under the Kenya Revenue Authority Act, Cap 469 (KRA Act), as an agency of the government, for the collection and receipt of revenue. It is required to administer and enforce all provisions of the laws set out in parts 1 & 2 of the First Schedule of the KRA Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws. The 2nd Respondent is a Commissioner appointed under Section 13 of the KRA Act. The respondents stated that under Part 1 of the First Schedule to the KRA Act the 1st Respondent enforces the East Africa Community Customs Management Act (EACCMA).

14. The respondents' case is that the Kenyan tax collection regime is centred on a system of self-assessment which largely relies on the full disclosure and/or good faith of individuals or companies making tax declarations. *The 2nd Respondent verifies compliance through routine examinations and inspections and through action precipitated by a comprehensive risk analysis system.* The respondents averred that the system of self-assessment regime has over the years been severely abused, with the attendant loss of a substantial amount of revenue accruing to the Government, which loss has unduly affected the funding of public expenditure.

15. The respondents disclosed that the Government of Kenya through the Duty Remission Scheme Office runs a programme meant to encourage manufacturers to export more goods and be competitive so as to earn the country more foreign exchange. Goods manufactured and exported do not attract Value Added Tax (VAT) or custom duties. Under the scheme, raw materials are imported duty free under customs bond and exported under customs supervision. In order to guard against abuse of the scheme, traders are required to submit a reconciliation report of utilisation of imported raw materials vis-à-vis the exports.

16. It is the respondents' case that in order to guard against the abuse of the Duty Remission Scheme (DRS), the 2nd Respondent conducted post clearance audit on all the companies operating under the Scheme. The exercise revealed that the Applicant does not export its goods through the Busia border as it purports. As a result of the finding, tax demand notes totalling to Kshs.15, 836,963.50 were raised.

17. In response to the demand notices, the Applicant presented copies of their documents with rotational numbers and endorsements at the back. Upon scrutiny of the documents submitted by the Applicant, the 2nd Respondent discovered that the stamps, rotational numbers and officers' signatures were all forgeries. According to the 2nd Respondent's register, the documents presented by the Applicant belonged to other companies whose goods exited through the border.

18. It is the respondents' case that the Applicant was aggrieved by the decision of the 2nd Respondent to demand the taxes and filed an appeal with the Customs & Excise Appeals Tribunal as provided for under the Customs & Excise (Appeals) Rules, 2000. The appeal was, however, later compromised by a consent order dated 23rd July, 2014 in which the Applicant agreed to pay taxes amounting to Kshs.14,045,808.50.

19. The respondents deposed that the Investigation and Enforcement Department, Eldoret had audited the Applicant's exports at the Lokichoggio border station and found that some exports could not be accounted for**.** Following that audit the Applicant admitted having committed an offence and the matter was resolved administratively**.**

20. The respondents' case is that the tax demand herein was based on the export entries submitted by the Applicant in its reconciliation reports. The demand covered various border stations and each of the demand letters was based on a control document submitted by the Applicant containing a list of the export entries.

21. The respondents averred that the Applicant's reconciliation reports revealed that entries were in the system but the export had not taken place; rotation numbers did not exist; and some entries were submitted which were not in the Applicant's reconciliation reports. The respondents also deposed that in arriving at the demand for Kshs. 134,883,572 the export documents submitted by the Applicant were

considered. Exports which were confirmed to have exited and had genuine documentation were also taken into account.

22. It is the respondents' position that the Applicant cannot prevent them from performing their statutory duties especially having confirmed that some exports never took place. The respondents contended that the fact that the bonds were cancelled does not stop them from conducting post clearance audit and seeking to recover taxes on account of the failure to account for exports or failure to comply with the conditions for the tax remission. According to the respondents, bond cancellation does not conclude tax collection. The respondents postulated that should the 2nd Respondent discover additional evidence to indicate that tax was not collected as required by law, he/she has powers to demand payment of the tax. Section 133 of EACCMA was cited in support of this argument.

23. The respondents asserted that sections 235 and 236 of the EACCMA empowers them to carry out post clearance audit on the import and export declarations of taxpayers through verifying the accuracy of the entry of goods or documents and investigating whether a taxpayer has made the correct customs declarations and paid all the taxes due.

24. The respondents submitted that the Applicant was fully engaged in the reconciliation exercise and the exports that were confirmed to have exited were allowed thus leading to an adjustment of the demand to Kshs. 134,883,572 from Kshs. 144,941,583. Further, that the Applicant was fully aware that the stamps, rotational numbers and officers' signature were not genuine or belonged to other companies whose goods exited through the border.

25. According to the respondents, they have powers to demand short levied taxes (duty not paid or underpayment of duty) and under Section 131 of the EACCMA they have powers to issue agency notices in enforcement of collection of taxes/duties.

26. The respondents disclosed that the Applicant had in addition to these proceedings pursued an alternative remedy of appeal as envisaged under Section 230 of the EACCMA by appealing to the Customs Tribunal established under Section 231 of EACCMA.

27. In conclusion, the respondents asserted that judicial review is not available to the Applicant in the circumstances of this case. The respondents' position is that an order of certiorari is not available for the reasons that it cannot issue in the absence of bad faith or to quash a demand notice made pursuant to statutory provisions and regulations under an Act of Parliament, more specifically the EACCMA. Further, that judicial review is concerned, not with the merits of the decision but the decision-making process itself, of which no fault can be found with the process leading to the issuance of the statutory demand notices.

28. In support of its case, the Applicant submitted that it was not asking this court to consider the merits of the decision of the respondents. Its plea to the court was to scrutinize the legality, rationality and reasonableness of the decision.

29. The Applicant asserted that the decision of the respondents is illegal in that there is no law which states that a certificate of export is the only proof of export. The Applicant submitted that the respondents' assertion that it would not recognize any other form of proof of export except certificates of export is not supported by the law and was thus *ultra vires.* According to the Applicant, the requirement for certificates of export is on taxpayers manufacturing under bond of which the Applicant is not.

30. It is the Applicant's position that the demand for certificates of export by the respondents is also contrary to the spirit of the Customs and Excise Act, Cap. 472 which provides at Section 79G that:

> **"The licensee shall obtain a certificate of exportation from the proper officer at the port of exit on completion of the exportation, and the certificate shall be submitted to the proper officer at the bonded factory as proof of such export within thirty days, or such further period as the proper officer may allow, from the date of entry of the goods."**

31. The Applicant insisted that it exported all the products manufactured using the raw materials imported under the DRS and the respondents' demand was thus unreasonable and irrational as it had produced various documents evidencing export. The Applicant relied on the decision in **Municipal Council of Mombasa v Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001** where the Court of Appeal stated that:

> **"…It is the duty of the decision maker to comply with the law in coming to its decision, and common sense and fairness demands that once the decision is made, it is his duty to bring it to the attention of those affected by it more so where the decision maker is not a limited liability company created for commercial purposes but is a statutory body which can only do what is authorised by the statute creating it and in the manner authorised by statute."**

32. The Applicant submitted that it is unreasonable and irrational for the respondents to maintain that certificates of export are the only proof of export when the law does not compel its officers to issue the same in all cases. According to the Applicant, the respondents' officers have on several occasions failed to issue the certificates for various reasons including power failure.

33. The Applicant asserted that it indeed produced to the respondents documents such as export entries duly endorsed by their officers, cargo manifests, bills of lading and other documents evidencing receipt of goods outside the country but the respondents rejected them stating that only certificates of export would establish export of the finished product. It is the Applicant's position that the law only allow the respondents to ascertain that export did indeed take place but they have instead resorted to making demands that the Applicant cannot meet due to the mistakes of the respondents' officers. The Applicant asserted that it has no mechanism to compel the issuance of certificates of export by the respondents' officers.

34. The case of **Westminster Corporation v London and Northwestern Rail Co. [1905] Ac 426** was cited by the Applicant to demonstrate that unreasonable acts by statutory bodies can attract judicial review orders. In the cited case Lord Macnaughten stated at page 430 that:

> "**It is well settled that a public body vested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of authority committed to it. It must act in good faith and must act reasonably ..."**

35. On the issue of legitimate expectation, the Applicant asserted that it had a reasonable legitimate expectation that the respondents would not demand extra taxes from it for the period in question as it had paid all the taxes due from it for that period. It is the Applicant's view that it had a legitimate expectation that it would not be compelled to meet tax obligations which are not imposed upon it by the law. The Applicant therefore submitted that the respondents' decision to demand taxes was contrary to its legitimate expectation and was in bad faith.

36. The Applicant contended that it had the legitimate expectation that having discharged its obligation under the DRS, it would be discharged of all obligations including payment of taxes. Further, the respondents having authorized the cancellation of security bonds led the Applicant to believe that it had fully complied with the conditions of the DRS and the respondents were satisfied with its compliance with the conditions under the Scheme which included exportation and tax payment.

37. The Applicant submitted that judicial review is available in this case notwithstanding the fact that it had filed an appeal before the relevant tribunal. The Applicant cited the decision of this court in **Republic v Kenya Revenue Authority ex-parte Bata Shoe Company (Kenya) Limited [2014] eKLR** to support this proposition. In the cited case, I stated that:

> **"It must be remembered that the Tribunal has expertise in tax matters and it should be given room to discharge its mandate. However, the fact that there is an alternative remedy cannot of itself prevent an applicant from seeking judicial review remedies. Where the Court finds that judicial review orders are appropriate, it will grant them."**

38. On their part, the respondents submitted that in order to check against abuse of the DRS, beneficiaries of the Scheme are required to submit reconciliation reports showing how the raw materials imported have been utilised and also submit proof of export.

39. The respondents' assertion is that this is not the first time the Applicant has produced documents which upon scrutiny have been found not to be genuine. The respondents contend that in September 2013 the Applicant failed to account for 15 entries as per a demand letter dated 27th September, 2013. Consequently the Applicant admitted failure to account for exports and fraudulent evasion of duty and was fined Kshs.1,000,000.

40. Further, that on 23rd July, 2014, the Applicant, accepted to pay Kshs. 14,045,808.50/= which was demanded as a result of its failure to prove export of manufactured goods. The Applicant appealed against the decision but the matter was later settled by consent before the Customs & Excise Appeals Tribunal.

41. Upon considering the evidence and submissions of the parties, I find that the issues for determination in this case are:

a. Whether the respondents' demand of Kshs. 134,883,572 breached the Applicant's legitimate expectation;
b. Whether the Respondent's decision to demand Kshs. 134,883,572 from the Applicant in additional taxes was illegal, irrational and unreasonable;
c. Whether the Applicant should be granted the reliefs sought; and
d. Who should meet the costs of these proceedings?

42. The undisputed facts in this matter disclose that the Applicant is in the business of importing raw materials and processing edible oils for local consumption and export. The Applicant is a beneficiary of a DRS meant to encourage manufacturers export more goods and be competitive so as to earn the country more foreign exchange. Goods manufactured and exported do not attract VAT or custom duties. Under the DRS, raw materials are imported duty free under customs bond and exported under customs supervision.

43. What is the nature and purpose of judicial review? Judicial review is available where a public body or a public officer has acted illegally, irrationally or in breach of the rules of natural justice. In exercising its jurisdiction, the court does not consider the merits of the decision. Among other things, the court has a duty to confirm that the law was followed and fairness was upheld-see **Municipal Council of Mombasa v Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001.**

44. Githua, J clearly highlighted the role of judicial review in ***Republic v Commissioner of Customs Services ex-parte Africa K-Link International Limited*** **Nairobi H.C. Misc. J.R. No. 157 of 2012, [2012]** ***eKLR*** when she stated that:

> *"**It must always be remembered that judicial review is concerned with the process a statutory body employs to reach its decision and not the merits of the decision itself. Once it has been established that a statutory body has made its decision within its jurisdiction following all the statutory procedures, unless the said decision is shown to be so unreasonable that it defies logic, the court cannot intervene to quash such a decision or to issue an order prohibiting its implementation since a judicial review court does not function as an appellate court. The court cannot substitute its own decision with that of the Respondent. Besides, the purpose of judicial review is to prevent statutory bodies from injuring the rights of citizens by either abusing their powers in the execution of their statutory duties and function or acting outside of their jurisdiction. Judicial review cannot be used to curtail or stop statutory bodies or public officers from the lawful exercise of power within their statutory mandates."***

45. I will start by considering the Applicant's claim that the decision of the respondents breached its legitimate expectation. The importance of the doctrine of legitimate expectation in promoting good governance is not in doubt. Legitimate expectation holds public bodies to their promises.

46. The Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2015] eKLR** set the conditions that must be met in order for an applicant to successful invoke the principle of legitimate expectation as follows:

> ***"a. there must be an express, clear and unambiguous promise given by a public authority;***
>
> ***b. the expectation itself must be reasonable;***
>
> ***c. the representation must be one which it was competent and lawful for the decision-maker to make; and***
>
> ***d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution."***

47. The respondents' reply to the Applicant's reliance on the doctrine of legitimate expectation is that the cancellation of the security bonds was premised on the assumption that the Applicant had indeed exported the goods manufactured using the raw materials imported under the DRS. However, investigations carried out later revealed that the Applicant had not exported all the goods. If the assertion of the respondents is correct then the Applicant cannot rely on the cancellation of the security bonds to claim that it had a legitimate expectation that it would not be asked to pay additional taxes. The principle of legitimate expectation cannot be relied upon to prop an illegality. It is also important to remember that a party who seeks to rely on the doctrine must act in good faith.

48. Under Section 133 of the EACCMA it is clearly provided that "**where any obligation has been incurred, whether by bond or otherwise, for the payment of any duty, then such obligation shall be deemed to be an obligation to pay all duties which may become payable or recoverable under the provisions of this Act."** The obligation is not discharged until the taxes are paid.

49. The second ground put forward by the Applicant is that the decision of the respondents was unlawful and unreasonable. The respondents have through the replying affidavit of Phylis Mutwol averred that the documents submitted by the Applicant, in support of its claim that the products were exported, were not genuine. At paragraph 15 she deposed:

> **"THAT using the Ex-parte Applicant reconciliation reports (AM-6) i was able to check the system in each of the reports and i made the following findings:-**
>
> - **Entries were in the system but the export had not taken place. E.g 2013MSA4105558, 2013MSA4124392**
> - **Rotation numbers did not exist e.g.2013MSA4155590**
> - **Some entries were submitted which were not in the Ex-parte Applicants reconciliation reports e.g. 24 entries cited in our letter dated 20th November 2014."**

50. The allegations by the respondents are serious. Should the same be true, then the Applicant is not entitled to any remedy from this court. The Applicant cannot be allowed to benefit from an illegality. The law in support of what I have just stated was enunciated by J. G. Nyamu, J (as he then was) in **Republic v Commissioner of Lands ex-parte Somken Petroleum Company Limited [2005] eKLR** thus:

> **"The circumstances of the stamping of the documents are such both the employees of the Commissioner of Lands and an employee or two of the advocate presenting the documents and by extension the applicants were prima facie involved in a fraudulent transaction – to defraud the Collector of Stamp duty revenue. In short it is a fraud upon revenue. I hold that it would be contrary to the doctrine of public policy for the applicant to seek a Judicial review remedy in a transaction so tainted with fraud on revenue.**
>
> **Moreover the stamping of the documents upon which the applicant relies in seeking relief is**

contaminated by "turpis causa" and the rule has long been established that "ex turpi causa oritur non action". This maxim means that no person can claim any right or remedy whatsoever under an illegal transaction in which he has participated – see ..... *GORDON v METROPOLITAN* [1910] 2 K.B 1080 at pg 1098. In SCOTT v BROWM [1892] 2 Q.B. 724 at pg 1128. Lindley L.J. held as follows:

> **"No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or *transaction* which is illegal if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality."**

Even in Judicial review I find that a transaction tainted with fraud or illegality cannot be enforced and the damage if any must lie where it fell unless it can be recovered without pleading illegality or fraud, when the party purporting to enforce took part."

51. Any benefit arising from diversion of goods meant for export into the local market would benefit the Applicant who will be entitled to VAT refund.

52. In the South African case of **Metcash Trading Limited v The Commissioner for the South African Revenue Service and another**, **Constitutional Court of South Africa Case CCT 3/2000** Kriegler, J observed that the burden of proving that an assessment of VAT by the tax collector was wrong belonged to the merchant. This is how he put it in paragraph 22 of his judgment:

> **"Manifestly section 31 constitutes a valuable weapon in the hands of the Commissioner. The prospect of having the Commissioner independently assess both the underlying amount and the VAT that is to be paid thereon must in itself be a powerful disincentive for recalcitrant, dishonest or otherwise remiss vendors. But the compulsive force of this mechanism of the Act goes a good deal further. The dissatisfied vendor can, by lodging an objection under Section 32 of the Act and, that failing, by noting an appeal under section 33 or 33A, both compel the Commissioner to reconsider the assessment and have its correctness reconsidered afresh by an independent tribunal. But the burden of proving the Commissioner wrong then rests on the vendor under section 37. Because VAT is inherently a system of self-assessment based on a vendor's own records it is obvious that the incidence of this onus can have a decisive effect on the outcome of an objection or appeal. Unlike income tax, where assessments can elicit genuine differences of opinion about accounting practice, legal interpretations or the like, in the case of a VAT assessment there must invariably have been on adverse credibility finding by the Commissioner; and by like token such a finding would usually have entailed a rejection of the truth of the vendor's records, returns and averments relating thereto. Consequently the discharge of the onus is a most formidable hurdle facing a VAT vendor who is aggrieved by an assessment: unless the Commissioner is precipitating credibility finding can be shown to be wrong, the consequential assessment must stand."**

53. This position tallies with Section 138 of EACCMA. The said Section requires the person who claims drawback on import duty to prove that the goods have actually been exported.

54. In fact, the Applicant's claim that the respondents' demand for certificates of export is unlawful has no basis as Section 79G of the Customs and Excise Act, Cap. 472, which was cited by the Applicant, actually states that a certificate of export shall be issued by the proper officer.

55. Is judicial review the most efficacious remedy? The Applicant does not dispute the fact that it has lodged an appeal against the decision of the respondents before the Customs and Excise Appeals Tribunal. From the pleadings filed in court it is clear that the Applicant's grievance goes to the merits of the decision of the respondents. The Tribunal is the best body to go through the documents of the Applicant and make a decision on the genuineness of those documents. A judicial review court cannot on affidavit evidence make a determination as to who between the Applicant and the respondents is to be believed on the question of the genuineness of the evidence submitted by the Applicant in support of

export.

56. I agree with the statement in **Republic v Land Registrar Taita Taveta District & another, Mombasa HCJR No. 36 of 2012, [2015] eKLR** that:

> **"The Judicial Review Court is particularly ill-equipped to deal with disputed matters of fact where, as in this case, it would involve fact finding on an issue of fraud which requires proof to a standard higher than the ordinary balance of probabilities in civil litigation. To prove fraud there is need for direct evidence to be adduced and tested through cross-examination of the witnesses before the court can conclude that fraud has been committed and that the applicant had participated in it to warrant revocation of title by the Court under sections 143 of the Registered Land Act cap. 300, section 23 of the Registration of Titles Act cap. 281 and now….the Land Registration Act 2012 which repealed the former two Acts. As I have recently held in Mombasa HC Misc. App. No. 46 Of 2002** ***Republic v. The Registrar of Titles & Ors. Ex Parte Kalidas Kanji (Africa) Ltd., "Judicial review which proceeds on the basis of affidavits is not the appropriate procedure for determining disputed matters of fact.""***

57. Whether or not the Applicant's documents are forgeries is an issue best left for the determination of the tax tribunal.

58. Considering what I have stated above, it follows that the Applicant's case must fail. The application is dismissed with no orders as to costs.

Dated, signed and delivered at Nairobi this 16th day of February ,2016

W. KORIR,

JUDGE OF THE HIGH COURT