REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

MISCELLANEOUS CIVIL CASE 125 OF 2010

BETWEEN

BETA HEALTHCARE INTERNATIONAL LIMITED.....PETITIONER

AND

COMMISSIONER OF CUSTOMS SERVICES.....1ST RESPONDENT

KENYA REVENUE AUTHORITY .....2ND RESPONDENT

THE ATTORNEY GENERAL .....3RD RESPONDENT

RULING

1. Mr Ochieng' Oduol, advocate for the petitioner has applied to call Mr Geoffrey M'Mwenda Nchooro as an expert in matters of tax classification. He submits that the expert will assist the court determine several issues regarding tariff classification. In his view, this is necessary because the parties have filed several contradictory affidavits and an expert will clarify some of the issues. He maintained that the respondent will not be prejudiced as they will have an opportunity to examine the expert.

2. The application is opposed by Mr Ontweka on the basis that the statutory authority which resolves matters of tariff classification has made a decision and the court ought to take this into account. This position is supported by Mr Mutinda, counsel representing the Attorney General.

3. Whether or not to call an expert is a matter entirely within the court's discretion. **Article 22(3)(a)** empowers the Chief Justice to make rules that permit the court to call upon any individual with particular expertise to appear as a friend of the Court. Although the Chief Justice is yet to make rules, this Court has power as part of its jurisdictions under **section 84** of the former Constitution to call such a person to assist the court where necessary.

4. The matter before the court raises several contested issues. It is the duty of the Court to determine factual and legal issues however difficult or technical. I have not appraised myself entirely of the various contentions and I am of the view that if I call upon an expert at this stage, it will only serve to obscure the

matters and lengthen the proceedings.

5. It must be remembered that the expert, at least as I understood from the petitioner, is intended to assist the court. I have not reached a stage of these proceedings where I can state that I now require an expert to assist me in the matter.

6. I will therefore not accede to the application at this stage. Should I feel that more light needs to be shed on the matter, I shall give the necessary directions at the appropriate stage.

7. The net result of my decision is that the application to call Mr Geoffrey M'Mwenda Nchooro as an expert is rejected.

DATED and **DELIVERED** at **NAIROBI** this 22nd day of May 2012.

D.S. MAJANJA

JUDGE

Mr Ochieng' Oduol instructed by Ochieng' Onyango Kibet and Ohaga Advocates for the petitioner.

Mr Ontweka instructed by the Kenya Revenue Authority for the 2nd and 3rd respondents.

Mr Mutinda, Litigation Counsel, instructed by the State Law Office for the 3rd respondent.