



Commissioner of Domestic Taxes v Ashut Plastics Limited (Income Tax Appeal E185 of 2024) [2025] KEHC 8640 (KLR) (Commercial and Tax) (19 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8640 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E185 OF 2024**

BK NJOROGE, J

JUNE 19, 2025

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

ASHUT PLASTICS LIMITED RESPONDENT

JUDGMENT

1. The Appellant issued the Respondent with a letter dated 17th May, 2023 of notice of intention to issue additional assessment. The Respondent rejected the assessment vide the Objection notice dated 23rd May, 2023. The Appellant further issued the Respondent with the objection decisions dated 26th May, 2023, and consequently 5th September, 2023 demanding Kshs.145,406,375.88 and Kshs. 154,111,301.73 respectively.
2. The Respondent further objected to the assessment vide the Objection Notice dated 27th June, 2023, and later on appealed against it to the Tax Appeals Tribunal. The matter was heard and the judgment of the Tax Appeals Tribunal was delivered on 28th June, 2024. The Appellant then appealed against the said judgment, necessitating the suit herein. The Respondent thereafter filed the Cross Appeal dated 26th September, 2024.
3. The Appellant being dissatisfied with the entire Judgement of the Tax Appeals Tribunal delivered on the 28th of June 2024 in Tax Appeals Tribunal Appeal No. E650 of 2024 filed the Memorandum of Appeal dated 26th July 2024 against the said judgement, on the following grounds:

The Tribunal erred in law in its interpretation of the First Schedule to the *Excise Duty Act* 2015 as amended by section 35 (b) (xiv) of the Finance Act, 2022 on the imposition of excise duty on locally manufactured articles of plastic.



- a. The Tribunal erred in law and in fact in failing to appreciate the legal principle concerning interpretation of tax statutes, which require that the language imposing tax must receive a strict construction.
 - b. The Tribunal erred in law and in fact by not adhering to the enacted statutory provisions of the Excise Duty Act as amended by the Finance Act. The Tribunal's judgement was based on legislative intent rather than the actual law, which, at the time, did not exclude locally manufactured plastics from the excise duty.
 - c. The Tribunal erred in law and in fact by erroneously misapplying and placing undue weight on parliamentary debates and legislative intent rather than the actual statutory provisions. The Tribunal failed to recognize that legislative intent not incorporated into the enacted law cannot override the clear provisions of the Finance Act 2022
 - d. The Tribunal erred in fact and in law by failing to acknowledge that any legislative errors or omissions should be rectified by the legislature itself, as demonstrated by the subsequent Finance Act 2023. The Tribunal's decision did not account for the fact that the Respondent is bound by the law as it stands until corrected by further legislative action.
 - e. The Tribunal's finding that the Appellant's additional assessments were unjustified was incorrect. The Respondent was entitled to issue additional assessments under Section 31 of the Tax Procedures Act to ensure compliance with the statutory requirements of the Finance Act 2022.
4. The Appellant sought the orders that;
- a. The judgment of the Tribunal delivered on the 28th June 2024 be set aside and/or vacated.
 - b. The Appellant's objection decision dated 5th September 2023 be upheld.
 - c. The costs of this Appeal be awarded to the Appellant.
 - d. The Court to make such further orders as it may deem necessary.
5. In response, the Respondent filed a Statement of Facts dated 24th October 2024 and a Cross Appeal dated 26th. In the Statement of Facts the Respondent took the position that the Appellant erred in fact and in law by imposing Excise Duty at the rate of 10% on the Respondent's locally manufactured articles of plastics of tariff heading 3923.30.00 and 3923.90.90 considering that the law and the legislature clearly provide that Excise Duty should only be levied on imported articles of plastic, thus, the Tribunal erred in fact and law by failing to hold that the Respondent's additional assessments were unjustified and incorrect.
6. The Cross Appeal was on the following grounds;
- a. The Tribunal erred in fact and in law by holding that the Appellant, upon being served with an assessment did not first object as provided for under Section 51 of the Tax Procedures Act and that therefore, there was no objection decision that could enable the Appellant to approach the Tribunal with an Appeal.
 - b. The Tribunal erred in fact by failing to consider and analyze evidence provided by the Appellant in their Objection Notice to the Respondent's Assessment dated 23rd May 2023.



- c. The Tribunal erred in fact and in law by failing to hold that the Respondent's additional assessments were unjustified and incorrect.
- d. The Tribunal erred in law and fact by failing to disregard the Respondent's finding that the amendments to the Finance Act 2021 vide the Finance Act 2021 were intended amendments other than assented amendments to the law as per the letter by the Clerk of the National Assembly dated 28th July 2022 confirming the amendment.
- e. The Tribunal erred in law by failing to appreciate the 1st Schedule of the Excise Duty Act of 2015 which only provides for taxation of imported plastic articles while the Appellant's goods are locally produced, and as such, should not have been charged by the Respondent.
- f. The Tribunal erred in both law and fact by failing to set aside the Respondent's additional assessment to the Appellant for the sole reason that the Appellant had not amended their returns to include the wrongful assessments.

Therefore, the Appellant prayed that:

- i. The Appellants Cross Appeal before the Court be allowed.
- ii. The Judgement of the Tribunal delivered on 28th June 2024 be set aside.
- iii. The Respondent's decision dated 17th May 2023 and consequently 26th May 2023 demanding Kshs.257,027, 563. 09/- be struck out in its entirety.
- iv. The Respondent, its employees, agents or other persons purporting to act on the Respondent's behalf be barred and estopped from demanding or taking further steps towards enforcement and/or recovery of excise duty, penalties and interests on the Respondent's demand in relation to the instant matter.
- v. The Respondents be ordered to pay costs of the Cross Appeal.
- vi. Any other remedies the Court may deem just and reasonable.

Issues for Determination

7. The Court has carefully considered the written submissions by the parties, the Record of Appeal, the Appeal itself, the Cross Appeal as well as the response therewith and frames the following issue for determination;
 - a. Whether the Tribunal erred in law in its interpretation of the First Schedule to the Excise Duty Act 2015 as amended by section 35 (b) (xiv) of the Finance Act, 2022 on the imposition of excise duty on locally manufactured articles of plastic.

Analysis

8. The jurisdiction of this Court while exercising its Appellate jurisdiction from the Tribunal is circumscribed by Section 56(2) of the Tax Procedures Act. It provides that an appeal to the High Court and the Court of Appeal shall be on a question of law only.
9. Indeed, the main issue for determination herein is a question of interpretation of law.



a) Whether the Tribunal erred in law in its interpretation of the First Schedule to the Excise Duty Act 2015 as amended by section 35 (b) (xiv) of the Finance Act, 2022 on the imposition of excise duty on locally manufactured articles of plastic.

10. In summary, the background of this dispute is that Paragraph 32 (a)(iv) of the Finance Act 2021, Articles of Plastic was under tariff heading 3923.30.00. There was an amendment of the Excise Duty Act effected through Paragraph 35 (b)(xiv) of the Finance Act 2022, which states;

The First Schedule to the Excise Duty Act, 2015 is amended —

(b) in the second table appearing in paragraph 1 of Part I— (xiv) by inserting the expression "and 3923-90.90" after the expression "3923.30.00" appearing in the tariff description "Imported Articles of plastic of tariff heading 3923.30.00"

11. The Appellant took the position that the word "imported" in the Finance Act 2022 was misplaced since the Finance Act 2021, which introduced Excise Duty on articles of plastics of tariff heading 3923.30.00 did not have the word "imported". It further argued that the Finance Act 2022 did not intend to use the word "imported" but only sought to insert the expression and 3923.90.90. This meant that all articles of plastic of tariff heading 3923.30.00 and 3923.90.90 were subject to excise duty at the rate of 10%. This is irrespective of whether they were locally manufactured or imported.

12. In contrast, the Respondent maintained that the Appellant herein is disregarding the explicit provisions of the Excise Duty Act. This necessitated the Appellant herein to adduce the Hansard and Order Paper to demonstrate the intent of Parliament when introducing the law.

13. In addition to the aforementioned, the Respondent through its representative body (The Kenya Association of Manufacturers), even got confirmation from the Clerk of the National Assembly that the Excise Duty should be imposed solely on imported Articles of Plastics and not locally manufactured one. Despite those above, the Appellant is still adamant that the Respondent should pay the outstanding principle Excise Duty Liability on locally manufactured plastics.

14. Going back to the Appellant's argument that the Finance Act 2022 did not intend to use the word "imported" but only sought to insert the expression and 3923.90.90. Hence, meaning all articles of plastic of tariff heading 3923.30.00 and 3923.90.90 were subject to excise duty at the rate of 10%. This is irrespective of whether they were locally manufactured or imported.

15. In dealing with this issue, it is imperative that the Court adopts the principle that tax statutes must be interpreted strictly, leaving no room for intendment or implication. This view was highlighted in *Stanbic Bank Kenya Limited v Kenya Revenue Authority CA Civil Appeal No. 77 of 2008 [2009] eKLR* 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."



16. The plain reading of Paragraph 35 (b)(xiv) of the Finance Act 2022 clearly points out that the locally manufactured articles of plastic were left out of this description under the Finance Act 2022. Therefore, the law in place at the time of the assessment that is the subject matter of this Appeal provided that only imported articles of plastic that fell under tariff Codes 3923.30.00 and 3923.90.90 were excisable at 10%.
17. In confirming the Respondent's assertions, there was a letter to the Kenya Association of Manufacturers dated 16th August 2022 in which the National Assembly confirmed that;

“We wish to confirm that the National Assembly considered and passed the particular amendment to 34 of the Finance Bill, 2022 as proposed by the Departmental Committee on Finance and National Planning. In this regard, the amended item should read as follows:

Tariff Description	Rate
Imported Articles of plastics of tariff heading 3923.30.00 and 3923.90.90	10%
18. It is the court's understanding that it is within the authority of the National Assembly under Articles 95, 209 and 210 of *the Constitution* to enact legislation governing the manner in which a particular form of tax is administered including the manner in which it is imposed, calculated and enforced. In the case of *Pevans East Africa Limited & another v Chairman, Betting Control & Licensing Board & 7 others* [2018] eKLR the court stated:

“Courts must decline to intervene at will in the constitutional spheres of other organs, particularly when they are invited to substitute their judgment over that of the organs in which constitutional power reposes, because those organs have the expertise in their area of mandate, which the courts do not normally have.”
19. Consequently, there is and was no room to assume that Finance Act 2022 did not intend to use the word “imported” as alleged by the Appellant. The writing is clear and there was a further confirmation by the National Assembly itself that the tariff applied to Imported Articles of plastics of tariff heading 3923.30.00 and 3923.90.90.
20. In light of the above, the Court agrees with the Tribunal's considered view that only imported articles of plastic of tariff codes 3923.30.00 and 3923.90.90 were excisable at 10%. Further, that the Appellant was not justified in levying Excise Duty on the Respondent's locally manufactured items of plastic in the months in dispute.
21. Accordingly, the Court upholds the Tribunal's findings and holds that the Appellant erred in imposing the 10% Excise duty on the Respondent's products.
22. As regards the Cross Appeal, the basis on which the Appeal was filed is not quite clear, given that the Tribunal's finding was in the Respondent's failure. The Objection decision was set aside.

Determination

23. The Appeal is dismissed in its entirety.
24. Each party to bear its own costs.
25. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE, 2025



NJOROGE BENJAMIN K.
JUDGE

