



**Commissioner of Legal Services and Board Coordination v  
Nairobi Plastics Limited (Income Tax Appeal E030 of 2024)  
[2025] KEHC 8709 (KLR) (Commercial & Admiralty) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8709 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
INCOME TAX APPEAL E030 OF 2024**

**BK NJOROGE, J**

**JUNE 19, 2025**

**BETWEEN**

**COMMISSIONER OF LEGAL SERVICES AND BOARD  
COORDINATION ..... APPELLANT**

**AND**

**NAIROBI PLASTICS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This is a Judgement arising out of the decision of the Tax Appeals Tribunal delivered on 8<sup>th</sup> December, 2023 in Tax Appeals Tribunal Appeal No. 26 of 2023.

**Background Facts**

2. The Tribunal had set aside the Appellant's Objection decision issued on 1<sup>st</sup> December 2022 that demanded for Kshs.8,850,800 being Excise duty when the Respondent filed nil returns. The Articles of Plastics manufactured by the Respondent were found to be exempt from Excise Duty and that only imported articles of plastics of tariff codes 3923.30.00 and 3923.90.90 were subject to Excise Duty at 10%.
3. The Appellant, being dissatisfied with the entire Judgement of the Tribunal delivered on the 8<sup>th</sup> of December 2023 in Tax Appeals Tribunal Appeal No.26 of 2023 appeals against the said judgement, on the grounds that:
  - a. 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.



- b. 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.
  - c. The Tribunal erred in law and fact in failing to make a pronouncement on whether a taxpayer can object to a self-assessment provided for under section 28 of the *Tax Procedures Act*.
  - d. The Tribunal erred in law and in fact in failing to pronounce itself on the legal validity or otherwise of the Respondent's Objection dated 9th September 2022 to its self-assessments of KShs. 24,998,166.85 for the month of July 2022.
  - e. The Tribunal in handling the matter failed to ensure that justice was done to the Appellant by allowing flaws of rules and procedures in handling the matter contrary to the provisions of Article 159(2) and (4) of *the Constitution* of Kenya 2022.
  - f. The Tribunal erred in both fact and law by failing to consider the relevant material evidence and pleadings placed before it by the Appellant and thus arriving at a wrong conclusion.
  - g. The Tribunal erred when it framed wrong issues for determination thus asked itself the wrong questions and in so doing arrived at a wrong conclusion.
4. The Appellant prayed for orders: -
- i. The Appeal be allowed.
  - ii. The Judgement of the Tax Appeals Tribunal dated 8<sup>th</sup> December 2023 issued against the Appellant be set aside.
  - iii. The Appellant's Objection Decision issued on 1st December 2022 demanding for Excise Duty amounting to Kshs. 8,850,800 be upheld.
  - iv. Costs be awarded to the Appellant herein.
5. The Respondent filed the Statement of Facts dated 13<sup>th</sup> May 2024 and stated 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. This is considering that the law and the legislature clearly provide that Excise Duty should only be levied on imported articles of plastic. Therefore, the Tribunal was justified in allowing the appeal.

### **Issues for Determination**

6. The Court has carefully considered the written submissions by the parties, the Record of Appeal, the Appeal itself 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**

7. 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.
8. 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.**

9. 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"

10. 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.
11. 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.
12. 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 principal Excise Duty Liability of Kshs.8,850,800 on locally manufactured plastics.
13. 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. 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.
14. 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.”

15. 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%.
16. In confirming the Respondent's assertions, there was a letter to the Kenya Association of Manufacturers dated 16<sup>th</sup> 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%
17. 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.”
18. 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.
19. 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.
20. 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.

### **Determination**

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

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JUNE, 2025**



**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of: -

Miss Kinyua holding brief for Miss Onyango for the Appellant

Miss Omogeni for the Respondent

Court Assistant Mr. Luyai.

