



**Commissioner of Legal Services and Board Coordination v  
Nairobi Plastics Limited (Income Tax Appeal E029 of 2024)  
[2025] KEHC 8754 (KLR) (Commercial and Tax) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8754 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E029 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 an Appeal arising out of the judgement of the Tax Appeals Tribunal delivered on 8<sup>th</sup> December, 2023 in Tax Appeals Tribunal Appeal No. 25 of 2023.

**Background facts**

2. The Tribunal's Judgement dated 8<sup>th</sup> December 2023 in TAT Appeal No. E25 of 2023, found that only imported plastic articles under tariff codes 3923.30.00 and 3923.90.90 were subject to 10% Excise Duty. The Tribunal further held that the Respondent's locally manufactured plastic articles were exempt and consequently set aside the Appellant's Objection Decision of 1<sup>st</sup> December 2022, which had demanded Kshs. 14,953,178 in Excise Duty for July to September 2022.
3. The Appellant was dissatisfied with the entire Judgement of the Tax Appeals Tribunal delivered on the 8<sup>th</sup> of December 2023 in Tax Appeals Tribunal Appeal No.25 of 2023. It filed the Memorandum of Appeal dated 6<sup>th</sup> February 2024 against the said judgment, on the following grounds:
  - 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 the 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 determination on an issue that was raised by a party to the dispute as one of the issues for determination.
  - d. The Tribunal erred in law and fact in failing to pronounce itself on the legal validity or otherwise of the Respondent's Objection dated 1<sup>st</sup> December 2022 to its self-assessments of Kshs.14,953,178 for the months of July and August 2022.
4. The Appellant asked the Court for orders that:
- a. The Judgement of the Tribunal delivered on the 8<sup>th</sup> December 2023 be set aside and or vacated.
  - b. The Appellant's Objection Decision dated 1<sup>st</sup> December 2022 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 reply, the Respondent filed the Statement of Facts dated 24<sup>th</sup> October 2024. It stated in summary 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 the above, the Appellant is still adamant that the Respondent should pay the outstanding principal Excise Duty Liability of Kshs.14,953,178 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 means 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 for the Appellant

Miss Mogeni for the Respondent

Court Assistant Mr. Luyai.

