Fazal Dharamshi & Company Limited v Kenya Revenue Authority (Petition E009 of 2023) [2025] KEHC 8552 (KLR) (12 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8552 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

PETITION E009 OF 2023

J NGAAH, J

JUNE 12, 2025

BETWEEN

FAZAL DHARAMSHI & COMPANY LIMITED ..... PETITIONER

AND

KENYA REVENUE AUTHORITY ..... RESPONDENT

JUDGMENT

1. Before court is a petition dated dated 16 February 2023 in which the petitioner seeks the following orders:

> "(a) a declaration that your petitioner's fundamental rights to the protection of its property and from arbitrary deprivation thereof as well as the right to fair administrative action, have been breached;
>
> (b) a declaration that the enforcement notice and alleged demand made by the respondent upon it for payment of Kshs. 29,205,925.00 made on 8th February 2023 and the alleged demand on 8th February 2022 infringe upon the petitioner's constitutional rights and are quashed or nullified and/or deemed unenforceable;
>
> (c) a declaration that the respondent acted inconsistently with and in breach of its powers, duties and obligations under the provisions of Articles 10, 40, 47 and 50 of *the Constitution*;
>
> (d) an order permanently prohibiting and/or restraining the respondent from enforcing payment of Kshs. 29,205,925.00 on account of alleged short levy of duty as against the petitioner".

2. The affidavit in support of the petition was sworn on 16 February 2023 by Mohamed Fazal who introduced himself in the affidavit as a director of the petitioner company.

3. According to Fazal, on 8 February 2023, the respondent demanded from the petitioner a sum of Kshs. 29,205, 925.00 on the basis that the respondent's audit had revealed that while applying certain goods, the petitioner had, in declaration of the imports, applied an import duty levy of 10% instead of 25%.

4. The enforcement notice made a reference to a demand alleged to have been sent in February 2023 but which the petitioner was not aware of. When the petitioner's counsel on record requested for the demand notice it was availed on 10 February 2023.

5. The consignment consisted of photocopying paper. Although the import duty levy is alleged to have been understated, the consignment had been cleared and released to the petitioner by the respondent after the latter verified the data entry in respect of the consignment and the consignment itself. The taxes and duties payable were duly ascertained through the respondent's simba system. They were paid before the consignment was released to the petitioner.

6. The respondent alleged that the understated levy of 10% was as a result of misclassification or tariffs but, according to the petitioner, the applicable tariff was the East African Common External Tariff from 2017 and 2022 whose correct code was declared by the petitioner as 4802.56 and not 4823.20 which, apparently, the respondent purported to apply in its demand for the outstanding levies. To be precise, Fazal has sworn that the consignment was made up of photocopying paper and not filter paper board.

7. In summary, the amount demanded by the respondent is "allegedly on account of uncollected duty due to application of a lower duty rate for a 'misclassified' tariff" which Fazal disputes.

8. It is further sworn that had the goods been misclassified as alleged, they would not have been released on verification by the respondent.

9. Since the respondent was, all along aware that the subject goods were being imported for trading purposes and not personal consumption and that taxes collected would form a fundamental component of the respective petitioner's cost of goods in order to determine its selling price, Fazal has sworn that it is unreasonable and irrational that a demand is made between one and a half years and four years after the date of importation.

10. The petitioner's case is that the demand for additional taxes now made by the respondent infringes upon the petitioner's constitutional property rights as well as the petitioner's right to fair administrative action in terms of the national values and principles of governance under article 10 of *the Constitution*. The petitioner, it is urged, legitimately expected that the Simba system calculated the correct tax payable to enable it incorporate this cost in its selling price and that, once the goods are sold, the petitioner cannot recover any sums claimed.

11. It has further been sworn that the wrongful acts or conduct or system deficiencies in the control of the respondent should not be visited upon the petitioner which has been honest, transparent and open with its declarations to the respondent and whose cargo was only released after their import entry and cargo was verified and the taxes demanded duly paid.

12. In any event, the petitioner neither had control over the respondent's Simba System nor made any changes to the computations generated by the System and subsequently verified, together with the cargo, by its officers.

13. According to the petitioner, it is morally repugnant to justice and the national values and principles of governance set out in articles 10 of *the Constitution* for the Kenya Revenue Authority to seek to saddle the petitioner with additional duty on goods sold as long ago as 2019 when it very well knows that the petitioner cannot and will not be able to pass on the cost resulting in a direct loss to them through no fault of their own.

14. The petitioner, it is urged, legitimately expected fair administrative action from the respondent particularly given the fact that it was aware that the subject goods were not for personal consumption but rather for trade purposes and that a major component in determining the costs of he importation for purposes of working out the selling price was the amount of duty and taxes paid or tax payable. The belated demand almost four years after clearance for an alleged underpayment is, in the circumstances, unjustified and without any basis particularly given that the petitioners are not alleged to have mis-described the cargo or its origin and infringes upon the Petitioners' constitutional rights.

15. Robert Odessa has sworn a replying affidavit on behalf of the respondent. He has sworn that he is an officer appointed under and in accordance with Section 13 (3) of the Kenya Revenue Act, cap. 469. He is currently serving "in the rank of supervisor within Post clearance Audit section of Risk Management Division of Customs and Border Control Department of Kenya Revenue Authority" and his duties include among others, post clearance audit.

16. The petitioner, according to Odessa, is an importer of photocopying paper more particularly described as "photocopy A4 paper 80 GSM". The petitioner is alleged to have declared the imported the consignment in issue under HS Code 4802.56.00 the particulars of which are as follows:

> " 4802.56.00 -- Weighing 40 g/m2 or more but not more than 150 g/m2, in sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state kg 25%."

17. The tariff heading for 48.02, on the other hand reads:

> " 48.02 Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punchcards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 48.01 or 48.03; hand-made paper and paperboard."

18. From the petitioner's own evidence, its consignment consisted A4 photocopying paper of 80 GSM. But the tariff declaration by the petitioner which was 4802.56.00 specifically deals with weight of between 40GSM and 150GSM. The paper under that particular classification has one side not exceeding 435mm and the other side not exceeding 297mm.

19. Pursuant to section 235 and 236 of the East African Community Customs Management Act, 2004, the respondent is mandated to review declarations by taxpayers to ascertain whether the taxpayer has made a correct declaration and whether the correct amount of taxes have been paid. Accordingly, the respondent conducted a desk audit of all imports by the petitioner from August 2018 to the time of the demand of the short fall due from the petitioner. The audit revealed a short levy in import duty and raised a VAT demand of Kshs. 29,205,925.00 and the same was served upon the petitioner to satisfy the demand.

20. Although the petitioner denied having received the notice dated 8 February 2022, the same has been exhibited to its documents annexed to the affidavit in support of the petition.

21. According to Odessa, the law allows the Commissioner to raise any demand for short levied taxes on imported goods within a period of 5 years from the date of importation. Lapse of time does not absolve the petitioner from payment of taxes that are due and owing as tax is a debt due and owing to the state and the same ought to be collected within the confines of the law. Where the law allows a period of 5 years, and the Commissioner demands the taxes within the said period, the same cannot be deemed to be ultra vires.

22. The Simba system operated by the respondent relies on the input by a taxpayer. Where a taxpayer inputs details that would generate a lower tax rate, then the system will input the low tax rate. In the petitioner's case, the petitioner made an input into the system by inserting the HS Code with the lower tax rate of 10%. Accordingly, the petitioner cannot now turn around and state that he has no control over the system.

23. The respondent carried out a post clearance audit in accordance with the provisions of Section 236 of East African Community Customs Management Act, (2004) on the importations made by the petitioner focusing on the tariff declarations by the petitioner vis-a-vis the correct tariff classification.

24. It is the respondent's position that the demand and enforcement notices issued by the respondent are consistent with the respondent's statutory mandate to administer, assess and collect taxes.

25. Looking at the affidavits sworn on behalf of the disputants, it is fairly easy to see that the background of the petitioner's petition is simply a disagreement on the tax rate levied on the petitioner's consignment it imported at a particular time. While the petitioner's case is that it paid the levy or levies due upon assessment by the respondent after which its consignment was released to the petitioner, the respondent, on the other hand is of a contrary opinion.

26. The petitioner's case is that the assessment of the tax paid by the petitioner on its consignment was understated and, as far as I understand Odessa, the understatement is attributed to the petitioner having made an erroneous tariff declaration in the sense that the petitioner made an HS Code entry of a lower tax rate of 10% when a proper HS code entry would have yielded a tax rate of 25%.

27. If a proper tax rate had been applied at the very first instance, according to the respondent, the petitioner would have paid Kshs. 29,205,925.00 as duty over and above the payment made. It is this difference that the respondent sought through demand and enforcement notices that provoked this petition.

28. Against this background, the dispute between the parties would primarily be factual in nature. Whether the petitioner applied the correct HS Code in its import declaration form is a question of fact. Whether the petitioner's consignment could be categorised under a particular HS Code rather the other is also a question of fact. It is also a question of fact whether the respondent subsequently undertook some audit which revealed that the taxes or duties levied on the petitioner's import were understated.

29. Eventually, the overarching issue at which all these questions converge is whether the demand for Kshs. 29,205,925.00 is a correct assessment of the tax due from the petitioner and, accordingly whether the impugned demand and enforcement notices are justified.

30. Part XX of the East African Community Customs Management Act, 2004 deals with appeals against the decision of the Commissioner. Section 229 thereof reads as follows:

    SUBPARA 229

    SUBPARA (1)

A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.

SUBPARA (2)

The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged.

SUBPARA (3)

Where the Commissioner is satisfied that, owing to the absence from the Partner State, sickness or other reasonable cause, the person affected by the decision or omission of the Commissioner was unable to lodge an application within the time specified in subsection (1), and there has been no unreasonable delay by the person in lodging the application, the Commissioner may accept the application lodged after the time specified in subsection (1).

SUBPARA (4)

The commissioner shall within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application, stating reasons for the decision.

SUBPARA (5)

Where the Commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application.

SUBPARA (6)

During the pendency of an application lodged under this section the Commissioner may at the request of the person lodging the application release any goods in respect of which the application has been lodged to that person upon payment of duty as determined by the Commissioner or provision of sufficient security for the duty and for any penalty that may be payable as determined by the Commissioner.

31. Everything being equal, the petitioner ought to have lodged an application for review under section 229(1) of the Act. According to section 229(4), a decision on the application for review would have been made within thirty days of the date of the lodgment of the application for review and, in default, the application would be deemed to have been allowed (see section 229(5)).

32. Where a person is not satisfied with the decision of the Commissioner then he is enjoined to lodge and appeal to the Tax Appeals Tribunal. The appeal has to be lodged within forty-five days after service of the decision. This is provided for under section 230 of the East African Community Customs Management Act. The section reads as follows:

230.

(1) A person dissatisfied with the decision of the commissioner under section 229 may appeal to a tax appeals tribunal established in accordance with section 231.

(2) A person intending to lodge an appeal under this section shall lodge the appeal within forty-five days after being served with the decision, and shall serve a copy of the appeal on the Commissioner.

33. This provision is consistent with section 12 of the *Tax Appeals Tribunal Act*, No. 13 of 2014 on appeals against the decisions of the Commissioner and provides that 'a person who disputes the decision of the Commissioner on any matter arising under the provisions of any tax law may, subject to the provisions of the relevant tax law, upon giving notice in writing to the Commissioner, appeal to the Tribunal'. Section 13 of the Tax Appeals Act details the procedure for making the appeal.

34. If still dissatisfied with the decision of the Tax Appeals Tribunal, the applicant would be entitled to move this Honourable Court under section 32 of the *Tax Appeals Tribunal Act* to impeach that decision. Under this provision of the law, a party to proceedings before the Tribunal may, within thirty days after being notified of the impugned decision or within such further period as the High Court may allow, appeal to this Honourable Court.

35. Thus, on the face of it, a clear pathway towards resolving the dispute between the petitioner and the respondent ought to have been the means prescribed by the East African Community Customs Management Act; the *Tax Procedures Act* and the *Tax Appeals Tribunal Act*.

36. As a matter of fact, the respondent took a preliminary objection to the course the petitioner has adopted and apparently sought to have the petition struck out because, in the wake of the provisions to which reference has been made, this suit was unsustainable. I could not readily find the preliminary objection on the case tracking system portal but a ruling on the objection shows that the objection was taken on the following grounds:

> " 1. That demand date 8th February 2022 is properly made by the respondent in accordance with Section 135 and 136 of the East African Community Customs Management Act.
>
> 2. That the enforcement action by the respondent dated 8th February 2023 is properly made pursuant Section 135 of the East African Community Customs Management Act.

Short levy or erroneous refund

135.

(1) Where any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case may be, were liable.

(2) Where a demand is made for any amount pursuant to sub-section (1), the amount shall be deemed to be due from the person liable to pay it on the date on which the demand note is served upon him or her, and if payment is not made within thirty days of the date of such service, or such further period as the Commissioner may allow, a further duty of a sum equal to five percent of the amount demanded shall be due and payable by that person by

way of a penalty and a subsequent penalty of two percent for each month in which he or she defaults.

(3) That section 229(1) grants the applicant/petitioner the right to object to the demand dated 8th February 2022 by applying for a review decision which the applicant/petitioner has failed to do resulting in an enforcement by the respondent.

Application for review to commissioner

229(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.

(4) That the application and the petition is (sic) improperly before this Honourable Court as this Court lacks the jurisdiction to entertain the application and the petition.

(5) That the applicant/petitioner has come before this Honourable Court before first going before the Tax Appeals Tribunal which is the court (sic) of first instance in customs matters, in accordance with Section 230(1) of the East African Community Customs Management Act.

Appeals to Tax Appeals Tribunal

230 (1) A person dissatisfied with the decision of the commissioner under section 229 may appeal to a tax appeals tribunal established in accordance with section 231.

(6) That the respondent prays that the application/petition be dismissed for want of jurisdiction pursuant to section 23(1) of the the East African Community Customs Management Act."

The respondent also asked for an order on costs.

37. The respondent was not successful in persuading the court that the petition was improperly before this Honourable Court and so on March 19, 2024, it rendered a ruling dismissing the preliminary objection.

38. Of particular relevance to the direction the determination of this petition should take, the court while overruling the respondent held, inter alia, as follows:

"(19) It is noteworthy that, in defending the Petition, counsel for the petitioner relied on the Krish Commodities Ltd v Kenya Revenue Authority (supra), for the proposition that the issue herein is not one of merit but the process. Hence counsel relied on the following excerpt from that decision:

"... the pertinent issue was whether the manner in which the decision was made or the process followed was reasonable, fair and in conformity with Article 47 of *the Constitution* ..."

39. In coming to this conclusion, the court was persuaded by the petitioner's submissions on this point. The petitioner had submitted that:

> " 2.11 My Lady, this is precisely the question that has been raised in the instant Petition - it is not a question of the merit on the demand for the short levied duty from which an appeal would ordinarily flow but rather about the fairness, reasonableness, rationality, efficiency and effectiveness of the decision and the efficacy of the decision making process leading onto the infringement of the Petitioners' constitutional rights that is in issue in the present Petition."

40. Needless to say, I am bound by the ruling of the Court and of particular relevance, is the delimitation set by the ruling on how far this court can go in determining the petition. To be precise, the ruling is express that I need not venture into the merits of the respondent's decision but, rather, focus on the process by which the decision was reached.

41. It follows that the questions of whether the petitioner made an erroneous tariff declaration or entered a wrong HS Code in the import declaration form; or should have paid the duty of 25% instead of 10%, and; whether the petitioner owes the respondent Kshs. 29,205,925.00 on account of unpaid duty are all questions beyond the scope of this decision.

42. Speaking of procedure, according to section 236 of the East African Community Customs Management Act, the Commissioner has powers to verify the accuracy of the entry of goods, among other things. This section reads as follows:

> 236. The Commissioner shall have the powers to—
>
> (a) verify the accuracy of the entry of goods or documents through examination of books, records, computer stored information, business systems and all relevant customs documents, commercial documents and other data related to the goods;
>
> (b) question any person involved directly or indirectly in the business, or any person in the possession of documents and data relevant to the goods or entry;
>
> (c) inspect the premises of the owner of the goods or any other place of the person directly or indirectly involved in the operations; and
>
> (d) examine the goods where possible for the goods to be produced.

43. According to the respondent, it is in the context of this provision that it undertook what Odessa has described as a "post clearance audit" or "the desk audit" of the declaration made by the petitioner with regards to the imported consignment, from which arose the disagreement on the amount of duty payable. It is as a result of the post clearance audit that it was discovered that there was a short levy in import duty on the petitioner's consignment to the tune of Kshs. 29,205,925.00.

44. If, according to the Commissioner's review or audit the duty on the petitioner's consignment was understated or, to use the language of the statute, short levied, the Commissioner being a proper officer was entitled to demand the amount short levied. Section 135 (1) of the Act is to the effect that there is a possibility that, for whatever reason, an importer could be short levied and whenever that happens, the commissioner is entitled to demand for the difference of what an importer has paid and what he ought to have paid. This section reads as follows:

> 135.

(1) Where any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case may be, were liable.

45. As to when the amount discovered to be owing becomes due, subsection (2) is clear that the amount is payable within thirty days of the date of the demand. The section reads as follows:

(2) Where a demand is made for any amount pursuant to sub-section (1), the amount shall be deemed to be due from the person liable to pay it on the date on which the demand note is served upon him or her, and if payment is not made within thirty days of the date of such service, or such further period as the Commissioner may allow, a further duty of a sum equal to five percent of the amount demanded shall be due and payable by that person by way of a penalty and a subsequent penalty of two percent for each month in which he or she defaults.

46. A question has arisen as to when the Commissioner ought to conduct his review or audit to ascertain such information as whether the correct import duty has been paid by importer. According to the petitioner, the consignment consisting of photocopying paper was imported between 2019 and 2021. Its case is that, "it is unreasonable and irrational that a demand is made between 18 months (1 ½ years) and 48 months (4 years) after the date of importation."

47. That the petitioner's petition appears to be solely hinged on what in the petitioner's opinion is unreasonable delay in conducting a post clearance audit is apparent from paragraph *11* in the affidavit in support of the petition where it was sworn as follows:

> " 11. That the Respondent was all along aware that the subject goods were being imported for trading purposes and not personal consumption and that taxes collected would form a fundamental component of the respective Petitioner's cost of goods in order to determine its selling price. It is unreasonable and irrational that a demand is made between 18 months [1 ½ years] and 48 months (4 years] after the date of importation."

48. And in the submissions filed in support of the petition, it has been urged that:

> " 22. By the time the enforcement notice was issued, the imported goods had long been sold. By making an untenable demand not premised on any just cause without any lawful and legal basis, the Respondent was acting with complete lack of candour and in contravention of the provisions of Articles 40(2),47(1) and Article 10 of *the Constitution* of Kenya."

49. So, if the process of reaching the impugned decision is impeached on the ground of undue, unreasonable or inordinate delay in the ascertainment of the correct duty that ought to have been paid, the question that arises is whether there is any express or implied provision in the law that prescribes the time within which a demand ought to be made. Indeed there is a such a provision, and the period within which the demand for any difference in duty that ought to have been paid but which was not paid is stated in section 135 (3) of the East African Community Customs Management Act which states as follows:

(3) The proper officer shall not make any demand after five years from the date of the short levy or erroneous refund, as the case may be, unless the short levy or erroneous refund had been caused by fraud on the part of the person who should have paid the amount short levied or to whom the refund was erroneously made, as the case may be.

50. Thus, the Act is clear that the Commissioner or any other proper officer has up to five years from the date of the short levy to make a demand. Five years may appear a long time and, going by the petitioner's argument that "taxes collected would form a fundamental component of the respective petitioner's cost of goods in order to determine its selling price" the period may appear irrational or unreasonable because the importer ends up absorbing the loss that ensues if recovery of the import duty that ought to have been levied is made long after the goods have been cleared and sold. But it is the legislature, in its wisdom, that prescribed a timeline of five years within which the respondent can make a demand for what ought to have been paid over and above the short levy.

51. It follows that, in the current scheme of things, there is nothing irrational, unreasonable or even unconstitutional in the respondent making a demand four and a half years after the short levy was made. And to answer the petitioner directly, in the wake of section 135(3), the procedure by which the decision contained in the demand or enforcement notice cannot be impeached solely because it was made long after the short levy was made. As long as the demand was made within the five-year limitation period, there is no basis of impeaching the process by which the decision was reached under section 47 of the *Fair Administrative Action Act* or on the ground that the decision infringes the petitioner's right to property contrary to article 40 of *the Constitution*. Neither can it be said that the process by which the decision was reached is against the national values and principles of governance under article 10 of *the Constitution*. Businesswise, a post clearance audit undertaken almost five years after the short levy may appear irrational, unreasonable or unconscionable, but until such a time that section 135(3) of the Act is either amended, repealed or invalidated, for whatever reason, the respondent is entitled to make a demand up to the last day of the fifth year from the date the short levy was made.

52. As I have noted the question whether the right HS code was applied and therefore, whether the correct declaration was made at the time of importation of the petitioner's goods, amongst other evidential questions on which the parties cannot agree, are questions beyond the scope of this judgment. It is the petitioner's case, and which this Honourable Court agreed with in its ruling of March 19, 2024, that the petition is only concerned about the process by which the decision was reached.

53. The only route by which evidence could have been properly interrogated is through a review under sections 229(1) and 230(1) of the East African Community Customs Management Act and appeals under sections 12 and 32 of the *Tax Appeals Tribunal Act*.

54. The Tax Appeals Tribunal, for instance, consists of experts or can call expert evidence on the category of any particular consignment for purposes of levying duty. It has been held in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at [30] that a court will generally be reluctant to disturb the findings of a tribunal with specialised knowledge of technical subject matter, irrespective of whether these findings be classified as law or fact.

55. Nonetheless, according to section 32 of the *Tax Appeals Tribunal Act*, a person dissatisfied with the decision of the Tribunal is entitled to appeal to this Honourable Court. No doubt, once seized of the appeal, this Court, in exercise of its appellate jurisdiction would be entitled to consider the evidence afresh and come to its own conclusion. (See Selle and Another versus Associated Motor Boat Company Ltd & Others 1968 EA 123 at 126). In the same breath, it would consider the merits of the decision and would even substitute its own decision for that of the tribunal.

56. I gather that the petitioner opted for a constitutional petition as an alternative to judicial review. This is apparent from the court's ruling on the preliminary objection where it held that:

> "(21) Nevertheless, as has been pointed out herein above, the petitioner chose the route of a constitutional petition as opposed to a judicial review application".

57. But the judicial review route was not always open to the petitioner. Assuming the petitioner was dissatisfied with the decision of the Tax Appeals Tribunal, if the matter had been escalated from the Commissioner, then under section 32 of the *Tax Appeals Tribunal Act*, the only option open to the petitioner would have been to file an appeal to this Honourable Court and not a judicial review application.

58. It is trite that judicial review is not an appeal; addressing the difference in the two jurisdictions in R versus Inland Review Commissioners, ex p Preston (1985) AC 835, the court held that:

> "A remedy by way of judicial review is not to be made available where an alternative remedy exists...Judicial review is a collateral challenge: it is not an appeal. Where parliament has provided by statute appeal procedures, as in taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision..." (Emphasis added).

59. Addressing the same issue in R versus Peterkin, ex p Soni (1972) Imm AR 253 Lord Widgery CJ had this to say:

> "Where Parliament has provided a form of appeal which is equally convenient in the sense that the appellate tribunal can deal with the injustice of which the applicant complains this court should in my judgement as a rule allow the appellate machinery to take its course. The prerogative orders form the general residual jurisdiction of this court whereby the court supervises the work of inferior tribunals and seeks to correct injustice were no other adequate remedy exists, but both authority and common sense seem to me to demand that the court should not allow its jurisdiction under the prerogative orders to be used merely as an alternative form of appeal when other and adequate jurisdiction exists elsewhere." (Emphasis added)

60. I bring out these decisions only to demonstrate that there is a difference between appeal and judicial review and since the latter was never available to the petitioner, there was no legal basis for the petitioner's argument that the instant constitutional petition is an alternative to judicial review.

61. For the reasons I have given, I am inclined to dismiss the petitioner's petition; it is hereby dismissed with costs. Orders accordingly.

SIGNED, DATED AND CIRCULATED ON THE CTS ON 12 JUNE 2025

NGAAH JAIRUS

JUDGE