



Commissioner of Customs & Border Control v Mannan Cargo Services Limited (Tax Appeal E031 of 2024) [2025] KEHC 10453 (KLR) (Commercial and Tax) (16 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E031 OF 2024
JK NG'ARNG'AR, J
JULY 16, 2025**

BETWEEN

COMMISSIONER OF CUSTOMS & BORDER CONTROL APPELLANT

AND

MANNAN CARGO SERVICES LIMITED RESPONDENT

(Being an Appeal from the Judgment of the Tax Appeals Tribunal delivered on 12th June 2024 in TAT No. E116 of 2024)

JUDGMENT

1. This appeal emanates from a dispute precipitated by the appellant's post verification audit of the respondent's imports. That exercise culminated into the issuance of the appellant's assessment to the respondent dated 1st December 2023. Dissatisfied with that decision, the respondent lodged its objection vide a letter dated 7th December 2023. Upon considering the objection, the appellant issued its decision on 20th December 2023. The assessment was varied to kshs. 7,955,516.00. The respondent was aggrieved by that decision. It pursued an appeal before the tribunal in TAT No. E116 of 2024. In its decision dated 12th June 2024, the tax appeals tribunal found that the respondent's appeal was merited. Consequently, the appellant's objection decision dated 20th December 2023 was set aside.
2. It is those findings that have implored this appeal. The appellant filed its memorandum of appeal dated 18th September 2024. The appellant raised three grounds disputing the findings of the tribunal as follows: the tribunal erred in relying on disputed, unsigned minutes of 4th April 2023 to uphold the import duty rate of Kshs. 3,900,000.00 on the respondent's import textiles; the tribunal failed to consider the appellant's basis for the valuation uplift as provided for under the Fourth Schedule of the [East Africa Community Customs Management Act \(EACCOMA\)](#) 2024; and the tribunal misdirected



itself on facts and law by holding that the appellant failed to provide evidence underpinning the valuation uplift under the Fourth Schedule of the EACCMA 2024.

3. In view of the foregoing reasons, the appellant prayed for the following orders: its appeal be allowed; the judgment of the tax appeals tribunal dated 12th June 2024 be set aside; the decision of the appellant in its objection decision dated 20th December 2023 be allowed; and costs of this appeal.
4. The respondent filed its statement of facts dated 12th June 2025. The respondent was of the considered view that the appeal lacked any basis and was for dismissal. In support of that conclusion, the respondent stated that the dispute originated from an investigation and verification of an under-declaration by the respondent of its consignment under entry number 23MBAIM406106319 dated 19th October 2023 under the EACCMA. This resulted in an underpayment of customs duty obligation of Kshs. 3,900,771.00.
5. Those findings galvanized the appellant to issue a notice of assessment dated 1st December 2023 to the respondent for customs duty amounting to Kshs. 7,955,517.00. The respondent lodged an objection dated 7th December 2023 that was dismissed by the appellant on 20th December 2023. The basis of the respondent's objection was that the customs duty paid by it was based on the benchmark rates agreed upon by the appellant and various traders in a meeting held on 4th April 2023. Those rates were communicated to the respondent and other parties in the appellant's letter dated 24th May 2023 reminding them of the implementation date of those agreed rates.
6. According to the respondent, the actions of the appellant, including its conduct from 1st June 2023, created a legitimate expectation that the benchmark rates were applicable. In its view, the tribunal was therefore correct in finding that it was unreasonable for the appellant to dispute the minutes and the applicability of the benchmark rates when it conducted itself in a manner consistent with the agreed rates. As a public body, the appellant was duty bound to conduct itself with integrity, consistency and fairness. The respondent urged this court to consider the decision of the tribunal and particularly the sentiments captured in paragraph 47 of its decision.
7. The appeal was heard on the basis of the parties' written submissions. On its part, the appellant filed written submissions dated 14th May 2025, supplementary written submissions dated 16th June 2025 and a supplementary list of authorities equally dated 16th June 2025. The appellant abridged the facts giving rise to this appeal to submit that the authenticity of the minutes and list of benchmark rates was disputed on account of the fact that they were not signed. It is for this reason that it demanded for the outstanding taxes totaling Kshs.7,955,516.00 after adjusting the value declared by the respondent upwards. It submitted that the said documents lacked probative value as they amounted to hearsay evidence.
8. The appellant submitted that the resulting effect of the tribunal was to interfere with its mandate prescribed in section 122 and the Fourth Schedule of the EACCMA. In its view, the tribunal ought to have considered that the benchmark rules were intended solely as a standard guide for specific types of goods. The appellant added that this was an instance of gross misdeclaration and undervaluation obligating the appellant to make a determination within the parameters of the law. The adjustment, it continued, was not arbitrary but rather a corrective measure to reflect the true market value of the goods in line with legal requirements.
9. The appellant submitted that the respondent failed to furnish sufficient documents to support the declared value. In the resulting circumstances, the appellant did not have any sufficient cause to adopt the transaction value method as the method of valuation applicable in this case. In its view the tribunal erroneously placed the burden on the appellant of disproving the respondent's



- declaration, authenticate the unsigned minutes rather than requiring it to substantiate their valuation with appropriate evidence as required under the law. It contended that the actions of the tribunal amounted to a violation of sections 30 and 59 of the *Tax Appeals Tribunal Act*. The resulting effect was to undermine the appellant's role in revenue collection.
10. The appellant submitted that legitimate expectation could not arise as there was not clear consistent representations made by it. It was its submission that the respondent failed to furnish sufficient documents to support the declared values. In view of the foregoing circumstances, the appellant had no sufficient cause to adopt the transaction value method as the method of valuation applicable. That the benchmark rules relied on by the respondent were not a method of determining value of imported goods for purposes of payment of import duty under the *EACCMA*. They were established as internal guidelines for the valuation of specific categories of goods. It relied on the provisions of section 122 (4) and the Fourth Schedule of the *EACCMA* for this presupposition. It urged this court to allow its appeal.
 11. The respondent, on its part, filed its written submissions and list of authorities both dated 12th June 2025. The respondent summarized the facts giving rise to this appeal to submit that the appellant's conduct post 1st June 2023 demonstrated a consistent application of the issued benchmark rates to various consignments imported by the respondent. Those rates remained applicable to other traders. The appellant was in the circumstances estopped from denying the applicability of the benchmark rates or the legitimacy of the impugned minutes.
 12. The respondent continued that though the valuation methods provided for under the *EACCMA* were undisputed, the benchmark rates from the meeting held on 4th April 2023 between the appellant and various traders remained applicable. That gave rise to a legitimate expectation on the respondent and its tax obligations since those rates were applicable on various imported consignments by the respondent and other traders. In fact, in its letter dated 24th April 2023, the appellant informed the respondent that its benchmark rates would take effect from 1st June 2023.
 13. According to the respondent, the appellant's actions of issuing an additional tax assessment for the sum of Kshs. 7,955,516.00 was an infraction of the principle of fairness and equity and the respondent's right to fair administrative action as a public entity. It submitted that an ambiguity in law must be construed in favor of the taxpayer as was the case herein. It urged this court to dismiss this appeal.
 14. In its supplementary written submissions, the appellant regurgitated the contents of its written submissions to argue that the presence of a letter head bearing a logo similar to its logo on the unsigned minutes was not sufficient proof that the minutes were legitimate. It maintained that it was a stranger to the letter dated 24th May 2023. The actions of the tribunal in relying on the unsigned minutes, it submitted, violated the doctrines of section 80 of the *Evidence Act* and Article 50 (4) of the *Constitution*. It urged this court to uphold its decision dated 20th December 2023.
 15. I have considered the diametrically opposed written submissions as well as the respondent's statement of facts. I have also examined the record of appeal and supplementary record of appeal and analyzed the law. The main issue for determination is whether the tribunal arrived at a correct decision in finding that the appellant's objection decision dated 20th December 2023 was erroneous and accordingly set aside.
 16. The facts as established from the record before me are that the appellant carried out an investigation and verification exercise of the respondent's imports in consignment entry number 23MBAIM406106319 dated 19th October 2023. According to its findings, it was established that the respondent had imported goods comprising of apparel in the form of dresses, men's jean trousers, men's t-shirts and ladies



sweaters. The appellant referred the goods to its valuation and tariff section of the customs and border control department for value opinion.

17. Upon scrutiny of the respondent's entry number 23MBAIM406106319, the appellant established that the respondent's declaration did not reflect the correct transaction value of the imports. Withal, that the amount of taxes paid was low compared to the value of the consignment. For this reason, the appellant proceeded to charge for the consignment to tax in the sum of Kshs. 7,955,516.00. Resultantly, the appellant issued a tax demand on 1st December 2023 that gave rise to the respondent's objection dated 7th December 2023.
18. On 13th December 2023, the appellant wrote to the respondent inviting it for a meeting. In the same letter, the respondent was requested to furnish documents supporting its objection as they had not been previously availed. The respondent relied on the minutes of the meeting between KRA and traders held on 4th April 2023 and schedule for applicable benchmark rates. Relying on what was adduced, the appellant's review decision dated 20th December 2023 confirmed that the demand of Kshs. 7,955,516,00 the subject of the appeal before the tribunal.
19. The appellant as well as the tribunal analyzed those two documents that are at the kernel of the dispute before me: whether the documents were reliable and admissible in evidence? It is not disputed that the minutes of the meeting held on 4th April 2023 and the benchmark rates were not signed by the appellant. It is on this basis that the appellant wholly objected to their reliance and application. In its analysis of the its veracity, the tribunal held:

“The authenticity of the minutes is not in doubt for the reason:-

- a. The minutes were recorded on the respondent's letterhead.
 - b. The respondent has not tabled any document where it has filed a complaint against the appellant for using its letterhead unlawfully and uttering false documents in the process.
 - c. The respondent wrote a letter dated 24th May 2023 confirming its meeting with the appellant and other Nairobi traders and also reminding the appellant that the implementation date for the agreed quality declaration, verification and valuation of goods would be on the 1st of June 2023.
 - d. The respondent provided four import declaration forms confirming that it had indeed paid a duty rate of Kshs. 3,900,000.00 on its previous imports as had been agreed on by the parties in the meeting of 4th April 2023.
47. The tribunal is thus at a loss as to how the respondent could implement a duty rate that was consistent with what was contained in the minutes of 4th April 2024 and thereafter run away from the same agreement when it was convenient.”

20. The tribunal continued:

“48. The conclusion arising from the above analysis is that the appellant has proved on a balance of convenience that there was indeed an agreement between it and the respondent on duty payable for its imports. The provision of the minutes, the respondent's follow-up letter of the meeting and the declaration forms



confirming the implementation of the said agreement confirm that the said meeting indeed took place.

49. The appellant thus paid the import duty of Kshs. 3,900,000.00 which was agreed on in the meeting of 4th April 2024 and which it had paid in all its previous consignments.

50. Under the circumstances, the respondent ought to have provided the basis for the valuation uplift as is provided under the Fourth Schedule of the EACCMA. This was not provided to the tribunal and hence the reason why the tribunal finds and holds that the respondent was not justified in confirming the tax assessed by the appellant.”

21. Was this a proper analysis? It is common knowledge that the appellant is a public entity. Accordingly, documents emanating from it must be adduced within the precincts of section 80 of the *Evidence Act*. This court in *Hezekiah Oira v Patrick Quarcoo* [2017] eKLR held as follows:

“The law provides that public documents should be produced by the makers in which case the person producing the same should have the copies properly certified and or/sealed. This is the law as per section 80 of the *Evidence Act* which provides that “. (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.”

22. Coupled with the above, I find that a document lacking execution brings into foe its probative value. In this case, the appellant challenged the authenticity of the benchmark rates and the minutes because of the fact that they were unsigned. Indeed, a where document whose probative value is questioned, the onus is on the person relying on it to establish that the contents therein are verifiable. However, that was not the case in this matter. It was incumbent on the respondent to adduce evidence by way of calling the evidence of the appellant in confirming that the meeting took place.

23. This court in *Mugo Mungai & 4 others v Official Receiver & Provisional Liquidator (Capital Finance Limited and Pioneer) & 2 others* [2019] KEHC 11476 (KLR) held as follows and which this court adopts those sentiments:

“In conclusion I find that an unsigned document has no probative value as the contents genuineness cannot be proved. It is worth noting that documents do not prove themselves; a witness must be examined to prove the documents. The evidence of the contents of the document is hearsay evidence unless the author thereof is known or identifies himself as owning the document. For the above reasons, I uphold the petitioners’ objection to the production of the impugned report.”

24. Similarly, in *Jarika County Lodge Limited v Commissioner of Domestic Taxes* [2024] KETAT 447 (KLR), the court held that a document is not valid until it is signed. The court stated tht signatures indicate that the person signed is legally bound by the document. An unsigned document is unenforceable.



- 25. In view of the above, I find that the minutes of 4th April 2023 and the benchmark rates were inapplicable, unenforceable and of no legal effect. Accordingly, the tribunal was in error in applying them to arrive at its decision. Section 30 of the *Tax Appeals Tribunal Act* provides that the burden of proof rests on the respondent in this case to prove that the assessment is excessive. Absent the documents I have found inept, the respondent failed to discharge its burden of proof.
- 26. Section 122 (1) of the *East Africa Community Customs Management Act* 2004 provides:

“Where imported goods are liable to import duty ad valorem, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value”
- 27. Under the Fourth Schedule, the customs value of imported goods shall be determined using one of six methods of valuation. The provisions of the Fourth Schedule are couched in mandatory terms. The provisions do not contemplate any other varied form of valuation. Thus, the benchmark rates could not be enforced as stated by the respondent. I find that no legitimate expectation could arise where an illegality is effectuated. The benchmark rules could not and cannot supersede the provisions of the law. Accordingly, they were unlawful.
- 28. As a result, I find that this appeal must succeed. The upshot of my above findings is that the appellant’s appeal is merited. I hereby set aside the decision of the tribunal dated 12th June 2024 and substitute the same with an order upholding the appellant’s objection decision dated 20th December 2023. I direct that each party shall bear its own costs of the appeal.

It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JULY, 2025
IN THE PRESENCE OF;**

Nyapara for the Appellant
N/A for the Respondent
Mark/Siele (Court Assistants)

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**J. NG’ARNG’AR
JUDGE**

