



**Commissioner of Investigations & Enforcement v London Distillers (K)
Limited (Income Tax Appeal E096 of 2022) [2024] KEHC 91 (KLR)
(Commercial & Admiralty) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 91 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
INCOME TAX APPEAL E096 OF 2022**

**A MABEYA, J
JANUARY 17, 2024**

**BETWEEN
COMMISSIONER OF INVESTIGATIONS & ENFORCEMENT APPELLANT
AND
LONDON DISTILLERS (K) LIMITED RESPONDENT**

(An appeal from the judgment of the Tax Appeals Tribunal delivered on 4th November, 2022)

RULING

1. Before Court is a Motion on Notice dated 21/7/2023. In the Motion, the appellant seeks the transfer of this appeal to the Judicial Review Division of this Court for Consolidation with JR Appl No. E 119 of 2021 *London Distillers (K) Ltd & Anor vs The Commissioner of Investigations and Enforcement of the KRA and others* (“the JR Matter”).
2. The grounds for the application were set out in the body of the Motion and the Supporting Affidavit of Mohan Galot of 21/7/2023. These grounds were basically that both cases arise from the same cause of action and the issues to be canvassed will be the same, that there is a likelihood of having 2 separate and conflicting determinations if the cases are heard by two separate courts. Finally, that it is prudent to save time if the matters were consolidated and heard as one.
3. The application was opposed vide the Replying Affidavit of Godfrey Mwerera sworn on 11/8/2023. It was contended that an appeal by the respondent to the Tax Appeal’s Tribunal against the appellants’ objection decision was allowed by the Tribunal on 4/11/2022. That the objection decision was in respect of confirmation of tax assessment of Kshs. 3,022,728,615/= in respect of excise duty and not criminal liability.



4. That while this appeal is about proper or improper assessment of the excise duty, the cause of action in the *JR matter* is about the procedure undertaken in preferring criminal proceedings against the directors of the respondent. That in any event, the parties in both suits are different. That even the provisions of the law under which the two proceedings are founded on are different. It was urged that the application be dismissed.
5. I have considered the rival contestations and the submissions of the parties. This is an application for consolidation. The jurisdiction therefor emanates from Order 11 Rule 3(h) of the *Civil Procedure Rules*.
6. As properly set out in the authorities relied on by Mr. Tiego, Learned Counsel for the respondent, consolidation of suits will be ordered where there are common questions of law or facts, in both suits, or where the rights to relief claimed in the suits arise out of the same transaction or series of transactions or for some other reason it is desirable to make an order for consolidation.
7. It should be recalled that an order for consolidation is desirable for purposes of furthering expeditious disposal of the cases and to save on time and costs.
8. In the present case, I am in agreement that of the cases are consolidated as sought by the respondent, it shall save costs and time. That the causes of action arise out of the same transaction or series of transactions, that is the assessment of the taxes due from the respondent.
9. The question is, are there common questions of law and facts that will fall for consideration? In the present appeal, the Court will be considering the decision of the Tribunal. Whether the tribunal had reached the correct determination in its assessment of the actions of the Commissioner of Domestic taxes in arriving at the alleged taxes of Kshs. 3 billion odd on excise taxes. It will be a fresh appraisal of the grounds of appeal of the respondent in its appeal to the tribunal.
10. However, in the *JR Matter*, the Court will be concerned with the procedure that the Director of Public Prosecutions undertook in arriving at the decision commence criminal proceedings against the respondent for tax evasion. It will be the criminal conduct, if any of the respondent that is in question in the *JR Matter*. That in my view is completely different from the issues of both law and facts that will be considered in this appeal.
11. In view of the foregoing, it will be to convolute the matter if the two suits are consolidated. There will be no common questions of law and facts that will fall for consideration even though the suits arise from the same cause of action.
12. Accordingly, I find the application dated 21/7/2023 to be without merit and dismiss the same with costs. The parties should take steps to have the appeal determined in the normal manner.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY, 2024.

A. MABEYA, FCI Arb, EBS

JUDGE

