



Chester Insurance Brokers Limited v Commissioner of Domestic Taxes (Tax Appeal E001 of 2020) [2021] KEHC 185 (KLR) (Commercial and Tax) (3 November 2021) (Judgment)

Neutral citation: [2021] KEHC 185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E001 OF 2020
DAS MAJANJA, J
NOVEMBER 3, 2021**

BETWEEN

CHESTER INSURANCE BROKERS LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

(Being an appeal from the Judgment and Decree of the Tax Appeal Tribunal at Nairobi delivered on 18th December 2019 in Tax Appeal No. 135 of 2016)

JUDGMENT

Introduction and Background

1. The Appellant is challenging the decision of the Tax Appeals Tribunal (“the Tribunal”) dated 18th December 2019 based on its Amended Memorandum of Appeal dated 17th February 2020. The Respondent (“the Commissioner”) opposes the appeal. Both parties have filed written submissions.
2. The facts giving rise to this appeal are not in dispute and are as follows. The Appellant is an Insurance Broker licenced by the Insurance Regulatory Authority under the *Insurance Act* (Chapter 487 of the Laws of Kenya). It is in the business of providing insurance brokerage services and acts an intermediary between the insured and insurance companies. Sometime in July 2016, the Commissioner carried out an audit on the its business activities for the period January 2013 to May 2016. Thereafter Commissioner issued additional assessment of KES. 44,356,997.00 in respect of excise duty on brokerage commissions earned by the Appellant and KES. 5,199,925.00 in respect of Withholding Tax (“WHT”) on software subscriptions, auditor’s fees and professional fees respectively.
3. The Appellant objected to this assessment through its letter dated 18th July, 2016 and the Commissioner, in response to this objection issued its objection decision on 19th December, 2016



confirming the Appellant's liability on excise duty and reducing the WHT assessment on software subscriptions to KES. 741,690.00. The Appellant was dissatisfied by the Commissioner's objection decision and appealed the same to the Tribunal which after hearing the parties dismissed the Appellant's appeal and upheld the Commissioner's assessment of KES 45,098,687.00. It is this decision by the Tribunal that is the subject of this appeal.

4. In its judgment, the Tribunal framed two issues for determination. First, whether insurance commissions and in particular brokerage commissions are subject to excise duty under the Customs and *Excise Duty Act* (Chapter 472 of the Laws of Kenya) ("the CEA"). Second, whether the fees paid for professional services rendered in respect of the Appellant's software are subject to WHT. On the first issue, the Tribunal accepted that the Appellant was a financial institution within the meaning of the CEA and that commissions were fees charged under the Act and therefore subject to excise duty. On the second issue, the Tribunal took the view that the fee paid to Spyce Limited to computerize and upgrade the Appellant's operations and systems was subject to withholding tax under section 35(3)(f) of *Income Tax Act* (Chapter 470 of the Laws of Kenya) ("the ITA").
5. From the judgment, memorandum of appeal and submissions, the dispute revolves around two head of taxes that were subject of the assessment; excise duty and WTH. I shall now set out the parties' submissions on the matters.

Whether the excise duty is payable on insurance brokerage commissions

6. Before I deal with this issue it is important to set out the relevant legislative provisions. Under section 117(1)(d) of the CEA, excise duty is imposed on excisable goods and services and at rates specified in Fifth Schedule. Further section 137(4) of the CEA provides that:

137 (4) The duty on other fees charged by financial institutions shall be charged at the rate in force when the fee is being charged and shall be collected and paid by the financial institutions.

7. Part III of the Fifth Schedule then provides as follows:

7. Excise duty charged for money transfer services by cellular phone service providers, banks money transfer agencies and other financial service providers shall be ten percent.
8. Excise duty on other fees charged by financial institutions shall be ten per cent.

The Finance Act, 2013 amended Part III of the Fifth Schedule by deleting "financial services providers" and substituting it with "financial institutions" thus:

6. The fifth Schedule of the *Customs and Excise Act* is amended in Part III-
 - a) By deleting the words 'financial services providers' appearing in item 7 and substituting thereof the words 'financial institutions'.
 - b) By inserting the following new paragraph immediately after paragraph 8.
9. For the purpose of item 7 and 8 financial institutions means-
 - (a) A person licenced under –



- (i) The Banking Act,
- (ii) The Insurance Act
- (iii)
- (iv)

(b)

(c)

“Other fees” includes any fees, charges or commissions charged by financial institutions, but does not include interest.

8. From the aforesaid provisions, it is clear that the Appellant is a financial institution as it is a business under the Insurance Act. Further that, “other fees” which includes commissions are charged by the financial institution. The Appellant does not dispute the fact that it is a financial institution within the meaning of the CEA.

Appellant’s Submissions

9. The Appellant submits that the Tribunal misconstrued the meaning, purpose and intent of the words ‘Commissions charged by Financial Institutions’ as provided under section 137(4) of the CEA to mean that Excise duty similarly applies to ‘Commission earned by Financial Institutions.’ The Appellant contends that the express wording of section 137(4) is that excise duty is levied where a financial institution charges fees and that the operative words used in the said section is ‘fees charged by financial institutions’ and not ‘fees earned’.

10. The Appellant submits that the Tribunal failed to distinguish between the terms ‘fees charged’ as provided under section 137(4) of the CEA and ‘Commission earned’. It states that the term “charged” is defined in the Black’s Law Dictionary to mean “to demand a fee, to bill”. The Appellant submits that it does not charge and/or bill the insurance company for payment of commissions as payment of commissions to the broker is governed by section 73(2) of the Insurance Act which provides that:

73 (2) No insurer shall, in respect of Kenya business, pay to a broker or agent as brokerage commission, any sum in excess of the amounts prescribed for or in respect of each prescribed class of business placed by that broker or agent with that insurer.

Thus, the Appellant contends while it is licenced under the Insurance Act to carry out insurance brokerage services as an intermediary, it does not charge brokerage commissions to the Insurer within the meaning of section 137(4) of the Insurance Act.

11. In order to support its argument, the Appellant explained the contextual background of how brokerage commissions are paid out to the insurance broker. It states that in a normal insurance transaction, an insurance broker, as an agent and intermediary for purposes of completing the transaction, sells an insurance policy to the insured on behalf of the insurance company. The broker then issues a risk note to the insured whereupon the insured pays the premium to the insurance company. In cases where the insured pays the premium to the broker, the broker is under a statutory obligation to immediately remit the full premium to the insurance company. At the end of each month, the insurance company prepares a statement of accounts showing the brokerage commission payable to the broker within the scale provided under the Insurance Act and after deducting WHT and any other costs related to the service provided by the Broker. The Commission paid to the Broker is a percentage of the insurance business placed by the Broker.



12. Based on the process outlined above, the Appellant submits that the broker does not at any time invoice/bill or charge the insurance company for payment of the commission. That the commission is paid directly paid by the insurer to the broker as percentage of the business placed by the broker and it constitutes the broker's core income earned and not income charged. This income, it submits, is subject to income tax provisions and not excise duty as otherwise held by the Tribunal.
13. The Appellant further submits that the financial institution that 'charges fees' in the context of insurance business and within the meaning of section 137(4) of the CEA is the insurance company which charges premiums on the policy holders. It asserts that the responsibility to levy, collect and remit excise duty can only be borne by the insurance company against the premiums charged on the policy holder and not the broker.
14. The Appellant faults the Tribunal's holding that the purposive interpretation of the amendments introduced by the Finance Act, 2013 was that insurance brokers were the tax targets contravenes the principle of interpretation of tax statutes that there is no room for purposive interpretation of tax statutes. It further submits that the Tribunal erred in failing to find that the Appellant does not charge fees within the meaning of section 137(4) of the CEA and therefore the obligation to collect and remit excise duty does not lie with the Appellant but with the insurance company.
15. The Appellant also submits that excise duty is a consumption tax charged on the supply of excisable goods and/or services and that consumption taxes such as excise duty and Value Added Tax operate in a manner that the tax burden is borne by the final consumer as it is included in the price of the goods or services and the recipient of the income merely collects the tax from the consumer and remits to the Commissioner. The Appellant submits that as an intermediary and an agent of the insurer, it does not charge premiums on the policy holder and merely collects premiums and remits it to the insurance company. It submits that the party capable of passing on the excise duty burden to the consumer is the insurer through the premiums charged. Further, the burden of collecting and remitting excise duty ought to be placed on the insurance company and not the intermediary and that under section 156(2) of the *Insurance Act*, an intermediary such as the Appellant, is expressly prohibited from receiving premiums on the insured behalf. The effect is that if the commissions paid to the Appellant are subject of excise duty, the Appellant would never recover the same from the insured. The Appellant thus holds that the Tribunal erred in failing to find that imposition of excise duty on the Appellant's income would not only impose an unfair tax burden on the Appellant but also impracticable as the same would not be recoverable from the consumer.
16. The Appellant reiterates that since commissions, which constitutes the brokers income, and paid net of taxes, is subject to income tax and not excise duty. The Appellant submits that by imposing excise duty on its core income, over and above levying income tax on the same income, constitutes double taxation on the Appellant's income which is ultimately an unfair tax burden on the Appellant. The Appellant submits that it is against this backdrop of unfairness that the Legislature considered that excise duty on insurance brokerage services as unfair and therefore exempted brokers from the purview of the *Excise Duty Act*, 2015 which repealed the CEA.

Respondent's Submissions

17. The Commissioner submits that the tax audit exercise it conducted on the Appellant's business and financial affairs revealed that the Appellant earned premium-related Commissions income for the period July 2013 to November 2015 that had not been subjected to excise duty tax in accordance with the CEA. It states that commissions earned by the Appellant are from placing insurance business and introducing clients to underwriters. Further, Part III of the Fifth Schedule states that excise duty is to be levied on services offered by financial institutions which are persons licensed under the respective



Acts including insurance brokers who are licensed under the [Insurance Act](#) and who are considered as financial institutions.

18. The Commissioner rejects the Appellant's argument that it was merely an intermediary and agent who passed the charge from the underwriter to the insured. In its view, the Appellant, as intermediary would still earn a brokerage fee. The Commissioner relies on the Tribunal's decision; *BTB Insurance Brokers Limited v Commissioner Of Domestic Tax, Tax Appeal No. 203 of 2015 (UR)* which was affirmed by this court and concurred with the Tribunal's holding that the Finance Act, 2013 amended Part III of the Fifth Schedule of the CEA, by deleting 'financial services providers' and substituting it with 'financial institutions' and that the appellant's earnings therein on commission was captured by the CEA and the Finance Act 2013 and therefore excise tax was payable on the commission earned.
19. The Commissioner submits that the Appellant is a financial institution by virtue of being licensed under the [Insurance Act](#) and that "other fees" as envisaged by the Fifth Schedule include fees, charges or, commissions charged by the said financial institutions for services rendered, for purposes for which they were licensed so that any fees, charges or commissions charged by the Appellant in the course of offering brokerage services, is liable to excise duty. The Commissioner urges the court to uphold the Tribunal's decision.

Resolution

20. Resolution of the issue whether the Appellant is required to pay tax on commissions it received turns on the interpretation of applicable legislation which I have set out above. Both parties agree and indeed submit that in interpreting a tax statute, the language imposing the tax must receive a strict construction. This principle was summarized by the Court of Appeal in [Mount Kenya Bottlers Ltd & 3 others v Attorney General & 3 others NRB CA Civil Appeal No. 164 of 2013 \[2019\] eKLR](#) as follows:

[40] However, when it comes to interpretation of tax legislation, the statute must be looked at using slightly different lenses. With regard to tax legislation, the language imposing the tax must receive a strict construction. Judge Rowlett in his decision in *Cape Brandy Syndicate v I.R.Commissioners [1921] 1KB* (cited by the appellants), expressed the common law position in this area when he stated;

'...in a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used'. (Emphasis ours)

(49) Similar statements have been made in several judgments on tax cases. In *Scott v. Russell (Inspector of Taxes), [1948] 2 All ER* Lord Simonds expressed:

"... there is a maxim in Income tax law which, though it may sometimes be over-stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him."

This common law position is what pertains here and has been adopted by our courts as good law. In our view there cannot be an equitable construction of income tax legislation. The norm is that a taxing legislation must be construed with perfect strictness whether or not such construction is against the State or against the person sought to be taxed. If however there is any real ambiguity in a taxing Act, such ambiguity may be resolved in favour of the taxpayer, or, as it is sometimes stated: *contra fiscum*.

21. The parties hold a common position that determination under this tax head revolves around the interpretation of section 137(4) and Paragraph 8 Part III of the Fifth Schedule to the CEA as amended



in the Finance Act 2013. The Appellant does not deny its status as a financial institution in terms of Part III of the Fifth Schedule as amended by the Finance Act 2013 and that as an insurance broker, it received commission payments from insurance companies.

22. The point of departure by the Appellant is on the operative words in section 137(4) of the CEA which the Appellant submits that it ‘earned’ rather than ‘charged’ these commissions hence and the said commissions paid to it are subject to income tax provisions and not excise duty as otherwise held by the Tribunal. It also states that it does not charge or bill the insurance company for payment of commissions at least going by the *Black’s Law Dictionary* definition of ‘charged’ which means “to demand a fee, to bill”.
23. In my view, whether the Appellant ‘earned’ rather than ‘charged’ these commissions is immaterial. What is material is that the Appellant, as a “financial institution” received these commissions. The Appellant’s reference to section 137(4) of the CEA as supporting its case is misplaced as it provides for the manner of determining the rate which is at the time when the fee, which includes the commission, is charged. It also provides that the excise duty shall be collected and paid by the financial institutions. Thus the clear and unambiguous words of the statute are that the broker shall collect and pay the excise duty on the commission.
24. The Appellant has explained the process under which it is paid commissions and submits that it does not charge for commissions as its commission is determined by statute. In my view, the commission is what is charged for the service rendered. It matters not that the Appellant does not raise or bill for the amount. In the event, the insurance company failed to pay the commission due, the broker would obviously demand the amount due to it because it is the amount it has “charged” for the services rendered. In short, the commission paid by the insurance company to the broker is the consideration for services rendered and it is this commission that attracts excise duty which the Appellant is duty bound to collect and pay excise duty on.
25. The issue whether the insurance broker is liable to pay excise duty on commission under the CEA is not new and was discussed in *BTB Insurance Brokers Limited v Commissioner of Domestic Taxes ML HC ITA No. 2 of 2017 [2020] eKLR* where Kasango J., accepted the position taken by the Commissioner and Tribunal as follows:
 - (34) It became clear from the above amendment that the Appellant’s argument that it being an intermediary and because the client pays directly to the underwriter and that the obligation for payment of excise duty lies with the insurance company does not hold water at all. All one needs to consider is that the Appellant is licensed under the *Insurance Act*. That being so it is a financial institution by the definition of the Finance Act 2013. By that Finance Act it will be seen that the Appellant since it receives other fees, that is commission, this makes the decision of the imposition of the excise duty to be fait accompli.
26. The CEA does not admit any ambiguity and as such this court is obliged to uphold the statute and to proceed on the route proposed by the Appellant would amount to re-writing legislation. As a result of the Appellant’s complaints regarding the tax, the CEA was repealed by enactment of the *Excise Duty Act*, Act No. 23 of 2015 which under the First Schedule, Part III which excludes, “an insurance premium or premium based or related commissions specified in the *Insurance Act* or regulations made thereunder” from the definition of “other fees”. This amendment, in my view, leaves no doubt that excise duty was due commission earned by insurance brokers under the CEA.

Withholding Tax



Appellant's submissions

27. On the issue of WHT, the Appellant submits that Tribunal erred in finding that the payments made to Spyce IT Limited for computerization and upgrading of the Appellant's software amounted to professional fees for which withholding tax was payable. It also faults the Tribunal for concluding that section 35(3)(f) of the ITA does not exempt one-off payment of professional fees from WHT.
28. The Appellant further submits that the Tribunal failed to consider the relevant accounting standards and treatment of services related to intangible assets for tax purposes as follows: -
 - a. Regulation 38 of the International Accounting Standards (IAS), makes provision for the accounting treatment of intangible assets. Under this regulation the costs of acquisition and maintenance of an intangible asset such as a software should be capitalised in the cost of acquiring the asset. These costs include any other costs directly attributable to the preparation of the intangible asset for its intended use.
 - b. Development costs of an intangible asset are equally capitalised after the technical and commercial feasibility of the asset for sale or use have been established. The entity must intend and be able to complete the intangible asset and either use it or sell it and be able to demonstrate how the asset will generate future economic benefits.
29. The Appellant admits that it contracted Spyce IT Limited to computerize its operations and upgrade its software. In line with IAS 38 regulations, the Appellant capitalized the costs of the software upgrade thereby constituting a capital expenditure in line with the accounting principles. Consequently, the sum of KES11,070,000.00 paid to Spyce IT Limited was accounted for as a capital expenditure and not professional fees, as such WTH was not payable in this respect.
30. The Appellant further submits that the Tribunal disregarded the provisions of section 31B of the Second Schedule, Part VI of the ITA, which provides that:

Subject to this Schedule, where a person incurs capital expenditure on the purchase or acquisition of the right to the use of a computer software, there shall be deducted in computing his gains or profits for the year of income in which the software is first used and for subsequent years of income, an amount equal to one-fifth of that expenditure.
31. The Appellant states that a number of significant considerations ought to be taken into account in order to determine whether or not an expense qualifies as a capital expenditure and that this position was buttressed in *Commissioner of Income Tax v Kencell Communications Limited (Now Airtel Kenya Limited) ML ITA No. 272 of 2015 [2016] eKLR*. The Appellant thus contends that the assessment on withholding tax in the sum of KES 741,690.00 being WTH ought to be set aside.

Commissioner's Submissions

32. In response, the Commissioner submits that it is undisputed that the Appellant contracted Spyce IT Limited to computerize its operations and upgrade its systems for which the Appellant paid a professional fee of KES 11,070,000. The Commissioner contends that it is from this payment that it demanded Withholding Tax of KES 741,690 including interest and penalty.
33. The Commissioner submits that contrary to the Appellant's contention that the software developed is a one-off payment and as such qualified as an asset, the payment made to Spyce IT Limited can only be substantiated as professional fees. It relies on section 2 of the ITA which provides that "management



or professional fee” means a payment made to a person, other than a payment made to an employee by his employer, as a consideration for a managerial, technical, agency, contractual, professional or consultancy service however calculated...”

34. The Commissioner submits that Spyce IT Limited was not an employee of the Appellant but was a provider of technical services. It grounds its case on Oxford Advanced Learners Dictionary (6th Ed.) which defines, “Technical” as, “Connected with the practical use of machinery, methods, etc, in science and industry; Connected with skills needed in a particular job, sport, art, etc; Connected with a particular subject and therefore difficult to understand if you do not know about that subject; Connected with the details of a law or set of rules.”
35. The Commissioner further relies on Section 35(3)(f) of the ITA which provides that, “a person shall, upon payment of an amount to a person resident or having a permanent establishment in Kenya in respect of management or professional fee or training fees the aggregate value for which is twenty four thousand shillings or more in a month, which is chargeable to tax, deduct therefrom tax at appropriate resident withholding tax” and that provision is unambiguous and imposes a duty upon the Appellant to deduct and remit WHT to the Commissioner .

Resolution

36. The Tribunal’s judgment on this issue is brief and perfunctory as follows:

(29) As regards to the issue of WHT on the Appellant’s software, the Tribunal notes that the Appellant contracted a company known as M/S Spyce Limited in the year 2014, to computerize its operations and upgrade its systems. It is not in dispute that it paid the Company a fee of Kshs. 11,070,000/= for the service rendered. It is from the said professional service that the Respondent demanded WHT of Kshs. 7411,690/= including interest and penalty.

[30] The relevant applicable law is Section 35(3)(f) of the ITA. The same provide

(31) In view foregoing the Tribunal finds that WHT tax is applicable to the said transaction and the Respondent lawfully brought it to charge.

37. It is the Appellant’s position that the amount paid to Spyce IT Limited to computerize its operations and upgrade its software ought to have been considered an asset as it was a one off payment intended to enhance the Appellants core business and operation. The Appellant relied on the decision in Commissioner of Income Tax v Kencell Communications Limited (Now Airtel Kenya Limited) (Supra) where Tuiyott J., cited with the approval the decision of the High Court Singapore; *BFH v Commissioner of Income Tax [2013] SGHC 161* where the court adopted a composite and integrated approach for differentiating capital and revenue expenses. First, the general principle is that the Court must look closely at the purpose of the expenditure and ascertain whether or not such expenditure created a new asset, strengthened an existing asset or opened new fields of business not hitherto available to the taxpayer, in which case such expenditure would be capital and not revenue in nature. Second, the Court looks at specific guidelines which elaborate on the first principle including the manner of the expenditure where a one-time expenditure, as opposed to recurrent expenditures, would tend to suggest that the expenditure is capital in nature, although this factor is not conclusive; and the consequence or result of the expenditure. If the expenditure strengthens or adds to the taxpayer’s existing core business structure, it is more likely to be capital in nature. Even applying these tests, the court cautioned that the categorization of an expenditure as being of capital or income nature is not



just a factual inquiry but an integrated one whereby the applicable legal rules and principles are applied to the facts as hand.

38. As the court pointed out, the inquiry is fact based and it must be recalled that the jurisdiction of this court in that regard is circumscribed section 56 of the [Tax Procedures Act](#) which provides as follows:

56. In any proceedings under this Part, the burden shall be on the taxpayer to prove
 - (1) that a tax decision is incorrect.
 - (2) An appeal to the High Court or to the Court of Appeal shall be on a question of law only.
 - (3) In an appeal by a taxpayer to the Tribunal, High Court or Court of Appeal in relation to an appealable decision, the taxpayer shall rely on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds. [Emphasis mine]

39. In exercising appellate jurisdiction, the Tribunal is entitled to review the facts in order to establish whether the Commissioner’s decision is “incorrect”. The second appeal to this court is limited to matters of law. Following the Supreme Court decision in *Gatirau Peter Munya v Dickson Mwenda Kitbinji and 2 Others [2014] eKLR*, the Court of Appeal in *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others [2018] eKLR* summarised what amounts to “matters of law” as follows:

- (38) [T]he interpretation or construction of the Constitution, statute or regulations made thereunder or their application to the sets of facts established by the trial Court. As far as facts are concerned, our engagement with them is limited to background and context and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into considerations of the credibility of witnesses or which witnesses are more believable than others; by law that is the province of the trial court. [Emphasis mine]

40. It is the duty of the Tribunal as the first appellate court to evaluate the facts and reach its own conclusion whether in fact the tax decision was incorrect. It is therefore not the duty of this court to review the evidence and reach it is own conclusion but to determine whether the Tribunal’s decision was based on the evidence before it or a reasonable tribunal having regard to the same facts and circumstances would not have reached the decision of the Tribunal.

41. I have gone through the record of appeal including the proceedings of the Tribunal. I have not seen any documents or evidence of the transaction between the Appellant and Spyce IT Limited in order to apply the test propounded in *Commissioner of Income Tax v Kencell Communications Limited (Now Airtel Kenya Limited) (Supra)*. I have not seen the contract and supporting documents, invoices and receipts to enable me determine whether in fact the Tribunal’s decision could not be supported. The fact that the payment was one-off, while relevant, is not necessarily decisive to the determination. On the other hand, the record of proceedings shows that when the Appellant was asked by the Chairperson of the Tribunal the nature of services rendered by Spice IT Limited, the counsel on record stated that it was professional services.



42. Based on the evidence on record, I cannot fault the Tribunal for finding that the payment to Spyce IT Limited was for a professional service and that WHT was applicable and lawfully brought to charge. The Appellant has failed to discharge its burden of showing that the tax decision was incorrect.

Conclusion and Disposition

43. On the first issue for determination, I find and hold that the Appellant is a financial institution within the meaning of the Fifth Schedule of the *Customs and Excise Act* and as such, at the time material to this case, liable to collect and pay excise duty on such commission collected at the rate prescribed by the law. As to whether the Appellant was liable to pay Withholding tax on fees paid to Spyce IT Limited to computerize its operation and upgrade its system, I find that the Appellant has not established the Tribunal erred in its finding.
44. The appeal is dismissed with costs to the Respondent.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2021.

D. S. MAJANJA

JUDGE

Mr Karani instructed by Iseme, Kamau and Maema Advocates for the Appellant.

Mr Lemiso, Advocate instructed by the Commissioner of Domestic Taxes, Kenya Revenue Authority.

