Commissioner of Customs and Border Control v Greenlife Crop Protection Africa Limited (Customs Tax Appeal E035 of 2024) [2025] KEHC 13312 (KLR) (Commercial and Tax) (26 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13312 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

CUSTOMS TAX APPEAL E035 OF 2024

CM KARIUKI, J

SEPTEMBER 26, 2025

BETWEEN

COMMISSIONER OF CUSTOMS AND BORDER CONTROL ..... APPELLANT

AND

GREENLIFE CROP PROTECTION AFRICA LIMITED ..... RESPONDENT

(Being an Appeal from the Judgement of the Tax Appeals Tribunal delivered at Nairobi on the 1st day of August 2024 in Tax Appeal No. E691 of 2023)

JUDGMENT

I. Introduction and Background

1. The Appellant is an officer of Kenya Revenue Authority, Statutory Corporation duly established under the provisions of the *Kenya Revenue Authority Act* (CAP. 469 of the Laws of Kenya) as the sole agent of the government for the assessment and collection of all government revenue. In exercise of his mandate. The Appellant enforces provisions of law set out in the first schedule to the KRA Act, among them the *Excise Duty Act* No.23 of 2015.

2. The Respondent is a limited liability company incorporated under the *Companies Act* and carrying on business in Athi River at Athi 55 Complex.

3. The genesis of this dispute lies in conflicting tariff classifications of the Respondent's fertilizer product. The Respondent imported liquid Lavender Total Fertilizer and vide its clearing agent, declared the product in HS Code 3105.90. 00 under entry number 23EMKIM400252899 dated 8th March 2023 on the basis of a tariff ruling reference no. CUSN&T/TARI/RUL/212/2015 dated 16th April 2015.

4. On 11th April 2023, the Appellant unilaterally issued a new tariff ruling (Reference No. KRA/C&BC/BIA/THQ/227/04/2023) reclassifying the product under HS Code 3824.99.90, a dutiable category. The Respondent objected to this reclassification through a letter dated 27th April 2023, contending that the product's composition remained unchanged since the 2015 ruling. The Appellant reaffirmed its position in a review decision dated 26th May 2023 (Reference No. KRA/CBC/BIA/THQ/APPEAL/058/05/2023). The Respondent objected to the review of tariff classification by the Appellant on 26th June 2023 and availed additional information on or between 5th and 11th July 2023 to back its stand.

5. Between 26th June and 11th July 2023, the Respondent furnished additional evidence to the Appellant, including:

    - A 100ml sample of Lavender Total Fertilizer.
    - Certificate of Analysis (COA);
    - Material Safety Data Sheet (MSDS);
    - Test Report.
    - Certificate of Conformity (COC); and
    - Technical Guide.

6. The Appellant issued a demand notice for Kshs 12,416,146 in short-levied duties, covering imports from August 2018. Following the Respondent's objection, the Appellant revised the demand to Kshs 3,433,163.73 on 15th September 2023, inexplicably vacating duties for pre-2023 imports while maintaining the reclassification for the March 2023 import.

7. Aggrieved, the Respondent appealed to the Tax Appeals Tribunal, which on 1st August 2024 vacated the Appellant's demand. The Tribunal held that the product was correctly classified under HS Code 3105.90.00 and that the Appellant's retroactive demand breached the doctrine of legitimate expectation. The Appellant now challenges that decision before this Court.

II. Appellant's Case

8. The Appellant contends that the Tribunal erred in law and fact. First, it asserts that the Respondent's appeal to the Tribunal was procedurally defective because it challenged the decision of 15th September 2023 instead of the earlier decision of 26th May 2023. Under Section 230(2) of the East Africa Community Customs Management Act (EACCMA), appeals must be lodged within 45 days of the contested decision. The Appellant argues that the Respondent's failure to appeal the May decision within this timeframe rendered it final and binding.

9. Second, the Appellant maintains that the product's correct classification is HS Code 3824.99.90. It relies on Note 3 to Chapter 31 of the East African Community Common External Tariff (EAC-CET), which excludes "micronutrient preparations" from Heading 3105. The Appellant asserts that Lavender Total Fertilizer's micronutrient content qualifies it as such a preparation. It further cites Section 223 of the EACCMA, which places the burden of proving correct classification on the importer.

10. Third, the Appellant invokes the presumption of correctness under Section 56 of the *Tax Procedures Act* and Section 223 of the EACCMA. It argues that its assessments are presumptively valid unless incontrovertibly disproven, citing Kenya Revenue Authority v. Man Diesel & Turbo Se [2021] eKLR, where the High Court affirmed that taxpayers must provide "competent and verifiable evidence" to rebut this presumption.

11. Finally, the Appellant contends that its post-May 2023 engagements with the Respondent, including requests for additional samples and documentation—were strictly limited to recalculating duty demands and did not reopen the substantive classification dispute. Thus, the Tribunal erroneously applied the doctrine of waiver.

III. Respondent's Case

12. The Respondent counters that the Tribunal correctly identified the decision of 15th September 2023 as the operative appealable point. It argues that the Appellant's conduct after 26th May 2023—specifically, requesting new samples (11th July 2023), issuing a revised ruling (7th August 2023), and recalculating duties—constituted a waiver of procedural timelines. The Respondent relies on Commissioner of Customs v. Auto Industries Ltd [2022] KEHC 15974, where this Court held that continued administrative engagement nullifies the finality of prior decisions.

13. On classification, the Respondent emphasizes that Lavender Total Fertilizer comprises 66% macronutrients (nitrogen, phosphorus, and potassium) and only 0.75% micronutrients, as certified by Bureau Veritas laboratory reports. It invokes General Interpretative Rule (GIR) 1 of the Harmonized System, which mandates classification based on "essential character." The dominant NPK composition, it argues, squarely places the product under Heading 3105 ("fertilisers containing two or three fertilising elements nitrogen, phosphorus, and potassium").

14. The Respondent further asserts a breach of legitimate expectation. The 2015 ruling created a binding commitment under Section 65 of the *Tax Procedures Act*, which the Appellant revoked without evidence of product change or misrepresentation. In Keroche Industries v. KRA [2007] KLR 240, the High Court prohibited retroactive reclassification where products remain unaltered, deeming it an "abuse of power."

15. Lastly, the Respondent disputes the Appellant's burden-of-proof argument. It contends that it discharged its evidentiary burden through scientific documentation, while the Appellant failed to substantiate claims of "hormones" or "dominant micronutrients" in the product, violating Article 50 of *the Constitution* (right to fair hearing).

IV. Issues for Determination

16. Based on the pleadings and submissions, the following issues arise for determination:

    a. Whether the Tribunal erred in treating the decision of 15th September 2023 as the appealable decision.

    b. Whether the Tribunal misapplied the law in classifying the product under HS Code 3105.90.00; and

    c. Whether the Respondent discharged the burden of proof.

V. Analysis And Determination

a. Whether the Tribunal erred in treating the decision of 15th September 2023 as the appealable decision.

17. Tax Appeals Tribunal under Section 230 of the East Africa Community Customs Management Act which states as follows: -

(l) A person dissatisfied with the decision of the Commissioner under section 229 may appeal to a tax appeal. 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 acopy of the appeal on the Commissioner.

18. The Appellant insists the Respondent should have appealed its decision of 26th May 2023 within 45 days. This argument ignores a critical nuance: the Appellant's subsequent conduct fundamentally altered the dispute's trajectory. By requesting additional samples and documentation on 11th July 2023—which informed a new ruling on 7th August 2023 and a revised demand on 8th August 2023—the Appellant reopened the administrative process. As held in Commissioner of Customs v. Auto Industries Ltd [2022] KEHC 15974, such engagement waives strict procedural timelines.

19. Moreover, the Appellant's letter of 15th September 2023 explicitly advised the Respondent to appeal to the Tribunal, reactivating the dispute under Section 230. To now claim that the Respondent appealed the "wrong decision" is disingenuous. Article 47 of *the Constitution* enshrines the right to fair administrative action, which includes the right to reasonable notice and an opportunity to be heard. The Appellant's shifting positions deprived the Respondent of this right.

20. The Appellant's failure to raise this procedural objection in its pleadings before the Tribunal further undermines its case. Introducing new arguments at the appellate stage is prejudicial and violates procedural fairness.

b. Whether the Tribunal misapplied the law in classifying the product under HS Code 3105.90.00;

21. Classification under the EAC-CET is governed by the World Customs Organization's General Interpretative Rules (GIR). GIR 1 mandates that classification be determined by the "terms of the headings and any relative Section or Chapter Notes." Heading 3105 covers "mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus, and potassium." The Respondent's laboratory reports—which the Appellant did not contest—confirm that Lavender Total Fertilizer contains 66% NPK macronutrients and only 0.75% micronutrients. Its essential character is thus defined by its NPK content.

22. The Appellant's reliance on Note 3 to Chapter 31 is misplaced. The Note excludes "micronutrient preparations" only where micronutrients are the "essential constituents." Here, micronutrients constitute a negligible 0.75%, disqualifying the product from classification under Heading 3824.99.90. The Appellant's assertion that the product contains "hormones" was unsupported by evidence and contradicted by the Respondent's Certificate of Analysis.

23. Critically, the 2015 ruling created a legitimate expectation binding the Appellant under Section 65 of the *Tax Procedures Act*. In Keroche Industries v. KRA [2007] KLR 240, the High Court held that retroactive reclassification without product change "amounts to abuse of power" and violates the principles of legal certainty under Article 201 of *the Constitution*. The Appellant provided no evidence that the product's composition had changed since 2015. Its selective reclassification of the March 2023 import—while vacating duties for identical pre-2023 imports—was arbitrary and irrational.

c. Whether the Respondent discharged the burden of proof.

24. While Sections 56 of the *Tax Procedures Act* and 223 of the EACCMA place the initial burden of proof on the taxpayer, this burden shifts when credible evidence is presented. The Respondent discharged its obligation through:

- Bureau Veritas laboratory reports;

- Technical specifications from the manufacturer;

- Certificates of Conformity; and

- Comparative analysis of similar NPK fertilizers classified under Heading 3105.

25. The Appellant, conversely, failed to discharge its reciprocal duty under Article 50 of *the Constitution* and Section 59 of the *Tax Procedures Act* to substantiate its reassessment. Its refusal to disclose the lab reports underpinning the 2023 reclassification—claiming they were "internal documents"—rendered its position unrebuttably and procedurally unfair. In Kenya Revenue Authority v. Maluki Kitili Mwendwa [2021] KEHC 4148, the High Court clarified that the presumption of correctness "vanishes" when the taxpayer presents credible evidence.

26. The Appellant's retroactive demand for Kehs 3,433,163.73—after eight years of consistent classification—violates the constitutional principles of certainty, equity, and fairness in taxation under Article 201. Accordingly, the Court makes the following orders:

    a. The Appeal is dismissed in its entirety.

    b. The Judgment of the Tax Appeals Tribunal dated 1st August 2024 is upheld.

    c. The Appellant shall bear the Respondent's costs of this appeal.

DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS 26TH DAY OF SEPTEMBER, 2025.

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CHARLES KARIUKI

JUDGE