



**Republic v Kenya Revenue Authority & another; Bonuke (Ex parte Applicant)
(Judicial Review E009 of 2025) [2025] KEHC 13867 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13867 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
JUDICIAL REVIEW E009 OF 2025
E OMINDE, J
OCTOBER 2, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

KENYA REVENUE AUTHORITY 1ST RESPONDENT

KENYA POWER LIGHTING CO. LTD 2ND RESPONDENT

AND

BENEDICT NYANGAU BONUKE EX PARTE APPLICANT

RULING

1. What is pending before this court is the 1st Respondents' Notice of Preliminary Objection dated 3rd April 2025 against the Application dated 25th March 2025 raised on the following grounds;
 1. That the Honourable Court lacks the requisite jurisdiction to hear and determine the suit in its entirety by virtue of section 52 (1) of the *Tax Procedures Act* which designates the Tax Appeals Tribunal as the appropriate forum.
 2. That the instant suit therefore offends the doctrine of exhaustion as provided for under section 9(2) of the *Fair Administrative Action Act*.
 3. That the instant suit offends the precedent set in the Court of Appeal decision in *The Speaker of National Assembly -vs- James Njenga Karume (1992) eKLR* to the effect that where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* of an Act of Parliament, that procedure should be strictly followed.
 4. That the instant suit is an outright abuse of the court process and ought to be dismissed with costs to the 1st Respondent.



2. The brief background underlying this Preliminary Objection is that the ex parte applicant was granted a tax exemption on 13/07/2020 on account of his physical disability and he contends that the same was valid from 01/01/2020 to 31/12/2025. The certificate was presented to the 2nd Respondent, his employer, for enforcement and he is expected to seek another tax exemption certificate effective 01/01/2026.
3. That he received communication from the respondents that his tax exemption had expired and his benefits would cease. Fearing that the 2nd respondent may prematurely terminate his exemption benefits, he filed the instant Notice of Motion dated 25th March 2025 seeking an order of prohibition against the Respondents, prohibiting them from declaring the certificate of disability as having expired, and an order of certiorari quashing the decision of the 1st Respondent made on 7th March 2025.
4. The 1st Respondent then filed the instant preliminary objection seeking to strike out the entire suit.
5. The parties were granted time to file submissions but the Applicant did not file any submissions. The court shall therefore determine the application on the basis of the pleadings on record and the 1st Respondents' Submissions.

1st Respondent's submission

6. Learned Counsel for the 1st respondent referred the court to the case of Mukisa Biscuits Manufacturing Ltd, vs. West End Distributors Ltd. Civil Appeal No. 9 Of 1969 [1969] EA 696. on the definition of a Preliminary Objection. Counsel referred the court to the provisions of Section 52 (1) of the [tax Procedures Act](#), urging that with respect to this case, the impugned decision challenging the arbitrary suspension of the tax exemption certificate ought to be adjudicated by the Tax Appeals Tribunal as opposed to the High Court. He cited the case of HCCOMMITA/E221/2023 - Saleh Mohammed Trust vs The Commissioner for Domestic Taxes in this regard.
7. Counsel stated that Section 9(2)(1) of the [Fair Administrative Action Act](#) stipulates that the High Court or a subordinate court shall not review an administrative action or decision under the Act unless the mechanisms, including internal mechanisms for appeal or review, and all remedies available under any other written law have been exhausted. Further, that the applicant has not demonstrated any exceptional circumstances to warrant the court's intervention. Counsel placed reliance on the case of Geoffrey Muthinja Kabiru & Others vs Samuel Muguna Henry & 1756 others [2015] eKLR urging that this suit offends the doctrine of exhaustion and it ought to be dismissed with costs to the 1st Respondent.

Analysis & Determination

8. Having addressed my mind to the issues raised, it is my considered opinion that the following issues that arise for determination are;
 1. Whether the court lacks jurisdiction to entertain the suit.
 2. Whether the application offends the doctrine of exhaustion.
9. A Preliminary objection was defined in the celebrated case of Mukisa Biscuit Manufacturing Co. Ltd –VS- West End Distributors Ltd. [1969] E.A. 696 where the Court then held that: -

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary Objection is in the nature of what used to be a demurrer it raises a pure point of law which



is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of Preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. This improper practice should stop.”

10. Having considered the Preliminary Objection raised by the Respondent, I am satisfied that it is on a pure point of law and I am therefore satisfied that it merits consideration as such.
11. On the issue of whether the court has jurisdiction to entertain the suit Nyarangi JA in Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR held as follows on the issue of jurisdiction;

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

12. Tax exemption certificates for persons with disabilities are governed by the provisions of The Persons with Disabilities (Income Tax Deductions and Exemptions) Order, Legal Notice 36 of 2010 which provides as follows;

4. Application for tax exemption

- (1) A person with disability may apply for exemption from income tax to the Commissioner through the Council in Form 1 set out in the Schedule.
- (2) The exemption under subparagraph (1) shall apply to the first one hundred and fifty thousand shillings of the total income per month.
- (3) The Council shall establish a committee, whose members shall include a medical doctor, for the purposes of vetting applications for tax exemption.
- (4) The Council shall after vetting an application for tax exemption, give a recommendation in Form 2 set out in the Schedule to the Commissioner.

13. This Judicial Review Application arises from a decision of the 1st Respondent with regard to the exemption certificate issued to the Applicant. In its communication to the Applicant, the 1st respondent advised the applicant of the to apply for another certificate as the previous one erroneously exempted the applicant for 6 years instead of 5. In order to determine jurisdiction, the court has considered whether it is appealable and whether there exists a procedure for the same prior to approaching the High Court and therefore falls under the appealable decisions. The procedure to appeal against a revocation is governed by section 56 of the [tax Procedures Act](#) and further,

14. Section 3 of the [Tax Procedures Act](#) provides as follows;

“appealable decision” means an objection decision and any other decision made under a tax law other than –

- (a) a tax decision; or



(b) a decision made in the course of making a tax decision;

“assessment” means a self-assessment, default assessment, advance assessment, or amended assessment, and includes any other assessment made under a tax law;

.....

“tax decision” means—

- (a) an assessment;
- (b) a determination under section 17(2) of the amount of tax payable or that will become payable by a taxpayer;
- (c) a determination of the amount that a tax representative, appointed person, director or controlling member is liable for under section 15, section 17 and section 18;
- (d) a decision on an application by a self-assessment taxpayer under section 31(2);
- (e) deleted by Act No. 4 of 2023, s. 49 (a);
- (f) a decision under section 48 requiring repayment of a refund; or (g) a demand for a penalty or late payment interest;

“tax law” means—

- (a) this Act;
- (b) the *Income Tax Act* (Cap. 470), *Value Added Tax Act* (Cap. 476), *Excise Duty Act* (Cap. 472) and *Miscellaneous Fees and Levies Act* (Cap. 469C); and
- (c) any Regulations or other subsidiary legislation made under this Act or the *Income Tax Act* (Cap. 470), *Value Added Tax Act* (Cap. 476), *Excise Duty Act* (Cap. 472) and *Miscellaneous Fees and Levies Act* (Cap. 469C);

General provisions relating to objections and appeals
Section 56 of the *Tax Procedures Act* provides as follows;

56. In any proceedings under this Part, the
- (1) burden shall be on the taxpayer to prove 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 only on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.

15. In *Geoffrey Muthinja & Ano. Vs Samuel Muguna Henry and 1756 Others* (2015) eKLR, the court held: -

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts can be invoked. Courts ought to be fora of last resort and not the first part of call the moment a stone brew.... The exhaustion principle is a sound one and serves the purpose of ensuring that a postponement of judicial consideration of matters to ensure that a party first of all diligent in the protection of interests within the mechanisms in place for resolution outside the courts. This accords with Article 159 of the Constitution which commands courts to encourage alternative means of dispute resolution.

16. The Court of Appeal, in *Speaker of National Assembly Vs- James Njenga Karume* (1992) eKLR, held that;

“In our view there is a considerable merit in the submission that; where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure must be strictly followed.”

17. In the instant case, the Applicant’s tax exemption certificate was neither revoked nor cancelled. He was simply advised of the error in computing the years as herein above summarised and advised that in the circumstances, he should apply for a new certificate. Instead of proceeding as advised, the Appellant moved to court by way of this Petition. This being the case, it is my considered opinion that there is no decision of the Kenya Revenue Authority that has violated the Applicant’s rights to warrant the prayers sought. He was informed that the computation of the years as six (6) as opposed to five (5) was occasioned by a technical hitch.

18. It follows therefore that the applicant having not applied for a new exemption certificate as advised is yet to exercise the avenues that exist to resolve the issue of what clearly is a normal expiration of his tax exemption certificate. I therefore agree with the 1st Respondent that this is a clear contravention of the doctrine of exhaustion because to have the issue resolved, the Applicant simply needs to make an application for a new certificate. In this regard, I find merit in the objection raised by the 1st Respondent and I accordingly uphold the same. The upshot is that Ex Parte Applicant’s application lacks merit and the same is dismissed in its entirety. Each party is to bear their own costs.

READ DATED AND SIGNED AT ITEN ON 2ND OCTOBER 2025

E. OMINDE

JUDGE

