Air Kenya Express Limited v Commissioner of Customs & Border Control (Income Tax Appeal E160 of 2021) [2025] KEHC 17133 (KLR) (Commercial and Tax) (14 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17133 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

INCOME TAX APPEAL E160 OF 2021

MN MWANGI, J

NOVEMBER 14, 2025

BETWEEN

AIR KENYA EXPRESS LIMITED ..... APPELLANT

AND

COMMISSIONER OF CUSTOMS & BORDER CONTROL ..... RESPONDENT

JUDGMENT

1. The respondent conducted a post-clearance customs audit for the period between January 2015 to December 2019 pursuant to the provisions of Sections 235 & 236 of EACCMA, 2004, to assess the appellant's compliance level with customs laws, regulations and procedures in regard to its imports. The audit revealed that Import Declaration Fees had not been paid on some aircraft parts imported by the appellant, which were chargeable to import duty. Consequently, a demand notice dated 24th January 2020 was issued to the appellant. On 21st February 2020, the appellant vide its Tax Agents, RSM - Eastern Africa Consulting Limited sought for an extension of time to 24th March 2020 to respond to the audit demand. The respondent extended time for the appellant to respond to the audit demand to 11th March 2020.

2. Through a letter dated 10th March 2020, the appellant lodged an objection against the respondent's audit demand contending that there were areas of misrepresentation of the law by the respondent as well as wrong computation of taxes due. The respondent in its objection decision communicated to the appellant vide a letter dated 24th March 2020, reaffirmed the legal basis and correctness of its tax demand.

3. Dissatisfied with the respondent's decision, the appellant appealed against the said decision to the Tax Appeals Tribunal vide a Memorandum of Appeal and statement of facts both dated 29th April 2020. The appellant contended that the respondent's tax decision was illegal, irrational, and contradictory

as it demanded import declaration fees (IDF) from an importer exempted under Reg.38A (3) and the Sixth Schedule of the Customs & Excise Act, it imposed IDF at 2.5% instead of 2% resulting in an overcharge of Kshs.4,891,401.00, it ignored proof of Kshs.139,007.00 already paid as IDF by the appellant and it unlawfully charged late payment interest on IDF that was in itself not payable in law before 20th September 2016, and at an excessive 2% rate instead of the statutory 1%. It further stated that the impugned decision also failed to consider the appellant's application for waiver of interest, demanded an arbitrary and excessive sum of Kshs.14,330,770.00 without legal basis, and it violated Articles 10, 27, 47 & 48 of *akn ke act 2010 constitution the Constitution*, and the appellant's legitimate expectation.

4. The appellant's case was that aircrafts and aircraft parts were expressly exempt under Reg. 38A(3) and the Sixth Schedule of the Customs & Excise Act. It averred that IDF could only be paid by importers required to file IDF forms, which did not include aircraft parts. It further averred that the Customs & Excise Regulations became unconstitutional from August 2010, thereafter the Miscellaneous Fees & Levies Act, 2016 was passed to provide a legislative framework for the levying of import declaration fees & other levies. For that reason, the appellant asserted that before 20th September 2016, importers of aircrafts and aircraft parts were exempt from Import declaration process and had no obligation to pay import declaration fees between January 2015 and September 2016.

5. The appellant contended that after the commencement of the Miscellaneous Fees & Levies Act on 21st September 2016, IDF was levied on aircraft parts at the rate of 2% of their customs value but aircrafts remained exempt. It stated that the respondent unlawfully applied 2.5% contrary to Section 7 of the Miscellaneous Fees & Levies Act resulting in an overcharge. The appellant stated that after accounting for the overcharge and amounts already paid, its IDF liability is only Kshs.749,546.00. The appellant averred that interest was wrongly imposed on IDF not payable before September 2016 and the rate of 2% applied by the respondent contravened Section 38 of the *akn ke act 2015 29 Tax Procedures Act*, which prescribes 1% per month. The appellant further averred that the respondent failed to act on its waiver application contrary to the provisions of Section 89 of the *akn ke act 2015 29 Tax Procedures Act*. The appellant asserted that the respondent acted ultra vires by imposing taxes not provided for in law.

6. At the Tax Appeals Tribunal (hereinafter referred to as the Tribunal), the appellant sought orders for the Tribunal to allow the Appeal, set aside the impugned tax decision and award it costs. Upon consideration of the pleadings filed and rival submissions by Counsel for the parties, the Tribunal framed three issues for determination being whether the demand for IDF before 20th September 2016 was legal, whether the respondent's computation of the IDF payable was accurate and whether the penalties imposed on the alleged unpaid IDF were valid.

7. On the 1st issue, the Tribunal held that before September 2016, IDF was imposed under Regulation 38A of the Customs & Excise Act, anchored on pre-shipment inspection. The Sixth Schedule exempted aircraft and aircraft parts from filing import declaration forms and pre-shipment inspection, but not from paying IDF fees. It found that exemption from procedure did not equal exemption from payment since if that was the case, it would have been expressly provided as in the case of export goods. The Tribunal further held that the Customs & Excise Regulations remained valid until replaced by the Miscellaneous Fees & Levies Act, 2016 as the 2010 Constitution did not render them void. It held that since no express and clear exemptions existed for aircraft parts, IDF was payable and the respondent was correct in demanding IDF fees.

8. On the 2nd issue, the Tribunal found that while the appellant alleged payment of Kshs.139,007.00 in respect of 11 entries, it failed to provide proof for most of the contested entries. It cited Section 30 of the *akn ke act 2013 40 Tax Appeals Tribunal Act* and held that the burden of proof lay with the appellant, which it failed to discharge. As a result, the Tribunal upheld the respondent's computation of the IDF

payable. On the 3rd issue, the Tribunal found that since IDF was payable pre-September 2016, interest was also due on unpaid amounts. The Tribunal further found that the provisions of the *akn ke act 2015 29 Tax Procedures Act* are inapplicable in this case as the dispute herein was not governed by the *akn ke act 2015 29 Tax Procedures Act*. It held that since the dispute herein was governed by the EACCMA, the respondent was correct in charging interest at 2% per month for late payment. On the complaint about lack of response to the waiver application, the Tribunal noted the lapse by the respondent but declined to intervene, holding that the issue fell within judicial review jurisdiction, not the Tribunal's.

9. The Tribunal held that the Appeal by the appellant was not merited and dismissed it. The Tribunal then upheld the respondent's objection decision dated 24th March 2020 and ordered each party to bear its own costs.

10. Dissatisfied with the Tribunal's decision, the appellant lodged an Appeal against it in this Court vide a Memorandum of Appeal dated 26th August 2021 raising the following grounds –

    i. That the Tribunal erred in law and fact in failing to find that a party expressly exempt from the import declaration process has no obligation to pay Import Declaration Fees (hereinafter referred to as "IDF");

    ii. That the Tribunal erred in law and fact in misinterpreting the provisions of the Regulation 38A(3) & (5) of the Customs & Excise Regulations that exempts importers of aircraft and aircraft parts from presenting an Import Declaration Form or pay IDF;

    iii. That the Tribunal erred in law and in falling to find and appreciate that there arose no legal obligation to pay IDF between August 2010 & September 2016 prior to the enactment of the *akn ke act 2016 29 Miscellaneous Fees and Levies Act* 2016 on 21st September 2016. (Hereinafter referred to as the "MFL Act") as in the stated period the appellant's aircraft and aircraft parts were exempt from the import declaration process;

    iv. That the Tribunal erred in law and fact by failing to appreciate that IDF should NOT be paid by persons exempt from the Import Declaration Process;

    v. That the Tribunal erred in fact and law by misinterpreting that the exemption in the sixth schedule of the *akn ke act 1978 13 Customs and Excise Act* was only in regard procedure for declaration in the import declaration forms and not express exemption from payment of IDF;

    vi. That the Tribunal erred in law by failing to find that there was no obligation to pay IDF as the appellant was exempt from the import declaration process noting that it is trite law that a person cannot be taxed unless it is designated in clear terms by legislation and the amount of liability is clearly defined;

    vii. That the Tribunal erred in law and fact by misinterpreting that a vague or implied exemption is no exemption while it is trite law that where there is ambiguity in tax legislation it ought to be interpreted in favour of the Taxpayer;

    viii. That the Tribunal erred in law in finding that there was no intention to exempt aircraft spares from IDF as it is not expressly mentioned and thereby placing a tax burden on the appellant while it is settled law that the power to impose taxes lies with the National Government through Parliament;

    ix. That the Tribunal erred in law in failing to find that the respondent acted ultra vires its powers under the *akn ke act 1995 2 Kenya Revenue Authority Act* in purporting to demand taxes where liability does not lie in law thereby imposing new procedures for tax collection;

x. That the Tribunal erred in law and fact in failing to find that since there is no legal basis for payment of IDF then the respondent had no grounds for imposing any late payment of interest for the period before the enactment of the MFL Act and such claim contravenes Section 38(2) of the *akn ke act 2015 29 Tax Procedures Act* (hereinafter referred to as the "TPA");

xi. That the Tribunal erred in law and fact in failing to find that mistaken payment of IDF prior to 21st September 2016 does not constitute an obligation to pay as there was no legal obligation to pay IDF and any sums paid mistakenly should be refunded;

xii. That the Tribunal erred in law and fact by falling to find that upon commencement of the MFL Act on 21st September 2016, IDF only became payable on aircraft parts at the rate of 2% of their customs value and issued a Judgment that contravenes an express provision of the law;

xiii. That the Tribunal erred in law in failing to appreciate that the purported IDF rate of 2.5% has no basis in the MFL Act and resulted in an overcharge of IDF;

xiv. That the Tribunal erred in law in failing to appreciate that the MFL Act 2016 prescribes the IDF payable at the rate of 2%;

xv. That the Tribunal erred in law and fact in failing to find that the respondent inflated the IDF rates payable without justification despite the appellant having settled the amounts in 11 instances;

xvi. That the Tribunal erred in law in failing to correctly appreciate the relevance of Section 38(1) & (2) of the *akn ke act 2015 29 Tax Procedures Act* on the late payment of interest specifically for the period prior to 21st September 2016 as no IDF was due prior to this period;

xvii. That the Tribunal erred in law in failing to acknowledge that on enactment of the MFL Act and the period thereafter it is illegal to impose late payment interest based on the respondent's erroneously computed and inflated IDF;

xviii. That the Tribunal erred in law and fact by failing to appreciate Section 89(6) & (7) of the *akn ke act 2015 29 Tax Procedures Act* and address itself on the appellant's application for waiver of late payment interest; and

xix. That the Tribunal erred in law by failing to find that the respondent by not issuing a decision on the appellant's application for waiver of late payment interest as per Section 89(7) of the *akn ke act 2015 29 Tax Procedures Act* consequently violated the appellant's right to Fair Administrative Action and equal protection of the law.

11. The appellant's prayer is for this Court to allow the Appeal with costs, set aside the Tribunal's Judgment in its entirety and the respondent's desk audit IDF demand on the aforesaid grounds.

12. This Appeal was canvassed by way of written submissions. The appellant's submissions were filed by the law firm of Rachier & Amollo LLP on 19th September 2023, whereas the respondent's submissions were filed on 31st January 2024 by Judith N. Kithinji Advocate.

13. Dr. Arwa, learned Counsel for the appellant submitted that under Regulation 38A(3) & (5) of the Customs and Excise Regulations, read together with the Sixth Schedule of the *akn ke act 1978 13 Customs and Excise Act*, importers of aircraft and aircraft parts were expressly exempted from the import declaration process, and consequently from payment of IDF. He submitted that between January 2015 & 20th September 2016, there was no legal obligation upon the appellant to pay Import Declaration Fees. Counsel relied on the case of Republic v Kenya Revenue Authority & another ex

parte Fontana Limited [2014] eKLR, and asserted that to demand IDF from exempted parties is illegal, irrational and contrary to Article 210(1) of *akn ke act 2010 constitution the Constitution*.

14. Counsel maintained that taxation must be founded strictly on the wording of legislation, with no room for implication or intendment. He contended that the respondent erred in purporting to demand principal IDF for the period prior to 20th September 2016, as there was no statutory basis for such a demand. Dr. Arwa submitted that the respondent justified charging late payment interest at 2% per month under Section 249 of the EACCMA, but no such interest was chargeable for the period before 21st September 2016 as the appellant was exempt from IDF obligations. He argued that the late payment of interest was based on inflated and erroneous IDF computations, and the respondent ignored the appellant's formal application for waiver of interest dated 10th March 2020, in violation of its constitutional and statutory rights.

15. Dr. Arwa contended that the respondent breached several Articles of *akn ke act 2010 constitution the Constitution* of Kenya including Article 10 by arbitrarily demanding Kshs.14,330,770.00 against clear legal exemptions, Article 27 by ignoring its waiver request and treating it unfairly, Article 47 by failing to accord it a hearing and by acting ultra vires in demanding IDF for exempt goods and the doctrine of legitimate expectation, whereby the appellant expected a response to its waiver application and lawful tax collection consistent with exemptions. To buttress the aforesaid submissions, Counsel relied on the cases of Republic v Minister of Finance & 2 others ex parte Kenneth Kiplagat [2018] KEHC 9584 (KLR) and Republic v Kenya Revenue Authority (KRA) & 4 others; New Flamingo Hardware & Paints Limited & 22nd others (Ex Parte) [2020] KEHC 10284 (KLR).

16. Dr. Arwa submitted that the respondent's claim that exemption from filing import declaration forms had no bearing on payment of IDF is without legal basis and merely exposes an ambiguity in the law prior to 21st September 2016 which ambiguity ought to be resolved in favour of the Taxpayer. He asserted that the said defect was cured prospectively by the *akn ke act 2016 29 Miscellaneous Fees and Levies Act*, 2016, which cannot apply retrospectively. Counsel further submitted that the respondent's contention that partial payment of IDF before September 2016 created a blanket obligation to pay for the entire period is misconceived since Article 210 of *akn ke act 2010 constitution the Constitution* requires that taxes and fees must be expressly imposed by legislation. He argued that mistaken payment of tax does not by itself create a legal obligation, as such sums constitute erroneous payments that ought to be refunded.

17. Ms Kithinji, learned Counsel for the respondent submitted that under Regulation 38A of the Customs and Excise Regulations, all importers are required to pay IDF except where the goods originate from East African Community Partner States or are intended for manufacture of goods for export. She further submitted that aircraft parts were never exempt either under the said Regulation or the *akn ke act 2016 29 Miscellaneous Fees and Levies Act*, 2016. She asserted that IDF was payable at the rate of 2.25% or Kshs.5,000 = minimum prior to 21st September 2016, and thereafter at 2% of the customs value as stipulated by the *akn ke act 2016 29 Miscellaneous Fees and Levies Act*. Counsel argued that while the appellant may have been exempted from filing import declaration forms prior to shipment, this did not imply that it was not required to pay IDF at the clearance stage. She stated that the demand raised was strictly from declarations where IDF remained unpaid.

18. Ms Kithinji submitted that the appellant's claims of payment were unsubstantiated as the supporting documents did not reconcile with some relating to other taxes. She maintained that the respondent's tax computation was accurate especially since the appellant was invited to provide proof or alternative figures but failed to do so. She argued that the interest charged at a compounded rate of 2% per month was properly anchored in Section 225 of the *akn ke act 1978 13 Customs and Excise Act* and

Section 249 of the EACCMA and that the application for waiver of interest was also dismissed for not meeting the statutory threshold. Counsel asserted that the respondent's actions were lawful, objective, and in full compliance with *akn ke act 2010 constitution the Constitution* and the *akn ke act 2015 4 Fair Administrative Action Act*, and therefore, the impugned tax decision was neither arbitrary nor unlawful.

Analysis And Determination

19. Pursuant to the provisions of Section 56(2) of the *akn ke act 2015 29 Tax Procedures Act*, an Appeal to the High Court from the decision of the Tax Appeals Tribunal or to the Court of Appeal is on a question of law only. Consequently, this Court is not permitted to replace the Tribunal's findings of fact with its own conclusions derived from an independent evaluation or interpretation of the facts.

20. I have considered the Memorandum of Appeal and Record of Appeal filed by the appellant, the statement of facts by the respondent and the written submissions filed by Counsel for the parties. The issues that arise for determination are –

    i. Whether the Tribunal misinterpreted the provisions of Section 38A of the Customs & Excise Regulations;

    ii. Whether the respondent applied the correct rate of Import Declaration Fees on the goods imported by the appellant; and

    iii. Whether the respondent ignored the appellant's formal application for waiver of interest in violation of the respondent's constitutional and statutory rights.

Whether the Tribunal misinterpreted the provisions of Section 38A of the Customs & Excise Regulations.

21. The appellant contended that under Regulation 38A(3) & (5) of the Customs and Excise Regulations read together with the Sixth Schedule of the *akn ke act 1978 13 Customs and Excise Act*, importers of aircraft and aircraft parts were expressly exempted from the import declaration process, and by extension, from payment of IDF. The appellant argued that between January 2015 & 20th September 2016, it had no legal obligation to pay Import Declaration Fees. The appellant contended that although the respondent sought to justify charging late payment interest at 2% per month under Section 249 of the EACCMA, such interest could not apply for the period prior to 21st September 2016 since the appellant was exempt from IDF liability.

22. The respondent on the other hand submitted that under Regulation 38A of the Customs and Excise Regulations, all importers are required to pay IDF except where the goods originate from East African Community Partner States or are intended for the manufacture of goods for export. She maintained that aircraft parts were never exempt under either this Regulation or the *akn ke act 2016 29 Miscellaneous Fees and Levies Act*, 2016. Consequently, IDF was chargeable at the rate of 2.25% or a minimum of Kshs.5,000 = prior to 21st September 2016 and thereafter at 2% of the customs value as prescribed by the *akn ke act 2016 29 Miscellaneous Fees and Levies Act*. Counsel argued that although the appellant may have been exempted from filing import declaration forms prior to shipment, this did not absolve it from the obligation to pay IDF at the clearance stage. She emphasized that the interest charged at a compounded rate of 2% per month was properly grounded in Section 225 of the *akn ke act 1978 13 Customs and Excise Act* and Section 249 of the EACCMA.

23. Regulation 38A(3) & (5) of the Customs and Excise Regulations provides that

    1. .....

2. .....

3. An importer of goods other than the goods specified in the Sixth schedule shall, prior to shipment of such goods, complete an import declaration form in Form C62 and present it together with an application fee of five thousand shillings to the office in Kenya of a pre-shipment inspection agent operating at the place where such goods were purchased.

4. ...

5. An importer shall present a copy of the import declaration form completed under paragraph (3) to Customs at the time of entering the goods, together with an import declaration fee which shall be two per cent of the dutiable value of the goods reduced by an amount equal to the application fee paid under paragraph (3).

   Provided that no import declaration fee shall be charged in respect of goods –

   a. Imported into Kenya from any of the East African Community partner states, that satisfy the Eastern African Community rules of Origin.

   b. Intended for use in the manufacture of goods for export, except the minimum processing fee of five thousand shillings.

24. The Sixth Schedule to the *akn ke act 1978 13 Customs and Excise Act* specifies categories of goods exempt from pre-shipment inspection and from the requirement to obtain an Import Declaration Form prior to shipment. These include aircraft, as well as aircraft parts and accessories. It is however evident that Regulation 38A principally addresses pre-shipment inspection, and at paragraph 5, it expressly exempts only goods imported from East African Community Partner States that meet the EAC Rules of origin and goods intended for use in the manufacture of products for export subject to a minimum processing fee of Five Thousand Shillings, from payment of import declaration fees.

25. The appellant asserted that Import Declaration Fee was a fee payable by importers who were required by law to undertake the import declaration process, and since aircraft, aircraft parts and accessories were exempted from pre-shipment inspection, they were in turn exempted from payment of Import Declaration Fees. For this reason, the appellant maintained that Import Declaration Fees was not payable for importation of aircraft and aircraft parts for the period between January 2015 to 20th September 2016.

26. Having the relevant provisions of the law, I am not persuaded that there is any ambiguity in the provisions of Regulation 38A of the Customs and Excise Regulations. The said provisions are very clear on which goods are exempted from pre-shipment inspection and which ones are exempted from paying Import Declaration Fees. Further, Regulation 38A(6) provides that where any goods subject to pre-shipment inspection are imported prior to such inspection, the goods may be inspected locally at a fee. This Court therefore finds that failure to subject goods to pre-shipment inspection does not amount to exemption from payment of Import Declaration Fees as inspection can always be done locally.

27. In the circumstances, I am inclined to agree with the Tribunal's finding at paragraph 67 of it Judgment that if there was an intention to exempt aircraft spares from import declaration fees, it would have been expressly mentioned in paragraph 4 or elsewhere. On reading the provisions of Regulation 38A of the Customs and Excise Regulations, I do not find and or see any ambiguity to be interpreted in favour of the appellant.

28. This Court also agrees with the Tribunal's finding at paragraph 70 of its Judgment that the Customs and Excise Regulations became unconstitutional after the 2010 Constitution. Pursuant to the provisions of Section 24 of the Interpretation and General Provisions Actwhich preserves the validity of subsidiary legislation even after repeal of the parent statute, Regulation 38A of the *akn ke act 1978 13 Customs and Excise Act* remained valid until the *akn ke act 2016 29 Miscellaneous Fees and Levies Act*, 2016 came into effect.

29. This Court therefore finds that in the absence of any express provisions in the *akn ke act 1978 13 Customs and Excise Act* and Regulations exempting aircraft, aircraft parts and accessories from paying Import Declaration Fees, it cannot be implied that one exists simply because the said goods are exempted from pre-shipment inspection. As was underscored in the oft cited case of Republic v KRA ex parte Yaya Towers Ltd [2008] eKLR, taxation is a creature of statute and exemptions cannot be implied but must be expressly provided. Therefore, the appellant's claim cannot stand.

30. In the end, this Court finds that there was no misinterpretation of the provisions of Section 38A of the Customs & Excise Regulations. This means that the respondent did not err in demanding Import Declaration Fees from the appellant for the period prior to 20th September 2016 and imposing late payment of interest on the unpaid amount at the rate of 2% per month as provided for under Section 225A of the Customs & Excise Regulations which provides that –

> Subject to sections 20 (2) and 158 where an amount of duty or other sum of money which is due under this Act remains unpaid after the date upon which it is payable, a penalty of two per cent per month or part thereof, of the unpaid amount shall forthwith be due and payable.

Whether the respondent applied the correct rate of Import Declaration Fees on the goods imported by the appellant.

31. The appellant submitted that after enactment of the *akn ke act 2016 29 Miscellaneous Fees and Levies Act*, Import Declaration Fees became applicable on aircraft parts at the rate of 2% of their customs value pursuant to the provisions of Section 7 thereunder, thus the respondent erred in computing principal Import Declaration Fees on aircraft parts using a higher rate of 2.5%.

32. Section 7(2) of the *akn ke act 2016 29 Miscellaneous Fees and Levies Act* provides that -

    1. There shall be paid a fee to be known as the import declaration fee, on all goods imported into the country for home use.

    2. The fee shall be at the rate of two point-five per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.

    3. ...

33. From the foregoing, provisions, it is clear that Import Declaration Fees is charged at the rate of 2.5 % and not 2% as contended by the appellant. In the circumstances, I am not persuaded that the respondent erred in computing the principal Import Declaration Fees on aircraft parts using a rate of 2.5%.

    Whether the respondent ignored the appellant's formal application for waiver of interest in violation of the respondent's constitutional and statutory rights.

34. On this issue, the Tribunal faulted the respondent for failing to respond to the appellant's waiver application but declined to grant any relief on grounds that such a matter falls within the realm of Judicial Review, thus outside its jurisdiction. In Kenya, Judicial Review is anchored in Sections 8 & 9

of the *akn ke act 1956 48 Law Reform Act*, Order 53 of the Civil Procedure Rules, 2010 and Articles 47, 50, & 165 of *akn ke act 2010 constitution the Constitution*. It is typically invoked to challenge the decision-making process of a public body, tribunal, or authority, rather than to interrogate the merits of the decision itself.

35. I am however persuaded that the respondent's failure to respond to the appellant's waiver application may well amount to procedural impropriety or a failure to discharge a statutory duty, both of which constitute valid grounds for Judicial Review. That said, that omission did not entirely preclude the Tribunal from examining the matter, particularly in considering whether it materially impacted the appellant's tax liability or the fairness of the proceedings. Notably, while the respondent contends that the appellant's waiver application did not satisfy the requisite legal threshold, it offered no explanation as to why a formal decision to that effect was never communicated to the appellant. Even so, this omission on its own, does not justify this Court's interference with the respondent's objection decision or the Tribunal's Judgment.

36. It is my finding that the instant Appeal is without merits. I make the following orders –

    i. The Appeal is hereby dismissed;

    ii. The appellant is at liberty to make an application to the respondent for waiver of interest; and

    iii. There shall be no orders as to costs.

    It so ordered

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14 TH DAY OF NOVEMBER 2025. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

Ms Maina for the appellant

Mr. Ngetich h b for Mr. Mutua for the respondent

Ms B. Wokabi – Court Assistant.