



Elite Crete Systems East Africa Limited v Kenya Revenue Authority (Commercial Case 002 of 2022) [2026] KEHC 1328 (KLR) (Commercial and Tax) (12 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1328 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 002 OF 2022
AA VISRAM, J
FEBRUARY 12, 2026**

BETWEEN

ELITE CRETE SYSTEMS EAST AFRICA LIMITED APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

Introduction

1. Before the Court is the Applicant's Notice of Motion dated 25th January, 2022, seeking orders of certiorari, prohibition and mandamus arising from the Respondent's decision communicated on 21st December, 2021, re-classifying imported goods under HS Code 3214.90.00 and demanding additional customs duty and taxes in the sum of Kshs. 366,895.26/-.
2. The Respondent opposed the application through Grounds of Opposition dated 27th May, 2022, and written submissions, contending that the application is fatally defective, that this Court lacks jurisdiction, that the dispute concerns a tax decision falling within a specialised statutory regime, and that the Applicant failed to exhaust the dispute resolution mechanisms provided under the East African Community Customs Management Act, 2004 (EACCMA).
3. The Court has considered the application, the affidavits, the Grounds of Opposition, the written submissions and the authorities cited.

Issues for Determination

4. The issues that arise for determination are:-
 - a. Whether the application is properly before this Court by way of judicial review.



- b. Whether this Court has jurisdiction to entertain the dispute.
- c. Whether the Applicant was required to exhaust the statutory remedies under the EACCMA.
- d. Whether the orders sought can be granted.

Analysis and Determination

5. The Respondent contended that the application is fatally defective as the orders sought cannot be granted by way of judicial review, and that the grievance raised is not procedural in nature but concerns a substantive tax decision.
6. Judicial review is concerned with the legality of the decision-making process, not with the merits of the decision itself. Where an Applicant invites the court to interrogate the correctness of a tax assessment or classification, the court must be slow to assume jurisdiction where Parliament has provided a specialised statutory framework for resolution of such disputes.
7. In the present case, the substance of the Applicant's complaint is the re-classification of its goods and the resulting tax liability. Determination of whether the goods fall under one tariff heading or another is a technical and merits-based inquiry falling squarely within the mandate of the customs and tax authorities and, on appeal, the Tax Appeals Tribunal.
8. The fact that the Applicant has framed the dispute as one of procedural unfairness does not, of itself, convert a merits dispute into a proper subject for judicial review. This is the case in the present matter.
9. As regards the jurisdiction of this Court, the Respondent relied on Section 219 of the EACCMA and the overall statutory scheme governing customs disputes. It is trite that Jurisdiction is everything. Without it, a court must down its tools. *The Constitution* and statute permit Parliament to establish specialised mechanisms and forums for the resolution of particular categories of disputes, including tax disputes.
10. Sections 229 and 230 of the EACCMA provide a clear procedure for review of decisions of the Commissioner and an appeal to the Tax Appeals Tribunal. That Tribunal is vested with the jurisdiction and expertise to determine disputes relating to customs classification, valuation and tax liability.
11. This Court's jurisdiction is not ousted in absolute terms. However, it is limited by the doctrine of exhaustion, now firmly entrenched in Kenyan law and grounded in both statute and principle. However, the Respondent correctly contended that the Applicant failed to exercise its right of review and appeal under Sections 229 and 230 of the EACCMA and that the application is premature.
12. The law is settled that where a statute provides a clear dispute resolution mechanism, that mechanism ought to be exhausted before the Court's jurisdiction is invoked. This principle has been consistently affirmed by Kenyan courts, including in *Speaker of the National Assembly v Karume* [1992] KLR 21 and *Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others* [2015] eKLR. The rationale for the doctrine is sound. It respects legislative intent, promotes orderly dispute resolution, and ensures that courts act as fora of last resort rather than first instance decision-makers in technical disputes.
13. In this case, there is no evidence that the Applicant lodged a formal application for review under Section 229 of the EACCMA, or that it pursued an appeal to the Tax Appeals Tribunal under Section 230.
14. The Applicant has not demonstrated the existence of exceptional circumstances that would justify bypassing the statutory framework. Allegations of delay, inconsistency or dissatisfaction with the



Respondent's decision do not, without more, meet the threshold for exemption from the exhaustion requirement.

15. In the absence of evidence to the contrary, the Court is of the view that the Applicant must follow the appropriate statutory process. No evidence has been laid before the Court to show that the statutory mechanisms available are inadequate to address the remedies or reliefs sought by the Applicant. Where there are no exceptional circumstances to warrant by passing the said mechanisms, I do not think that this Court may leap frog the statutory process and proceed to issue orders of judicial review at the present stage.
16. Having found that the dispute concerns a substantive tax decision, that the Court's jurisdiction has been prematurely invoked, and that the Applicant failed to exhaust the available statutory remedies, it follows that the orders of certiorari, prohibition and mandamus sought cannot issue.
17. Based on the reasons set out above, the Notice of Motion dated 25th January, 2022, is struck out with costs.
18. The file is marked as closed.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 12TH DAY OF FEBRUARY, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Godfrey

.....Applicant

.....Respondent

