Njeri v Commissioner of Domestic Taxes (Income Tax Appeal E002 of 2022)
[2025] KEHC 749 (KLR) (Commercial and Tax) (31 January 2025) (Judgment)

Neutral citation: [2025] KEHC 749 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

INCOME TAX APPEAL E002 OF 2022

BM MUSYOKI, J

JANUARY 31, 2025

BETWEEN

NELSON NDEGWA NJERI ..... APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT

(Being an appeal from judgment of the Tax Appeals Tribunal in its appeal number 421 of 2020 dated 15-12-2021)

JUDGMENT

1. On 22-07-2022, the appellant submitted imported goods for valuation for payment of taxes and paid Kshs 315,794.00 in taxes. When the respondent delayed in undertaking the valuation for a period the appellant felt was inordinate and unfair, he wrote several letters of complaints seeking expediting of the process. The respondent eventually uplifted the value of the goods to Euro 4004 which the appellant was not happy with following which he wrote a letter dated 6th August 2020.

2. The appellant was not satisfied with the uplifting of the value of the goods and proceeded to file an appeal before the Tax Appeals Tribunal on 14-09-2020. The appeal was heard both on merits and preliminary objection. The preliminary objection was based on the doctrine of exhaustion and in reliance to Section 229(1) of East African Community Customs Management Act, 2004 (EACCMA) which provides as follows;

> 'a person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.'

3. The tribunal considered first the preliminary objection and in its judgement dated 15-12-2021 found that the appellant had not exhausted the internal dispute resolution mechanism provided under the aforesaid Section and dismissed the appeal. It is against this decision that the appellant has approached this court raising 10 grounds. All these grounds oscillate around the contestation that the tribunal erred in allowing the preliminary objection.

4. The appeal was argued by way of written submissions. In his submissions dated 13-03-2023, the appellant argues that the respondent failed to respond to his letters dated between 30-08-2020 and 11-08-2020. I have looked at the letters which appear on pages 56 (letter dated 30-07-2020), 58 (letter dated 4-08-2020), 75 (letter dated 6-08-2024) and 76 (letter dated 6-08-2020) of the record of appeal and I note the following;

    a. Letters dated 30-07-2020 and 4-08-2020 were complaining of the delay in valuation for the goods.

    b. Letter dated 6-08-2020 was acknowledging receipt of the respondent's decision to value the goods at Euro 4004 and asking for details of how the valuation was arrived at. The letter also seeks that the payment of the duty be suspended pending hearing of some other two matters which were said to be pending before the tribunal.

5. According to the appellant, the letter dated 6th August 2020 constituted application for review under Section 229(1) of EACCMA. That means that the decision of the respondent which gave rise to the dispute between the parties was given on 6th August 2020. In his appeal to the tribunal the appellant stated that he was appealing after being aggrieved by the decision made by the Commissioner of Customs and Border Control for unwarranted uplift of customs value. It is this decision which the respondent argues should have been subjected to an application for review under section 229(1) before the matter could be mature for litigation before the tribunal.

6. I have gone through the record of appeal and I notice that there is no specific letter applying for review of the valuation. Actually, the appellant has not in his submissions referred me to any specific letter which suggest that he made the application for review. In the aforesaid letters the appellant complained of delays in valuation and lack of information on how the assessment was done. None of them in my interpretation appear to me to be application for review. Even if we were to assume that the letter dated 6th August 2022 was an application for review, it cannot be said that a decision on the same was ever made or communicated which would have warranted an appeal to the tribunal. At least none has been exhibited. What has been exhibited are letters complaining of delay in valuation and asking for information on how the valuation was reach.

7. Subsection 4 of Section 229 of the EACCMA gives the Commissioner a period of 30 days to determine and communicate his decision on an application for review. Subsection 4 states that;

> 'The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for decision.'

8. If it is assumed that the appellant's letter dated 6-08-2020 which was complaining about the valuation was his application for review, then the period provided by the above Section lapsed on 5th September

2020. In that case, the application would have been deemed allowed by virtue of subsection 5 in which case there was nothing for the appellant to appeal to the tribunal. The said subsection states that;

> 'Where the Commissioner has not communicated his or her decision to the person lodging the application for review within time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application.'

9. Flowing for the above, it is my finding that whichever way one looks at it, it is clear that the appellant did not exhaust the internal dispute resolution mechanism provided under Section 229 of the EACCMA and therefore he was in breach of the doctrine of exhaustion. Where there is breach of this doctrine, the courts and tribunals are justified to decline jurisdiction. In Mereka v Samora M. Sikalieh – Chairman, Karen Langata District Association (KLDA) (2023) KEHC 19953 (KLR) it was held that;

> 'The doctrine of exhaustion encourages disputants to seek other means of resolving their conflicts rather than, or before coming to Court. The jurisdiction of the Court should only be invoked when all other means of dispute resolution fail or are exhausted.'

10. The court in William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others; Muslims for Human Rights & 2 Others (Interested Parties) (2020) eKLR also reiterated the importance of the application of the doctrine by holding that;

> 'The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts.'

11. The court would exempt parties from the application of the doctrine where the circumstances justify exercise of such discretion. The appellant has not demonstrated existence of special circumstances which would move the court to exempt him from application of the doctrine. He has actually not even applied for the exemption and there is nothing in the appeal to justify exemption. He instead argues that the tribunal dismissed his appeal on a technicality. This court holds the position that a provision of the law providing for mechanism of disputes resolution is a substantive issue and cannot be termed as a procedural technicality as it goes to the core of exercise of right to access justice. Where the law makes a provision on the procedure which should be followed for doing an act especially in contested matters, that procedure must be strictly followed unless the circumstances dictate a different approach. In Speaker of National Assembly v Karume (1992) KLR 21, the Court of Appeal held that;

> 'Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.'

12. The upshot of the above is that this court finds that the tribunal was right in declining jurisdiction to determine the appeal and therefore this appeal lacks merits and the same is hereby dismissed with costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

JUDGMENT DELIVERED IN PRESENCE OF MISS SEGA FOR THE RESPONDENT AND IN ABSENCE FOR THE APPELLANT.