



**Papyrus Paper and Paper Productions Limited & 5 others v Kenya Revenue Authority  
(Constitutional Petition E010 of 2022) [2025] KEHC 5229 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 5229 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CONSTITUTIONAL PETITION E010 OF 2022**

**OA SEWE, J**

**MARCH 27, 2025**

**IN THE MATTER OF ARTICLES 10, 20, 21, 22, 23, 35, 40, 47, 48, 159, 258, AND  
SECTION 19 OF THE SIXTH SCHEDULE OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**2.**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION  
OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND  
PROCEDURE RULES 2013 AND ARTICLE 23 OF THE CONSTITUTION  
OF KENYA 2010 AND ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**3.**

**IN THE MATTER OF DEMANDS MADE BY THE KENYA REVENUE AUTHORITY  
AGAINST PAPYRUS PAPER AND PAPER PRODUCTS LIMITED, YUSUFI ENTERPRISE  
COMPANY LIMITED, KABY HOLDINGS LIMITED, KENSINGTON TRADERS LIMITED,  
UNITECH SUPPLIES COMPANY LIMITED AND JAMPEN ENTERPRISES LIMITED**

**AND**

**4.**

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLES 21, 28,  
40 AND 47 OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**PAPYRUS PAPER AND PAPER PRODUCTIONS LIMITED .... 1<sup>ST</sup> PETITIONER  
YUSUFI ENTERPRISE COMPANY LIMITED ..... 2<sup>ND</sup> PETITIONER  
KABY HOLDINGS LIMITED ..... 3<sup>RD</sup> PETITIONER**



**KENSINGTON TRADERS LIMITED ..... 4<sup>TH</sup> PETITIONER**  
**UNITECH SUPPLIES COMPANY LIMITED ..... 5<sup>TH</sup> PETITIONER**  
**JAMPEN ENTERPRISES LIMITED ..... 6<sup>TH</sup> PETITIONER**  
**AND**  
**KENYA REVENUE AUTHORITY ..... RESPONDENT**

### **JUDGMENT**

- (1) The petitioners are limited liability companies incorporated in the Republic of Kenya. They filed the Petition dated 4<sup>th</sup> March 2022 seeking the following reliefs:
- (a) A declaration that their rights to the protection of property and from arbitrary deprivation thereof as well as the right to fair administrative action, have been breached.
  - (b) A declaration that the demands made by the respondent upon them for payment of Kshs. 26,458,080/=, Kshs. 58,754,873/=, Kshs. 4,758,856/=, Kshs.5,287,929/=, Kshs.9,242,951/= and Kshs. 2,343,932/=, respectively, on 2<sup>nd</sup>, 4<sup>th</sup> and 8<sup>th</sup> February 2022 and the undated demand letters infringe upon their constitutional rights and are null and void and deemed unenforceable.
  - (c) A declaration that the respondent acted inconsistently with and in breach of its powers, duties and obligations under the provisions of Article 10, 40, 47 and 50 of *the Constitution*.
  - (d) An order permanently prohibiting and/or restraining the respondents:
    - (i) from enforcing payment of Kshs. 26,458,080/= on account of alleged short levy of duty against Papyrus Paper and Paper Products Limited;
    - (ii) from enforcing payment of Kshs. 58,754,873/=, on account of alleged short levy of duty against Yusufi Enterprise Company Limited;
    - (iii) from Enforcing payment of Kshs. 4,758,856/= on account of alleged short levy of duty against Kaby Holdings Limited;
    - (iv) from enforcing payment of Kshs. 5,287,929/= on account of alleged short levy of duty against Kensington Traders Limited;
    - (v) from enforcing payment of Kshs. 9,242,951/= on account of alleged short levy of duty against Unitech Supplies Company Limited;
    - (vi) from enforcing payment of Kshs. 2,343,932/= on account of alleged short levy of duty against Jampen Enterprises Limited.
  - (e) An order that costs of the Petition be borne by the respondent.
  - (f) All and other such orders or relief as the Court may deem just and fit to grant.
- (2) The petitioners averred that, at all material times, they were carrying on the business of, inter alia, importers of photocopying paper, the HC Code for which is 480256.00; and that on the 2<sup>nd</sup>, 4<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> February 2022, the respondent, Kenya Revenue Authority, made demands upon them for payment of duty in respect of goods imported by them between 2018 and 2021. They further stated that the



- demands were hinged on the result of respondent's audit, which allegedly revealed a short levy due to application of an import rate of 10percent instead of 25percent.
- (3) The petitioners further averred that all their efforts to engage the respondent on the demands have been unsuccessful, yet all the various consignments of imported photocopying paper were cleared and released to the above companies by the respondent after verification of the entry, the goods as well as the tax collectable by the respondent's officers and upon payment of taxes and duties that were generated by the respondent through its SIMBA System.
  - (4) The respondent relied on the Replying Affidavit sworn on 27<sup>th</sup> May 2022 by Mutahi Wambui, an officer within the respondent's Post Clearance Unit and duly appointed for purposes of the [Kenya Revenue Authority Act](#). The respondent deposed that, from a desk review of the imports undertaken under tariff 4802.56.00 for the period 2<sup>nd</sup> August 2018 to 8<sup>th</sup> February 2022, it was discovered that various importers had incurred a short levy of taxes as a result of the application of a duty rate of 10percent instead of 25percent. Consequently, the respondent demanded for the short levied taxes from those taxpayers who included the petitioners herein; which demands prompted the institution of this Petition.
  - (5) The respondent explained its mandate as well as the law and procedures on Post Clearance Audit and pointed out that the law allows it to recover short levies within 5 years. On HS Code Classification, the respondent averred that the change from 10percent to 25percent tariff was effected vide [Legal Notice No. 69 of 2018](#), and that the same was in the public domain. The respondent contended that its SIMBA system correctly reflected the applicable HS Code and therefore the petitioners had no excuse for not applying it in the course of their respective self-assessment procedures.
  - (6) It was further the contention of the respondent that the SIMBA system is an administrative tool developed by it to facilitate tax administration and trade in compliance with the Tax statutes; and therefore the system is subject to the provisions of the applicable tax statutes and cannot be interpreted to waive tax or amend any tax legislation. Further, the respondent asserted that any error in the SIMBA system cannot be used to waive the provisions of a tax statute or create any expectation regarding waiver of tax.
  - (7) The Petition was canvassed by way of written submissions which were highlighted orally on 24<sup>th</sup> June 2024. The petitioners relied on the written submissions dated 3<sup>rd</sup> April 2024. In addition to the background facts they addressed the Court on the applicable law in support of their contention that they properly and validly declared their respective imports under the correct HS Code 4802.56.00 as evidenced by the documents annexed to their bundle of documents.
  - (8) In the petitioners' submission, it was incorrect for the respondent to allege that they applied the wrong duty rate in their entries and yet acknowledge that the SIMBA system is a tool developed by it to facilitate tax collection. It was their contention that if the SIMBA system administered tax at the rate of 10percent as opposed to 25percent, it would be irrational for the respondent to seek to levy additional tax years after the fact. The petitioners relied on the following decisions in urging the Court to allow the Petition:
    - (a) [Krish Commodities Ltd v Kenya Revenue Authority](#), Mombasa Civil Appeal No. 67 of 2017.
    - (b) [Kenya Revenue Authority and Export Trading Company Limited](#) [2022] KESC 31 (KLR).
    - (c) [Aryuv Agencies Limited v Kenya Revenue Authority](#) [2019] eKLR
  - (9) On its part, the respondent relied on its written submissions dated 25<sup>th</sup> April 2024. It proposed a single issue for determination, namely whether the Petition has any merit. It submitted that, at all material



times, the applicable import duty rate was 25percent and that this was well within the knowledge of the petitioners. The respondent was categorical that whether or not the rate had been changed in the SIMBA system did not preclude the petitioners from paying tax as by law prescribed.

10. The respondent set out the particulars of each entry made by the petitioners to demonstrate that the demand for the short levied duty was made within the period allowed by Sections 135, 235 and 236 of the East African Community Customs Management Act, 2004 (EACCMA). It reiterated its mandate of post clearance audit and relied on the following cases to buttress its arguments:
  - (a) *Republic v Commissioner General Kenya Revenue Authority, Ex Parte Mount Kenya Bottlers Ltd and another* [2016] eKLR;
  - (b) *Commissioner of Customs and others v Amit Ashok Doshi and 2 others*, Mombasa Civil Appeal No. 157 of 2007;
  - (c) *Aryuv Agencies Ltd v Kenya Revenue Authority* [2019] eKLR;
  - (d) *Republic v Kenya Revenue Authority and another, Ex Parte Kronos Lcs Centre East Africa Limited* [2012] eKLR;
  - (e) *Republic v Kenya Revenue Authority, Ex Parte Baa Shoe Company (Kenya) Limited* [2014] eKLR
- (11) I have given careful consideration to the Petition, the averments set out in the parties' respective affidavits and the written submissions filed on their behalf by their advocates. It is common ground that the petitioners are traders carrying on the business of importing and selling photocopying papers; and that in the course of their business they would make declarations in the respondent's SIMBA system to facilitate payment of the duty due from them. It is also common ground that the petitioners made the correct declarations as to the applicable code, and that the amount of duty due was automatically generated by the SIMBA system, verified and paid.
- (12) Long afterwards, the respondent discovered that the duty was erroneously charged at the rate of 10percent instead of 25percent which was the applicable rate at the time. Accordingly, the respondent served the petitioners with demand letters seeking for payment of short-levied duty as follows:
  - (a) Papyrus Paper and Paper Products Ltd - Kshs. 26,458,080/=,
  - (b) Yusufi Enterprise Company Ltd - Kshs. 58,754,873/=,
  - (c) Kaby Holdings Ltd - Kshs. 4,758,856/=,
  - (d) Kensington Traders Ltd - Kshs. 5,287,929/=,
  - (e) Unitech Supplies Company Ltd - Kshs. 9,242,951/= and
  - (f) Jampen Enterprises Ltd -Kshs. 2,343,932/=, respectively,
- (13) The letters are dated 2<sup>nd</sup>, 4<sup>th</sup> and 8<sup>th</sup> February 2022, and copies thereof were annexed to the petitioner's Supporting Affidavits and are similarly in terms of content, save for the amount demanded. The demands were made pursuant to Sections 135, 235 and 236 of the EACCMA. There is no dispute as to the respondent's mandate as well explained in the Replying Affidavit sworn by Mr. Wambui.
- (14) There is also no dispute that, under EACCMA, the respondent has the powers to inspect and audit the accounts of the petitioners and to recover short levied taxes which were not declared or paid at the point of entry of the goods in question. Section 235(1) states:



- (1) The proper officer may, within five years of the date of importation, exportation or transfer or manufacture of any goods, require the owner of the goods or any person who is in possession of any documents relating to the goods —
  - (a) to produce all books, records and documents relating in any way to the goods; and
  - (b) to answer any question in relation to the goods; and
  - (c) to make declaration with respect to the weight, number, measure, strength, value, cost, selling price, origin, destination or place of transshipment of the goods, as the proper officer may deem fit.”
  
- (15) Further to the foregoing, Section 135 of [EACCMA](#) states:
  - (1) Where any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case may be, were liable.
  - (2) Where a demand is made for any amount pursuant to sub-section (1), the amount shall be deemed to be due from the person liable to pay it on the date on which the demand note is served upon him or her, and if payment is not made within thirty days of the date of such service, or such further period as the Commissioner may allow, a further duty of a sum equal to five percent of the amount demanded shall be due and payable by that person by way of a penalty and a subsequent penalty of two percent for each month in which he or she defaults.
  - (3) The proper officer shall not make any demand after five years from the date of the short levy or erroneous refund, as the case may be, unless the short levy or erroneous refund had been caused by fraud on the part of the person who should have paid the amount short levied or to whom the refund was erroneously made, as the case may be.
  
- (16) In this regard, the respondent placed reliance on *Republic v Commissioner General, Kenya Revenue Authority, Ex Parte Mount Kenya Bottlers Ltd and another* (supra) which it was held:
 

“The mere fact that goods have been released to the importer does not preclude the Respondent from carrying out post clearance audit to verify the accuracy of the declarations made at the time of the clearance of the goods and where the said audit disclose that there was an undervaluation of import values by the Applicant Company’s agents for customs purposes hence resulting in gross underpayment of duties on the Applicant Company’s imports, the importer will be liable to make good the difference.”
  
- (17) The respondent also relied on [Aryuv Agencies Ltd v Kenya Revenue Authority](#) (supra) at paragraph 17 in which Hon. Ogola, J. had the following to say:
  17. ...this Court is of the view that the Ex parte Applicant was under the duty to pay applicable tax since as submitted by Mr. Nyaga, learned counsel for the Respondent, Kenya tax system is based on self-accounting and self-assessment. Every tax payer is required to make a declaration of how much tax is due and payable and the Respondent is empowered to audit such declarations. In my view the Ex parte Applicant knew the tax it was expected to pay. It was given a lesser tax to pay. It accepted to pay the lesser tax without asking any questions. A responsible



tax payer cannot hide the truth about tax that has become due. If there was a mistake in the Simba System, this mistake was immediately known to the Ex parte Applicant when they were asked to pay lesser tax than what their self-assessment of tax required them to pay. The Ex parte Applicant knew about the faulty system but declined to share this fact with the Respondent. The Respondent only learnt about this fact much later, however, early enough to enable it to demand payment of the shortfall within the five years as provided under Section 135 (1) of the EACCMA which stipulates that:

“Where any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case may be, were liable.”

The Applicant’s failure to pay the said amount left the respondent with no choice but to detain the Applicant’s containers by dint of Section 235(3) of the EACCMA. In any event, despite the error in the Simba System, the Applicant was at all material times aware of the correct rate applicable to the rice it had imported.

- (18) I am in complete agreement that payment of tax is indeed an obligation imposed by the law and therefore the expressions of Hon Mativo, J. (as he then was) in *Republic v Kenya Revenue Authority, Ex Parte Bata Shoe Company (Kenya) Limited* (supra) are apt, namely:

“...Payment of tax is an obligation imposed by law. It is not a voluntary activity. That being the case, a taxpayer is not obliged to pay a single coin more than is due to the taxman. The taxman on the other hand is entitled to collect up to the last coin that is due from the taxpayer.”

- (19) In this instance, the petitioners complied with all the procedures set out for self-declaration and assessment in the respondent’s SIMBA system. They therefore approached the Court to challenge the subsequent demands for short levies made by the respondent long after the imported goods had been sold. In their contention the demands are not only unreasonable but go against the provisions of Articles 10, 40, and 47 of *the Constitution*.

20. The main issue for determination therefore is whether the impugned demands are tenable in the circumstances. It is significant therefore that the SIMBA system is of the respondent’s own creation to facilitate tax collection. It is also notable that, in their respective affidavits, the petitioners deposed that the system does not permit an importer to state the rate of duty applicable but automatically generates the amount payable on the basis of the HS Code or Tariff Number. This is distinguishable from the situation obtaining in the Mt. Kenya Bottlers case (supra) in which the importer presented an undervaluation of the imported goods.

- (21) Similarly, in the Aryuv case, the facts indicate that the importers were aware of the mistake in the SIMBA system. In this instance there was no such proof. To the contrary, the respondent submitted that they ought to have known that duty was payable at 25percent instead of 10percent because the same had been gazetted vide a Legal Notice. Hence, in my considered view, no fault could be attributed to the petitioners in connection with the 10percent rate that was applied by the SIMBA system in respect of their impugned entries.

- (22) Moreover, while the respondent has demonstrated that there had been a change from 10percent to 25percent vide *Legal Notice No. 112 of 2018*, published in the EAC Gazette of 2<sup>nd</sup> August 2018, no



explanation was proffered as to why the adjustment was not immediately effected in the system. Indeed, the respondent was silent as to the exact date when it reconfigured the system to replace the 10percent rate with 25percent.

- (23) The Supreme Court and the Court of Appeal had occasion to consider disputes involving similar facts. In *Kenya Revenue Authority v Export Trading Company Ltd* (supra) the Supreme Court held:

“We reiterate the findings by the High Court and Court of Appeal and hold that the appellant acted unfairly in demanding the alleged short levied duty almost 4 years after the initial assessment and payment of the duty so assessed were irrational and did not accord the respondent its right to fair administrative action.”

- (24) Similarly, in *Krish Commodities Limited v Kenya Revenue Authority* (supra) the Court of Appeal held: (at paragraph 30)

30. Moreover, it is common ground that the identification of the applicable rate of duty and assessment of duty payable was done by the Simba System. The appellant had no role in declaring or setting the rate to be applied. For the respondent to turn around and pass the buck to the appellant by contending that it was aware at all material times of the right rate cannot hold any weight. More so, taking into account that the respondent’s own officers verified the entries made and even inspected the consignments. The respondent’s officers were not acting as a conveyor belt performing a perfunctory exercise. The reason they were there was to verify the accuracy of the entries and the duty payable before clearance of the consignments in question. Having verified the entries in issue, rate applied and assessed duty as correct, a legitimate expectation arose in favour of the appellant that the assessed duty was correct.

- (25) The superior courts had in full view, the provision of Sections 135 and 235 of EACCMA that permit the respondent to demand for short levies, but nevertheless required that such demands be made within a reasonable time for purposes of Article 47. Accordingly, while the decision of Ayurv is of the persuasive kind, the cases of Export Trading Co. Ltd and Krish Commodities Ltd relied on by the petitioners are binding on this Court.

(26) It is therefore my finding that, in making the demands for short levies from the petitioners years after they had sold the imported goods and on the basis of its own negligence, the respondent acted unreasonably. I find merit in the Petition. It is hereby allowed and orders granted as follows:

- (a) A declaration be and is hereby granted that the rights of the petitioners to the protection of property and from arbitrary deprivation thereof as well as the right to fair administrative action, have been threatened by the impugned demands.
- (b) A declaration be and is hereby granted that the demands made by the respondent upon them for payment of Kshs. 26,458,080/=, Kshs. 58,754,873/=, Kshs. 4,758,856/=, Kshs. 5,287,929/=, Kshs. 9,242,951/= and Kshs. 2,343,932/=, respectively, on 2<sup>nd</sup>, 4<sup>th</sup> and 8<sup>th</sup> February 2022 are null and void and therefore unenforceable.
- (c) A declaration be and is hereby made that, in making the impugned demands, the respondent acted inconsistently with and in breach of its powers, duties and obligations under the provisions of Articles 10, 40, 47 and 50 of *the Constitution*.
- (d) An order be and is hereby made permanently prohibiting and/or restraining the respondents:



- (i) from enforcing payment of Kshs. 26,458,080/= on account of alleged short levy of duty against Papyrus Paper and Paper Products Limited;
- (ii) from enforcing payment of Kshs. 58,754,873/=, on account of alleged short levy of duty against Yusufi Enterprise Company Limited;
- (iii) from enforcing payment of Kshs. 4,758,856/= on account of alleged short levy of duty against Kaby Holdings Limited;
- (iv) from enforcing payment of Kshs. 5,287,929/= on account of alleged short levy of duty against Kensington Traders Limited;
- (v) from enforcing payment of Kshs. 9,242,951/= on account of alleged short levy of duty against Unitech Supplies Company Limited;
- (vi) from enforcing payment of Kshs. 2,343,932/= on account of alleged short levy of duty against Jampen Enterprises Limited.

(27) On costs, I bear in mind the decision of the Supreme Court in the case of *Jasbir Singh Rai and 3 others v Tarlochan Singh Rai and 4 others*, SC Petition No 4 of 2012; [2014] eKLR that the legal principle that costs follow the event is not absolute. The court held:

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation...

(22) Although there is eminent good sense in the basic rule of costs – that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the applicant...”

(28) The respondent is a public body sustained by the taxpayer. In my considered view, it would be injudicious to condemn it to pay costs to the petitioners in the circumstances of this case. I therefore hereby order each party to bear own costs of the Petition.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF MARCH 2025**

**OLGA SEWE**

**JUDGE**

