



Omnispace Limited v Commissioner of Customs and Border Control (Income Tax Appeal E008 of 2024) [2025] KEHC 9209 (KLR) (Commercial and Tax) (26 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E008 OF 2024**

H NAMISI, J

JUNE 26, 2025

BETWEEN

OMNISPACE LIMITED APPELLANT

AND

COMMISSIONER OF CUSTOMS AND BORDER CONTROL RESPONDENT

JUDGMENT

1. The Appellant is a limited liability company duly incorporated in Kenya under the provisions of the *Companies Act*. Its main form of business is the provision of events, conferencing and meeting facilities, accessories and services as well as event management.
2. The Respondent is a principal officer appointed under section 13 of the *Kenya Revenue Authority Act*.
3. The Appellant imported an aluminium structure for use as storage facility, with glass doors and windows. The item was correctly classified under tariff subheading 7610. According to the Appellant, due process was followed and documents submitted.
4. The dispute herein arose after the Respondent carried out a desk review audit of the Appellant and alleged that the Appellant had misclassified its importation of aluminium maxiflex structure as tariff sub-heading HS Code 7619.90.00 instead of HS Code 9406.90.90, stating that the imports were maxiflex parts, glass walls and glass doors which the Respondent classified as prefabricated building.
5. Following the review, the Respondent issued a demand notice to the Appellant on 20 April 2022. In response to the demand for additional taxes, on 17 May 2022, the Appellant applied for a review of the Respondent's decision. Being dissatisfied with the Respondent's review decisions, the Appellant lodged a Notice of Appeal and filed a Memorandum of Appeal at the Tax Appeals Tribunal. While the Appellant's record indicates that these documents were dated and filed on 20 July 2022, the Tribunal's



judgment and Respondent's Statement of Facts consistently record the appeal having been lodged on 27 July 2022. The Tribunal's stamp on the documents is dated 27 July 2022. It is this latter date, 27 July 2022, that the Tribunal used as the basis for its finding. The Tribunal dismissed the Appellant's appeal by holding that the same was filed out of time and without leave.

6. Being aggrieved by the judgement and order of the Tribunal, the Appellant lodged this appeal on the following grounds:
 - i. That the Honourable Tribunal failed to appreciate that the Section 2(2)) of the *Tax Procedures Act*, 2015 defers to specific procedures in relevant tax laws, in this instance, the East African Community Customs Management Act, 2004 (EACCMA).
 - ii. That the Honourable Tribunal misapprehended the law and fact in failing to appreciate that East African Community Customs Management Act, 2004 (EACCMA) is the principal tax law governing the management and administration of Customs in Kenya.
 - iii. That the Honourable Tribunal erred in law in failing to appreciate that Section 230(1)& (2) of the East African Community Customs Management Act, 2004 (EACCMA) grants a person dissatisfied with the decision of the Commissioner under Section 229 of the Act to lodge an appeal with the Tax Appeals Tribunal within forty- five (45) days of receipt of the decision of the Commissioner.
 - iv. That the Honourable Tribunal erred in law and fact in failing to appreciate that the Tax Appeal Tribunal Act 2013 was enacted pursuant to the provisions of Section 231 East African Community Customs Management Act, 2004 (EACCMA) which mandates EAC Member states to enact legislation establishing Tax Appeals Tribunal to hear appeals lodged in accordance with Section 230 of the Act;
 - v. That the Honourable Tribunal erred in law and fact by failing to appreciate that Section 13 of the *Tax Appeals Tribunal Act*, 2013 on the timelines for lodging an appeal against an objection decision cannot override the provisions of Section 230(2) of the EACCMA prescribing the timelines for lodging an appeal against the decision of the Commissioner under Section 229;
 - vi. That the Honourable Tribunal erred in fact and law in making a decision per incuriam and holding that it lacked jurisdiction to determine the appeal.
 - vii. That the Honourable Tribunal erred in law and fact by finding that the Appellant ought to have sought extension of time to lodge the appeal despite having lodged the appeal within the timelines specified under Section 230(2) of the EACCMA, 2004.
 - viii. That the Honourable Tribunal erred in law by not affording the parties an opportunity to address the issue of the appeal timeliness, which was neither raised in the pleadings nor submissions of the parties, thereby violating the parties' right to a fair hearing decreed and protected by Articles 10, 25(c), 47, 48, and 50(1) of *the Constitution* of Kenya 2010.
 - ix. That the Honourable Tribunal erred in law and abdicated in its judicial duty by failing to address the fundamental dispute before it: whether the Respondent was justified in reclassifying the Appellant's goods.
 - x. That the Honourable Tribunal failed to exercise its judicial powers and /or discretion judiciously and failed to consider all relevant facts in arriving at the decision of 20 December 2023.



- xi. That the Honourable Tribunal erred in law and fact in striking out the Appellant's Appeal dated 20 July 2022.
7. The appeal was canvassed by way of written submissions.

Analysis & Determination

8. Having keenly read the Record of Appeal, Supplementary Record of Appeal and the respective submissions, I concur with the Appellant that there are two issues for determination herein:
 - i. Whether the Tribunal erred in law in finding that the Appellant's appeal was filed out time;
 - ii. Whether the Tribunal erred in law by failing to address the fundamental dispute that was whether the Respondent was justified in reclassifying the Appellant's goods as prefabricated building as opposed to aluminium structure.
9. Determination of these issues requires an interrogation of the relevant statutory provisions, particularly those relating to customs disputes, and their interplay.
10. The *Tax Procedures Act* was enacted to harmonise and consolidate procedural rules for the administration of tax laws. Section 2(2) thereof stipulates that its procedures apply "unless a tax law specifies a procedure that is unique to the administration of a tax thereunder." Section 3 defined tax law to include specific legislation such as the *Income Tax Act* and *Value Added Tax Act*. It, however, does not explicitly list the East African Community Customs Management Act (EACCMA). This does not automatically exclude customs matters from the broader framework of tax disputes. As submitted by the Appellant, in the case of Fair Logistic Agency Ltd-vs- Kenya Revenue Authority [2020] eKLR, the Court affirmed that the *Tax Procedures Act* establishes the sole procedure for administration of tax disputes, unless a tax statute established an alternative specific unique procedure.
11. The EACCMA is the primary legislation governing customs matters within the East African Community. It provides a specific mechanism for challenging decisions made by the Commissioner. Section 229 outlines the process for a person directly affected by a Commissioner's decision or omission on customs matters to lodge an application for review within 30 days.
12. Section 230(1) of EACCMA grants a person dissatisfied with the Commissioner's decision under section 229 the right to appeal to a tribunal established in accordance with Section 231.
13. Section 230(2) provides as follows:

A person intending to lodge an appeal under this section shall lodge the appeal within 45 days after being served with the decision, and shall serve a copy of the appeal on the Commissioner.
14. Section 231 provides for the establishment of Tax Appeals Tribunals in partner states for the purpose of hearing appeals against the Commissioner's decisions made under Section 229.
15. The *Tax Appeals Tribunal Act* was enacted to establish a single Tribunal for the management and administration of tax appeals, thereby consolidating the function of the various pre-existing tribunals. Section 2 broadly defines tax law to include EACCMA among other statutes administered by the Commissioner. This provision clearly brings customs disputes under the purview of the Tribunal.
16. Section 3 establishes the Tribunal to hear appeals against any tax decision made by the Commissioner.



17. Section 12 provides as follows:

A person who disputes the decision of the Commissioner on any matter arising under the provisions of any tax law may, subject to the provisions of the relevant tax law, upon giving notice in writing to the Commissioner, appeal to the Tribunal; Provided that such person shall before appealing, pay a non-refundable fee of twenty thousand shillings. (emphasis added)

18. Section 13 outlines the procedure for appeal.

19. The legislative intent behind the *Tax Procedures Act* and the *Tax Appeals Tribunal Act* was to harmonize and simplify tax and customs disputes resolution process. However, the coexistence of specific timelines in EACCMA and the *Tax Appeals Tribunal Act* for initiating an appeal creates a point of contention. The core of the conflict lies in whether the 30-day period for the Notice of Appeal under the *Tax Appeals Tribunal Act* operates as a distinct, mandatory initial step or whether the 45-day period to lodge an appeal under EACCMA encompasses the entire appeal initiation process for customs matters.

20. It is the Appellant's contention that EACCMA is the specific law that should prevail for customs appeals. On the converse, the Respondent argued that the *Tax Appeals Tribunal Act* is the jurisdictional prerequisite and that section 230(2) of EACCMA would only apply to the filing of the substantive appeal.

21. In its decision dated 13 June 2024, the Commissioner explicitly directed the Appellant to appeal to the Tribunal "as provided for under Section 230 of EACCMA, 2004". The Commissioner, a public authority, having guided a party to a specific statutory provision for appeal, cannot then resile from that guidance to impose a stricter alternative interpretation.

22. The case of *Cape Brandy Syndicate V Inland Revenue Commissioner (1921) 1KB 64* articulated the principle of strict interpretation of tax statutes as follows:

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look at the language used. Thus, when the language of a taxing statute is clear, if a person being assessed falls within the four corners of the statute, he is to be taxed; if not, no tax is to be levied."

23. The case of *Commissioner of Customs and Border Partrol -vs- Lachlan Kenya Limited KEHC 12109 (KLR)* provides further guidance on the issue. The Court stated:

"The foregoing provisions are clear on the required timelines. An appeal to the Tribunal ought to be lodged within 45 days after the Commissioner had rendered his decision on any matter in dispute."

24. The Respondent submitted that a Notice to Appeal is a jurisdictional prerequisite. They relied on the cases of *HA vs. LB Civil Appeal 188 of 2021* and *University of Eldoret & another v Hosea Sitienei & 3 others [2020] eKLR*. While these cases establish the importance of a timely Notice of Appeal in general appellate procedure, they do not override the specific statutory timelines provided in EACCMA for customs appeals to the Tribunal. The EACCMA, being the specific statute for customs matters, governs the timelines for establishing an appeal to the Tribunal in such disputes.



25. The Commissioner's impugned decision was rendered on 13 June 2022. The Appellant's appeal was lodged on 27 July 2022. The period between is 44 days. This falls squarely within the 45-day period stipulated in section 230(2) of EACCMA. It is, therefore, the finding of this Court that the Tribunal erred in finding that the appeal was filed out of time.
26. In the premise, I find that the appeal succeeds and is hereby allowed. The Judgement of the Tax Appeals Tribunal delivered on 20 December 2023 in Tax Appeal No. 780 of 2022 is hereby set aside. The Appellant is awarded costs of this appeal.

DATED AND DELIVERED AT NAIROBI THIS 26 DAY OF JUNE 2025.

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

Mr. Ouma for the Appellant

N/A for the Respondent

Libertine AchiengCourt Assistant

