



REPUBLIC OF KENYA



KENYA LAW
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**Commissioner of Customs & Border Control v Kariuki (Tax Appeal E010 of 2024)
[2025] KEHC 11597 (KLR) (Commercial and Tax) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E010 OF 2024
AA VISRAM, J
JULY 31, 2025**

BETWEEN

COMMISSIONER OF CUSTOMS & BORDER CONTROL APPELLANT

AND

GEORGE NJENGA KARIUKI RESPONDENT

*(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi
dated 26th January, 2024 in Tax Appeals Tribunal Appeal No. 691 of 2022)*

JUDGMENT

Introduction and Background

1. This appeal arises from the Respondent's importation of a Mercedes CLS 400 V6 engine petrol motor vehicle (chassis number WDD2183612A157869) from the United Kingdom for private use. On 22nd April, 2022, the Respondent paid Kshs. 2,320,446/- in assessed duty based on the Current Retail Selling Price (CRSP) list effective 7th July, 2020. As the list did not include a CLS 400 but listed a CLS 350 with an identical description, the Respondent used the CLS 350 value of Kshs. 13,383,141/-.
2. Following customs verification, the Appellant ("the Commissioner") advised the Respondent on 27th April, 2022, to pay an additional uplift amount of Kshs. 1,592,698/-, bringing the total tax payable to Kshs. 3,843,680/- based on a CRSP value of Kshs. 22,641,678/-. The Respondent appealed this demand on 4th May, 2022, and later sought release of the vehicle on a bank guarantee for the disputed tax amount, citing sections 106, 107, 122(3), and 229(6) of the *East African Community Customs Management Act* (EACCMA). The request was denied, and on 30th May, 2022, the Commissioner upheld the customs valuation decision.



3. The Respondent appealed to the Tax Appeals Tribunal (“the Tribunal”), which in its judgment dated 26th January, 2024, held that the Commissioner erred in levying additional tax without a clear basis. The Commissioner now appeals that decision.

Grounds of Appeal

4. The Commissioner’s Memorandum of Appeal dated 22nd March, 2024, raises, in summary, that:-
 - a. The Tribunal erred by finding that the 2020 CRSP was applicable at the time of importation.
 - b. The Tribunal misapprehended the record in concluding that both parties agreed on the applicability of the 2020 CRSP.
 - c. The Tribunal failed to note inconsistencies in the Respondent’s transaction documents.
 - d. The Tribunal failed to appreciate that the Commissioner acted in accordance with section 122 and the Fourth Schedule of the [EACCMA](#).
 - e. The Tribunal ignored material facts presented by the Commissioner.

The Commissioner therefore prays for the Tribunal’s decision to be set aside, and for the Respondent to pay the outstanding customs duty of Kshs. 1,592,698/- with costs.

Commissioner’s Submissions

5. The Commissioner argues that the 2020 CRSP was not in operation during the importation because conservatory orders in Constitutional Petition No. 45 of 2020 restrained its implementation. According to the Commissioner, reliance on the 2020 CRSP by the Tribunal was erroneous.
6. It contends that it did not agree with the Respondent on the applicability of the 2020 CRSP and that this position is reflected in its pleadings and submissions before the Tribunal.
7. The Commissioner submits that the Respondent’s transaction documents were inconsistent, citing differing invoice values, remittance amounts, and online quotations, which made reliance on the transaction value method unreliable.
8. Invoking Section 122 of the [EACCMA](#) and paragraph 3 of the Fourth Schedule, the Commissioner argues that it lawfully used the transaction value of identical goods obtained from DT Dobie, an authorized dealer, to determine the CRSP at EUR 180,000 (KES 22,641,678/-).

Respondent’s Submissions

9. The Respondent submits that the 2020 CRSP was operational during the importation and the Commissioner provided no evidence of its suspension. It argues that even if the 2019 CRSP had been applicable, the tax paid using the 2020 CRSP was higher, thus favoring the revenue authority.
10. The Respondent maintains that the transaction documents were consistent and that he relied on the CLS 350’s identical specifications to determine tax payable. He further contends that the Commissioner failed to provide a detailed rationale for the uplifted customs value despite a written request, in violation of Section 122(2) of the [EACCMA](#) and Article 35(1)(b) of the [Constitution](#).
11. The Respondent asserts that unilateral engagement of DT Dobie without prior notice was arbitrary and inconsistent with principles of tax certainty and fairness, citing [Keroche Industries Limited v Kenya Revenue Authority & Others](#) [2007] KEHC 3680 (KLR) and [Car Importers Association of Kenya v Kenya Revenue Authority & Others](#) [2019] KEHC 11878 (KLR).



Analysis and Determination

12. This Court's jurisdiction under Section 56(2) of the [Tax Procedures Act](#) is limited to questions of law. As held in [John Munuve Mati v Returning Officer Mwingi North Constituency & Others](#) [2018] KEHC 8738 (KLR), an appellate court cannot substitute its own factual findings for those of the Tribunal.
13. From the record and submissions, the issues for determination are: -
 - i. Whether the 2020 CRSP was in operation during the importation.
 - iv. Whether the Commissioner followed the valuation principles under section 122 and the Fourth Schedule of the [EACCMA](#).
 - iii. Whether the Tribunal erred in its treatment of the Respondent's transaction documents.
 - ii. Whether the Tribunal erred in finding that both parties agreed on the applicability of the 2020 CRSP.

Operation of the 2020 CRSP

14. The Commissioner claims that conservatory orders in Petition No. 45 of 2020 suspended the 2020 CRSP. However, no such ruling or order was produced before the Tribunal or this Court. Upon reviewing the record, I find no evidence of such suspension. In the absence of proof, I am persuaded that the 2020 CRSP was operational during the Respondent's importation.

Agreement on Applicability of 2020 CRSP

15. The Tribunal stated that both parties agreed the 2020 CRSP was applicable. The Commissioner's pleadings, however, expressly disputed this. The Tribunal's conclusion on this point was therefore a misapprehension of the record. I find merit in this ground of appeal.

Consistency of Transaction Documents

16. The Commissioner contends that inconsistencies in the Respondent's documents prevented reliance on the transaction value method. However, the Tribunal noted that the Commissioner never explained how it derived a CRSP of Kshs. 26 Million from a market retail selling price of GBP 74,135.
17. The record confirms that despite requests from the Respondent, the Commissioner failed to provide this explanation in its review decision. This lack of transparency undermined the uplift decision. Taxpayers are entitled to understand valuation methods, particularly where a CRSP substantially exceeds invoice values.

Compliance with Section 122 and Fourth Schedule

18. Section 122(2) of the [EACCMA](#) entitles an importer to a written explanation of how customs value was determined. The Commissioner did not provide such an explanation. Further, although it claimed to have engaged DT Dobie, its decision letter of 30th May, 2022, does not mention DT Dobie nor provide a valuation breakdown.
19. The Tribunal correctly found that the additional assessment lacked a clear legal and factual basis and contravened principles of fairness, accountability, and transparency as required by Articles 10 and 47 of the [Constitution](#), Section 5 of the [Kenya Revenue Authority Act](#), and section 122 of the [EACCMA](#).



Disposition

- 20. For the reasons above, I find no legal basis to interfere with the Tribunal’s decision. The appeal is therefore dismissed.
- 21. There shall be no order as to costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 31ST DAY OF JULY, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Sakina

..... for Appellant

..... for Respondent

