



**Commissioner of Domestic Taxes v London Distillers (K) Limited (Income Tax Appeal E097 of 2024) [2025] KEHC 11286 (KLR) (Commercial & Admiralty) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11286 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
INCOME TAX APPEAL E097 OF 2024**

**JK NG'ARNG'AR, J**

**JULY 30, 2025**

**BETWEEN**

**COMMISSIONER OF DOMESTIC TAXES ..... APPELLANT**

**AND**

**LONDON DISTILLERS (K) LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment of the Tax Appeal Tribunal delivered on 8th March 2024 in Nairobi TAT No. 1026 of 2022)*

**JUDGMENT**

**Background**

1. The Respondent herein London Distillers (K) Limited filed a statement of facts dated 2 September 2022 challenging the appellant's demand vide letter dated 27 June 2022 demanding for prepaid Excise duty on purchase amounting to Kshs. 15,712,051. The Respondent objected to the tax demand and assessment in a letter dated 13 July 2022. The memorandum was anchored on the following grounds of appeal;
  - i. The Respondent's that bottles used as essential inputs for the manufacture of the appellant's products in line with internationally accepted practice in the manufacturing world is a very narrow view of definition of raw materials and unreasonable.
  - ii. The Respondent's description of raw materials in its letter of 27 June 2022 is inherently wrong and misleading.
  - iii. The appellant is looking into the Tribunal's finding that excise duty paid on bottles used as inputs for the manufacture of its products qualify for claim under Section 14 (1) of the [Excise Duty Act](#).



2. The Honourable Tribunal upon conclusion of the hearing delivered a judgment on 8 March 2024 and issued the following orders in favour of the Respondent;
  - a. The appeal be and is hereby allowed.
  - b. The Respondent's objection dated 5 August 2022 is hereby set aside; and
  - c. Each party to bear its own cost.

### **The appeal**

3. Being dissatisfied with the Tribunal decision on objection, the Appellant filed a memorandum of appeal dated 2<sup>nd</sup> September 2022 citing the following grounds;
  - i. That the Honourable Tribunal erred in law by purporting to create an ambiguity under section 14(1) of the *Excise Duty Act* on the meaning of raw materials used in manufacture of excisable goods when no such ambiguity exists in the law on the Respondent's use of packaging materials as a raw material in the manufacture of its alcoholic beverages.
  - ii. That the Honourable Tribunal erred in law by failing to apply the cardinal rules of interpretation of tax statutes on the use of ordinary meaning of the term "raw material" under section 14(1) of the *Excise Duty Act* in determining whether the Respondent's packaging materials (bottles) are raw materials used in the manufacture of Respondent's excisable goods.
  - iii. That the Honourable Tribunal erred in law by failing to find that the dispute before it was on the application of strict interpretation of tax statutes on whether the Respondent's packaging materials (bottles) could be construed as raw materials under section 14(1) of the *Excise Duty Act* used in the manufacture of the Respondent's finished product (alcoholic beverages).
  - iv. That in finding purported ambiguity under section 14(1) of the *Excise Duty Act* on failure to define the term raw materials, the Tribunal erred in law and fact as the Act cannot define/ prescribe raw materials on all conceivable products in the manufacturing processes.
  - v. That in failing to apply strict interpretation of tax statutes on section 14(1) of the *Excise Duty Act*, the Tribunal wrongfully concluded that packaging materials (bottles) are used as raw materials in the Respondent's line of business of manufacture of alcoholic beverages.
  - vi. That the Honourable Tribunal erred in law in finding that the Respondent is permitted to claim excise duty paid on its packaging materials as raw materials when the packaging materials are not ingredients used in the manufacture of the Respondent's alcoholic beverages.
  - vii. That the Honourable Tribunal erred in law and fact by failing to find that costs on packaging materials not being raw materials used in the manufacture of the Respondent's alcoholic beverages under section 14(1) of the *Excise Duty Act* are only claimable as allowable deductions under section 15 of the *Income Tax Act*.
  - viii. That the Honourable Tribunal erred in law by failing to find that it is bound by decisions of the higher courts which has conclusively determined that packaging materials are not raw materials used in the manufacturing processes.
  - ix. That the Honourable Tribunal erred in law and fact in failing to consider the Appellant's submissions and responses in its finding.



- x. That the Honourable Tribunal misapplied the law and facts and therefore arrived at the wrong decision.
4. The appellant urge this court to grant the following orders;
  - a. That the Appeal be allowed with costs to the Appellant.
  - b. That the consequential findings and orders of the Tribunal subject to this appeal be set aside in its entirety.
5. In response to the memorandum of appeal, the Respondent filed a statement of facts dated 21 May 2025. In the said respondent's statement of facts, the Respondent prays that this court be pleased to dismiss the appeal, affirm and uphold the judgment of the Tax Appeals Tribunal dated 8 March 2023 and costs of this appeal and the appeal before the Tribunal.
6. This appeal canvassed by way of written submissions. The appellant filed written submissions dated 12 November 2024 and supplementary submissions dated 6 May 2025 while the Respondent filed submissions dated 29 November 2024.

### **Appellant's submissions**

7. The appellant raised several issues regarding the interpretation of Section 14 of the *Excise Duty Act*. They argued that the Tribunal's strict interpretation of the term "used as a raw material" in the manufacture of other excisable goods (hereinafter referred to as "finished goods") and that could be considered as raw materials used in the manufacture of its end product, alcoholic beverages, was absurd. They cited *Leonard Konchella & others vs Chief Justice & president of the Supreme Court of Kenya & others (Petition No. E291 of 2020)*, which stated that a court should not pursue an interpretation whose end is to create an absurdity or ambiguity in the law where non-exists.
8. The appellant also argued that the Tribunal should have interpreted Section 14 wholesomely, including whether packaging bottles imported by the Respondent could be used in the manufacture of its final product, alcoholic beverages, as per the express terms and meaning of Section 14 of EDA. The appellant cited case of Cape Brandy Syndicate vs Inland Revenue Commissioner (1921) 1 KB 64 and Republic vs Commissioner of Domestic Taxes Large Taxpayer's Office ex-parte Barclays Bank of Kenya Ltd (2012) eKLR.
9. On the second issue, the appellant argued that the Tribunal's decision was erroneous, as packaging materials cannot be construed as raw materials for the manufacture of its alcoholic beverages. They argued that to constitute a raw material used for the manufacture of the final product, the material must be an essential ingredient that ultimately affects the composition or state of the final product.
10. Lastly, the appellant argued that the Tribunal failed to appreciate that the issue was introduced by the respondent for interrogation contrary to the law. They argued that the rate used by the appellant in its assessment is traceable to the respondent's self-assessment returns, and the appellant disallowed the claims since the packaging materials were not claimable under section 14 of the EDA.

### **Respondent's submissions**

11. The Respondent filed an appeal against the Appellant's objection decision, demanding prepaid excise duty on purchases amounting to Ksh. 15,712,051. The Respondent argued that bottles are essential inputs for their manufacturing process and that the Appellant's narrow definition of raw materials is not in line with international best practices. The Tribunal set aside the Appellant's objection decision on 8 March 2024. The Respondent then lodged an appeal, raising three grounds: whether bottles used



to package alcoholic beverages are a raw material capable of qualifying for relief under Section 14(1) of the *Excise Duty Act*, whether the Court should allow the Appellant assessment based on an erroneous excise duty rate, and who should bear the cost of this appeal.

12. The Appellant argued that the Appellant’s objection decision excluded imported bottles from the definition of raw materials, which they believe is inconsistent with the business and culture of manufacturing. They maintain that bottles are used in the production line to facilitate identification, portability, presentation, sales, marketing, distribution, and consumption of their products. The Court of Appeal held that tax legislation must be construed strictly without implication or intendment, and any ambiguity in the statute must be resolved in the taxpayer’s favor. The Respondent argued that any other interpretation of the section would amount to double taxation on the bottles and the finished product, contravening the intention of section 14(1) of the Act.
13. In the case of *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others*, the Supreme Court ruled that a purposive interpretation should be given to statutes to reveal their intention. The court noted that the purposive approach to legislative interpretation has evolved to resolve ambiguities in meaning, and the court is not bound by literal words in statutes. Instead, the court can look beyond the words and consider the historical context. This approach aims to give effect to the true purpose of legislation and consider extraneous material.
14. The Appellant urged this court to set aside the judgment and decree rendered on 6<sup>th</sup> February, 2023 in its entirety and the Appellant’s appeal is allowed with costs.

### **Analysis and Determination**

15. I have considered the memorandum of appeal, the response and the submissions by both parties together with the cited authorities. I find the following issues relevant for determination;
  - i. Whether the Honourable Tribunal erred in law by interpreting “raw materials” under Section 14(1) of the *Excise Duty Act* to include packaging materials (bottles) used in the manufacture of alcoholic beverages?
  - ii. What orders should issue regarding the Tribunal’s decision and the costs of the appeal?
16. In regards to the first issue, it is important to set out the provisions of Section 14 (1) of the *Excise Duty Act*. The said Section provides that;

“ 14.

  - (1) where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods (hereinafter referred to as “finished goods”), the excise duty paid on the raw materials shall be offset against the excise duty payable on the finished goods.”
17. The major dispute arising in the present appeal is whether “bottles” can be considered “raw materials” in the manufacture of alcoholic beverages. The Appellant’s argument is that a raw material must be an “essential ingredient that ultimately affects the composition or state of the final product.” According to this definition, bottles, which merely contain the liquid, would not qualify as raw materials.



18. Section 2 of the *Excise Duty Act* does not define the term “raw materials” but defines “alcoholic beverage” to include beer, opaque beer, powdered beer wine, spirits and spirituous beverages and mead. There is no mention of packaging materials (bottles).
19. The Respondent argues that bottles are “essential inputs” for the manufacturing process, facilitating various aspects like identification, portability, presentation, sales, marketing, distribution, and consumption. They contend that the Appellant’s definition of raw materials is too narrow and not in line with international manufacturing practices.
20. It is a well-established principle in manufacturing that raw materials are substances or components used in the primary production or manufacturing of goods. They undergo a transformation or are incorporated into the final product. Packaging materials, though essential for the commercialization and distribution of a product, typically serve as containers or protective coverings. They do not, in the ordinary sense, become an integral part of the composition of the product itself. Differently put, an alcoholic beverage is still an alcoholic beverage, regardless of the bottle it is in. The bottle does not contribute to the chemical or physical properties of the alcohol.
21. The wording of Section 14(1) of the *Excise Duty Act* refers to materials “used as a raw material in the manufacture of other excisable goods.” The phrase “used as a raw material” strongly implies incorporation or transformation into the new excisable good. While bottles are used in the process of bringing the excisable good (alcoholic beverage) to market, they are not “used as a raw material” in the sense of being an ingredient or component that is transformed into the beverage itself.
22. It is good to note that if Parliament intended to provide relief for all essential inputs, including packaging, it could have used broader language such as inputs, components, or materials used in the production process. The specific choice of “raw material” suggests a narrower scope, focusing on direct compositional inputs.
23. In my humble view, while tax statutes generally demand strict interpretation, this does not preclude a sensible and practical understanding of the terms used, especially when a literal interpretation would lead to an absurd or commercially unreasonable outcome. The purpose of Section 14(1) is to provide relief from excise duty on inputs that are genuinely consumed or transformed into another excisable product, thereby avoiding cascading taxation.
24. This court is guided by the case of Commissioner of Domestic Taxes & another v Chase Bank Kenya Ltd (In Receivership) & another [2021] KEHC 28 (KLR) where Mativo J, (as he then was) while citing the case of Cape Brandy Syndicate v IRC 1 KB 64, 71 stated that;

“Tax laws should be interpreted in manner so as to maintain a balance between interest of both revenue collector and the assessee. The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J in his classic statement in Cape Brandy Syndicate v IRC :

“In a taxing statute 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 a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used.”
25. The Respondent has raised an issue of double taxation which needs careful consideration. Excise duty is levied on specific goods manufactured or imported. If excise duty is paid on bottles upon their import or manufacture, and then again on the alcoholic beverage (which includes the cost of the bottle in its final price), the Respondent argues this constitutes double taxation.



26. The term double taxation typically applies when the same tax is levied on the same income or transaction twice. For instance, excise duty is levied on two distinct excisable goods: the bottles (if they are excisable goods themselves upon import or manufacture) and the alcoholic beverages. The purpose of Section 14(1) of the Act is to prevent cascading excise duty where an excisable good is used as a raw material to produce another excisable good.
27. The crucial question remains whether the bottle is “used as a raw material” for the beverage. Given the analysis above, it is difficult to conclude that it is. The cost of packaging is generally a business expense. As the Appellant correctly pointed out, such costs are typically treated as allowable deductions under income tax laws for the purpose of calculating taxable profits, rather than as a direct excise duty relief on the input itself.
28. The Tribunal found an ambiguity in Section 14(1) of the Excise Duty Act regarding the definition of “raw materials.” This Court respectfully disagrees. While the term “raw material” might not be exhaustively defined in the Act for every conceivable product, its ordinary meaning in the context of manufacturing is generally understood to refer to primary inputs that are transformed or incorporated into the final product. The Act’s failure to list every single raw material for every single manufactured good does not automatically create an ambiguity in the general meaning of the term.
29. Based on the foregoing analysis, this Court finds that the ordinary and plain meaning of “raw material” in the context of manufacturing, particularly as used in Section 14 (1) of the Excise Duty Act, refers to a substance or component that is transformed into or incorporated as an ingredient of the final excisable product. Bottles though essential for packaging, presentation and distribution, do not undergo such a transformation or incorporation into the alcoholic beverages themselves.
30. It is my view that interpreting “raw material” to include packaging materials would be to expand the scope of Section 14(1) beyond its plain meaning and the apparent legislative intent, potentially creating a new category of relief not explicitly provided for. Such an expansion, if deemed necessary, is the prerogative of the legislature, not the courts.
31. The argument of double taxation, while understandable from a commercial perspective, does not alter the legal definition of “raw material” under the Act. The costs associated with packaging are appropriately dealt with under income tax provisions as allowable deductions.
32. Therefore, the Tribunal erred in law by finding an ambiguity in Section 14(1) of the Excise Duty Act where none exists and by concluding that packaging materials (bottles) qualify as raw materials for the purpose of claiming excise duty relief under that section.
33. In the circumstances and for the reasons stated above, this Court makes the following orders:
  - a. This appeal be and is hereby allowed.
  - b. The Judgment of the Tax Appeals Tribunal delivered on 8<sup>th</sup> March 2024 in Nairobi TAT No. 1026 of 2022, including its consequential findings and orders, is hereby set aside in its entirety.
  - c. Each party shall bear its own costs for this appeal.

It is so ordered.

**DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF JULY, 2025 IN THE PRESENCE OF:-**

Nyapara for the Appellant

Awiti for the Respondent



CA:Peter/Siele

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**JULIUS K. NG'AR NG'AR**  
**JUDGE**

