



**Pesapal Limited v Commissioner of Domestic Taxes (Income Tax Appeal E081 of 2023)
[2025] KEHC 12284 (KLR) (Commercial and Tax) (27 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E081 OF 2023**

RC RUTTO, J

AUGUST 27, 2025

BETWEEN

PESAPAL LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

*(Being an Appeal against the Judgment delivered on 26th May 2023 at
the Tax Appeals Tribunal in Tax Appeal Tribunal Case No. 13 of 2022)*

JUDGMENT

1. This appeal arises from the judgment delivered by the Tax Appeals Tribunal in Tax Appeal No. 13 of 2022. In that case, the Appellant challenged the Respondent's VAT assessment, which was confirmed in the objection decision dated 26th November 2021. The assessment upheld a principal VAT amount of Kshs.76,836,162/= and penalties and interest totaling Kshs.33,982,992/= The assessment was based on commissions earned by the Appellant from merchants for the provision of financial services.
2. The Appellant contends that the commission it earns are solely for financial services rendered on behalf of third parties, merchants, who have registered to use the Appellant as a payment service provider. Accordingly, the Appellant argues that these commissions qualify for VAT exemption under the First Schedule to the VAT Act. The Respondent, however, maintains that the Appellant operates as a payment platform that integrates with banking IT systems, mobile e-money transfer platforms, and other online payment channels through which financial services may be offered. The Respondent asserts that the Appellant merely facilitates processes such as lending, storing, or receiving money on behalf of clients, merchants, or customers, activities it likens to those of a banking software vendor. Therefore, the Respondent argues that the Appellant's services do not fall within the scope of financial



services exempted under Part II, Paragraph 1 of the First Schedule to the VAT Act, and the assessment was rightly confirmed.

3. Upon hearing the appeal, the Tax Appeals Tribunal identified a single issue for determination that is, whether the Respondent erred by raising the VAT assessments on the Appellant. The Tribunal dismissed the appeal and upheld the objection decision dated 26th November 2021. It held that the Appellant's payment processing system/platform though registered by the Central Bank of Kenya, constitutes an information technology system designed to facilitate payments for its clients and it does not amount to provision of financial service. The Tribunal further found that the Appellant's activities align with the license issued under the [National Payment System Act](#), which authorises entities to act as service providers for payment systems and not as providers of financial services.
4. The Appellant being dissatisfied with the Tribunal's judgment, lodged this appeal through a Memorandum of Appeal dated 10th July 2023 raising several grounds of appeal, as follows; that the Tribunal erred in holding that the Appellant does not provide financial services and that its commissions are not VAT exempt under the VAT Act yet it is authorised by the Central Bank of Kenya under the provisions of the [National Payment System Act](#) to conduct or carry out payment services in Kenya; holding that the Appellant has to be registered as a financial institution under Section 5 of the [Banking Act](#) to qualify as a person providing financial services under the VAT Act; holding that the Appellant is a provider of payment system under the National Payment System rather than a payment service provider; holding that an entity that obtains a license and or authorisation under the [National Payment System Act](#) can only act as a service provider for payment systems only; failing to strictly interpret the definition of financial services as set out in Part II, Paragraph 1 (b) of the First Schedule of the VAT Act and thereby overlooking that the Appellant was supplying exempt financial services such as issuing, transferring, receiving or dealing in money; neglecting to adopt a holistic and literal interpretation of Paragraph 1 (b) Part II of the First Schedule to the [Value Added Tax Act](#) which contains an open-ended list of financial services, and thus failing to resolve the ambiguity in favour of the Appellant; failing to hold that under Paragraph 1 (m) Part II of the First Schedule to the [Value Added Tax Act](#), the Appellant was providing financial services on behalf of others on a commission basis and was therefore exempted from Value Added Tax.
5. The Appellant prayed that this Honourable court allows the appeal with costs and that the judgment of the Tax Appeals Tribunal delivered on 26th May 2023 in Tax Appeal Case Number 13 of 2021 be set aside.
6. In response to the Memorandum of Appeal, the Respondent filed its Statement of Facts dated 16th February 2024. On the issue of whether the Appellant provides financial services, the Respondent argued that the Appellant's licence as a payment service provider authorizes it to offer payment system only and the Tribunal was correct in holding so. On the second issue, whether the services offered by the Appellant are VAT exempt, the Respondent contended that for the Appellant to qualify for exemption from tax, it must offer one of the financial services listed under Paragraph 1 of Part II of the First Scheduled of the VAT Act. That since the Appellant does not offer any of the listed financial services, its supplies are not VAT exempt.
7. The appeal was canvassed by written submissions. The Appellant's submissions are dated 23rd May 2024 while the Respondent's submissions are dated 20th August 2024.

Appellant's Submissions

8. Counsel for the Appellant commenced their submissions by outlining a brief background of the case, as already summarized above then proceeded to submit on the specific grounds of appeal.



9. On the first and fifth grounds of appeal, the Appellant argued that the VAT Act does not provide a specific and exhaustive definition of “financial services,” and that neither the Tax Appeals Tribunal nor the Kenya Revenue Authority provided one. The Appellant contended that a comparison between the definition of a payment service provider under Section 2 of the *National Payment System Act* and the financial services listed under Part II of the First Schedule to the VAT Act reveals that both refer to similar activities, albeit using different terminology. It maintained that the services it offers under the *National Payment System Act* qualify as VAT-exempt financial services under sub-paragraph 1(b), read together with sub-paragraph 1(m), of Part II of the First Schedule to the VAT Act. The Appellant further asserts that its services do not fall under the category of “excluded services” under sub-paragraph 1(b). It criticized the Tribunal for failing to explain how the services under the two legislative frameworks differ, or why any such difference would disqualify it from benefiting from VAT exemption especially given the uncontroverted bank statement extracts presented, which show that the Appellant receives, stores, pays, and transfers money in a manner similar to a financial institution.
10. The Appellant emphasized that the only distinction between the *National Payment System Act* and the VAT Act is that the former governs financial services delivered through electronic systems. It argued that the VAT Act does not exclude electronically rendered financial services from VAT exemption. To support this position, the Appellant relied on the case of Commissioner of Domestic Taxes v. Bank of Africa Limited (Civil Appeal E127 of 2020) [2023] KEHC 1036 (KLR) (Commercial and Tax), where the High Court affirmed that such services qualify for exemption.
11. On the second ground of appeal, the Appellant challenged the Tribunal’s finding that it could only qualify to offer financial services if registered as a financial institution under Section 5 of the *Banking Act*. The Appellant argued that the VAT Act does not require registration under the *Banking Act* to qualify for VAT exemption. Instead, it only specifies the type of financial services that are exempt, without regard to the identity of the person or legal status of the provider. The Appellant further submitted that tax laws being penal in nature, they must be interpreted strictly, and any ambiguity should be resolved in favor of the tax payer.
12. On the third ground of appeal, the Appellant submitted that its licence from the Central Bank of Kenya, as reflected in the authorization certificate does not describe it as a provider for payment systems, as the Tribunal claimed. Rather, the certificate authorizes it to conduct or carry out payment services in Kenya.
13. Addressing the fourth ground of appeal, the Appellant referred to Part II and Part III of the *National Payment System Act* which contains provisions on designation and regulation of operators, respectively. Section 12 and 13 thereof specifically deals with the authorization of a payment service provider. The Appellant submitted that the Act clearly distinguishes between payment systems and payment service providers, and that the Tribunal erred in conflating the two by suggesting that the Appellant could only be licensed under the National Payment Systems Act as a payment system.
14. On the sixth ground of appeal, the Appellant noted that, at paragraph 70 of the Tribunal’s judgment, the Tribunal acknowledged a dispute between the parties regarding the nature of the services offered. Specifically, whether those services fall under sub-paragraphs 1(b) and 1(m) of Part II of the First Schedule to the VAT Act. The Appellant reiterated that it engages in activities such as: the issuing, transfer, and receipt of money, functions that align with financial services. It argued that this position is further supported by its licensing under the *National Payment System Act*, which is “an Act of Parliament to make provision for the regulation and supervision of payment systems and payment service providers, and for connected purposes.”



15. The Appellant further submitted that, in view of the authorities cited including Commissioner of Domestic Taxes v. Bank of Africa Limited (Civil Appeal E127 of 2020) [2023] KEHC 1036 (KLR) and Govind Saran Gang Saran v. Commissioner of Sales Tax and Others [1985] AIR 1041; [1985] SCR (3) 1041, even if the comprehensive arguments advanced were found wanting, the mere presence of ambiguity in the statutory provisions ought to be resolved in its favour, thereby entitling it to VAT exemption.
16. On the seventh ground of appeal, the Appellant submitted that it had presented uncontroverted evidence showing that it offers financial services on behalf of third parties, and does so on a commission basis. It argued that, under sub-paragraph 1(m) of Paragraph 1 in Part II of the First Schedule to the VAT Act, such services are expressly VAT exempt.
17. On the last ground of appeal, the Appellant contended that, even without extensive evidence, a straightforward review reveals that where the licensing authority is the Central Bank of Kenya and the service involves the use of information technology to facilitate payments as in the case of a “payment processing system/platform” the logical inference is that such services relate to the facilitation of payments, not merely to the provision of technology. The Appellant emphasized that the VAT Act does not contain any provision excluding services delivered via information technology from VAT exemption. It maintained that the National Payment System Act was enacted precisely to reflect the evolution of financial services, particularly the increasing reliance on electronic and technological systems.
18. The Appellant further submitted that Part III of the Finance Bill proposes amendments to the VAT Act, specifically under section 34(b)(i), which seek to delete the list of VAT exempt financial services, including those provided on behalf of another on a commission basis. The Appellant argued that this proposed deletion implicitly acknowledges the ambiguity in the current law. In its view, such a deletion would be unnecessary if the provisions were already clear and unambiguous. This, it claimed, reinforces its position that the existing legal framework supports its claim for VAT exemption.
19. In conclusion, the Appellant urged the court to allow the appeal with costs by setting aside the Tribunal’s judgment dated 26th May 2023.

Respondent’s Submissions

20. Counsel for the Respondent began by outlining the background of the case. He then cited Section 56 (2) of the Tax Procedures Act and the case of John Munuve Mati versus Returning Officer Mwingi north Constituency & 2 others [2018] eKLR, to remind the court that its appellate jurisdiction, is limited to matters of law only.
21. Counsel then proceeded to identify four issues for determination that is, whether the Tribunal erred in holding that the Appellant does not provide financial services; whether the Tribunal erred in holding that the Appellant has to be registered as a financial institution under Section 5 of the Banking Act, whether the Tribunal erred in holding that the Appellant is a provider of payment system under the National Payment System Act rather than a payment service provider and whether the Tribunal erred in failing to strictly interpret the definition of financial services as set out in the VAT Act.
22. On the first issue, the Respondent submitted that, the Appellant is a Payment Service Provider (PSP) licensed and regulated by the Central Bank of Kenya under the National Payment Systems Act, 2011 and the National Payment Systems Regulations, 2014. While citing the case of Cape Brandy Syndicate v. Commissioner of Inland Revenue, the Respondent noted that the Appellant facilitates transactions between customers and merchants via an online platform and earns commissions. This,



- the Respondent argued, shows that the Appellant operates a technological platform and not a financial service provider as defined under sub-paragraph 1(b) of Part II of the First Schedule to the VAT Act, 2013. It was the Respondent's position that, while the Appellant's system has been registered by the Central Bank of Kenya under the National Payment Systems Act to facilitate payments, this does not qualify as the provision of financial services for purposes of VAT exemption.
23. The Respondent emphasized that the Appellant's online platform merely integrates with banking IT systems, mobile money transfer services, and other electronic payment channels, thereby serving as a technological enabler rather than a financial service provider. To support this position, the Respondent cited the decision in *Fivespot Kenya Limited v. Commissioner of Domestic Taxes*, [2023] KETAT 269 (KLR) urging the Court to adopt the reasoning that a payment processing system or platform licensed by the Central Bank of Kenya does not constitute a financial service under the VAT Act.
 24. Regarding the second issue, the Respondent submitted that, for the Appellant to be considered as "dealing with money" within the context and meaning of sub-paragraph 1(b) of Part II of the First Schedule to the VAT Act, 2013, it must qualify as an "authorised dealer" as defined under Section 2 of the *Central Bank of Kenya Act*. The Respondent contended that a payment service provider does not meet this definition. The Respondent further submitted that, even if the Appellant were considered a financial service provider, the nature of the activities it engages do not fall within the scope of the financial services exempted under the First Schedule to the VAT Act, 2013. While referring to Section 5 of the *Banking Act*, the Respondent argued that in order to be recognized as a financial service provider, the Appellant must qualify as a financial institution and be registered as such under the *Banking Act*.
 25. On the third issue for determination, which relates to the fifth, sixth, and seventh grounds of appeal, the Respondent challenged the Appellant's claim that its business activities fall under the phrase "...any other dealing with money" as provided in sub-paragraph 1(b) of Part II of the First Schedule to the VAT Act. The Respondent argued that the phrase "any other dealing with money" must be interpreted in the context with the preceding terms: "issue," "transfer," and "receipt." Citing the case of *Commissioner of Domestic Taxes v. Bank of Africa Limited*, the Respondent maintained that the provision maintains a closed list of exempt services. The Appellant's platform does not fit within this list. The Respondent emphasized that the VAT Act exempts specific services or activities, not the entities providing them. As such, the Appellant's business model does not qualify for exemption. He also argued that there is no ambiguity in the VAT Act to justify a broad interpretation. In support of this position, the Respondent cited the case of *Stanbic Bank Kenya Limited v. Kenya Revenue Authority* (Nairobi Civil Appeal No. 77 of 2008), which held that statutes must be interpreted based on their plain language. While any ambiguity, if present, should be resolved in favor of the taxpayer. Nevertheless, the Respondent urged the Court to apply a strict reading of the law and reject the Appellant's attempt to broaden the scope of exemption beyond what Parliament intended.
 26. On the fourth issue for determination, the Respondent referred to the case of *Adrian Kamotho Njenga versus Kenya School of Law* [2017] eKLR to support its argument that there are three separate and distinct categories under which a person/institution can be licensed as a payment service provider. The Respondent acknowledged that the Appellant may fall within one of these categories but emphasized that being licensed as a payment service provider does not automatically mean the Appellant offers financial services as defined under the VAT Act. It is submitted that not all payment service providers are financial service providers, and holding such a licence is not conclusive proof that the services offered qualify as financial service under Part II of the First Schedule of the Vat Act 2013. While making reference to Section 1 of the National Payment Systems Act and its preamble, the Respondent argued that a licence issued under this Act only authorizes an entity to operate as a service provider for payment



services. Such a license does not confer the authority to offer financial services, nor does it entitle the Appellant to VAT exemption.

27. In conclusion, the Respondent urged this court to find that the Appeal lacks merit, uphold the judgment of the tribunal and the appeal be dismissed with costs to the Respondent.

Analysis and Determination

28. This court acknowledges that its jurisdiction is limited by Section 56(2) of the *Tax Procedures Act* (TPA), which provides that “An appeal to the High Court or to the Court of Appeal shall be on a question of law only.” Therefore, the court is not permitted to substitute its own conclusions for those of the Tribunal based on its own analysis of the facts. However, the court must ensure that the conclusions reached by the Tribunal are supported by the evidence on record and are not perverse as was held in the case of *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR. (Also see the Court of Appeal in the case of *Peter Gichuki King'ara Vs IEBC & 2 Others*, Nyeri Civil Appeal No. 31 Of 2013, (Court of Appeal) (Visram, Koome & Odek, JJA)) on what constitutes points of law.

29. Based on the above authorities, and having considered the record of appeal, the statement of facts and parties’ written submissions and authorities cited, the key issue for determination is; Whether the Tax Appeals Tribunal erred in holding that the services offered by the Appellant do not qualify as VAT exempt financial services under Paragraph 1 of Part II of the First Schedule to the VAT Act.

30. Central to this appeal is the interpretation of whether a licensed Payment Service Provider (PSP), as defined under the *National Payment System Act* (NPSA), provides financial services that are exempt from VAT exempt under Part II of the First Schedule to the VAT Act.

31. The Appellant argues that as a licensed PSP under the NPSA, it engages in activities such as “issuing, transferring, receiving or otherwise dealing with money” which falls under the scope of Paragraph 1(b) of the VAT exemption schedule. Additionally, it claims to perform these services on behalf of merchants and earns commissions, thereby meeting the criteria under Paragraph 1(m), which exempts the financial services on behalf of another on a commission.

32. In response, the Respondent, contends that the Appellant merely operates a technological platform that facilitates payments, and such infrastructure based services do not amount to direct financial services. That the Tribunal agreed with this view, stating;

“An analysis of the pleadings by both parties also brings out the picture that the payment processing system/platform which the Appellant has been registered by the Central Bank to provide amounts to provision of an information technology system that is intended to facilitate payments for its clients. It does not in any way amount to provision of financial service.”

33. It is undisputed that the Appellant is licensed by the Central Bank of Kenya under the NPSA to offer payment services. Section 2 (1) of the NPSA defines a payment service provider as:

“...a person, company or organisation acting as provider in relation to sending, receiving, storing or processing of payments or the provision of other services in relation to payment services through any electronic system...” (Emphasis mine)



34. Paragraph 1(b) and 1 (m) of Part II of the First Schedule of the VAT Act which the Appellant heavily relies on in the appeal provides;

“The supply of the following services shall be exempt supplies—

1. The following financial services—

(a) ...;

(b) the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money;

(c) ...;

(d) ...;

(e) ...;

(f) ...;

(g) ...;

(h) ...;

(i) ...;

(j) ...;

(k) ...;

(l) ...;

(m) The provision of the above financial services on behalf of another on a commission basis;

(n) ...;

(o) ...;”

35. To begin with, the phrasing of Paragraph 1(b) of Part II of the First Schedule of the VAT Act was clearly intended to capture a wide array of monetary operations, particularly those that facilitate the movement of funds. This interpretation was affirmed in *Commissioner of Domestic Taxes v Bank of Africa Limited* (Civil Appeal E127 of 2020) [2023] KEHC 1036 (KLR) (Commercial and Tax) (17 February 2023) (Judgment) where the court held as follows;

“38. It is of significance to note the law exempts the “issue, transfer, receipt” “or” “any other dealing with money” and then uses the word “including”. Paragraph 1(b) has two parts because of the use of the word “or” which means the paragraph should be read disjunctively. Understood that way, then financial services mean the issue, transfer and receipt of money. The second part comes in after “or” so that financial services mean “any other dealing with money.” The paragraph then uses the word “including” “money transfer services and accepting over the counter payments of household bills.”



39. It is appropriate to note that the first part of the paragraph talks about issue, transfer and receipt of money. The second part after “or” still talks about “any other dealing with money” and goes on to use the word “including” thus leaving the list of what constitutes financial services inconclusive. A holistic and literal reading of paragraph 1(b), would yield to the conclusion that financial services mean any dealing in money namely; money transfer services, accepting money over the counter and payment of household goods, among other services, excluding, however, “services of carriage of cash, restocking cash machines, sorting or counting of money.” The list of exempted financial services is, therefore, inconclusive because the legislature used the word “including” to define financial services.”
36. Importantly, the VAT Act neither restricts eligibility for exemption based on the technology used, nor does it tie exemption to registration under the *Banking Act*. The Appellant’s activities, facilitating merchant payments, processing client funds, storing balances, and executing payment instructions, are functionally equivalent to and mirror those of financial institutions albeit in a digital environment. The fact that these services are delivered through digital platforms does not alter their essential nature and character of the services, which are in substance “dealings with money.”
37. The definition of a PSP under NPSA include core monetary functions such as, sending, receiving, storing, and processing of payments. These functions align directly with the services expressly described under Paragraph 1(b) of Part II of the First Schedule to the VAT Act. It is therefore evident that Parliament anticipated the rise of electronic financial service delivery models when it enacted the NPSA, recognizing that financial services could be rendered not only by banks but also by technology-enabled platforms. The use of electronic system does not diminish the financial character of the services. On the contrary, the NPSA was designed to regulate such digital financial interactions, confirming their legitimacy and financial nature. In that regard, the Appellant is not merely a casual facilitator; it is a regulated entity entrusted with transactional control over funds, performing services that are analogous to those expressly exempted under the VAT Act.
38. Moreover, with respect to Paragraph 1(m) of Part II of the First Schedule to the VAT Act, it is undisputed that the Appellant earns commissions from merchants for facilitating transactions. These merchants are third parties who rely on the Appellant’s infrastructure to receive payments from consumers. The Appellant does not transact on its own behalf; rather, it performs services on behalf of others and earns a commission for each transaction. This factual arrangement aligns directly with the plain wording of Paragraph 1(m), which exempts financial services provided on behalf of another on a commission basis.
39. It is also important to note that the VAT Act is silent on whether digital or electronic services disqualify an entity from exemption. The principle of statutory interpretation presumes that Parliament does not legislate in vain. Had Parliament intended to exclude digital platforms or PSPs, from VAT exemption, it would have done so explicitly appreciating the modern dynamics increasingly driven by fintech innovations. It is critical to underscore that the VAT Act defines exempt services by the nature of the activity, not by the institutional classification, without recourse to other statutes. To imply such classification would, in my view, amount to judicial legislation, which is contrary to the constitutional imperative that bestows upon Parliament the legislative mandate.
40. Even if uncertainty remained as to whether the Appellant’s services fall under Paragraph 1(b) or 1(m), the law on tax interpretation is settled: any ambiguity must be resolved in favor of the taxpayer.



- 41. The Tribunal failed to apply these interpretative principles as it did not adequately consider the substance of the Appellant’s services or the legislative intent behind the VAT exemption provisions.
- 42. For these reasons, this Court finds that the Tribunal misapprehended the legal provisions governing VAT exempt financial services leading to an erroneous conclusion. The Appellant’s services clearly fall within the scope of Paragraphs 1(b) and 1(m) of Part II of the First Schedule to the VAT Act.
- 43. Accordingly, the Tribunal’s judgment delivered on 26th May 2023 is set aside the effect of which is that the objection decision by the Respondent dated 26th November 2021 is equally disallowed. Each party to bear its own costs.
- 44. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 27TH DAY OF AUGUST, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Appellant

.....for Respondent

Peter Court Assistant

