Grant Thornton

The East Africa Seed Company Limited v Commissioner for Legal Services and Board Coordination {2025} [2026] KEHC 8641 (KLR)

Judgement Alert Issue no. 3 of 2026

July 2026

Background

The dispute arose after the Kenya Revenue Authority (KRA) conducted a tax audit on East Africa Seed Company Limited and issued an objection decision dated 22 December 2022, confirming VAT assessments amounting to KShs. 221,294,843.

The Tax Appeals Tribunal (TAT) dismissed the taxpayer's appeal on 4 April 2025, prompting the taxpayer to appeal to the High Court on points of law.

Brief Background of the case at the Tax Appeals Tribunal (TAT)

At the centre of the dispute was a corporate restructuring undertaken by the Seed Co Group, under which East Africa Seed Company Limited transferred its business to another group entity. The taxpayer maintained that the transaction constituted the transfer of a business as a going concern, involving not only assets but also liabilities, employees, goodwill, customer relationships and the continued operation of the business.

According to the taxpayer, the transfer was completed on 21 April 2020, before the coming into effect of the Tax Laws (Amendment) Act, 2020 on 25 April 2020, which removed the VAT exemption applicable to transfers of going concerns. The taxpayer therefore argued that the transaction qualified for VAT exemption under the law then in force.

KRA challenged this position and contended that the taxpayer had failed to demonstrate that the transfer occurred before the legislative amendment took effect. The Commissioner relied on various inconsistencies identified in the transaction documents, including invoice sequencing, transaction adjustments and supporting records, to argue that the requirements for exemption had not been satisfied.

Brief Background of the case at the Tax Appeals Tribunal (TAT)

- KRA further disputed the taxpayer's entitlement to input VAT recovery and maintained that the variances identified through its review of customs and VAT data had not been adequately explained.
- Aggrieved by the objection decision, the taxpayer appealed to the Tax Appeals Tribunal in Tax Appeal No. E680 of 2024.
- Before the Tribunal, the taxpayer produced extensive documentary evidence, including sale agreements, notifications submitted to KRA, reconciliation schedules, iTax records, Simba customs documentation and correspondence relating to the transaction.
- The taxpayer argued that the evidence sufficiently demonstrated that the transfer was completed before 25 April 2020 and that the various tax variances identified by KRA had been properly reconciled.
- The taxpayer also challenged the withholding tax assessments on the basis that there was no legal mechanism allowing KRA to recover unwithheld tax from a payer during the period between the repeal of section 35(6) of the Income Tax Act in 2016 and the introduction of section 39A of the Tax Procedures Act in 2019.
- In a judgment delivered on 4 April 2025, the Tax Appeals Tribunal dismissed the appeal and upheld KRA's objection decision in its entirety. The Tribunal found that the taxpayer had not sufficiently proven that the business transfer qualified as a VAT-exempt going concern, rejected the input VAT claims, upheld the VAT assessments arising from Simba and financial statement variances and sustained the withholding tax and withholding VAT assessments. As a result, the tax demand of approximately KShs. 221 million remained payable.

Brief Background of the Case at the High Court

- Dissatisfied with the Tribunal's findings, East Africa Seed Company Limited appealed to the High Court through Tax Appeal No. E104 of 2025.
- The taxpayer argued that the Tribunal had failed to properly evaluate the evidence placed before it, had imposed evidentiary requirements not contained in the law, had disregarded the taxpayer's reconciliations without justification, and had failed to appreciate both the legislative gap relating to withholding tax and the impermissibility of retrospective taxation.
- The appeal was heard by the High Court's Commercial and Tax Division, which ultimately allowed the appeal, set aside both the Tribunal's judgment and KRA's objection decision, and held that each party would bear its own costs.

Issues for determination

The High Court considered whether the Tribunal erred in law by:

- Holding that the transfer of the Appellant's business was subject to VAT instead of qualifying as a transfer of a going concern;
- Rejecting the Appellant's claim for full input VAT under section 17(6)(c) of the VAT Act;
- Upholding VAT assessments arising from Simba customs system variances;
- Upholding VAT assessments arising from differences between VAT returns and audited financial statements;
- Upholding withholding income tax assessments during the period when section 35(6) of the Income Tax Act had been repealed; and
- Applying withholding VAT provisions retrospectively to 2016.

High Court’s judgment & analysis

1. **VAT on Transfer of a Business as a Going Concern**
   The Court held that the taxpayer had provided sufficient evidence, including the sale agreement, correspondence, invoices and notifications to KRA, demonstrating that the business transfer was completed on 21 April 2020, before the withdrawal of the VAT exemption. The Court found that the transaction involved the transfer of assets, liabilities, employees and goodwill and therefore qualified as a transfer of a going concern.

2. **Input VAT Apportionment**
   The Court found that the Tribunal erred in rejecting the taxpayer's claim solely because audited accounts had not been provided. It held that the VAT Act requires application of the statutory apportionment formula and that the reconciliation schedules submitted by the taxpayer were sufficient for this purpose.

3. **Simba System Import Variances**
   The Court noted that the taxpayer had produced customs documents, iTax records and reconciliations explaining the variances. Having provided this evidence, the taxpayer had discharged its burden of proof and KRA was required to demonstrate why the explanations were inadequate.

4. **Variances Between VAT Returns and Financial Statements**
   The Court accepted the taxpayer's explanation that the differences mainly related to exports, exempt supplies and zero-rated supplies. It found that neither KRA nor the Tribunal had adequately justified rejecting the reconciliations provided.

High Court's judgment & analysis

5. Withholding Income Tax (WHT)

Relying on the Pevans East Africa decision, the Court held that KRA lacked statutory authority to recover unwithheld tax from a payer during the period between the repeal of section 35(6) of the Income Tax Act in 2016 and the introduction of section 39A of the Tax Procedures Act in 2019.

6. Retrospective Application of Withholding VAT

The Court held that withholding VAT provisions could not be applied retrospectively and reaffirmed that ambiguity in tax legislation should be interpreted in favor of the taxpayer.

Decision

The High Court allowed the appeal, set aside the Tribunal's decision and quashed KRA's objection decision, with each party bearing its own costs.

Implication of the judgement

- **Substance over form -** Minor documentary inconsistencies should not override credible evidence demonstrating the true nature and timing of a transaction.
- **Burden of proof -** Once a taxpayer provides sufficient supporting documentation, KRA must justify its assessment and explain why the evidence is inadequate.
- **No extra-statutory requirements -** Tribunals and KRA cannot impose evidentiary requirements that are not prescribed by law.
- **Strict interpretation of tax laws -** Tax obligations can only be imposed where there is clear legislative authority.
- **No retrospective taxation -** Tax provisions should not be applied retrospectively where doing so creates uncertainty or imposes liabilities after the relevant event.

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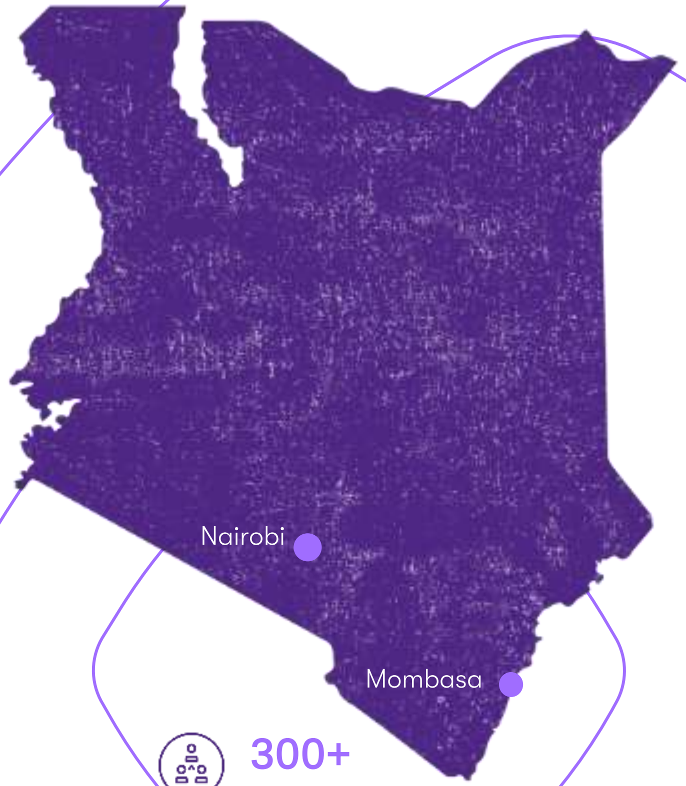

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