

Are You Paying Tax on Revenue That Is not Yours?

Our legal team at *Intelpoint Consulting* successfully represented Mr. John Wainaina Kamau, before the Tax Appeals Tribunal in Tax Appeal E1052 of 2024.

This judgment reinforces our firm's track record in delivering strategic, well-reasoned, and successful outcomes for clients facing complex disputes with the tax authority.



John Wainaina Kamau v Commissioner of Domestic Taxes, TAT E1052 of 2024

Background

- John Wainaina Kamau, trading as *Johnsmart*, acted as a middleman buying surplus fuel allocations from Oil Marketing Companies and reselling to small petrol stations at a margin.
- KRA conducted audit and compliance checks for 2020 and 2021, relying heavily on Kenya Pipeline Corporation (KPC) data.
- KRA issued additional tax demands of KES 27.9 million covering Corporation Tax and VAT treating the entire OMC sales volumes as Johnsmart's turnover.
- Johnsmart disputed the assessments, arguing he only earned margins, not the full turnover, and that reliance on KPC data was flawed. KRA rejected his objection and maintained the assessment.

Johnsmart's Argument

- Johnsmart insisted he is just a broker, earning commission on trades not selling full volumes;
- Johnsmart argued that VAT and corporation tax should be based on margins only;
- Johnsmart asserted the data provided by KPC was inaccurate and misleading, confirmed by OMC correspondence disowning it;
- Johnsmart contested KRA's assumed 1% margin, which had no empirical or industry study to justify it; and
- Johnsmart claimed KRA unlawfully disallowed legitimate business expenses

KRA's Argument

- KRA defended their reliance on using KPC data where taxpayer records were deemed insufficient;
- KRA mentioned that they based their assessment by comparing volumes, applied 0.5-1% margin and taxed variances between KPC data and declared turnover; and
- KRA emphasized that the taxpayer bore the burden to prove the assessments wrong, which he failed to do due to limited documentation.

Tribunal's Decision

- The Tribunal ruled that as a broker, Johnsmart only earns a margin/commission;
- The Tribunal noted that it was erroneous for KRA to treat the entire OMC volumes as his sales;
- The Tribunal observed that KRA failed to demonstrate a clear basis for imposing the arbitrary margin;
- The Tribunal was persuaded that KPC data was unreliable; and
- The Tribunal found that KRA failed to consider deductible expenses incurred wholly and exclusively in producing income.

Conclusion

- Tax charged should be based on the economic reality of a taxpayer's business not inflated proxies from third-party data;
- Only the margin/commission is subject to VAT and income tax not the gross value of third-party sales; and
- This ruling reinforces taxpayer rights that if assessments are based on flawed data or arbitrary assumptions, they can be successfully overturned.

Recommendation

- Taxpayers should always maintain contracts, transaction trails and margin analysis to demonstrate brokerage income versus turnover;
- Taxpayers should anticipate KRA's reliance on third-party data and prepare reconciliations against actual books and bankings ; and
- Tax Authorities should put into consideration building a tax governance framework for ongoing industries where volume-tracking and third-party data often triggers disputes.

The Tribunal's decision is a timely reminder that tax assessments must reflect the real substance of a business not arbitrary margins, or flawed third-party data.

Defending that position during audits or objections requires well-crafted strategies, solid documentation and experienced legal tax support.

At **Intelpoint Consulting**, *Your Tax Lawyers with a Personal Touch* we specialize in providing professional and personalized tax services tailored to your operations.

Whether you are in energy, ICT, trading, or services, our services will help you:

- Challenge unfair tax assessments;
- Proactively defending against audits and objections;
- Design tax governance frameworks that reduce risk and enhance compliance confidence; and
- Safeguard your margins by ensuring taxes are levied on actual earnings.

Engage with our tax experts today to safeguard your business with practical, proactive, and client centered solutions.

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Please contact us to discuss your specific circumstances.