
K&S WINS IN TAX MATTERS - LEGITIMATE EXPECTATION AND UNDEFINED TERMS

1. Legitimate Expectation in Tax Matters

K&S acted for the Kenya Petroleum Refinery at the Court of Appeal in successfully opposing an appeal by KRA against a High Court Judicial Review Decision.

The High Court had quashed KRA's imposition of customs duty on fuel used by the Refinery during the refining process. The Court of Appeal noted that the Refinery was a bonded warehouse and had used fuel from refining crude oil to run its machinery during the refining process for over 45 years.

The Court held that KRA's decision to demand duty, some of which was backdated, was arbitrary, unfair and unreasonable and also breached the Refinery's legitimate expectation.

The Decision reaffirms the Court's view that where a person has enjoyed a benefit pursuant to representations from a person who has authority to make them, then it would be unreasonable to withdraw such benefit without consultation.

The K&S team was led by [Nazima Malik](#).

2. Construing of terms not defined in Taxing Acts

K&S acted for Kuehne+Nagel and successfully opposed an appeal filed by KRA in the High Court against a decision rendered by the Tax Appeals Tribunal (TAT). The issue before the Court was whether VAT was chargeable on transportation of cut flowers outside Kenya.

At the time of the assessment raised by KRA, the VAT

Act Cap 476 (now repealed) provided that VAT on transportation of unprocessed agricultural produce was zero-rated. As the word "process" was not defined in the repealed VAT Act, the High Court had to determine whether the cutting of flowers and dipping them in hydrating solution amounted to a process. The Court formed the view that the essential character of the flowers did not change by the mere cutting and dipping in hydrating solution and therefore the flowers were unprocessed. The Decision sets an interesting precedent in how the Court applies terms that are not defined in a Taxing Act.

The K&S team was led by [Nazima Malik](#).



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