

LEGAL ALERT



**High Court's Beacon: Charities Granted Direct
Path to Appeal Tax Exemption Denials to The
Tax Appeals Tribunals**



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On 13th February 2025, the KRA issued a Public Notice on the implementation of the Income tax (Charitable Organizations and Donation Exemption) Rules, 2024 (the “Rules”) in which among many other things, all Charitable Organizations will now be required to comply with the Rules to enjoy tax exemptions. These Rules will also determine whether such organizations will get tax exemption certificates upon application or renewal.

One of the main concerns of charitable organizations is determining where and how to seek refuge in case their application for tax exemption is declined. The Tribunal in Tax Appeal No. 1545 of 2022 held that it did not have Jurisdiction to entertain appeals arising from rejection of exemption application as the same were neither tax decisions nor appealable decisions.

The Issues in Contention

Our team appealed against the decision wherein we submitted that the rejection decision on the application for exemption was an appealable decision and did not require the Appellant to first lodge a Notice of Objection with the Commissioner. We further submitted that rejection decision was not a tax decision as misconstrued by the Commissioner but an appealable decision and urged the court to apply the plain meaning of “**under any other decision made under a tax law**” which applied to the rejection decision.

The Commissioner’s team on the other hand argued that the rejection decision did not constitute an appealable decision as defined under section 3(1) of the Tax Procedures Act, Cap 469 A as it was not an objection decision. They further argued that the

appropriate forum to challenge the decision was through a judicial review court and that the court should apply the ejusdem generis interpretation rule when interpreting “**any other decision made under a tax law**”.

The Decision

The High Court, in a Judgement delivered by Lady Justice Rhoda Rutto on 14th February 2025, in [Saleh Mohammed Trust v Commissioner of Domestic Taxes \(Income Tax Appeal E221 of 2023\) \[2025\] KEHC 17214 \(KLR\) \(Commercial and Tax\) \(14 February 2025\) \(Judgment\) - Kenya Law](#) affirmed our argument that any decision made under tax law that is not a tax decision is an appealable decision.

The Court held that the decision to reject the application for exemption is an appealable decision as it falls under “**any other decision made under a tax law other- than (a) a tax decision or (b) a decision made in the course of making a tax decision**” as defined under Section 3(1) of the Tax Procedures Act, Cap 469 A.

In the appeal to the High Court, the Commissioner argued that the Appellant ought to have challenged the Commissioner’s action by way of Judicial Review. Whereas recognizing this as an available option, the Court in its determination affirmed that pursuant to the provisions of Section 9(2)(1) of the Fair Administrative Action Act, the High Court or subordinate court, shall not review an administrative action or decision under the Act unless the mechanisms, including internal mechanisms for appeal or review and all remedies available under any other written law have been exhausted. The

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Appellant was therefore required to exhaust all available mechanisms, that is, appeal to the Tribunal that is vested with the requisite jurisdiction to hear an appealable decision.

This same position was affirmed in, in the case of [Krystalline Salt Limited v Kenya Revenue Authority \[2019\] KEHC 6939 \(KLR\) - Kenya Law](#), see para 69 thereto.

The Court further determined that the appeal be heard on merit by the Tribunal and referred the matter back to the Tribunal for hearing of the substantive appeal as the issue of jurisdiction was now settled.

Significance of the Judgement

It is now settled, (unless the same is overturned by the Court of Appeal) that when a Charitable Organization's Application for tax exemption is declined, such a decision can be appealed directly to the Tribunal without requiring the applicant to first lodge a Notice of Objection to the rejection decision as it is an appealable decision. This decision clarifies the dilemma that such entities face when contemplating their next action after receiving a rejection of their tax exemption application.

DISCLAIMER

This alert is for informational purposes only and should not be taken to be or construed as a legal opinion. If you have any queries or need clarifications, please do not hesitate to contact Lilian Renee Omondi, Partner, (renee@oraro.co.ke), William Ochieng, Associate, (william@oraro.co.ke), Melanie Mwenda Associate (melanie@oraro.co.ke) or your usual contact at our firm, for legal advice.



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