

Commissioner of Domestic Taxes vs ICEA Lion General Insurance Co Ltd (Income Tax Appeal E105 of 2023)

November 2025

Judgement Alert Issue No. 2 of 2025



Background



The Appellant (KRA) initiated a compliance review on the Respondent (ICEA Lion General Limited), a limited liability licensed to conduct insurance business in Kenya. The Appellant demanded Corporation tax of **Kes 122,109,291** & Value Added Tax(VAT) of **Kes 88,805,225** inclusive of penalties & Interest for the period 2015 to 2018. The Corporation Tax demand was settled and the question before the Tax Appeal Tribunal (TAT) was whether VAT chargeable on the disposal of salvage motor vehicles by the Respondent. The Tribunal ruled in favour of ICEA stating that the disposal of salvages is an integral part of the insurance business, flowing from the principles of indemnity & subrogation and consequently the VAT exemption for insurance services also includes the disposal of salvages. KRA appealed the Tribunal's decision at the High Court.

Parties Position at the High Court

Appellant position

The Appellant contended that the Tax Appeals Tribunal erred in law on two main fronts:

- The Tribunal failed in finding that the sale of motor vehicles salvages is part of insurance compensation.
- That the Tribunal was wrong in finding that even if the insurer retains the salvages from the insured to either diminish the costs or reimburse itself does not amount to a sale.
- The Tribunal failed to appreciate that the proceeds collected from the sale of motor vehicle salvages was to be treated as income and not compensation.
- The Tribunal failed to appreciate that the proceeds collected from the sale of motor vehicle salvages was to be treated as income and not compensation.
- That the VAT Act 2013, does not list the sale of motor vehicle salvages as an exempt or zero-rated supply.

Respondent's position

The Respondent (ICEA Lion General Insurance) position was that;

- The High Court should adopt a purposive and harmonious interpretation of the relevant statutes. That the disposal of motor vehicle salvages is not a separate line of business but is part of the indivisible component of insurance of services.
- The disposal of a salvage is not a commercial transaction undertaken for profit but a recovery mechanism to mitigate the insurer's loss and give effect to the principle of indemnity.
- That the Insurance Act had defined Insurance business to include any business incidental to insurance business as so defined.

Issues for determination & the Court's finding

1. Whether the disposal of motor vehicle salvages constitutes a taxable supply of good subject to VAT at the Standard Rate?

The High Court in coming up with its decision stated that:

- The VAT Act exempted insurance services but did not provide the definition of what exactly insurance services constitute of and consequently the definition provided in the Insurance Act would form the basis in determining the definition of what insurance services constitute of. Which in this case had been defined to include the incidental insurance activities.
- The High Court ruled that the disposal of the salvage is not a distinct trading activity but rather the final step in the process of indemnification. The proceeds of the salvage are not trading income but rather are treated as reduction of claims expense and not as revenue from sale.
- Consequently the disposal of the salvage was a single, economically indivisible supply of insurance as correctly held by the Tribunal.

Implication of the judgement

This judgement established that disposal of salvage is VAT Exempt, as the transaction could not be split as they are one indivisible supply.

We note that this position is subject to change if the KRA proceeds to the Court of Appeal. however we remain ready to communicate the same with our clients if the position changes.

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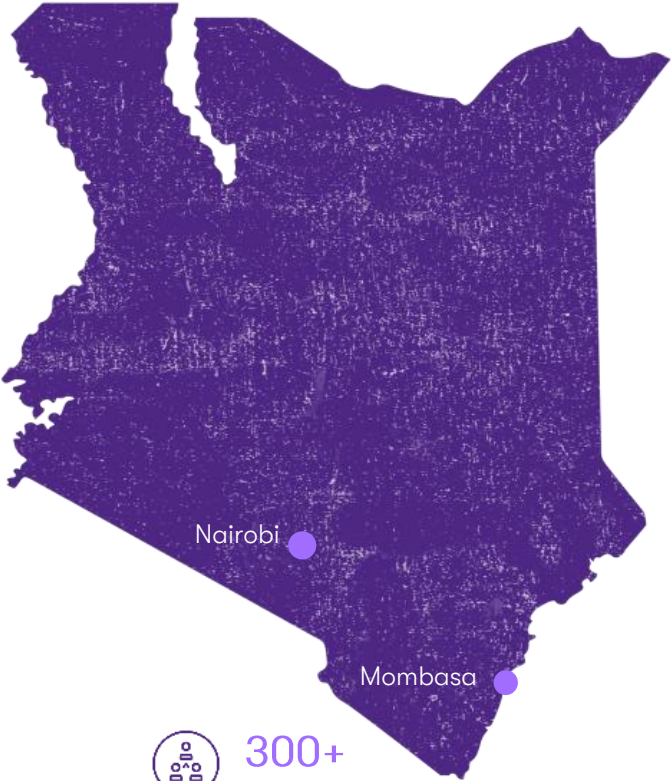
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