



**IN THE COURT OF APPEAL**

**NAIROBI**

**(CORAM: MAKHANDIA, OUKO & M'INOTI, J.J.A)**

**CIVIL APPEAL NO. 283 OF 2014**

**BETWEEN**

**PHARMACEUTICAL MANUFACTURING (K) CO LTD.....1<sup>ST</sup> APPELLANT**

**KUMAR SHAH.....2<sup>ND</sup> APPELLANT**

**UTAMCHAND G. SHAH.....3<sup>RD</sup> APPELLANT**

**CHRISTINE D' SOUZA.....4<sup>TH</sup> APPELLANT**

**AND**

**THE COMMISSIONER GENERAL OF**

**THE KENYA REVENUE AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**THE COMMISSIONER OF CUSTOMS SERVICES.....3<sup>RD</sup> RESPONDENT**

*(An appeal from the Decree and Judgment of the High Court of Kenya (Lenaola, J.) dated 26<sup>th</sup> August, 2014*

*in*

*Human Rights Division Petition No. 589 of 2013)*

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**JUDGMENT OF THE COURT**

The 1st appellant is a limited liability company engaged in pharmaceutical manufacturing business. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> appellants are, respectively, its shareholder, Managing Director and Administrative Manager.

The dispute culminating in the suit giving rise to this appeal was triggered by a demand from the 3<sup>rd</sup> respondent requiring the 1<sup>st</sup> appellant to pay to it Kshs.121,660,538/- in unpaid import VAT for the

period between January, 2008 and November, 2013. This amount was subsequently corrected and reduced to Kshs. 43,579,769/-. The appellants petitioned the High Court for protection claiming that the 1<sup>st</sup> and 2<sup>nd</sup> Schedules to **Sections 2 and 7 (2)** of the VAT Act, 2013 contravened the principles and framework of public finance under **Article 201** of the Constitution; that, to the extent that the aforesaid **Section 7 (2)** imposes on the 1st appellant import VAT on raw and packaging materials imported for the purpose of manufacturing medicine, it is null and void; that the enactment of that law infringed the appellants' right under **Article 27 (1)** which guarantees them the right to equal protection and equal benefits of the law and the right to non-discrimination; that the 1st appellant's rights not to be arbitrarily deprived of property was equally violated by the Act, whose application had the effect of taking away the import VAT exemptions which it had enjoyed over the years; that the 2<sup>nd</sup> to 4<sup>th</sup> appellants' right to health were also comprised by the Act.

The respondents on their part disputed these accusations arguing that from by a post-clearance audit carried out on the import operations of the 1st appellant it was discovered that the latter owed the Government in tax arrears Kshs.43,579,769/-; that for the period the demand related the 1<sup>st</sup> appellant did not enjoy any tax exemption or zero-rating on its pharmaceutical imports.

We have considered the appeal, submissions as well as authorities relied on by both side. We find no merit in the appeal, and for the reasons we shall give on 10<sup>th</sup> March, 2017, dismiss it with costs under **Rule 32 (5)** of the Court of Appeal Rules.

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of March, 2017.**

**ASIKE – MAKHANDIA**

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**JUDGE OF APPEAL**

**W. OUKO**

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**JUDGE OF APPEAL**

**K. M'INOTI**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**