THE SUPREME COURT OF KENYA

BARCLAYS BANK OF KENYA LIMITED (NOW ABSA BANK KENYA PLC) Vs

COMMISSIONER FOR DOMESTIC TAXES *(Large Taxpayers Office)*

KENYA BANKERS ASSOCIATION & MASTERCARD ASIA PACIFIC (PTE) LIMITED

(Interested Parties)

SC PETITION NO. 12 (E014) OF 2022

DATE OF JUDGMENT: 5th December, 2025

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court allows the appeal.

Background

The Commissioner of Income Tax *(the respondent)* assessed and demanded withholding tax from ABSA Bank Kenya PLC (*the appellant*) under Sections 2 and 35 of the Income Tax Act. The assessment was based on card payment transactions or processes. The first assessment was made on payments by ABSA Bank to Visa International Services Association, MasterCard Inc., and American Express Ltd. (*the card companies*), on the grounds that the payments were royalties. The second assessment was made on payments by ABSA Bank to other banks that issue credit cards, on the grounds that the payments were professional and management fees.

ABSA Bank moved the High Court, challenging the assessment and demand for withholding tax. The High Court allowed ABSA Bank's case and found that the Commissioner of Tax had failed to identify with accuracy the specific transactions or payments that attracted withholding tax. The trial court held that the Commissioner of Tax had not clearly established how the assessed transactions fell within the provisions of Sections 2 and 35 of the Income Tax Act.

On appeal, the Court of Appeal reversed the decision of the High Court. It found that the Commissioner of Tax had proved the payments made by ABSA Bank to the card companies were royalties, and that the payments made by ABSA to other banks that issue credit cards were management and professional fees, under Section 2 of the Income Tax Act and therefore attracted withholding tax under Section 35 of the said Act.

Dissatisfied, ABSA Bank appealed to the Supreme Court, and the Court framed two issues for determination:

i. *Whether payments made by Acquiring Banks to Card Companies constitute royalties liable to taxation and subject to withholding tax; and*

ii. *Whether interchange fees paid by an Acquiring Bank to an Issuer Bank can be classified as management or professional fees liable to taxation and subject to withholding tax*

Upon consideration, the Supreme Court has allowed the appeal for the following reasons:

Issue 1: The Court finds that the fees paid by an acquiring bank to card companies are not royalties within the meaning of Section 2 of the Income Tax Act, hence not liable to withholding tax, under Section 35 of the Income Tax Act.

Issue 2: The Court finds that the interchange fees paid by an acquiring bank to an issuing bank are not professional or management fees within the meaning of Section 2 of the Income Tax Act, hence not liable to withholding tax under Section 35 of the Income Tax Act.

The Judgment of the Court of Appeal is therefore overturned, and each party will bear its costs.

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