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TAX ALERT | JULY 2026

Supreme Court Affirms That the Powers of the Cabinet Secretary for National Treasury to Grant Income Tax Exemptions Through a Gazette Notice Are Constitutional

17 July 2026 | Petition number E006 of 2025: Eliud Karanja Matindi v National Assembly and 4 Others (the Supreme Court Judgment)

Introduction

- On 17 July 2026, the Supreme Court delivered judgment on petition number E006 of 2025: Eliud Karanja Matindi v National Assembly and 4 Others (the **Supreme Court Judgment**).

- The Supreme Court Judgment affirmed the Court of Appeal decision which held that section 13(2) of the Income Tax Act, Chapter 470 of the Laws of Kenya (the **Income Tax Act**) which allows the Cabinet Secretary for National Treasury and Economic Planning (the **CS Treasury**) to grant income tax exemptions through a gazette notice is constitutional.

Litigation at the High Court

- In July 2021, Constitutional Petition No. E280 of 2021 (the **Petition**) was filed at the High Court challenging, among others, the constitutionality of Legal Notice No. 15 of 2021 dated 25 February 2021 (the **Legal Notice**) through which the CS Treasury sought to exempt Japanese companies, Japanese consultants and Japanese employees involved in projects under specified financing agreements from income tax on income derived from or accrued in Kenya.

- The petitioner argued that the Legal Notice was unconstitutional for (a) want of public participation and (b) being discriminatory.

- On 17 February 2023, the High Court delivered Judgment on the Petition declaring section 13(2) of the Income Tax Act unconstitutional to the extent that it authorized income tax waivers through a notice in the Kenya Gazette instead of legislation (the **High Court Judgment**).

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Litigation at the Court of Appeal

- The CS Treasury and the National Assembly appealed against the High Court Judgment to the Court of Appeal arguing that the Legal Notice was executive in nature and did not require public participation. Consequently, the Legal Notice was constitutional.

- On 30 December 2024, the Court of Appeal rendered its judgment on the appeal (the **Court of Appeal Judgment**) and found that the Legal Notice was of an executive character and not of a legislative character hence no public participation was required.

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Litigation at the Supreme Court

- The appeal against the Court of Appeal Judgment to the Supreme Court distilled two (2) major issues for determination, namely, (a) whether the Legal Notice was a statutory instrument which required public participation and (b) whether the tax waiver was discriminatory in nature.

- The Supreme Court found that:

-the Legal Notice was administrative in nature and did not require public participation; and

-the Legal Notice was not discriminatory.

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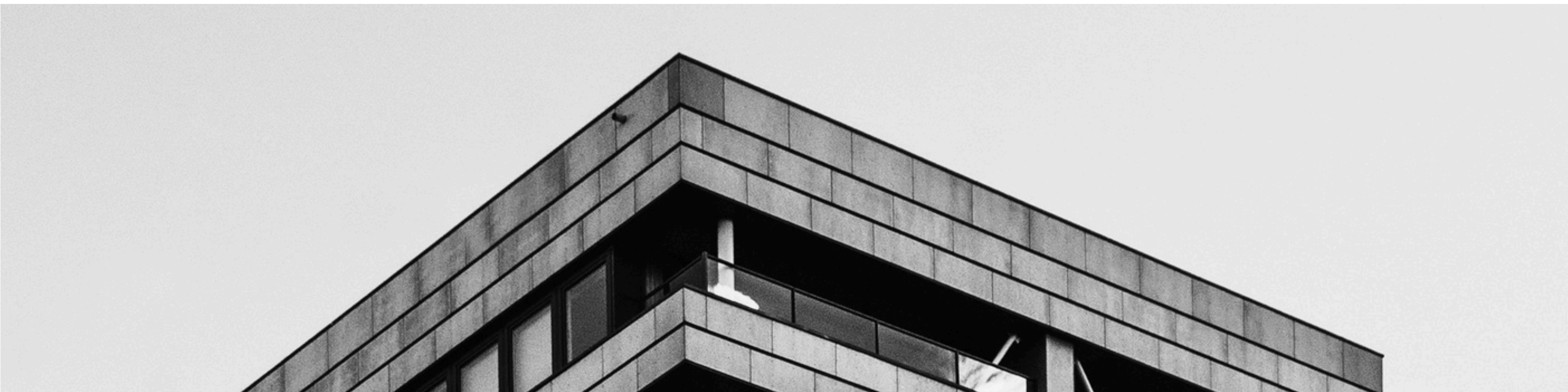
Conclusion

- In light of the Supreme Court Judgment, section 13(2) of the Income Tax Act is constitutional and the income tax exemptions granted by the CS Treasury under this provision are legally binding.

- Legal notices of an administrative nature are not statutory instruments and do not require public participation.



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