A TARRA AGILITY AFRICA STUDY OF THE KENYAN TAX RECORD

The Silent Liability

Kenya's tribunals and courts have decided more than five thousand tax disputes. Read together they describe an enforcement system that now wins most of what it litigates, and taxpayers losing, in the main, on questions of evidence and timing that sit within their own control.

52%
of decided cases now go to the Commissioner; the taxpayer takes 36%

47%
of the Revenue's wins turn on documentation the taxpayer did not keep

59%
the Revenue's win rate in 2026, against about a third in 2020

Prepared for the Africa Tax Terminal launch · Nairobi · Private and confidential. Every figure is drawn from the Africa Tax Terminal knowledge base; the method is set out on the final page. This paper is written for general information. It is not legal or tax advice.

IN THIS PAPER

What the Kenyan record shows, and what to do about it

The Africa Tax Terminal holds the Kenyan tax record in structured form. This paper reads it from end to end, and sets out where the exposure sits, why taxpayers lose, and what a finance function can do that an annual review cannot. The argument runs in six parts.

In brief
The burden of proof has always been the taxpayer's; the record now shows its price.

I **The shape of the risk**
Litigation is routine, and the Commissioner is winning the majority of it.

II **Where the exposure sits**
VAT is hard ground and customs the exception; sector sets the odds.

III **Why cases are lost**
Documentation, the burden of proof and the calendar, not fine law.

IV **The sums, and the forum**
Billion-shilling assessments, decided by a bench that varies.

V **The moving target**
A Finance Act every year, and a surge of revenue-authority notices.

VI **What follows**
A continuous risk met with a standing governance protocol.

The evidence
The landmark decisions behind every figure in this paper.

Method & about
How the study was built, and what the figures do not claim.

IN BRIEF

The burden has always been the taxpayer's. The record now shows its price.

Section 56(1) of the Tax Procedures Act, 2015 puts the burden of proving an assessment wrong on the taxpayer, not the Commissioner. That allocation is neither new nor contentious. What is new is the weight of decided authority that now applies it, and the consistency with which the taxpayer comes off worse.

The Africa Tax Terminal holds the Kenyan tax record in structured form: **5,250 decided cases, 73,279 extracted rules and 1,353 adjudicators**, each case coded by the tax in issue, the sector, the forum and the result. It is, so far as we are aware, the most complete reading of an African tax system yet assembled, and it answers a question that anecdote cannot. When a Kenyan tax dispute is fought to a decision, who wins, and on what.

5,250
decided Kenyan tax cases carrying a recorded outcome, 2011–2026

73,279
extracted rules, growing with every Finance Act

1,353
adjudicators profiled across 23,356 appearances

The answer is unflattering. The Commissioner takes 52% of decided cases outright, to the taxpayer's 36%, and the Revenue's annual win rate has climbed from roughly a third in 2020 to close to six in ten today. The reasons are seldom questions of construction. They are documentary: an invoice not retained, a burden not discharged, an objection lodged out of time. These are failures of record-keeping and process, which is to say failures a finance function owns.

For a group managed from outside the continent the exposure compounds. Interest and penalties run from the date a liability arose, not the date it is found, so delay favours the Revenue. A position never tested does not lapse; it matures, quietly, until an audit calls it in. The oversight, meanwhile, is periodic and remote while the risk is continuous and local.

Why it reaches the board

A contested tax position is no longer an aberration; taken to a decision it is now more likely to fail than to succeed, and the sums in issue reach into the billions of shillings. The variables that decide these cases are not points of law reserved to counsel. They are documentation, the burden of proof and the calendar, and they are managed, or neglected, inside the finance function.

THE ARGUMENT

Five findings from the record

I Litigation is now routine

Decided cases rose roughly twentyfold between 2019 and 2024 and have held near that level since. A dispute is no longer a once-in-a-company's-life event. It is a recurring cost of operating in Kenya, and it belongs on the risk register.

II The Revenue wins the majority

Across the record the Commissioner takes 52% of decided cases outright, to the taxpayer's 36%. The share decided for the Revenue has risen from about a third in 2020 to close to six in ten in 2026.

III The losses are self-inflicted

Nearly half of the Revenue's wins turn on missing documentation, a third on an undischarged burden of proof, and close to a quarter on a date missed. Cases are decided on what a finance team controls, not on fine law.

IV Sector sets the odds

Outcomes diverge sharply by industry. In financial services the taxpayer wins more than the Revenue; in construction, hospitality and healthcare the Commissioner leads comfortably. Where a company trades shapes its odds before the facts are heard.

V The target keeps moving

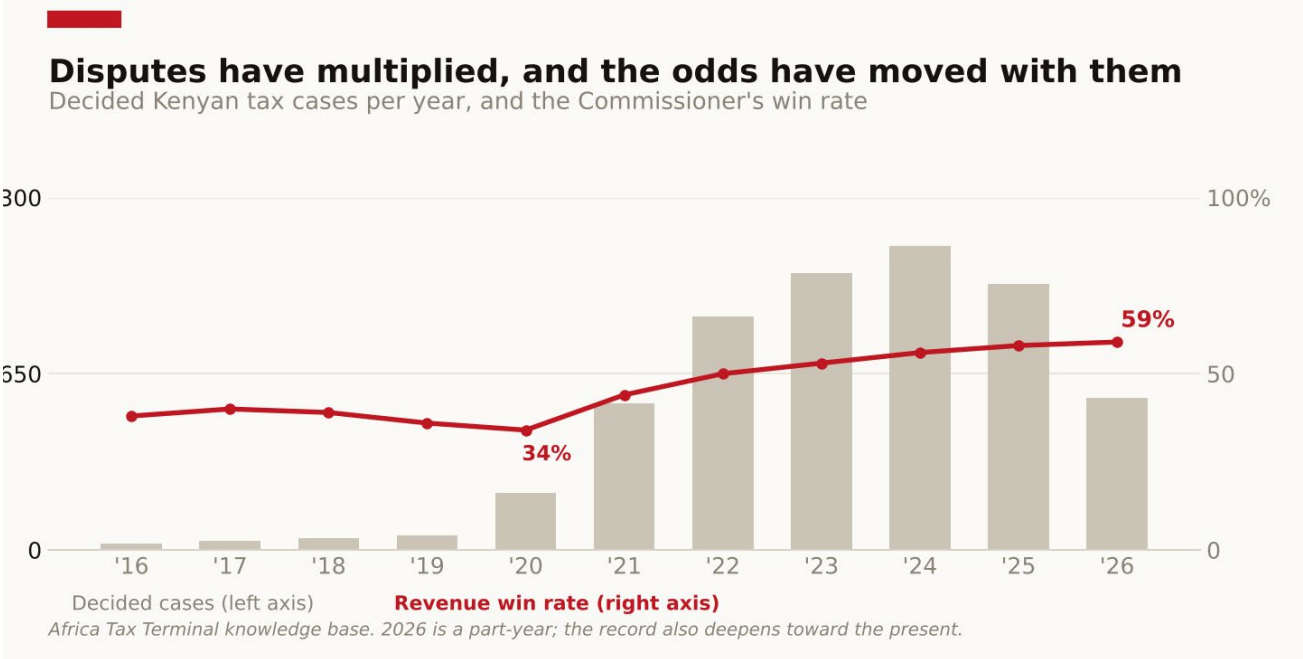
A Finance Act every year, often a further amending Act beside it, and a rising stream of revenue-authority notices mean a settled position can open overnight. A rule base of 73,279 is a figure for today, not for next year.

I · THE SHAPE OF THE RISK

Disputes are ordinary now, and harder to win

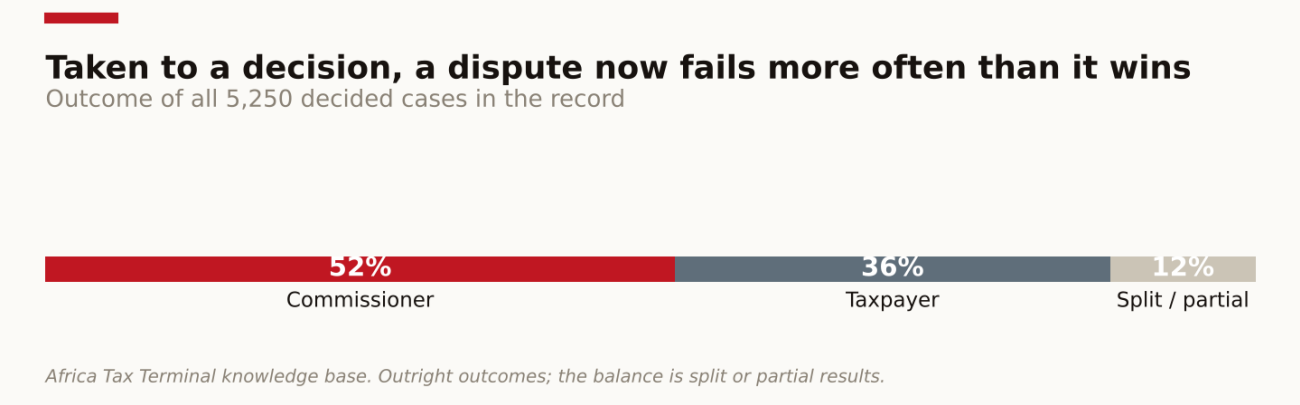
There was a time when a tax assessment fought to a decision was an unusual event. That time has passed. The cases in the record rose about twentyfold between 2019 and 2024, and through the same years the share decided for the Revenue rose with them. More cases have not meant easier ones. The body of precedent has settled, case by case, in the Commissioner's favour, and an enforcement function has learned to use it.

EXHIBIT 1 Decided cases each year, with the Commissioner's win rate



We would read little into any single year. A movement of this size, held across a sample this large, is not noise. One qualification is worth stating rather than leaving to be found: these are cases fought to a decision. Many disagreements settle earlier, at objection or in alternative dispute resolution, and never reach the record. The paper describes litigation, not the whole of enforcement.

EXHIBIT 2 Outcome of all 5,250 decided cases



The asymmetry is not accidental. It is written into the procedural code, and three provisions do most of the work.

The burden of proof
s.56(1) TPA 2015

In any proceeding, the taxpayer must prove the assessment is excessive or wrong. The Commissioner need not prove it right. Silence in the file is resolved against the taxpayer.

The clock
ss.38, 51 TPA 2015

Interest and penalties accrue from the date the liability arose. An objection must be lodged within 30 days, with the tax not in dispute paid. Time runs for the Revenue.

The file
s.23–24, s.59 TPA 2015

Records must be kept for five years and produced on notice. What is not documented at the time is, in practice, not available to prove later.

None of this is peculiar to Kenya, but Kenya applies it with unusual consistency. The burden in section 56(1) is not a presumption that shifts once the taxpayer raises a plausible case; the tribunals have read it as a positive obligation to prove the assessment wrong on the evidence, and an assessment stands to the extent that obligation is not discharged. A gap in the records is, in practice, resolved as a finding for the Revenue, whatever the underlying merits.

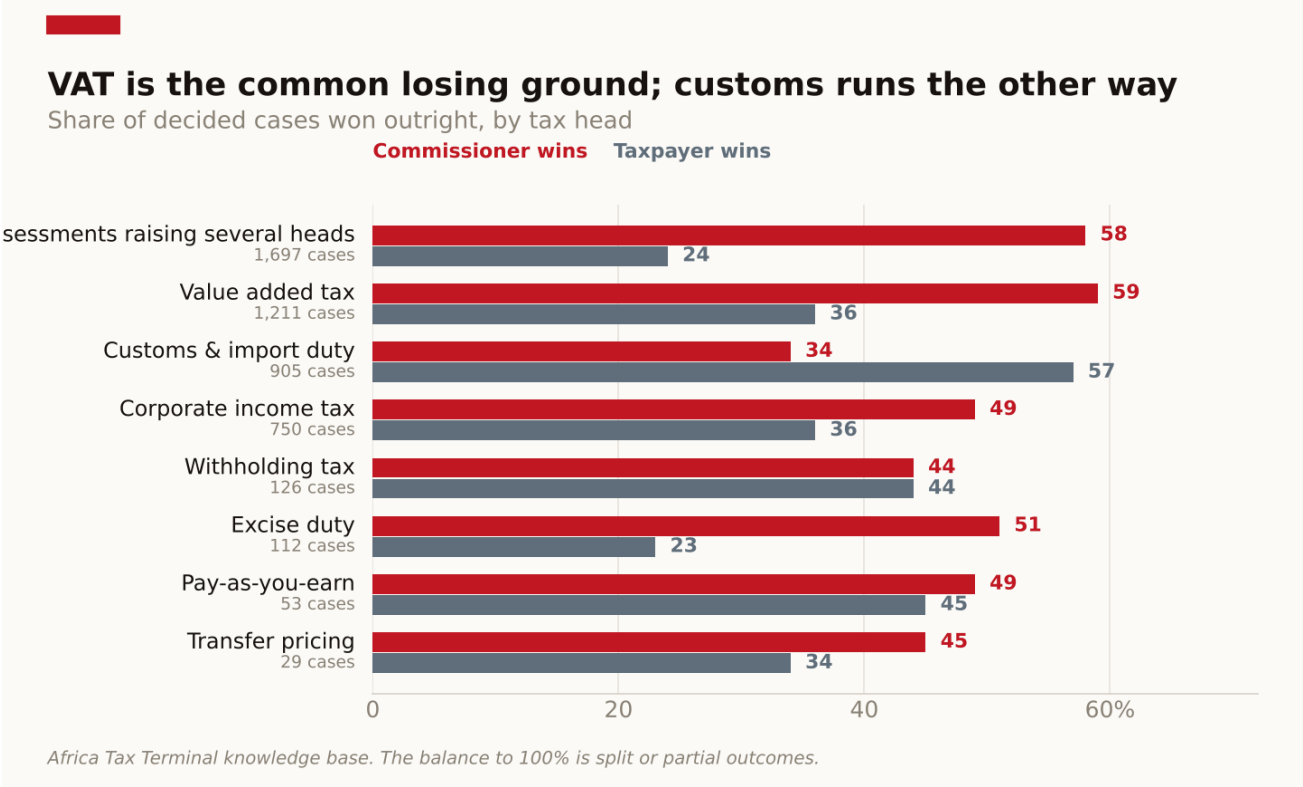
The timetable compounds the point. An objection lodged a day outside the thirty-day window is invalid, and the assessment becomes final and conclusive; the merits are never reached. Interest runs from the original due date, so a position carried for several years arrives at the tribunal already bearing interest and penalties that can approach the tax itself. Each provision is mundane on its own. Together they mean a company that manages its evidence and its diary has closed most of the routes by which it could lose, before the first hearing is listed.

II · WHERE THE EXPOSURE SITS

One head is hard ground; another runs the other way

The headline conceals a wide spread. Value added tax is at once the most litigated head and among the least forgiving. The Commissioner takes 59% of 1,211 decided VAT cases, most of them on denied input tax or a contested exemption, where section 17 of the VAT Act, 2013 makes the deduction turn on a valid tax invoice and proof of payment. Assessments raising several heads at once are harder still. Customs is the instructive exception. Across 905 valuation and classification disputes the taxpayer wins more often than not, because classification under the East African Community Customs Management Act turns on documents an importer can produce and a tariff heading that can be argued.

EXHIBIT 3 Who wins outright, by tax head



VAT is the common, losing battleground.
Input-tax denials and exemption disputes dominate. In *Mseky Holdings* (2026) an entire input-VAT claim of KES 40.5m was disallowed for want of invoices and proof of payment — a documentary failure, not a point of law.

Customs is where taxpayers do best.
Classification and valuation turn on what an importer can show. In *Drifield* (2026) a nil-rated classification was upheld against the Revenue's 25% — the record carried the heading.

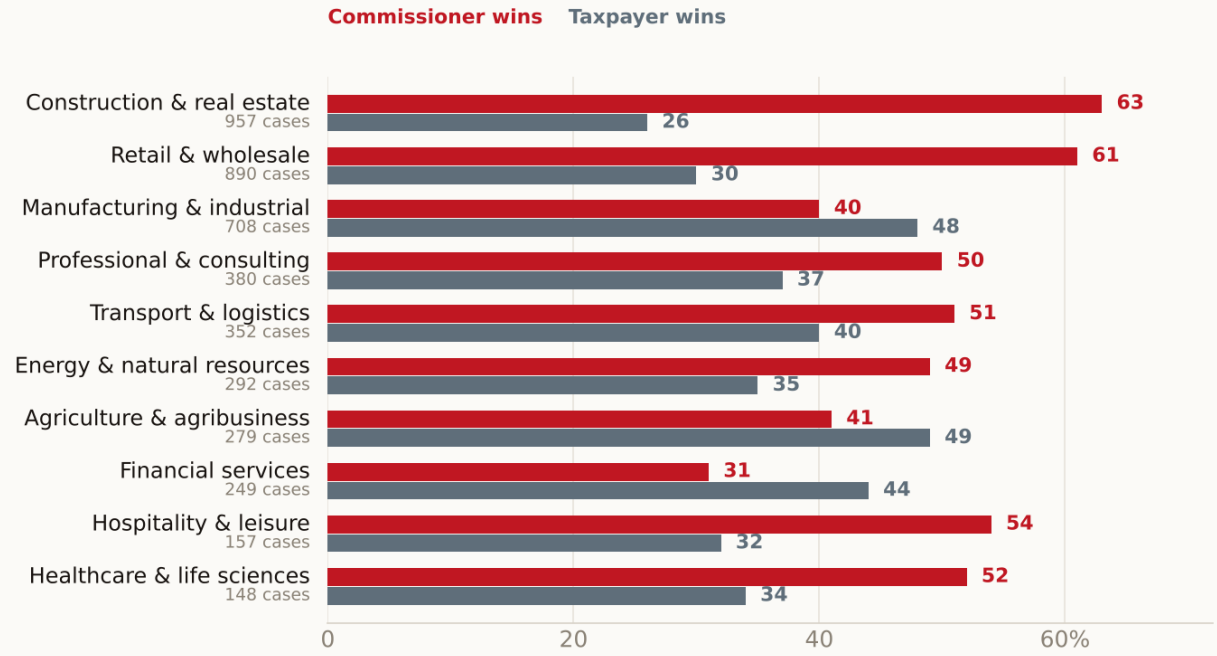
Industry shapes the odds

The same unevenness runs across the economy, and the record holds enough cases in each of twenty-five industries to read it with some confidence. Construction and real estate generate the most disputes and lose the most, the Commissioner prevailing in 63% of them. Manufacturing holds its ground, helped by a cleaner input and output trail. The service sectors diverge most sharply of all: financial services is the one large sector in which the taxpayer wins more decided cases than the Revenue, on the VAT exemption for financial services and the limits of excise on bank charges, while healthcare and logistics run firmly the other way, on customs and the burden of proof.

EXHIBIT 4 Who wins outright, ten largest sectors by number of cases

Where a company trades sets its odds before the facts are heard

Share of decided cases won outright, ten largest sectors by case volume



Africa Tax Terminal knowledge base, cases tagged by industry. The balance is split outcomes.

The question a finance director should ask

Not whether the company has a good case in the abstract, but where its own sector sits in the record, and whether it is provisioning as though it knew. The base rate is not destiny, but it is the starting point an assessment is argued from.

The cases are not, for the most part, lost on the law. They are lost on documentation, on the burden of proof, and on the calendar — the three things a finance team owns outright.

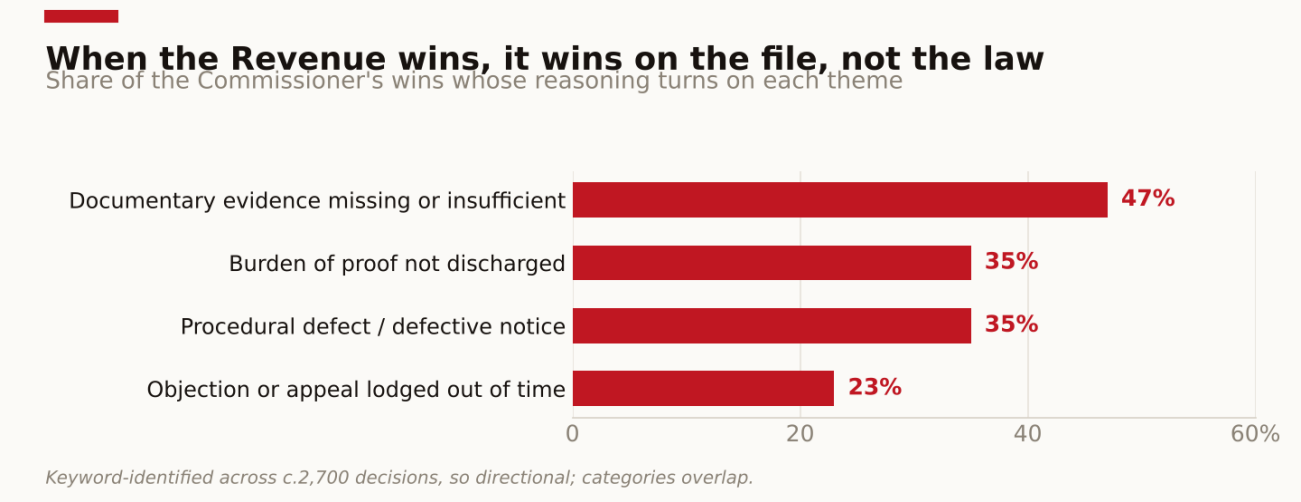
THE SILENT LIABILITY · FINDING III

III · WHY CASES ARE LOST

Taxpayers lose on the controllable things

It is worth knowing not only how often taxpayers lose, but why. We read the reasoning in the decisions, and the pattern is consistent and unglamorous. Nearly half of the Revenue's wins turn on documentary evidence that was missing or insufficient. A third turn on the taxpayer failing to discharge the burden of proof, which under section 56(1) is the taxpayer's to carry. Another third involve a procedural failing, and close to a quarter a deadline missed.

EXHIBIT 5 What the Commissioner's wins turn on



The mirror image is as telling. When taxpayers win, it is rarely because they out-argued the merits; it is because the Revenue itself erred, served a defective notice, or acted out of time. In *Osho Drapers* the same documentary failure was carried through the Tribunal, the High Court and the Court of Appeal, and lost at each. In *Nyoro Construction* a deadline the Revenue itself missed turned a KES 211m assessment into a win. In *Seatide Logistics* a KES 406m assessment was upheld in full for want of documentary evidence: the burden of proof decided it.

THE PRACTICAL READING

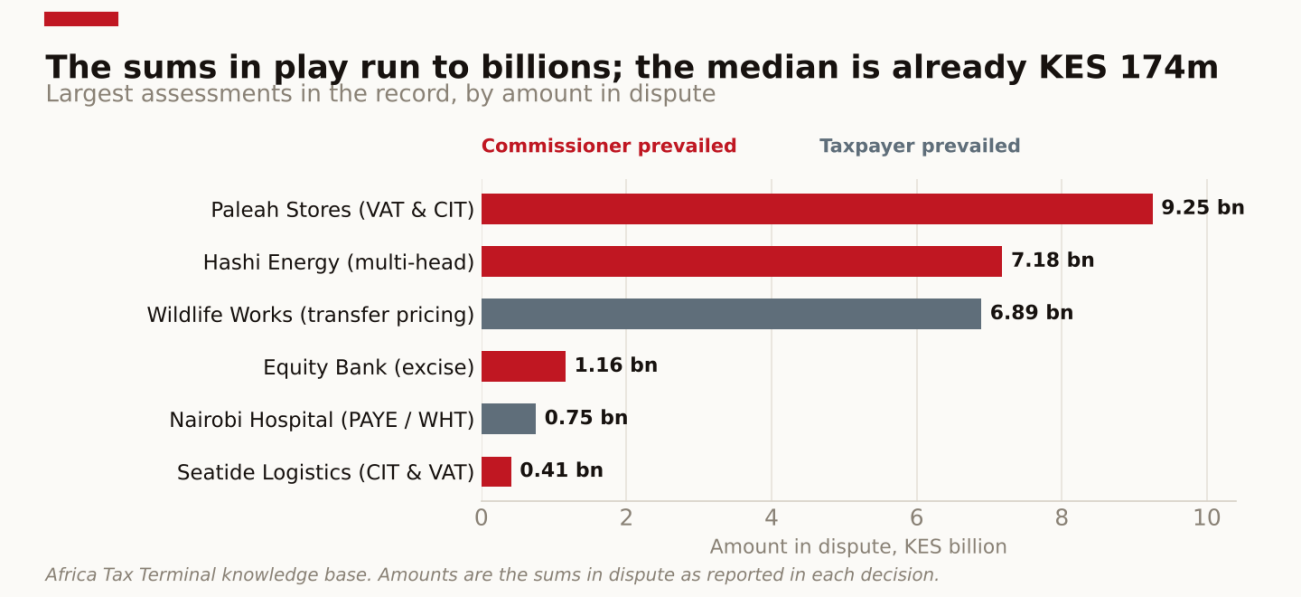
The variables that decide these cases are the ones a finance team controls: keep the contemporaneous evidence, discharge the burden before the fight rather than during it, and never miss a statutory date. The losses are, in the main, failures of system rather than of argument.

IV · THE SUMS, AND THE FORUM

Large amounts, decided by people

The amounts are not trivial. At the busiest benches the median sum in dispute is around KES 174m, and the largest assessments reach into the billions. The record is not short of nine- and ten-figure exposures, and the law in them is often deep: residence and the place of management, the arm's-length standard, the characterisation of a fee.

EXHIBIT 6 Largest assessments in the record, by amount in dispute



Africa Tax Terminal knowledge base. Amounts are the sums in dispute as reported in each decision.

The cases behind those bars repay study. In *Hashi Energy* (2026) income was taxed in Kenya because the business was managed and controlled there, a residence question under the charge to tax. In *Wildlife Works* (2025) a transfer-pricing adjustment of KES 6.89bn was resisted because the arrangement was documented at arm's length, as section 18(3) of the Income Tax Act and the Transfer Pricing Rules require; in *Tristar Transport* (2025), on the same head, the Revenue's method was imposed for want of contemporaneous documentation. The difference between the two was the file.

A tax dispute is also decided by people, and the record lets us look at them. The Terminal profiles 1,353 adjudicators across 23,356 appearances; 195 have heard enough cases to compare. The work is concentrated, the ten busiest sitting on roughly a third of the appearances in that group. More striking is the spread. Taxpayer success among the busiest ranges from about one case in four to a little over four in ten, around a median of 36%. The merits carry most of a case. The bench is not nothing, and it is one more reason to arrive prepared.

Deep law, large sums, human variance

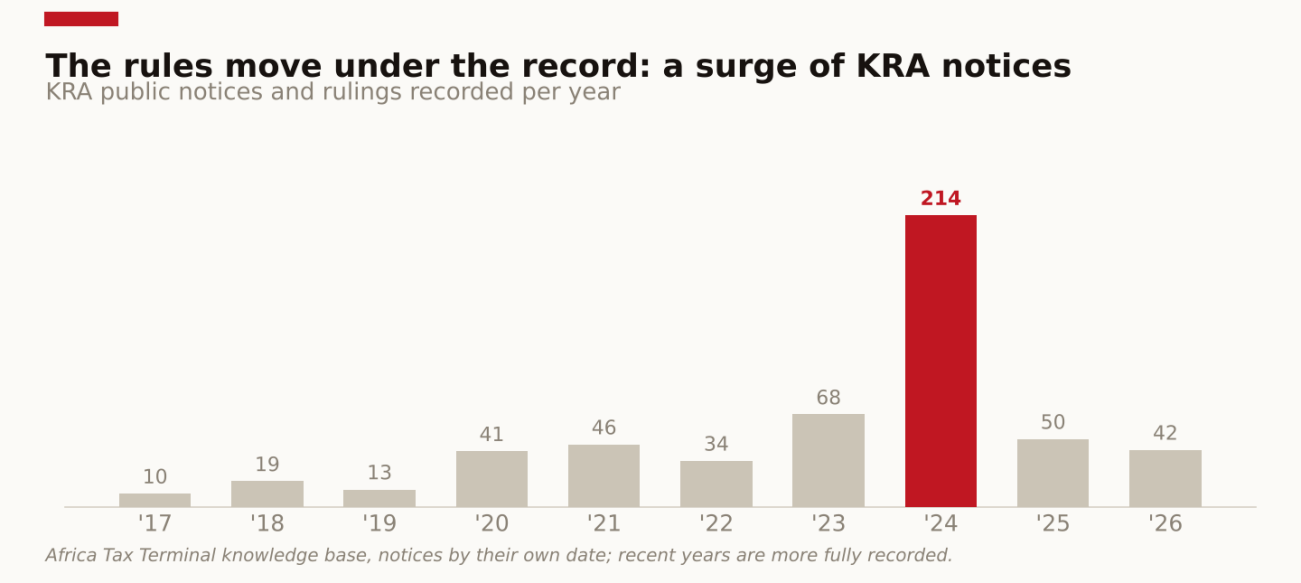
That combination is the one that rewards preparation. KES 9.25bn turned on records in Paleah Stores; KES 7.18bn on where a company was managed in Hashi Energy; KES 6.89bn on transfer-pricing documentation in Wildlife Works. In each, the outcome was decided by evidence assembled, or not assembled, long before the hearing.

V · THE MOVING TARGET

The law will not hold still

The reason a snapshot ages so quickly is that the law underneath it keeps moving. Kenya has amended its tax law through a Finance Act, and in several years a further amendment Act, in every year of the past decade. The revenue authority adds a steady stream of its own public notices and rulings, which in the record climbed sharply to a peak in 2024. Each change can turn a settled position into an open one, and none of it waits for an annual review.

EXHIBIT 7 Revenue-authority public notices recorded per year



A Finance Act every year, in force at once.
The statute a position must answer to is revised annually, sometimes more than once, and the changes take effect immediately. A position taken under last year's law is not safe because it was right last year.

A rule base of 73,279, and growing.
More than a third of those rules are procedural — the machinery of assessment, objection and proof, which is the ground most cases are decided on. An annual health check decays from the day it is signed.

VI · WHAT FOLLOWS

A continuous risk needs a continuous answer

The evidence to this point describes a risk that is continuous and compounding. Most of the tools a finance team has to meet it are neither. A health check is commissioned once a year and ages from the day it lands. Specialist advice is bought in episodes, after a problem has already arrived. Between those episodes the law changes, a position drifts out of support, a deadline passes, and nothing in the ordinary toolkit notices. The cadence of the defence does not match the cadence of the risk.

What the findings point to is not more reports. It is a standing set of controls that keep documentation, the burden of proof and time from failing, with each exposure visible and each one owned. That is a governance protocol, and it is almost mundane, which is rather the point. What is new is that it can now run continuously, at a cost that lets a company adopt it rather than aspire to it. The Africa Tax Terminal is built to run it: advisor-first tax intelligence, grounded only in decided cases, statutes and revenue-authority notices, delivered as continuous exposure monitoring rather than a one-off review, with each health check certified by a named practitioner.

The control	The failure it answers	Run on the Terminal
A live position register	Exposures rediscovered only at audit	Surfaces and ranks tax exposures continuously, by sector
Evidence discipline	Missing documentation, in 47% of losses	Flags positions that lack support and holds each to its legal basis
The deadline clock	Objection or appeal filed out of time	Tracks statutory dates and raises them before they fall
Named ownership	The burden of proof left to no one in particular	Routes each issue to a named owner and records the decision
Board line of sight	Oversight that is periodic and, offshore, remote	Produces the quarterly report and annual attestation from the register

What it does

— Surfaces and ranks exposures continuously
— Ties each finding to primary authority
— Certifies findings through a named practitioner
— Keeps an audit-ready record of decisions

What it does not do

— Give legal advice or a formal opinion
— File returns, or replace your own controls
— Audit or verify the data provided to it
— Decide anything on a purely automated basis

Coverage is live in Kenya. Uganda and South Africa are in build, with further African markets to follow. The framework is the same in each; the record deepens market by market.

THE EVIDENCE

The cases behind the findings

The figures in this paper are not abstractions. Each rests on decided cases, read and coded in the knowledge base. A selection of the landmark decisions is set out below, with the tax in issue, the amount in dispute and what each one shows. Full citations are held in the Terminal.

Case	Tax & amount	Result	What it shows
Paleah Stores Ltd v Commissioner [2021] KETAT 161	VAT & CIT · KES 9.25bn	**Revenue**	The largest assessment in the record, upheld because the records were not there.
Hashi Energy Ltd (in liquidation) v Commissioner [2026]	Multi-head · KES 7.18bn	**Revenue**	Income taxed in Kenya because the business was managed and controlled from Kenya.
Wildlife Works Sanctuary Ltd v Commissioner [2025]	Transfer pricing · KES 6.89bn	**Taxpayer**	Transfer pricing is winnable where the arrangement is documented at arm's length.
Commissioner v Equity Bank (Kenya) Ltd [2023] KEHC 18721	Excise · KES 1.16bn	**Revenue**	Loan-related bank fees are excisable 'other fees', not interest.
Kenya Hospital Association (The Nairobi Hospital) v Commissioner [2024] KETAT 649	PAYE / WHT · KES 748.6m	**Taxpayer**	Locum doctors are independent contractors, so their pay bears withholding tax, not PAYE.
Seatide Logistics Ltd v KRA [2026] KETAT 213	CIT & VAT · KES 406m	**Revenue**	Upheld in full for want of documentary evidence; the burden of proof decided it.
Nyoro Construction Ltd v Commissioner [2026]	Multi-head · KES 211m	**Taxpayer**	Older years time-barred; the Revenue had over-reached.
Tristar Transport Ltd v Commissioner [2025] KETAT 446	Transfer pricing · KES 110.8m	**Revenue**	The Revenue's method imposed for want of contemporaneous documentation.
Commissioner v Airflo Ltd [2026] KECA 1378	VAT · KES 46m	**Taxpayer**	Court of Appeal: exported logistics services are zero-rated where consumed outside Kenya.
Osho Drapers Ltd v Commissioner [2022]–[2026]	Income tax	**Revenue**	The same documentary failure lost at the Tribunal, the High Court and the Court of Appeal.

Cases as recorded in the Africa Tax Terminal knowledge base. Amounts are the sums in dispute as reported in each decision.

METHOD & ABOUT

How this study was built

THE DATA, AND HOW WE READ IT

The findings come entirely from the Africa Tax Terminal knowledge base as it stood in late 2026: 6,000 indexed documents, of which 5,250 are decided Kenyan tax cases carrying a recorded outcome, 73,279 extracted rules and profiles for 1,353 adjudicators. Cases are classified by the tax in issue, the industry, the forum and the result. Outcome, rule and bench figures were computed directly across the record; the reasons for loss were identified by reading the case summaries for recurring themes.

WHAT THE FIGURES DO NOT CLAIM

They describe cases fought to a decision. Disputes settled at objection or in alternative dispute resolution are not in the record. Counts reflect both real activity and a record fuller toward the present; 2026 is a part-year. The reasons for loss are keyword-identified and directional. No individual adjudicator is named. The evidence is Kenyan; other markets are in build.

TARRA AGILITY AFRICA

A boutique international tax, legal and accounting practice, advising on ambitious investment into and within Africa. It acts for indigenous and foreign-owned businesses, and for private clients and their families, across the life of an investment. Its distinguishing feature is breadth under one roof. The Africa Tax Terminal is the firm's advisor-first intelligence layer, based in Nairobi and built for finance teams across Africa.

A NOTE ON ITS USE

This paper is written for general information and discussion. It is not legal or tax advice, and no step should be taken on it without advice on the particular facts.

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