



## HIGHLIGHTS

- Court of Appeal in Kenya clarifies that VAT is applicable to Commercial Property Transactions.
- Supreme Court in Kenya reaffirms its previous decision in on mandatory requirements of section 44 of the Banking Act on banking rates.
- Significant legislative amendments proposed to address Kenya' grey listing due to strategic deficiencies in combatting money laundering and terrorism financing.

### 1. VAT APPLICABLE ON COMMERCIAL PROPERTY TRANSACTIONS (SALES, LEASES ETC.)

**In a decision rendered on 21st March 2025, Kenya Revenue Authority v Ndegwa [2025] KECA 510 (KLR) the Court of Appeal clarified the application of value-added tax (VAT) to commercial property transactions.**

#### Background

The dispute revolved around the interpretation of Section 5 of the Value Added Tax (VAT) Act, 2013 as read with paragraph 8, Part II of the First Schedule of the Act which provide that "Supply by way of sale, renting, leasing, hiring, letting of land or residential premises" is VAT exempt. Specifically, the case questioned **whether VAT is chargeable on the sale of land, which has commercial premises erected thereon.**

The High Court had previously held that no VAT was chargeable on any land transactions, whether involving residential or commercial premises on the basis that the definition of "land" under the Constitution includes buildings. This decision was premised on the purchase of commercial property by David Ndegwa (Respondent). Mr Ndegwa paid VAT on the transaction but sought a refund from the Kenya Revenue Authority (KRA) claiming that VAT was not applicable.

Aggrieved by the High Court's decision, KRA filed an appeal before the Court of Appeal culminating in the March 21 decision.

## Findings

The Court of Appeal overturned the High Court ruling, agreeing with KRA that **VAT exemption only applies to land and residential premises, not commercial buildings**. The Court noted that the High Court had misapplied the Constitution's definition of land. It held that the definition of land in Article 260 of the Constitution applies only if the context permits and in the context of the VAT Act, the definition could not apply wholesomely.

The Court thus dismissed the refund claim confirming that VAT must be paid on commercial property transactions.

## Implications

- The decision has significant implications for buyers of commercial property, including mergers and acquisitions (M&A) transactions where the asset base is land upon which commercial premises has been constructed. Buyers acquiring commercial premises must factor in VAT costs, potentially affecting valuation, deal structuring and leading to higher tax liabilities.
- For M&A transactions, the buyers may wish to explore share purchases as opposed to asset purchases (where the underlying asset is commercial property) because share transactions do not attract VAT.
- This ruling is also likely to influence market trends with investors exploring property acquisitions with potential exemptions e.g., REITs.

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**VAT is chargeable on the sale or lease of commercial premises**

## 2. SUPREME COURT RULING ON SECTION 44 BANKING ACT

### **Stanbic Bank Kenya Limited v Santowels Limited (Petition (Application) E005 of 2023) [2025] KESC 3 (KLR) (14 March 2025)**

The Supreme Court has in a recent decision rendered on March 14, 2025 reaffirmed that banks must seek approval from the Cabinet Secretary responsible for Finance (the CS Finance) prior to increasing interest rates on loans and facilities.

The case revolved around whether banks require CS Finance approval before increasing interest rates on loans and financial facilities, as per Section 44 of the Banking Act or whether the approval can be granted by the Central Bank of Kenya (CBK) Governor in exercise of delegated responsibility.

## Background

The Supreme Court had previously ruled (on June 28, 2024) that banks must seek approval from the Cabinet Secretary for the National Treasury and Economic Planning before adjusting interest rates.

Stanbic Bank filed a review application, arguing that since 2003, the Governor of the Central Bank of Kenya (CBK) had been delegated this authority through legal and regulatory developments. Santowels Limited however argued that CS Finance approval remains the legal requirement under Section 44, even if CBK has some regulatory oversight.

## Findings

In its ruling, the Supreme Court dismissed Stanbic Bank's application for review and reaffirmed that the Cabinet Secretary retains ultimate authority, even if powers are delegated to the CBK Governor.

The Court noted that as the delegating authority, the CS Finance remains accountable for the outcome of the delegated power and the CS Finance can only donate his authority but not responsibility.

The ruling emphasized that delegation does not override statutory responsibilities, meaning banks must continue seeking Cabinet Secretary approval.

### Implications

- Previously, many banks have obtained rate change approvals directly from the CBK Governor. However, the import of this ruling is that approval must be sought from the CS Finance in compliance with the Banking Act. This necessitates an internal review of banks' practices regarding rate change approvals to align with the court's interpretation.
- This decision hopefully provide certainty and clarifies which entity is responsible for issuance of rate change approvals.



### 3. KENYA SUBJECT TO 10% RECIPROCAL TARIFF ON EXPORTS TO USA

President Donald Trump recently announced a 10% tariff on Kenya on all exports to the USA, with effect from April 9. The move was part of a trade policy overhaul announced by Trump targeting 185 countries.

The Trump administration has defended the decision citing trade imbalances, currency manipulation and restrictive trade barriers imposed by other countries.

The net effect of Trump's reciprocal tariff will have a major effect on Kenya's total trade with America, which stood at \$1.5 billion in 2024. Kenya exported goods worth \$737.3 million (Sh95.3 billion) to the U.S. in 2024, with majority of the exports being apparel, coffee and tea.

In response to the reciprocal tariff, the Government of Kenya has committed to working to expand production, improve infrastructure and technology, and invest in skills development to meet new demand.

Since May 2000, Kenya has been exempt from tariffs when exporting to the USA under the African Growth and Opportunity Act (AGOA), which expires this September.



## Implications

- The reciprocal tariff will impact Kenyan businesses exporting to the US, with the apparel industry being potentially the most impacted. The apparel industry significantly blossomed under the tax exemption provided by AGOA.
- However, the 10% tariff is lower than tariff hikes on some of Kenya's competitors, which could make Kenyan products more attractive to US buyers
- The imposition of these tariffs casts a shadow over the likelihood of AGOA's renewal upon expiry in September this year. This creates a difficulty for Kenyan exporters who have relied on AGOA's provisions.

## 4. AMENDMENTS TO THE ANTI-MONEY LAUNDERING LAW KENYA

The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025 was recently published with the aim of refining existing laws on anti-money laundering (AML) and countering the financing of terrorism (CFT) in Kenya.

The Bill updates multiple legal provisions to enhance regulatory oversight, enforcement mechanisms, and compliance requirements for reporting institutions.

The Bill is a response to technical compliance deficiencies identified arising from the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) rating and review by Financial Action Task Force (FATF). Notably, the FATF on February 23, 2024 grey-listed Kenya and placed it under increased monitoring due to gaps in the country's anti-money laundering and counter-terrorism financing framework.

Key highlights of the Bill include:

### Expanded scope:

- The Bill broadens definitions of key terms, including "dealer in precious stones or metals," ensuring that financial and non-financial entities involved in such trade fall under AML/CFT regulations.

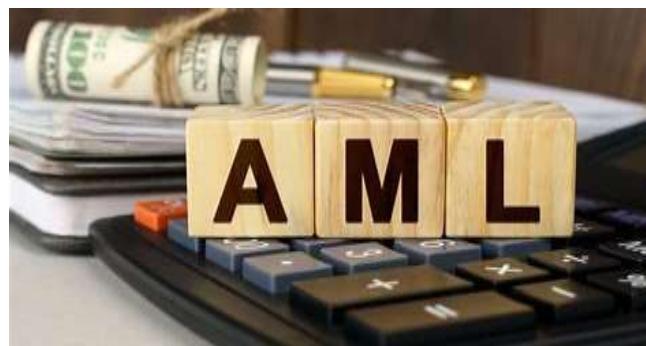
- The Bill also expands AML/CFT obligations to precious metal and stone dealers, betting companies, retirement benefits firms, mining businesses, and Sacco societies.

### Stricter compliance and penalties:

- Establishes higher penalties for non-compliance, including monetary fines and potential imprisonment.
- Reporting institutions that fail to meet AML/CFT obligations will be subject to stronger enforcement actions.

### Risk based supervision

- The Bill mandates the Financial Reporting Centre, supervisory bodies, and self-regulatory bodies to apply a risk-based approach to supervision, including implementation of risk-based monitoring strategies.



## Implications

- The proposed Bill is a notable attempt to strengthen Kenya's ability to meet global AML/CFT standards, aligning with international best practices.
- Once adopted, the Bill will expand AML/CFT obligations to entities such as Sacco societies and retirement benefit firms. These entities will need to introduce stricter Know Your Customer (KYC) requirements and conduct more frequent reporting of suspicious transactions to the FRC in order to comply with AML/CFT reporting requirements.
- With heavier penalties for non-compliance proposed under the Bill, financial institutions (e.g. banks) and Designated Non-Financial Businesses and Professions (e.g. accountants, NGOs and real estate agents) must adopt a stricter approach to their AML/CFT obligations.



## 5. PROPOSED GLOBAL SHIPPING LEVY

At recent international meetings of the UN's International Maritime Organization (IMO), a coalition of small island developing states from the Pacific, Caribbean and African regions proposed a shipping fuel levy as part of climate action to increase costs for polluting fuels and generate funds for climate projects.

Kenya and more than 60 other countries have expressed their support for this proposal. Climate change continues to threaten Kenyan ports with rising seas and stronger storms. For instance, the port of Mombasa has faced several flooding incidents which increasingly disrupt operations.

A final decision on the shipping levy is to be reached during IMO meetings in London this April.

### Implications

- The implementation of a global shipping levy is likely to increase shipping costs which could, in turn, drive up the prices of imported goods and ultimately lead to higher commodity prices for consumers.
- However, funds generated from the levy could be used to used to increase the climate resilience of Kenyan ports thus reducing disruptions from climate-related incidents, resulting in lower costs for businesses and more reliable delivery of essential imports.
- The funds could also be used to modernize Kenyan ports thus increasing their competitiveness and developing new maritime industries.
- The global shipping levy seeks to penalize pollution. This is an opportunity for Kenyan shipping companies to upgrade to cleaner vessels.

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