**Income Tax v T**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 10 January 1975

**Case Number:** 42/1974 (25/75)

**Before:** Spry Ag P, Law Ag V-P and Musoke JA

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**Appeal from:** High Court of Kenya – Harris, J

*[1] Judicial Precedent – Decision given per incuriam – Only when inconsistent statutory provision or*

*authority is ignored.*

*[2] Judicial Precedent – Full Bench – Application should be made for full Bench when Court asked to*

*overrule previous decision.*

*[3] Income Tax – Direction by Commissioner – Direction cannot stand if Commissioner influenced by*

*something which ought not to have been taken into account.*

*[4] Income Tax – Direction by Commissioner – No power exists to remit an assessment for*

*reconsideration – Income Tax Management Act* (*Cap.* 24), *ss.* 22, 103*.*

**Editor’s Summary**

In the High Court the respondent challenged directions made by the appellant under s. 22 of the Income Tax Management Act (Cap. 24). The direction dealt with four specified transactions. Among other findings the trial judge held that where some transactions did not fall within the section the direction was wholly void. On appeal, the appellant asked that *Income Tax v. Armstrong* (4) be not followed on the grounds that it was wrongly decided, given per incuriam, and was no longer an authority by reason of subsequent statutory changes. The appellant asked that the direction be upheld as to one settlement and the matter re-submitted to the Commissioner-General for reassessment.

**Held –**

(i) a decision is only per incuriam if it is given in ignorance or forgetfulness of some inconsistent

statutory provision or authority binding on it;

( ii) where the court is asked to reverse one of its own decisions a full bench should be asked for;

(iii) where the Commissioner-General has allowed himself to be influenced by something which ought

not to have been taken into account, a direction cannot stand (dictum of Newbold, J.A. in *Income*

*Tax v. Armstrong* (4) qualified);

(iv) *Income Tax v. Armstrong* (4) was rightly decided;

(v) the incorrect inclusion of the absolute settlement materially affected the direction;

(vi) no power existed to remit an assessment for reconsideration;

( vii) the court could not say that the Commissioner-General must have made a direction regarding the

second settlement had he not misdirected himself.

Appeal dismissed.

**Cases referred to Judgment:**

(1) *Morelle Ltd. v. Wakeling*, [1955] 1 All E.R. 708.

(2) *Lands Commissioner v. Bashir*, [1958] E.A. 45.

(3) *Kiriri Cotton Co. Ltd. v. Dewani*, [1958] E.A. 239.

(4) *Income Tax v. Armstrong*, [1963] E.A. 505.

[Decision of the High Court sub. nom. *T. v. Income Tax*, [1973] E.A. 397 upheld.]