

Case Name: *Kenya Aid Programme v Sheffield City Council* [2013] EWHC 54 (Admin) (22 January 2013)

Topic: Rates mitigation (charity occupation)

Full case: [click here](#)

Summary: Where a charity occupies part only of premises in respect of which 80% mandatory relief has been requested, this may be sufficient to be construed as wholly or mainly for charitable purposes, subject always to the use being within the objects of the charity. The court must decide the issue on a broad basis, having regard to the particular facts.

Commentary: This case involved an appeal from a decision of the Magistrates' Court to issue liability orders in respect of premises ("Unit 1" and "Unit 2") occupied by Kenya Aid Programme (KAP) under a lease, where applications for mandatory relief had been rejected. Under section 43 (6) of the Local Government Finance Act 1988 such relief must be granted where premises are wholly or mainly used for charitable purposes. It had been agreed between the parties that KAP was a registered charity and that it was in rateable occupation of the premises, so the dispute related to compliance or otherwise with the "wholly or mainly" criterion.

In the Scottish case of *English Speaking Union v City of Edinburgh Council* [2010] RA 227 (not binding on English courts but of persuasive authority) it had been decided that the court should look at the whole evidence before it and determine on a broad basis whether the property is wholly or mainly used for charitable purposes. This entailed a consideration of the extent of use, where only one floor was occupied in a building with 8 floors. For this reason, the Court decided against the ratepayer.

In *KAP* the Magistrates' Court had been unable to conclude that the premises were being used by them wholly or mainly for charitable purposes, as there was a marked absence of substantial use of the premises. As part of its consideration of the use of the premises, the Court took account of the inefficient use of the space, the existence of similar premises in the north of England occupied by KAP on a similar basis and the low volume of furniture shipped to Kenya.

The High Court confirmed that the extent of use was a relevant consideration but rejected as relevant factors (1) the inefficiency of the use; (2) the necessity of KAP to occupy both Units 1 and 2; and (3) the mutual advantage to KAP and its landlord of the receipt of the 80% relief. Taking these factors into account cast doubt on the Magistrates' Court decision and the High Court accordingly allowed KAP's appeal, quashing the original liability orders and remitting the case to the District Judge for further consideration.

This is one of a number of cases concerning the interpretation of "wholly or mainly for charitable purposes". You are also referred to *Public Safety Charitable Trust* (Bluetooth transmitters), *Digital Pipeline* (IT equipment to Africa) and *My Community Space* (exhibitions of volunteering opportunities), which in broad terms reinforce the approach taken in *English Speaking Union*.