



**Muremba Mines Ltd v Commissioner of Domestic Taxes (Income Tax Appeal E099 of 2023)  
[2024] KEHC 10212 (KLR) (Commercial and Tax) (16 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10212 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E099 OF 2023**

**A MABEYA, J**

**AUGUST 16, 2024**

**BETWEEN**

**MUREMBA MINES LTD ..... APPELLANT**

**AND**

**COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT**

**JUDGMENT**

1. This appeal seeks to overturn the decision of the Tax Appeals Tribunal “the Tribunal” made on 29/6/2023. The background to this appeal is that the respondent assessed the affairs of the appellant and gave an assessment on 14/1/2021.
2. The appellant filed a notice of objection to which the respondent issued his objection decision on 3/8/2022. The appellant failed to appeal on time but then filed an application for extension of time to lodge an appeal at the Tribunal on the grounds that the respondent had served it using an email that belonged to a former employer. The Tribunal dismissed the application and held in favour of the respondent.
3. Dis-satisfied with that decision, the appellant filed the present appeal vide a memorandum of appeal dated 7/7/2023. The appeal was premised on 9 grounds which can be summarized into 3 as follows: -
  - a. That the Tribunal erred in fact and in law in dismissing the application for enlargement of time by holding that the appellant did not provide reasonable cause and by denying the appellant its right to prosecute the appeal.
  - b. That the Tribunal erred in law and fact in failing to find that there was no inordinate delay in bringing the application and wrongfully exercising its discretion.



- c. That the Tribunal erred in focusing in procedural technicalities and failed to consider the appellant's submissions and responses.
4. On the foregoing grounds, the appellant sought to have the appeal allowed and the ruling of the Tribunal be set aside.
  5. In opposition to the appeal, the respondent filed a statement of facts dated 19/9/2023. He contended that the appellant had failed to appeal against the decision of the Tax Appeals Tribunal within 30 days as prescribed by the law. That the delay of 7 months was inordinate and inexcusable and no credible reason had been advanced by the appellant. That the email address he used to communicate to the appellant was the registered email of the appellant on ITAX.
  6. The appeal was canvassed by way of written submissions which I have considered. The appellant submitted that the Tribunal erred in disregarding the evidence provided by the appellant. That the delay had been occasioned by the service of the objection decision to one of the appellant's former employees who had since left employment of the appellant. That the Tribunal's decision contravened the appellants right to a fair hearing.
  7. For the respondent, it was submitted that the extension of time to file an appeal was conditional upon demonstration that the appellant had reasonable grounds. That the delay of 7 months without explanation was inordinate and the appellant failed to convince the Tribunal. That the appellant had raised new issues at the submission stage and the same was meant to mislead the Court.
  8. I have considered the record and the submissions. From the grounds of appeal, the main issue for determination is whether the Tribunal erred in dismissing the application for enlargement of time.
  9. As already stated, the appellant had delayed in preferring an appeal against the respondent's objection decision. It therefore applied for enlargement of time to file an appeal against that objection decision. The appellant argued that it did not receive the objection decision since the same was communicated through an email that belonged to its former employee and as a result it was unable to file the appeal on time.
  10. The Tribunal's jurisdiction for extension of time to file an appeal out of time is found in section 13 of the *Tax Appeals Tribunal Act* which provides: -
    - “ 3) The Tribunal may, upon application in writing, extend the time for submitting the documents referred in subsection (2).
    - 4) An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from giving notice of appeal within the specified period.”
  11. Section 51(12) of the *Tax Procedure Act* is clear that the time limit for preferring an appeal to the Tribunal is 30 days upon receipt of the objection decision. It provides that: -

“ A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.”
  12. The power to extend time to file an appeal out of time is discretionary upon consideration of several factors. The Supreme Court, in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and*



*Boundaries Commission & 7 others* [2014] e KLR, set out some broad considerations that should guide a court in exercising its discretion in cases of this nature. It stated: -

- “i) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- ii) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii) Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- v) Whether there will be any prejudice suffered by the respondents if the extension is granted;
- vi) Whether the application has been brought without undue delay; and
- vii) Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

13. In the present case, the Tribunal had the discretion to extend the time sought. However, the burden of proof was upon the appellant to demonstrate to the Tribunal that; either its directors were sick, or were outside the court’s jurisdiction or provide any reasonable cause for the failure to appeal within time.
14. I have examined the record and the appellant’ reasons for the delay. I note from the documents in the online platform (cts), that the email address provided as belonging to the applicant is the same email address used by the respondent to communicate the objection decision.
15. The appellant attached a letter dated 1/4/2020 terminating the alleged employee, one Gladys from employment. The Court notes that the appellant still continued to use the said email in the objection application filed two years later.
16. No explanation was given as to why the appellant did not change the contact information upon dismissal. The Court finds that there was no basis to fault the Tribunal in exercising its discretion. The reasons advanced by the appellant were not sufficient. Further, the Tribunal cannot be faulted in its finding that the delay of 7 months was inordinate.
17. Further, without satisfactory evidence to explain the delay, the Tribunal cannot be faulted for failure to exercise its discretion in favor of the appellant. It cannot be said that the Tribunal contravened the appellant’s right to fair hearing as contended.
18. Accordingly, I find no merit in the appeal and the same is dismissed with costs. The decision of the Tribunal dated 29/6/2023 is hereby upheld.

It is so decreed.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF AUGUST, 2024.**

**A. MABEYA, FCI Arb**

**JUDGE**

