



Central Kenya Coffee Mill Limited v Commissioner of Domestic Taxes (Income Tax Appeal E048 of 2022) [2023] KEHC 4020 (KLR) (Commercial and Tax) (28 April 2023) (Judgment)

Neutral citation: [2023] KEHC 4020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E048 OF 2022
JWW MONG'ARE, J
APRIL 28, 2023**

BETWEEN

CENTRAL KENYA COFFEE MILL LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

(Appeal from part of the Judgment & Orders of the Tax Appeals Tribunal date 25/3/2022)

JUDGMENT

1. The Appeal before this court has been brought against a decision of the Tax Appeal Tribunal (hereinafter referred to as "Tribunal,") by the Appellant, Ms. Central Coffee Mill Limited, a limited liability company, duly incorporated in Kenya, against the Commissioner of Domestic taxes to challenge the decision of the Tribunal in TAT Appeal Number 205 of 2021 issued on March 25, 2022.
2. The Appellant is a limited liability company registered in Kenya whose principal activity is as a licensed commercial coffee miller and the Respondent is a principal officer of the Kenya Revenue Authority with the mandate to assess and collect revenue on behalf of the Government of Kenya.
3. The dispute at the Tribunal arose as a result of letter by the Respondents issued on January 20, 2021, to the Appellant demanding a total of Ksh 60,664,111.00/- from the Appellant as VAT together with accrued interest for the period between 2016-2019.
4. Subsequently and on February 8, 2021, the Appellant objected to the demand letter on the grounds that the services it rendered to its overseas clients were not chargeable to VAT. In response, the Respondent issued an objection decision dated 29/3/2021.



5. Aggrieved by the decision, the Appellant filed an appeal before the Tribunal vide a Notice of Appeal dated 20/4/2021. The Tribunal heard and determined the appeal and rendered its decision vide a judgment dated 25/3/2022.
6. The Appellant being dissatisfied with the judgment of the Tribunal appealed against part of the said judgment on the following grounds:
 1. The Tribunal erred in law and in fact by referring the matter back to the objection stage when it had decisively found that there was no objection decision issued in accordance with the law.
 2. The Tribunal erred in law and in fact by impugning the Appellants objection notice when no such prayer had been sought and no such issue was before the Tribunal.
7. Based on the grounds above, the Appellant prayed for orders that the appeal be allowed and part of the Tribunal's judgment referring the matter back to the objection stage be set aside and the Appellant's objection notice dated February 8, 2021 be allowed in entirety by operation of the law.
8. The Respondent filed statement of facts dated September 2, 2022 in opposition to the appeal.
9. The Appellant contended that the Tribunal acted outside the parameters of the law by remitting the matter to objection stage for compliance with section 51 of the *Tax Procedures Act* 2015 (TPA); that the Tribunal made a finding that the notice of objection was defective hence the Appellant was allowed to provide the required documents and that the Tribunal correctly made a finding that there was no validly lodged objection with supporting documents capable of being allowed and correctly referred the matter to the objection stage.
10. The Respondent further argued that the Tribunal was obligated to look at the notice of objection before it would deem it allowed, in doing so the Tribunal correctly made a finding that it did not comply with section 51(3) of the *Tax Procedure Act, 2015*.
11. Thus, the Respondent prayed to have the appeal dismissed and to have the Tribunal's judgment dated March 25, 2022 upheld.
12. I have carefully analysed and considered the pleadings, the submissions and the authorities submitted in this appeal.
13. The grounds of appeal raised herein can be condensed to the issue of whether the Tribunal erred in law and in fact in referring the matter back to the objection stage.
14. I noted that the Tribunal, in its judgment, ordered the parties to be remitted back to the objection stage for compliance with section 51 of the *TPA* in order for a valid objection notice and a valid objection decision to be made.
15. The reasoning behind this decision was that the Respondent's objection decision of 29/3/2021 did not qualify as an objection decision as envisioned in section 51(10) of the *TPA* as the Respondent did not give a sufficient notification to the taxpayer of any invalidity in the objection notice prior to issuing the objection decision. Further that the Respondent did not indicate the material facts and reasons for the decision in the objection decision contrary to Section 51(10) of the *TPA*.
16. On this issue, the Appellant submitted that the Tribunal, erred in law and fact in referring the dispute back to the objection stage when it had substantively made a determination that there was no objection decision. The Appellant argued that instead the Tribunal ought to have applied the provisions of section 51(11) of the *TPA* by deeming the notice of objection as allowed by operation of the law and not refer the matter back to the objection stage.



17. On its part, the Respondent submitted that the Tribunal acted within the law by remitting the matter to the objection stage for compliance with section 51 of the TPA.
18. Section 29(3) of the Tax Appeals Tribunal Act states:
- “The Tribunal shall make a decision in writing or through electronic means—
- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and either—
- (i) making a decision in substitution for the decision so set aside; or
- (ii) referring the matter to the Commissioner for reconsideration in accordance with any directions or recommendations of the Tribunal.”
19. My understanding of the provision above is that the Tribunal may make a decision setting aside an objection decision and may refer the matter back to the Commissioner for reconsideration.
20. To my mind, I find that the Tribunal correctly interpreted the above legal provision in its final orders of sending the parties back to the objection stage for compliance with Section 51 of the TPA and allow a valid objection notice and a valid objection decision to be made.
21. The contention by the Appellant that the Tribunal erred in impugning the Appellant’s objection notice when no such prayer had been sought and no such issue was before the Tribunal, I find that the notice of objection having been part of the documents submitted to it during the hearing of the appeal before it, therefore the Tribunal had to consider all the documents before it. I agree with the Respondent in that the Tribunal correctly made a finding that the notice of objection did not comply with section 53 of the TPA even though this was not an order sought in the appeal before it.
22. The upshot of the above finding is that this appeal lacks merit and it is dismissed with costs awarded to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF APRIL 2023.

J. W. W. MONG'ARE

JUDGE

In The Presence Of:-

Ms. Maina holding brief for Wakwaya for the Appellant

Mr. Wairire for the Respondent.

Sylvia- Court Assistant

