



**Ndirangu t/a Ndirangu Hardware v Commissioner of Domestic Taxes (Tax Appeal E070 of 2021) [2023] KEHC 19357 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19357 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**TAX APPEAL E070 OF 2021**  
**DAS MAJANJA, J**  
**JUNE 30, 2023**

**BETWEEN**  
**JOSEPH MURIITHI NDIRANGU T/A NDIRANGU HARDWARE APPELLANT**  
**AND**  
**COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT**

*(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 28th May 2021 in Tax Appeal No.202 of 2018)*

**JUDGMENT**

**Introduction and Background**

1. Before the court for determination is an appeal by the Appellant against the decision of Tax Appeals Tribunal (“the Tribunal”) dated May 28, 2021 where the Tribunal dismissed the Appellant’s appeal and affirmed the Respondent’s (“the Commissioner”) Objection Decision dated April 12, 2018 (“the Objection Decision”) where the Commissioner had raised additional assessments in the sum of Kshs 8,532,219.63 in respect of VAT for the period November 2015 – December 2016.
2. The background leading to the appeal before the Tribunal and now to the court can be gleaned from the record. Sometime in 2018, the Commissioner stated that it had conducted a verification exercise of the Appellant’s VAT declarations and noted that the Appellant had made some vatable supplies to the Kenya Forestry Services (KFS) in the year 2015 and there had been no evidence of him having declared the VAT charged on the supplies in his VAT returns for the period of interest. In its letter of February 12, 2018, which served as a demand notice, the Commissioner stated that a variance was observed between the Appellant’s declarations for VAT versus income tax for the years, suggesting that the Appellant under declared his sales for VAT during the two years of interest. Consequently, the Commissioner issued additional assessments amounting to Kshs 8,576,321.00 and demanded the same from the Appellant.



3. On February 14, 2018, the Appellant objected to the assessments via iTax by stating that they were erroneous as there was no reason for disregarding his purchases which he had claimed within the stipulated time and that no scrutiny was done on the invoices claimed. He further stated that he declared total sales for the period. After reviewing the objection, the Commissioner rejected the objection through the Objection Decision. In its internal review, the Commissioner stated that the Appellant had failed to produce necessary documents to prove his objection claim.
4. The Appellant filed an appeal with the Tribunal against the Objection Decision. The Tribunal rendered its judgment on May 28, 2021 dismissing the appeal and upholding the Objection Decision. It identified two issues for determination; whether the Objection Decision was valid and whether the additional assessments were properly raised. On the validity of the Objection Decision, the Tribunal observed that the Appellant objected to the assessments on February 14, 2018 and the Objection Decision was made on 1April 2, 2018 which was within the sixty-day period stipulated in the law and was accordingly valid.
5. On the additional assessments, the Tribunal agreed with the Commissioner that the Appellant’s claims and averments were not supported by any evidence and that the onus of proving that the assessments were erroneous was upon the Appellant in accordance with section 56(1) of the [Tax Procedures Act, 2015](#) (“the TPA”). That in the absence of such proof, the Commissioner was within law to raise the additional assessments to the best of its ability as authorised by sections 31(1) (c) and the [TPA](#).
6. The Appellant is dissatisfied with the Tribunal’s decision and has appealed based on the grounds set out in the Petition of Appeal dated June 7, 2021. The Commissioner has filed its Statement of Facts dated December 6, 2021. Both parties have filed written submissions.

### **Analysis and Determination**

7. Even though the Appellant raises 12 grounds in its Petition of Appeal, the issues raised are like those determined by the Tribunal in its judgement. It is therefore the duty of the court to decide whether the Tribunal was right and that its decision was supported by the evidence on record. In doing so, the court is aware that its jurisdiction is circumscribed by section 56(2) of the [TPA](#) which provides that “An appeal to the High Court or to the Court of Appeal shall be on a question of law only”. This means that this court is not permitted to substitute the Tribunal’s decision with its own conclusions based on its own analysis and appreciation of the facts but must nevertheless satisfy itself that the conclusions reached by the Tribunal are supported by the evidence on record and are not perverse (see [John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others](#) [2018] eKLR)
8. The Appellant raised the issue that the Objection Decision was not valid as there was no objection decision in the first place given to the Appellant as required by the [TPA](#) and that what was taken as an objection decision was a confirmation of assessment document served on the Appellant without any Tax decision as required by the [TPA](#). The Appellant also argued that the Objection Decision was issued after sixty days contrary to section 51(11) of the [TPA](#) which provides that “Where the Commissioner has not made an objection decision within sixty days from the date that the taxpayer lodged a notice of the objection, the objection shall be allowed.”
9. It is not disputed that the Appellant lodged its objection on February 14, 2018 which meant the Commissioner had sixty days from that date to render an objection decision which was to be made latest by April 14, 2018. Even though the Appellant claims that there was no objection decision per se, the record indicates that there is a document titled “objection decision” that is dated April 12, 2018 by the Commissioner. I therefore agree with the Tribunal’s conclusion that this document was the



Objection Decision and that having been made on April 12, 2018, was within the statutory timeline provided for under section 51(11) of the [TPA](#).

10. The Appellant contends that the Objection Decision was not adequate in that it did not address any of the issues in the objection but rejected them without any reasons. Section 51(10) of the [TPA](#) provides that “An objection decision shall include a statement of findings on the material facts and the reasons for the decision”. In the Objection Decision the Commissioner stated as follows:

Dear Sir/Madam,

With reference to your objection decision to the assessments dated February 12, 2018 made upon you for VAT-Nov 2015 & Dec 2016, we hereby give you notice that the assessment is confirmed as we are not prepared to amend in accordance with your objection.

signed

Station Manager – Nakuru Station

11. From the above, the Commissioner rejects the objection but does not give any reasons for rejecting the objection. It does not state why it was not prepared to amend the assessment. The Appellant was not informed why his objection was rejected and why the Commissioner was “not prepared to amend in accordance with your objection”. The requirement under section 51(10) above for an objection decision to give reasons is couched in mandatory terms and thus, I agree with the Appellant that the said Objection Decision was inadequate and did not amount to an objection decision as contemplated by the law (see [Total Kenya Ltd v Kenya Revenue Authority; Barclays Bank of Kenya Ltd & 2 Others \(interested parties\)](#) ML HC C&HR Pet No 474 of 2019 [2020]eKLR).

12. The duty to give reasons is not a trifling requirement. It is a constitutional mandate embedded in the right to fair administrative action guaranteed by Article 47 of [the Constitution](#) which provides, in part, that,

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- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

13. These provisions together with those of the [Fair Administrative Action Act, 2015](#) were given judicial imprimatur in [Suchan Investment Limited v Ministry of National Heritage and Culture and 3 Others](#) NRB CA Civil Appeal No 48 of 2012 [2016] as follows:

- (45) Under Article 47 (2) of [the Constitution](#) as read with the provisions of the Fair Administrative Actions Act of 2015, the common law position that there is no duty to give reasons for administrative decision is no longer a general principle of law in Kenya. A shift has taken place and there is requirement to give reasons for administrative decisions. (See also Section 45 (2) (a) and (b) of the [Employment Act](#) No 11 of 2007). In [Judicial Service Commission -v- Hon. Justice Mutava Mbalu](#), Civil Appeal No 52 of 2014, Githinji JA in considering the duty to give reasons for administrative action in light of Article 47 (2) of [the Constitution](#) expressed that reasons for decision should be given as a matter of right where a right under the Bill of Rights has been or is likely to be adversely affected by the administrative action and not otherwise;



that the right to be given written reasons for the decision can be limited by law for a reasonable and justifiable cause.

14. In *PZ Cussons East Africa Limited v Kenya Revenue Authority* ML HC C&HR No No 309 of 2012 [2013] eKLR, the court noted and considered the effect of failure to give written reasons:

[10] I agree with the KRA that the burden would be upon the Company to show that the amounts taxed was excessive. But to that extent only. It was necessary and indeed in regard to reasonable administrative action to detail how it came to its decision contained in the letter of June 29, 2012 so as to enable the company, if it so wished, to mount challenge if it so wished. The duty to give reasons is now embedded in Article 47(2). I therefore find and hold that the failure by KRA to give information as to how it arrived on the amount was unreasonable.

15. For the reasons I have set out I hold that in as much as the Objection Decision was valid as it was made in time, it was inadequate for not providing written reasons for the decision hence it is null and void. This duty to give written reasons is a mandatory requirement that is rooted in the *Constitution* and cannot be sidestepped hence the Objection Decision is set aside for that reason.

16. The appeal is allowed. The Judgment of the Tribunal be and is hereby set aside with the effect that the Objection Decision is also set aside. The result is that the Appellant's objection to the assessment is allowed.

17. There shall be no order as to costs.

**SIGNED AT LONDON, ENGLAND**

**D. S. MAJANJA**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2023.**

**F. MUGAMBI**

**JUDGE**

