



**Mungania Tea Factory Company Limited & another v
Commissioner of Domestic Taxes (Income Tax Appeal 13 of 2018)
[2022] KEHC 122 (KLR) (Commercial and Tax) (18 February 2022) (Ruling)**

Neutral citation: [2022] KEHC 122 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL 13 OF 2018
A MSHILA, J
FEBRUARY 18, 2022**

BETWEEN

MUNGANIA TEA FACTORY COMPANY LIMITED 1ST APPLICANT

KTDA MANAGEMENT SERVICES LIMITED 2ND APPLICANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

RULING

1. The Applicant filed a Notice of Motion Application dated 26th February 2020 under the provisions of Sections 1A, 1B and 80 of the *Civil Procedure Act*, Order 45 Rule 1(1), 2(1), Order 51 Rule 1 of the *Civil Procedure Rules*; the applicant seeks orders that;
 - a. The judgment delivered on 30th January 2020 be reviewed and rectified as hereunder:
 - i. Paragraph 51 of the aforesaid judgment, line 9 thereof be reviewed and rectified to read “the decision of the Tribunal dated 27th March 2018 is hereby set aside and the Respondent’s tax assessment of Kshs.603, 968,757 is hereby quashed.”
2. The Application was supported by the grounds on the face of it and by the sworn Affidavit of Dr. John Kennedy Omanga dated 26th February 2020 who stated that; the Court after hearing the parties on the Appeal as filed by the Appellants herein, found the Appellants’ Appeal meritorious and allowed the same.
3. The Court in allowing the Appellants’ Appeal, inadvertently indicated that it had set aside the “Tribunal decision dated 23rd June 2015 and quashed the Respondent’s demand of Kshs.13, 323, 420.73”. However, the Tribunal’s decision was dated 27th March 2018 while the total Respondent’s



tax assessment for all the Appellants herein in the consolidated Appeal was in the sum of Kshs.603, 968, 757.

4. The mistake indicating the date of the Tax Appeal Tribunal Decision as 23rd June, 2015 as opposed to 27th March, 2018 and the Respondent's demand of Kshs. 13, 323, 420.73 as opposed to the sum of Kshs.603, 968, 757 is an error apparent on the face of the Court record. Indeed, the said correct dates and amounts had been aptly cited by the Court at page 1 of the subject judgment.

APPLICANT'S CASE

5. The Applicant submitted that it had satisfied the condition precedent for review of the judgment dated 30th January 2020 as provided under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules.
6. That there was an error apparent on the face of the Court record and the Applicant relied on the case of *Zablon Mokuva versus Solomon M. Choti & 3 Others* [2016] eKLR.
7. The Applicant also stated that the Application was unopposed.

ISSUES FOR DETERMINATION

8. The Court has considered the court record, the application and the written submission filed therein by the Applicant and has framed only one issue for determination;
 - a. Whether the Applicant has satisfied the condition for the grant of the order for review of error apparent on the face of the record?

ANALYSIS

9. On 1st November 2021, both counsels for the respective parties appeared in court and confirmed that the present application is unopposed and informed the Court that there was an error in the wording of the Judgment dated 30th January 2020.
10. The applicable law for review is found under the provisions of Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules which provide as follows: -

Section 80. Review

“Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

11. Order 45, Rule 1 reads as follows - Application for review of decree or order.

“1.

(1) Any person considering himself aggrieved—

- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account



of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

12. The error apparent on the face of the record in the present Application arises from the judgment of Hon Justice R. Limo dated 30th January 2020. The judgment reads in part as follows;

“.....The decision of the Tribunal dated 23rd June 2015 is hereby set aside and the Respondent’s demand of Kshs.13, 323,420.73 is hereby quashed.....”

13. The mistake indicates the date of the Tax Appeal Tribunal Decision as 23rd June 2015 as opposed to the 27th March 2018 and the Respondent’s demand is stated as Kshs.13, 323, 420.73 as opposed to being an assessment of Kshs.603, 968, 757 which when cross referenced with the judgment of the Tribunal found at pages 132-161 of the Supplementary Record of Appeal is indeed found to be an error as the said judgment is found to be dated 27th March 2018.

14. Secondly, on the issue of the figures, in the judgment of Hon. Justice Limo, dated 30th January 2020 at page 1 of the said judgment it is stated as follows;

“MUNGANIA TEA FACTORY LTD and KTDA MANAGEMENT SERVICES LTD, the 1st and 2nd Appellants respectively were dissatisfied with the decision of the Tax Appeal Tribunal delivered on 27th March 2018 vide Appeal No. 191 of 2015. In that Appeal, the Appellants had sought an appeal against the Commissioner of Domestic Taxes, the Respondent, (also the Respondent herein) for its assessment of Kshs.603, 968,757 for the audit period of 2008-2014 years of income.”

15. As rightly pointed out by the Applicant, the amount contested was the Respondent’s assessment of Kshs.603, 968,757 for the audit period of 2008-2014 years of income. The amount of Kshs.13, 323, 420.73 was the assessment done on 15th April 2015 as evidenced in the judgment of the Tax Appeals Tribunal and was not the sum for the audit period of 2008-2014 years of income.

16. In addition, this court in writing its judgment took cognizance of the right amount of Kshs.603, 968,757 in its summary of the facts of the case.

17. In *Chandrakhant Joshibhai Patel -v- R* [2004] TLR, 218 it had been held that an error stated to be apparent on the face of the record:

“...must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long drawn process of reading on points on which may be conceivably be two opinions.”

18. In *Paul Mwaniki vs. National Hospital Insurance Fund Board of Management* [2020] eKLR, it was said:

“ 37. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules



and Section 80 of the Act. Put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

19. In the instant case, the error is self-evident on the face of the record itself as shown in the extract of the judgment. The error is one that can be seen clearly and should be corrected to capture the right judgment of the court.
20. It is noteworthy that the present application was brought without unreasonable delay and without opposition.
21. This court is satisfied that the application is merited as the Applicant has demonstrated that there was an error apparent on face of the record in the impugned judgement.

FINDINGS AND DETERMINATION

22. For the forgoing reasons this court makes the following findings and determinations;
 - (i) The application seeking review of the judgment delivered on 30/01/2020 is found to have merit and it is hereby allowed.
 - (ii) The error at paragraph 51 of the judgment is hereby rectified to read ‘the decision of the Tribunal dated 27th March, 2018 is hereby set aside and the Respondent’s tax assessment of Kshs.603,968,757/- is hereby quashed.’
 - (iii) Each party shall bear their own costs

Orders Accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 18TH DAY OF FEBRUARY, 2022.

HON. A. MSHILA

JUDGE

In the presence of;

Nyamweya holding brief for Milimo for the Applicant

No appearance for Marigi for the Respondent

