



**Commissioner of Legal Services and Board Coordination v Metropolitan
Cannon General Insurance Limited (Sued as the Successor in Title of
Cannon General Insurance (K) Limited) (Income Tax Appeal E179 of 2023)
[2025] KEHC 1529 (KLR) (Commercial and Tax) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E179 OF 2023
BM MUSYOKI, J
FEBRUARY 14, 2025**

BETWEEN

**THE COMMISSIONER OF LEGAL SERVICES AND BOARD
COORDINATION APPELLANT**

AND

**METROPOLITAN CANNON GENERAL INSURANCE
LIMITED RESPONDENT
SUED AS THE SUCCESSOR IN TITLE OF CANNON GENERAL INSURANCE
(K) LIMITED**

*(Being an appeal against part of the judgment of the Tax Appeals
Tribunal in its appeal number 637 of 2022 dated 8-09-2023)*

JUDGMENT

1. Section 19(5) of the [Income Tax Act](#) provides as follows;

‘The gains or profits for a year of income from the long term insurance business of a resident insurance company, whether mutual or proprietary, shall be the sum of the following–

- a. the amount of actuarial surplus, as determined under the [Insurance Act](#) and recommended by the actuary to be transferred from the life fund for the benefit of shareholders;
- b. any other amounts transferred from the life fund for the benefit of shareholders; and



- c. thirty per centum of management expenses and commissions that are in excess of the maximum amounts allowed by the *Insurance Act* (Cap. 487)(5A).’
2. In my considered view, this appeal is about the interpretation of Subsection 19(5)(b) of the *Income Tax Act*.
3. The undisputed background of this matter is that Cannon Assurance Limited transferred its long-term insurance business to Metropolitan Cannon General Insurance (K) Limited both of which were under common control and similar shareholding. Among the assets so transferred was Kshs 189,172,000.00 which was described as statutory reserve for life insurance business. The appellant took position that this amount was subject to corporate tax under the above stated Section while the respondent maintained that the same was not subject to the said tax. And that to me is the only contention in this appeal.
4. The respondent has submitted that the transfer of the said amount was not for the benefit of the shareholder but compliance to a statutory requirement. On this issue, the tribunal in the appealed judgement held as follows;

‘The tribunal noted from the foregoing correspondence between the appellant and IRA as well as between the appellant and the National Treasury, the transfer of assets by CAL to MCLA was purely on the basis of recommendation and guidance by the IRA that composite insurance business should separate their life assurance business from their general assurance.’

5. What the tribunal was saying in the above cited part is that, there was no gain or benefit in the transfer but a procedural compliance with a statutory requirement. In my understanding, the appellant cannot and could not impose tax on a transaction that does not amount to an income, profit or benefit. For a taxpayer to be justifiably taxed, there must be an accruing benefit, profit or income.
6. It would appear to me that the difficulty here is in understanding what the word ‘benefit’ means in the context of the taxation laws and specifically Section 19(5)(d) of the *Income Tax Act* where it talks of ‘for the benefit of shareholders.’ As far as I understand company law, shareholders are the owners of the company but the two are distinct. The shareholders have no control over the day to day running of the company and they derive benefits from the company in form of dividends or other income emanating therefrom as declared by the board of directors. In this context, for any funds to be said to be to benefit of the shareholders, there must be clear flow of the benefits from the company to the shareholders. I do not think that this was the position for the funds in question. In *Anil Walia v Vijay Vir Singh & Another* (2010) KEHC 2150 (KLR) it was held that;

‘It is a basic principle of company law that the company has a distinct and separate legal personality from its shareholders and directors even where the directors happen to be the sole shareholders. Apart from their shares, shareholders have no proprietary interest in the company’s assets.’

7. Similarly, in *Gitobu Imanyara & 2 Others v Attorney General* (2016) KECA 557 (KLR) the Court of Appeal reiterated the position by holding that;

‘From the above findings, we have no hesitation but to agree with submissions by Mr. Onyiso and we reiterate that it is settled law that a company is a separate legal entity from its owners and has a right to sue and be sued as a separate and distinct personality. It is a principle enunciated in the age old case of *Salomon* (supra), the law does not allow



the shareholder of a company to bring an action for losses and damages suffered by the company.’

8. In tandem with the above legal position, it is my finding that the transfer of Kshs 189,172,000.00 could not have been for the benefit of the respondent’s shareholders. The same was a transfer to the company for the ordinary course of its business and in compliance with statutory and regulatory requirements and I do not hesitate to agree with the tribunal that the appellant was wrong in subjecting the same to taxation under Section 19(5)(b) of the *Income Tax Act*.
9. In the case before the tribunal, the funds in question were transferred from Cannon Assurance Company Limited to Metropolitan Cannon General Insurance Limited to meet a statutory requirement which went through approvals by the regulatory authorities. In fact, the funds were reserve for protection of policyholders or the respondent’s customers and not for the benefit of the shareholders or even the company. In other words, these are funds which must remain as a reserve in the respondent’s account and cannot be appropriated to the shareholders. To state that funds transfer was for the benefit of shareholders is giving a too narrow statutory interpretation to that Section. The appellant should have demonstrated that the said transfer directly or ultimately benefited the shareholders and not the company.
10. This court has taken note that the tribunal cited Section 22 of the *Income Tax Act* which states that;

‘No gain or loss shall be included in the computation of income under section 3(2)(f) in the case of a transfer of property that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, where such transfer is–

 - a. a legal or regulatory requirement;
 - b. as a result of a directive or compulsory acquisition by the government;
 - c. an internal restructuring which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months; or
 - d. in the public interest and approved by the Cabinet Secretary.
11. After citing the above paragraph, the tribunal held that;

‘The tribunal is persuaded, on the basis of the documents adduced by the appellant in its pleadings, and the provisions of the law stated in the foregoing analysis, that the transfer of the appellant’s life assurance business did not constitute a sale or transfer of assets on consideration that would trigger an income tax obligation as per Section 19(5) of the *Income Tax Act*. Specifically, the transaction under dispute was not undertaken for the benefit of shareholders. It was undertaken due to a requirement by the IRA which the appellant complied with’.
12. Both parties have not addressed me on this part which I find to be very relevant to this appeal. I do not see any other interpretation of this Section other than that the transfer was not taxable. The tribunal was right in holding as it did above.
13. Further, I do note that there was an application for exemption from capital gain tax which obviously means that the transfer attracted tax as a transfer of property in a transaction would. This means that it was a transfer of a capital asset just like land would be where the seller pays the capital gain tax whereas the buyer pays stamp duty. I do not think there would be a scenario where the parties to such



transaction pay the mentioned taxes then in addition pay income tax. That in my view would amount to double taxation in respect of the same transaction.

14. From the above analysis, it is my holding that this appeal lacks merits and I proceed to dismiss it with costs to the respondent.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Chelangat for the appellant and Mr. Bosire Nyamori for the respondent.

