



Chromawave Enterprises Limited v Commissioner of Domestic Taxes (Miscellaneous Civil Case E082 of 2024) [2025] KEHC 3513 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL CASE E082 OF 2024
MA ODERO, J
MARCH 21, 2025**

BETWEEN

CHROMAWAVE ENTERPRISES LIMITED APPLICANT

AND

THE COMMISSIONER OF DOMESTIC TAXES RESPONDENT

RULING

1. Before this Court for determination is the Notice of Motion application dated 8th August 2024 by which the Applicant Chromawave Enterprises Limited seeks the following orders;-
 - “ 1. That the Honourable Court be pleased to grant the Applicant leave to lodge an Appeal against the judgment in Tax Appeals Tribunal, Tax Appeal No. 1176 of 2022 delivered at Nairobi on 26th January, 2024 out of time.
 2. That the Honourable Court be pleased to refer this matter to the Respondents Alternative Dispute Resolution Department for amicable settlement.
 3. That the costs of this Application be provided for”
2. The application was premised upon Section 32 of the *Tax Appeals Tribunal Act*, Rule 4 of the Tax Appeals Tribunal/Appeals to the High Court Rules 2015, Section 53 and 55 of the *Tax Procedures Act*, Article 159 of *the Constitution* and all other enabling provisions of law and was supported by the Affidavit of even date sworn by Joseph Wachira Gitau a Director of the Applicant.
3. The Respondent the commissioner of domestic taxes has opposed the appeal through the Replying Affidavit dated 26th November 2024.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 27th January 2025 whilst the Respondent did not file any written submissions.



Background

5. The Applicant herein had filed an appeal in the Tax Appeals Tribunal. The tribunal heard the matter and issued a judgment dated 26th January 2024 striking out the appeal.
6. Being aggrieved by the judgement of the Tax Appeals Tribunal, the Applicant is desirous to appeal to the High Court and filed the Notice Appeal dated 16th February 2024.
7. They now seek leave to file the said appeal out of time.

Analysis And Determination

8. I have considered this application, the reply filed thereto as well as the written submissions filed by both parties.
9. Section 32 of the *Tax Appeals Tribunal Act* Cap – Laws of Kenya provides that appeals against decisions made by the Tribunal ought to be filed within thirty (30) days. Thereafter the Memorandum of Appeal ought to be filed within 30 days after service of the Notice of Appeal.
10. In applications for extension of time the Court must consider the period of delay, the reasons advanced for such delay and the prejudice if any to be suffered by the opposite party.
11. In this matter the judgment in question was delivered on 26th January 2024. The Notice of Appeal was filed on 16th February 2024.
12. The Applicant ought to have filed their appeal thirty (30) days thereafter i.e by 15th March 2024. This was not done. This application for extension of time was filed on 8th August 2024 – that means the application has been brought five (5) months after the period to file appeal had expired.
13. In as much as this Court notes that there has been a delay of five (5) months, the issue is not so much the period of this delay but more the reason for the delay.
14. In this matter the applicants sought to resolve the dispute by writing to the Independent Review Objections a letter dated 10th June 2024 seeking for extension of time to object. On 4th July 2024 the Applicants received a response advising them that they may file an appeal to the High Court.
15. It is clear that the Applicants did not simply go to sleep after the judgment. They continued with engagements in an attempt to resolve the dispute. In the circumstances I do not find the delay to have been excessive.
16. I have perused the Draft Memorandum of Appeal dated 8th August 2024 (Annexure “JWG – 5” to the Supporting Affidavit dated 8th August 2024] It is not the duty of this court to comment on the merits or otherwise of the intended appeal. In my view the same raises triable issues.
17. I note that the demand made against the Applicant is Kshs. 17,765,982.00. This is not a small amount. The Applicant ought to be allowed an opportunity to exhaust all the legal avenues available to him. In my view the Respondents will not be prejudiced as they will be granted an opportunity to challenge the appeal in the High Court.
18. I therefore allow this application and this court makes the following orders:-
 - (1) The Applicant is granted leave to file Appeal out of time against the judgment delivered on 26th January 2024, by the Tax Appeals Tribunal in Tax Appeal No. 1176 of 2022.
 - (2) The Appeal to be filed and served within thirty 30 days of today’s date.



(3) Costs of this Application will be met by the Applicant.

DATED IN NYERI THIS 21ST DAY OF MARCH 2025.

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MAUREEN A. ODERO

JUDGE

