



**Commissioner of Legal Services & Board Coordination v
KP Investments Limited (Income Tax Appeal E130 of 2023)
[2025] KEHC 2791 (KLR) (Commercial and Tax) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2791 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E130 OF 2023**

PJO OTIENO, J

MARCH 7, 2025

BETWEEN

**COMMISSIONER OF LEGAL SERVICES & BOARD
COORDINATION APPELLANT**

AND

KP INVESTMENTS LIMITED RESPONDENT

JUDGMENT

1. The Appellant, Commissioner of Legal Services & Board Coordination, is a principal officer appointed under Section 13 of the *Kenya Revenue Authority Act*, CAP 469 of Kenya's laws. Under Section 59(1) of the Act, the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all tax revenue. Further, under Section 5(2) of the Act with respect to the performance of its functions under sub-section (1), the authority is mandated to administer and enforce all provisions of the written laws as set out in Part 1 and 2 of the First Schedule to the Act for the purpose of assessing, collecting and accounting for all revenues in accordance with those laws. The Respondent on the other hand is a Limited Liability Company duly incorporated in the Republic of Kenya and carrying business in Kenya.
2. The Appellant through the East and South Tax Office conducted a compliance check on the Appellant for the period 1st January 2016 to 31st December 2019 and discovered that there were unexplained incomes and undeclared taxes that were due. The Respondent was thereafter issued with a Notice of Assessment dated 26th June 2020 and followed up with an explanation of the assessment vide a letter dated 8th July 2020 that outlined the taxes as a result of disallowed donation and an unexplained source of funds for purchase of a property.



3. The Respondent objected the Appellant's assessments vide a letter dated 23rd July 2020 where it was alleged that the donation was to a registered charity and that the source of funds for the purchase of land was from its shareholders. Following the numerous correspondences by the parties in attempts to settle the dispute, the Appellant requested for relevant documents and which were sent via email on 19th November 2020 and 14th December 2020 and upon consideration issued an Objection Decision on the 31st of March 2022 in which it partly allowed the Objection in regards to the source of funds and whereby the assessment of Kshs. 56, 970, 000 was vacated. The Respondent however disallowed the donation with claims that the same did not conform to the requirements of the *Income Tax Act*.
4. Dissatisfied with the decision, the Respondent moved to the Tax Appeals Tribunal vide the memorandum of appeal dated 20th April 2022. The appeal was heard whereafter the Tribunal delivered its judgment on 29th June 2023 allowing the appeal by setting aside the appellant's Objection Decision dated 31st of March 2022.

The Appeal

5. The Appellant being dissatisfied with the Judgment and Orders of Honourable Tax Appeals Tribunal in TAT No 438 of 2022, lodged the instant Appeal by the Memorandum of Appeal dated 25th August 2023. The memorandum challenges the whole decision and the consequential Orders. The challenge is on the grounds that ; -
 - a. That the Honourable Tribunal erred in failing to consider or address itself on the merits of the assessment and the Objection Decision issued by the Appellant on 31st March 2022.
 - b. That the Honourable Tribunal failed to take into account the Appellant's evidence that there were various engagements between the Appellant and the Respondent including emails and meetings in an attempt to resolve the dispute.
 - c. That the Honourable Tribunal erred in the Tribunal failed to consider that the Finance Act 2019 had introduced an amendment to Section 51(b) of the *Tax Procedures Act* expanding the time for issuing an objection decision

“The Commissioner shall make the objection decision within sixty days from the receipt of the notice of objection on any further information the Commissioner may require from the taxpayer, failure of which the objection shall be deemed allowed.”
 - d. That the Honourable Tribunal erred in law and fact in failing to consider that the Appellant had engaged the Respondent variously as acknowledged in the Objection Decision and that this was sufficient to consider the Objection Decision to have been issued on time.
 - e. That the Honourable Tribunal erred in basing its Judgment on the finding that the Objection Decision had been allowed by operation of the law without delving into the merits of the assessment and the Objection Decision.
 - f. That the Honourable Tribunal erred in failing to consider that the most important document required by the Appellant was the purported registration of the Respondent under the *Societies Act* or the Non-Governmental Organizations Coordination Act in order qualify the donation made to Oshwal Education & Relief Board as an allowable expense, which document has not been produced to date.



- g. That the Honourable Tribunal erred in failing to consider and/or determine that the Respondent had not complied with Section 15(2)(w) of the [Income Tax Act](#) and therefore the Appellant's Objection Decision was lawful and justified.
 - h. That the Honourable Tribunal erred in law and fact by failing to find that the Respondent had not complied with the provisions of Section 51(3) of the [Tax Procedures Act](#) by failing to properly support its objection by providing all supporting documents.
6. The Appellant prays that the Judgment of the Tax Appeals Tribunal dated 29th June 2023 be set aside and the Appeal in TAT No.38 of 2022 be dismissed, the Appellant's Objection Decision dated 31st March 2022 be upheld and that the costs of this Appeal and those of the Appeal at the Tax Appeals Tribunal be awarded to the Appellant.

Appellant's Case

7. The Appellant's case is premised on the Statement of Facts dated 28th May 2022 and filed on 30th May 2022 before the TAT. The Appellant averred that, through its East and South Tax office, it conducted a compliance check on the Respondent for the period 1st January 2016 to 31st December 2019 and of which it was revealed unexplained incomes and undeclared taxes that were due on part of the Respondent. The Appellant indicated to have then issued a notice of assessment dated 26th June 2020 and a further letter dated 8th July 2020 explaining the assessment that the due taxes were occasioned by disallowed donation and unexplained source of funds for purchase of property and to which was objected by the Respondent to the assessments vide a letter dated 23rd July 2020 stating that the donation was to a registered charity and that the source of funds was from its shareholders.
8. The Appellant presented that various meetings were held between parties and correspondence in attempt to settle the dispute amicably to no avail with several requests to the Respondent for further documentation and the same was not provided to its expectation. It was the Appellant's case that the amendment to provisions of Section 51(11) of the [Tax Procedures Act](#) by Section 32 of the Finance Act 2019 was in force at the time of making objection on 23rd July 2020 and at the time of making the objection decision on 31st March 2022. The Appellant issued that an objection decision on the 31st March 2022 in which the Commissioner indicated that he was convinced about the source of funds hence vacated the assessment of Kshs. 56, 970, 000.00. However, the donation was disallowed with claims that the Appellant noted the same did not conform to the requirements of the [Income Tax Act](#).
9. The Appellant contended that it had requested the Respondent to provide documentation in support of objection on several occasions and the Respondent was unable to provide the same to enable it allow the donation to Oshwal Education and Relief Board. The Appellant averred that after various meetings with the Respondent and after issuing relevant supporting documents in line with the numerous correspondences between itself and the Appellant, it vacated the previous assessment on remittances by shareholders for purchase of property.
10. The Appellant averred to have held various working meetings with Respondent and corresponded variously, a fact admitted by the Respondent denying its assertions to the contrary. The Appellant further denied that the objection decision was null and void for being outside the 60 days period after lodging an objection being TPA allows the Commissioner to request for more documents in support of objection, during the period time stops running. It was his case that the decision to arrive at the assessment was justified and had a basis in law having been communicated to the Respondent in line with Section 51(9) of the [Tax Procedures Act](#). The Appellant further presented that it was not bound



by returns and information provided by the Appellant and could assess the Respondent's liability using information available to it in line with Section 24(2) of TPA.

11. The Appellant indicated to have analyzed the expenses claimed by the Respondent including the claimed donation of KShs. 52 million and determined that the donee was unable to provide proof of registration or exemption from registration under Societies Act or the Non-Governmental Coordination Act, 1990 which would have allowed such donation to be claimed as deductible expenses.

The Response

12. The Respondent in response to the Memorandum of Appeal dated 25th August 2023 by the Appellant filed Statement of Facts on 5th March 2024. In response to Grounds 1 and 3 of the Memorandum of Appeal that the Tribunal erred in failing to consider or address itself on the merits of the assessment and the Objection Decision issued by the Appellant on 31st March 2022 as well as the enlargement of time by dint of Section 51 (11) (b) of the Tax Procedures Act 2015, the Respondent states that in its Memorandum of Appeal dated 20th April 2022 it raised only two grounds of appeal at the Tribunal which included determination of whether the Objection Decision dated 31st March 2022 was invalid having been issued outside the sixty days period; and, whether the Appellant's decision to disallow cash donations made to a charitable organization was contrary to the provisions of Section 15(2)(w) of ITA; issues which were equally framed by the Appellant in its Statement of Facts dated 28th May 2022 to be those pertinent for determination by the Tribunal.
13. Further, the Respondent's response as to the issue of when the sixty days began running is a question of evidence presented that the Tribunal correctly found that the said decision was rendered outside the sixty days period being the Appellant failed to demonstrate that time did not start running on 23rd July 2020 and correctly as well as failing to comply with the specific requirements of Section 51(11) of the Tax Procedures Act, 2015.
14. In response to Grounds 2 and 4 of the Memorandum of Appeal of the allegations that there were various engagements between the Appellant and the Respondent, the Respondent averred that the question of when time started running was an issue demonstrable by way of evidence via email correspondence and virtual or physical meetings. The Respondent presented that such being formal meetings, deliberations and/or discussions arising out of the said meetings were documented in minutes between the parties or followed up by email correspondence and that the absence of such formalities was sufficient proof that there were no further engagements between the Appellant and the Respondent after 23rd July 2020 contrary to the allegations by the Appellant.
15. The Respondent further issued that the Honourable Tribunal properly addressed its mind to the issues of engagements between the Appellant and the Respondent and correctly made a finding that the Appellant did not provide any documentation or evidence as to any communication between the Appellant and the Respondent after the Respondent herein objected to the assessment on 23rd July 2020.
16. In response to Grounds 5, 6 and 7 of the Memorandum of Appeal of allegiance that the Honourable Tribunal erred by finding that the Objection Decision had been allowed by the operation of the law and on the failure of the Respondent's failure to evince registration under the Societies Act or the Non-Governmental Organizations Coordination Act, the Respondent presents that its Objection dated 23rd July 2023 having been allowed by operation of the law, effectively rendered the Objection Decision by the Appellant null and void for all intents and purposes and as such there was no decision before the Honourable Tribunal to determine on merits as to entertain the defective Objection Decision and



delve into its merits would be tantamount to sanitizing an illegality. The Respondent affirmed that the Honourable Tribunal therefore correctly addressed its mind to the Objection Decision and as to whether or not it merited any further interrogation and correctly made a finding as it did in paragraphs 80, 81 and 82 of its judgment that the rules of procedure must be strictly adhered to.

17. In response to Ground 8 of the Memorandum of Appeal that the Honourable Tribunal erred in failing to find that the Respondent had failed to properly support its objection by providing all supporting documents, it was the Respondent's case that the Appellant never raised the issue of a defective Objection at any stage of the assessment despite having had all the time before rendering an objection decision to inquire for further documents. The Respondent stated that the Appellant failed to demonstrate that it had sought for further documents from the Respondent and that it failed to provide the same.
18. The Respondent averred that the issue of a defective objection was not an issue for determination at the Tax Appeals Tribunal and neither did the Appellant raise it at its Statement of Facts. The Tribunal cannot be faulted on issues that were never placed before it arguing that tritely parties are bound by their pleadings and this Honourable Court cannot be invited to delve into issues that were not for determination before the Tax Appeals Tribunal.
19. In conclusion, the Respondent prays that:
 - a. The judgment of the Tax Appeals Tribunal dated and delivered on 29th June 2023 be upheld.
 - b. The Respondent's Objection dated 23rd July 2020 be and is hereby allowed by operation of the law.
 - c. The Appeal herein lacks merit and the same be and is hereby dismissed with costs to the Respondent.

Appellant's Submissions

20. The Appellant in its submissions dated 18th March 2024 grounds its contentions in the Memorandum of Appeal dated 25th August 2023 into two main issues for determination being:
 - i. Whether the Objection Decision made by the Appellant was proper and justified in law.
 - ii. Whether the cash donations to Oshwal Education and Relief Board are allowable under Section 15(2) of the *Income Tax Act*.
21. As to whether the Objection Decision made by the Appellant was proper and justified in law, the Appellant submits that the Honourable Tribunal erred by determining that the Appellant's Objection Decision dated 31st March 2022 was issued out of time as the law as it pertained at the time gave a leeway for the Appellant to issue an Objection Decision outside the sixty (60) days period.
22. In pointing the amendment to Section 51(11) of the *Tax Procedures Act* introduced by Section 32 of The Finance Act 2019, the Appellant submits that the Respondent was issued with Notice of Assessment dated 26th June 2020 and followed up with an explanation of the assessment vide a letter dated 8th July 2020 thereafter objected to the same on 23rd July 2020 and an Objection Decision issued on 31st March 2022.
23. The Appellant submits that Tribunal in its judgment failed to consider the law prevailing at the time as quoted above which allowed the Commissioner to seek for supporting and/or further documents at which point time stopped running. The Appellant submits to have at paragraph 8 of its Statement of Facts filed at the Tribunal indicated that there were ongoing engagements between the parties, a



fact that was not controverted by the Respondent and evident under paragraph 1 of the Appellant's Objection Decision dated 31st March 2022 that; "...Reference is made to your application for objection dated 23rd July 2020 in response to assessments dated 26th June 2020 and our various meetings and correspondences we have had....." The Appellant further points at paragraph 2.2 of the same Objection Decision where it referred to audited accounts and fund remittances and books of accounts provided by the Respondent, document it claims to have led it to the vacation of the initial principal tax of Kshs. 56,970,000 and the document which were not provided by the Respondent in its Objection Notice the dated 23rd July 2020.

24. It is the Appellant's submission that the Respondent only provided copies of the objection application, copies of the objection letter, copies of proof of source of funds, tax exemption certificate from Oshwal Education Relief Board and receipts for payments for the Donation, a logical explanation of there being continued engagement with the Appellant that led to provision of these additional documents which the Commissioner used to vacate part of the assessment.
25. In further response to ground 8 of the Memorandum of Appeal and the Respondent's assertion in the Statement of Facts dated 5th March 2024, the Appellant submits that the issue of a defective objection was indeed raised in the Appeal under Paragraph 24 of the Appellant's Statement of Facts at the Tribunal and further faults the Honourable Tribunal for not making a determination on it adding that the Respondent's failure to provide all supporting documents to the objection and to the satisfaction of the Commissioner fallen afoul of Section 51(3) of the [Tax Procedures Act](#). It is the Appellant's submission that the Respondent did not provide all the necessary documents and as such the Objection could not have been valid hence was not satisfied with the documents provided at the time.
26. In conclusion, the Appellant states that;
 - a. The Objection Decision was issued in line with Section 59(11) of the [Tax Procedures Act](#) as at the time and the Appellant issued the decision procedurally.
 - b. The Honourable Tribunal erred in its findings and the same ought to be set aside.
 - c. The Honourable Tribunal failed to determine the matter on the basis of its merits. REASONS WHEREFORE, the Appellant prays that the Honourable Court;
 - d. Upholds the Appellant's decision as proper and in conformity with the provisions of the law. DATED at Nairobi this 18th day of March 2024.

Respondent's Submissions

27. The Respondent in its submissions filed on 20th March 2024 equally submitted on two issues for determination by this court being;
 - i. Whether the Objection Decision made by the Appellant was proper and justified in law.
 - ii. Whether Tribunal was correct to disregard delving into the merits of the Objection Decision having found it invalid.
28. As to whether the Objection Decision made by the Appellant was proper and justified in law, the Respondent in pointing Section 51(11) of the [Tax Procedures Act](#) 2015 as amended by the Finance Act 2019 in line with the statutory timelines within which an Objection Decision should be rendered submits that the said amendment was to stop reckoning of time and allow parties to exchange documents conclusively. The sixty days would however begin counting immediately the taxpayer has furnished the commissioner with all information, in which case, the Commissioner is bound by the



same law to consider all the information provided and render an Objection Decision within sixty days. It is the Respondent's submission that the Appellant failed to explain the more than two years delay in rendering its Objection Decision stating that the last correspondence as between the Appellant and the Respondent was on 14th December 2020 and that time started running immediately.

29. The Respondent cites the case of *Eastleigh Mall Limited v Commissioner of Investigations & Enforcement* (Income Tax Appeal E068 of 2020) [2023] KEHC 2000 (KLR) (Commercial and Tax) (17th July 2023) (Judgment) Neutral citation: [2023] KEHC 2000 (KLR) where the court stated as follows on the issue of the effect of an Objection Decision rendered outside the sixty days period;

“It is clear from the foregoing that the provisions of section 51(11) of the *Tax Procedures Act* are mandatory. They are not cosmetic. Parliament in its wisdom knew that in matters tax, time is very crucial as those in commerce need to make informed decisions. If the Commissioner is allowed to exercise his discretion and stay ad-indefinitum before issuing an objection decision, the taxpayer would be unable to make crucial decisions and plan his/her business properly. The timelines set are mandatory and not a procedural technicality.”

30. The Respondent denies the Appellant's contention that there were ongoing engagements for over more than two years stating that the Appellant did not document even a single meeting either by way of taking minutes or exchanging emails. It is the Respondent's submission that Tax Appeals Tribunal correctly addressed this issue at paragraph 78 of its judgment and stated that neither the Appellant nor the Respondent provided evidence of any communication between the parties after the Appellant issued its objection to the assessments.
31. As to whether the Tribunal was correct to disregard delving into the merits of the Objection Decision having found it invalid, the Respondent in reiterating the above cited decision in the case of *Eastleigh Mall Limited v Commissioner of Investigations & Enforcement* (Income Tax Appeal E068 of 2020) [2023] KEHC 2000 (KLR) submits that the Tax Appeals Tribunal was correct in finding that there was no basis to delve into the merits of the Objection Decision as there was no decision within the law. It is the Respondent's case that even if the Tax Appeals Tribunal was to look into the merits of the Objection Decision, the Appellant did not have any basis for disallowing the donation made by the Respondent to Oshwal Academy as they had listed the institution as a charitable organization and issued it with an exemption certificate which remains in force until 4th November 2025.
32. In conclusion, the Respondent submits that the Objection Decision rendered outside the statutory timelines is not a decision for all intents and purpose and being the Appellant rendered its decision more than 2 years after the expiry of the statutory timelines, a delay not only inexplicable but also unexcusably inordinate, the court in upholding the judgment of the Tribunal delivered on 29th June 2023 should dismiss the Appeal with costs to the Respondent.
33. The appeal was directed to be canvassed by way of written submission and both sides filed submissions the court has had the benefit of reading and deriving valuable benefits therefrom

Issues Analysis and Determination

34. The Court having considered the Memorandum of Appeal by the Appellant, the parties respective Statement of Facts and submissions in line with the Tribunal's decision delivered on the matter on 29th June 2023, finds only two issues to be pertinent for determination by the court. The two issues are: -
- a. Whether the judgment of the tribunal demonstrate the due and correct application of Section 51(11) of the *Tax procedures Act* and thus justified in law?



- b. Only if the above is answered in the negative, Whether the donations to Oshwal Education and Relief Board are allowable under Section 15(2) of the *Income Tax Act*?
35. In the decision appealed against, the Tribunal found that the Appellant had failed to adduce any evidence of correspondence in support of its assertion that there was engagement toward procurement of further documents from the respondent between the date the objection was lodged, 23.7.2020, and the date of the objection decision, 31.3.2022, and thus failed to comply with the specific requirements of Section 51 of the *Tax procedures Act* 2015. For that reason, the Objection Decision was set aside for having been delivered out of time contrary to the statute. The tribunal further held that there was evidence that donations to Oshwal Education and Relief Board, was allowable under the law and thus set aside the decision disallowing same.
36. This being a second appeal, pursuant to section 56 of the *Tax Procedures Act*, the mandate of the court is limited to questions of law only. What constitutes point of law is now settled and one may only cite the Court of Appeal in the case of John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others [2018] eKLR where the court summarized what amounts to “matters of law” as hereunder –
- “As far as facts are concerned, our engagement with them is limited to background and context and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into considerations of the credibility of witnesses or which witnesses are more believable than others; by law that is the province of the trial court.”
37. The court is thus bound by statute to interrogate if the tribunal properly applied the law to the facts availed in the decision now under challenge. With such a roadmap set, the court notes that the Objection Decision subject to the appeal before the tribunal was rendered on 31st March 2022 while the notice of objection was lodged on the 23rd July 2020.
38. Before the Tribunal, the appellant insisted that there existed continued engagements between the parties which then suspended the statutory timelines from running.
39. On the other hand, the respondent contended that the last correspondence between the parties was on 14th December 2020 when time immediately started running. The Respondent thus posits that the Objection Decision was rendered outside the statutory timelines and does not pass as a decision for all intents and purposes. It reiterates that having been rendered more than 2 years after the expiry of the statutory timelines with no explanation to the effect, the same could not be valid at all and the tribunal was apt in its findings.
40. Section 51(11) of the *Tax Procedures Act* upon which the appellant mounts its case provides that the Commissioner shall make the objection decision within sixty days from the date of receipt of notice of objection or any further information the Commissioner may require from the taxpayer, failure to which the objection shall be deemed to be allowed.
41. Whether or not there were engagements between the parties remained a matter of facts to be proved by evidence. Because it was the appellant who so alleged, the legal burden remained on him to demonstrate that indeed there were engagement which ended on a date not later than 60 days before the date the objection decision was made. The record at the tribunal does not show that any such evidence was led and was ignored by the tribunal to justify interference by the court on appeal as a matter of law.



42. It is still the law that a fact that is neither proved nor disproved is unproved. When so unproved, there is no basis to find for a party for such lack of proof. In this matter the appellant never proved before the tribunal that it did engage the Respondent on the issue of further documents later than the 14th December 2020. Without the date the last of such documents were received, there is no basis to find that the delivery of the objection decision was made within 60 days after the last documents were received in line with section 51(11) of the [Tax Procedures Act](#). The law is that cases are proved by adduction of fact thus the court in *Alfred Kioko Muteti v Timothy Miheso & Another* [2015] eKLR the court held that: -

“A party can only discharge its burden upon adducing evidence. Merely making pleadings is not enough...thus, the burden of proof lies on the party who would fail if no evidence at all were given by either party.... Pleadings are not evidence....”

43. In this matter it was not sufficient to allege existence of engagement without more. Evidence of such was inescapable. It cannot be the law, as asserted by the appellant, that since paragraph 1 of the Objection Decision shows that the Respondent had provided various documents upon which part of the assessment was vacated is a justification of there being ongoing engagements between. When time under section 51 begins or stops to run must be factual and not a matter of inference. To the court, that nothing was availed to show that there were engagements by way of meetings with recorded minutes or even email to record such engagement only show that no such engagement ever occurred. The effect is that the objection decision was rendered outside the statutory timelines and was thus amenable to being upset as the tribunal did.

44. The decision of the tribunal is thus determined to have been in apt interpretation and application of the law and attracts no interference on appeal. Timelines set by statute must thus never be considered cosmetic or mere aspirations but must be given full effect. In *Nicholas Kiptoo Korir Salat v IEBC and 6 Others* (2013) eKLR the Court of Appeal in discussing the need for strict compliance with the law observed and set the law to be:

“This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules, apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.” (emphasis provided)

45. Failure to comply with statutory timelines has been determined by the court to deprive the decision so reached of validity and sets it up for outright upset. In *Eastleigh mall Ltd v Commissioner for Investigations and Enforcement* (2023) KEHC 2000 KLR the court had this to say: -

“It is clear from the foregoing that the provisions of Section 51(11) of the [Tax Procedures Act](#) are mandatory. They are not cosmetic. Parliament in its own wisdom knew that in matters tax, time is very crucial as those in commerce need to make informed decisions. If the commissioner is allowed to exercise his discretion and stay ad-infinitum before issuing an objection decision, the tax payer would be unable to make crucial decisions and plan his/her business properly. The timelines set are mandatory and not procedural technicality”



46. That decision followed previous decisions in which the courts were unanimous that failure to deliver an objection decision in time yields no decision at all and the objection stands successful by operation of the law. See *In Equity Group Holdings Limited v Commissioner of Domestic Taxes* for the finding that having correctly found that the decision was made after the expiry of 60 days, the TAT had no legal basis to proceed as it did and to invoke article 159(2) (d) because there was no decision at all by operation of the law under section 51 (11) (b) and that the tribunal had no discretion to either extend time or to entertain the matter further. See also *Republic v Commissioner Of Customs Services Ex-Parte Unilever Kenya Limited* [2012] eKLR and *Vivo Energy Kenya Limited v Commissioner of Customs & Border Control, Kenya Revenue Authority & another* [2020] for the same holding.
47. The justification and rationale of the above findings and holdings go to the very essence of and need to compliance with the law as enacted by parliament. The court, on the principles of separation of powers, must keep to the law that legislative power is vested by the sovereign upon parliament and the courts must thus be very slow, even on its interpretation, to let the will of the people through parliament to prevail. See *Nicholas Kiptoo Korir Salat v IEBC and 6 Others* (2013) eKLR (supra)
48. In this matter, the tribunal having found that the objection was rendered outside the set timelines, it followed that the objection stood allowed by operation of the law with the axiomatic consequence that the decision of the commissioner stood reversed for having been null and void. The tribunal in that context was bound to rest its decision without much further efforts being employed to consider the next limbs of the appeal.
49. That is exactly what the Honourable tribunal did. It cannot be faulted for penning-off once there was a final decision that there was no valid objection decision.
50. Even for this court, there having been a finding that there was no valid objection decision before the tribunal, it follows that there is no further meaningful purpose to be served in delving into the question whether the finding on allowability of the donations for *Income Tax act* purposes or even whether there was a valid notice of objection to by the respondent.
51. In conclusion, the court finds that the Appeal lacks merit and is hereby dismissed with costs to be paid by the appellant. The effect is that the objection decision dated the 31st March 2022 is declared to have been made out of time and was thus null and void. Once there was failure to deliver the decision within the timelines, the objection stood allowed as prayed.
52. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF MARCH, 2025.

PATRICK J O OTIENO

JUDGE

