



**Elle Kenya Limited v Commissioner of Investigations &  
Enforcement Department (Income Tax Appeal E024 of 2024)  
[2025] KEHC 2783 (KLR) (Commercial and Tax) (10 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2783 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E024 OF 2024  
CJ KENDAGOR, J  
MARCH 10, 2025**

**BETWEEN**

**ELLE KENYA LIMITED ..... APPELLANT**

**AND**

**COMMISSIONER OF INVESTIGATIONS & ENFORCEMENT  
DEPARTMENT ..... RESPONDENT**

**JUDGMENT**

1. The Respondent investigated the Appellant on suspicion Thatthe Appellant had under-declared Excise duty, VAT, and Income tax for the period 2015 to 2019. Upon conclusion of the investigation, the Respondent issued the Appellant with a notice of assessment dated 13<sup>th</sup> October, 2021 for Excise Duty, VAT, and Income Tax totaling Kshs.525,653,847/=. The Appellant objected to the assessment vide a letter dated 10<sup>th</sup> November, 2021. The Respondent subsequently issued an email dated 16<sup>th</sup> December, 2021 invalidating the Objection. It thereafter issued a letter confirming the assessment on the 30<sup>th</sup> September, 2022. The Appellant was aggrieved by the Respondent’s decision and appealed to the Tax Appeals Tribunal on 28<sup>th</sup> October, 2022.
2. The Appellant argued Thatits Objection was valid and Thatthe Respondent was not justified in invalidating the Objection and in confirming its assessment. It argued Thatthe Respondent was not justified in raising additional assessments for excise duty for the period between 2015 and 2020 and Thatthe Respondent used the wrong approach and method in the determination of the table Income. On the other hand, the Respondent defended its decision by arguing Thatit relied on its own best judgment based on information available to it in compliance with Section 31 of the *Tax Procedures Act* while raising the additional income tax assessments. It maintained Thatit could not be faulted because the Appellant had failed to show Thatits assessments were incorrect.



3. The Tribunal delivered the judgment on 20<sup>th</sup> December, 2023 in which it dismissed the Appellant's Appeal. It upheld the Respondent's invalidation decision dated 16<sup>th</sup> December, 2021 and the Confirmation of assessment letter dated 30<sup>th</sup> September, 2022. In the judgment, the tribunal held Thatthe Appellant's objection breached the expressed provisions of Section 51 (3) (c) of the [Tax Procedures Act](#). It held Thatthe Appellant was given the chance and even issued with a reminder to provide documents so as to validate its objection, but it failed to do so. Thus, it concluded Thatthe Respondent was justified to confirm its assessment for the reasons Thatthe Appellant's objection was not validly lodged.
4. The Appellant was dissatisfied with the entire decision of the Tax Appeals Tribunal and appealed to this Court vide a Memorandum of Appeal dated 29<sup>th</sup> January, 2024. It listed the following grounds of Appeal;
  1. That the Honourable Tribunal erred in law and in fact by failing to find Thatthe Respondent has raised assessments Thatwere outside the five (5) year statutory period contrary to Section 31 (4) (b) of the [Tax Procedures Act](#), and as such the said assessments were null and void.
  2. That the Honourable Tribunal erred in law and in fact by failing to distinguish the objection process as governed by Section 51 of the [Tax Procedures Act](#) and the pre-assessment audit process Thatgoverns Section 31 of the [Tax Procedures Act](#) by referring to communications in the latter process to arrive at its decision instead of relying on the correspondences Thathad been made after the assessment as required by Section 51 (4) of the [Tax Procedures Act](#).
  3. That the Honourable Tribunal erred in law and in fact by failing to appreciate Thatthe nature of the Appellant's business (which is manufacture of alcoholic beverages) was such Thata pre-assessment audit process (as distinguished with the objection process under Section 51 of the [Tax Procedures Act](#)) would entail a visit to the Appellant's premises by the Respondent to verify and physically audit the manufacturing/production process, if the Respondent so wished, since such evidence as required can only be physically verified.
  4. That the Honourable Tribunal erred in law and in fact by failing to appreciate Thatthe Respondent's Notice of Invalidation issued on 19<sup>th</sup> December 2022 offended Section 51 (4) of the [Tax Procedures Act](#) by failing to specify the information required from the Appellant rather than generically cite the requirements of the law.
  5. That the Honourable Tribunal erred in law and in fact by failing to appreciate Thatthe Respondent's Notice of Invalidation issued on 19<sup>th</sup> December 2022 offended Article 47 of [the Constitution](#) on the right to fair administrative action and therefore making the said Notice of Invalidation unlawful, unfair and unreasonable, and as such null and void ab initio.
  6. That the Honourable Tribunal erred in law and in fact by failing to appreciate Thatthe Appellant's Notice of Objection dated 10<sup>th</sup> November 2021 had extensively challenged the assessments on the basis of reconciliation such Thatno documents were required to prove the Appellant's assertions in this particular regard other than the detailed explanations in the Notice of objection as required by Section 51 (3) (a) of the [Tax Procedures Act](#).
  7. That the Honourable Tribunal erred in law and in fact by failing to appreciate Thatthe Appellant's objection dated 10<sup>th</sup> November 2021 was accompanied by relevant documents where such relevant documents were required to prove an assertion as required by Section 51 (3) (c) of the [Tax Procedures Act](#) such as a payment plan to prove Thatan assessment for Excise Duty of Kshs.97,738,895/= for the period between 2015 and 2020 was a duplication



of an earlier assessment covering the same period That had been resolved; invitation to inspect unused bottle caps amounting to Kshs.1,251,204/=; and workings to explain bank deposits.

8. That the Honourable Tribunal erred in law and in fact in failing to find That the Appellant's Notice of Objection dated 10<sup>th</sup> November 2021 had been validly lodged and complied with Section 51 (3) of the [Tax Procedures Act](#).
  9. That the Honourable Tribunal erred in law and fact in failing to find That the Respondent ought to have issued an Objection Decision instead of issuing a Notice of Invalidation contrary to both Article 47 of [the Constitution](#) on the right to fair administrative action and Section 51 (10) & (11) of the [Tax Procedures Act](#) since the Notice of Objection had been validly lodged.
  10. That the Honourable Tribunal erred in law and in fact by failing to appreciate That the Respondent had breached the Appellant's right to legitimate expectation by raising Excise Duty assessments of Kshs 97,738,895/= for the period between 2015 and 2020 which had already been resolved and a payment plan entered between the Appellant and the Respondent.
  11. That the Honourable Tribunal erred in law and fact in failing to appreciate That the Respondent had failed to explain the basis of the assessment or even how the bank statements had been analysed together with the VAT returns and Income Tax Returns to arrive at the additional assessments, contrary to Article 47 on the right to fair administrative action.
  12. That the Honourable Tribunal erred in law and in fact in failing to appreciate That the Respondent had misapplied the Banking Analysis Test by failing to take into account inter-bank transfers and cash deposits from other bank accounts for purposes of clearing suppliers' cheques, and assuming That every deposit is income contrary to section 3 (2) of the [Income Tax Act](#).
  13. That the Honourable Tribunal erred in law and in fact in failing to appreciate That the Appellant had explained in the Notice of Objection of 10<sup>th</sup> November 2021 That it had applied to the Respondent for an amendment of self-assessment under Section 31 (2) of the [Tax Procedures Act](#) to allow for claiming of Investment Deduction on the purchase of a manufacturing plant as provided by Section 24 of the [Income Tax Act](#), yet the Respondent had proceeded to issue an assessment on corporation tax amounting to Kshs.55,919,584.80/= instead of first issuing a decision on the application for amendment of the self-amendment.
  14. That the Honourable Tribunal erred in law and in fact in failing to appreciate That the Respondent erred in raising VAT assessments of Kshs.156,956,690.24 where the Respondent had only charged output VAT and completely ignored the corresponding Input VAT against the value addition principle envisioned in the VAT Act and to the detriment of the Appellant.
  15. That the Honourable Tribunal erred in law and in fact in failing to appreciate That the Appellant's Notice of Objection dated 10<sup>th</sup> November 2021 had been allowed by operation of law under Section 51 (11) of the [Tax Procedures Act](#) when the Respondent failed to communicate its decision within sixty (60) days from the date of receipt of the Appellant's Objection to the assessments and instead issued an confirmation of assessments on 30<sup>th</sup> September 2022 (more than 6 months from the date of the objection).
  16. That the Honourable Tribunal misapplied the law and facts and therefore arrived at the wrong conclusion.
5. The Appellant asked the Court to allow the appeal and set aside the decision of the Tribunal dated December 20, 2023.



6. The Appeal was canvassed by way of written submissions.

### **Appellant's Written Submissions**

7. The Appellant submitted Thatthe Respondent was wrong to rely on both the Banking Method and the Inputs-Outputs method in raising additional assessments. It argued Thatthe Respondent utilized Bank Deposits received in the Appellant's Bank Account and the Input-Output Method in determination of the Taxable Income for the period under investigation. It argued Thatthis approach was erroneous because it amounted to double taxation since the same income earned by the company had been taxed twice, using two different bases of taxation. It argued Thatthe Respondent had a duty to demonstrate objectively how it had analyzed the bank statements to arrive at an additional assessment.
8. In addition, the Appellant submitted Thatit was unlawful for the Respondent to raise Additional Assessments outside the 5-year statutory period contrary to Section 31 (4) (b) of the [Tax Procedures Act](#). It argued Thatthe above provision provides a statutory period of 5 years within which the Respondent can issue additional or amended assessments from the date of filing the original return. It submitted Thatin the present case, the assessment notice dated 24<sup>th</sup> November, 2021 covered the period between 2015 and 2020, which was over the statutory period of 5 years provided for in law.
9. Further, the Appellant argued Thatthe Commissioner's Objection Decision was null and void because it was issued out of time contrary to Section 51 (11) of the [Tax Procedures Act](#). It argued Thatthe above provision provides Thatan objection notice must be allowed where the Commissioner had not made an objection decision within 60 days from the date Thatthe taxpayer lodged the objection notice. It argues Thatit filed its Objection on 10<sup>th</sup> November, but it received the Respondent's Decision to invalidate the Objection on 30<sup>th</sup> September, 2022, which was 10 months after the lodge of the Objection. It argued Thatits Objection had been allowed by operation of law.
10. It argued that, when the 60 days lapsed, it had a legitimate expectation Thatpursuant to the law, its prayers as per the Notice of Objection had been granted. It relied on [Commissioner of Domestic Taxes v Sketchers Limited \(Tax Appeal E011 of 2023\)](#) [2024] KEHC 5569 (KLR) and [Commissioner of Domestic Taxes v Airtel Networks Kenya Limited \(Income Tax Appeal E062 of 2022\)](#) [2023] KEHC 25059. Lastly, it argued Thatthe Respondent was wrong to invalidate its Objection on grounds Thatthe Appellant had not discharged its burden of proof It submitted Thatat the time of the Objection Review, it had provided all the relevant documents in regards to the Reconciliation and supporting documents.

### **Respondent's Written Submissions**

11. The Respondent submitted Thatthe decision to arrive at the additional assessment was justified and had basis in law. It argued ThatSection 24 (2) of the [Tax Procedures Act](#) empowers it to make assessments based on information available. It also argued ThatSection 31 (1) of the Tax Procedure Act empowers it to make alterations or additions to original assessments from available information for a reporting period based on the Commissioner's best judgment. It submitted Thatit issued the additional assessments for the period 2015 to 2020 upon detecting Thatthere were under declarations in the Appellant's Excise, VAT, and Income Tax Returns.
12. In addition, it responded to the Appellant's claims Thatthe assessments were outside the 5-year statutory period. It submitted Thatthe Appellant is barred from raising the issue on the Assessment for the year 2015 being time barred in the present appeal because Appellant did not raise the same ground before the Tribunal. It submitted Thatthis Court does not have jurisdiction to consider and determine an issue Thatwas not raised by the Appellant in its appeal at the Tribunal.



13. Further, the Respondent submitted Thatthe Tribunal was right in finding Thatthe Appellant had not filed a valid objection. It argued Thatfor an objection to be valid, it must meet all the requirements of Section 51 (3), which require the grounds to be precisely stated and documents submitted in support of the said grounds. It submitted Thatthe Appellant’s objection was not a valid objection because the Appellant’s grounds of objection were not supported by documents, and thus did not meet the requirements under Section 51 (3) of the *Tax Procedures Act*.
14. Lastly, it submitted Thatthe Tribunal was correct in finding Thatthe Appellant failed to discharge the burden of proof by not availing supporting documents as requested by the Respondent. It argued Thatit was evident from the correspondence between the Appellant and the Respondent Thatthe Appellant did not provide documents to validate its objection.

### **Issues for Determination**

15. Having considered the Grounds of Appeal and submissions by both parties, I find four issues for determination.
  - a. Whether the Appellant’s Objection to the Assessments was valid as per Section 51 (3) of the Tax Procedure Act.
  - b. Whether the Respondent’s Objection Decision was made within the legal timelines.
  - c. Whether the Appellant discharged its burden of proof as per Section 56 (1) of the Tax Procedure Act.
  - d. Whether the Appellant is barred from raising the issue on the Assessment for the year 2015 being time barred in the present appeal.
16. It is trite law Thatthe duty of the first appellate court is to re-evaluate the evidence in the subordinate Court both on points of law and facts and come up with its findings and conclusions. As the Court is re-evaluating the evidence, it is required to bear in mind Thatit had neither seen nor heard the witnesses. This principle was set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind Thatit has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either Thathe has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ...”

### **Whether the Appellant’s Objection to the Assessments was valid as per Section 51 (3) of the Tax Procedure Act**

17. The Respondent submitted Thatthe Tribunal was right in finding Thatthe Appellant had not filed a valid objection. It argued Thatfor an objection to be valid, it must meet all the requirements of Section 51 (3), which require the grounds to be precisely stated and documents submitted in support of the said grounds. It submitted Thatthe Appellant’s objection was not a valid objection because the Appellant’s grounds of objection were not supported by documents, and thus did not meet the requirements under Section 51 (3) of the *Tax Procedures Act*.
18. This Court is being invited to determine whether the Appellant’s Objection to the Assessments was valid as per under Section 51 (3) of Tax Procedure Act.



19. Section 51(3) of the Tax Procedure Act guides on what is required for a valid objection and states as follows:-

“ A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—

- (a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;
- (b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment That is not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1); and
- (c) all the relevant documents relating to the objection have been submitted”.

20. The Court in *Kenya Revenue Authority v Man Diesel & Turbo Se, Kenya* [2021] eKLR interpreted the above provision. It held That the provision places an obligation on the taxpayer to persuade the Appellant That its assessment is incorrect. It stated as follows;

“The import of the above provisions is That the party with the obligation of persuasion (what Wigmore termed the risk of non-persuasion) is said to bear the burden of proof.[9] The flip side of the foregoing is the effect of non-persuasion on a party with the burden of proof which is That the particular issue at stake in the litigation will be decided against him/her. Generally, the taxpayer has the burden of proof in any tax controversy. The taxpayer must demonstrate That the commissioner's assessment is incorrect. The taxpayer has a significantly higher burden. The taxpayer must prove the assessment is incorrect.”

21. I have analyzed the contents of the Notice of Objection. It states the grounds of objection in a numbered format. To some extent, it also gives reasons for the objections. However, it does not include the amendments required to be made to correct the decision. The Notice of Objection also states That it has attached several documents to support the grounds of objection. Some of the documents it claims to be attached to it include a copy of the Payment Plan and a copy of the letter to the Commissioner for Amendment of the self-assessments to allow for claiming of Investment Deduction. I have relooked at the Record of Appeal and I could not find the two documents said to be attached to the Objection.

22. The Respondent wrote to the Appellant on 16<sup>th</sup> December, 2021 invalidating the Appellant's Objection on grounds That it had not satisfied the requirements outlined under Section 51 (3) of the *Tax Procedures Act*. In the communication, the Respondent asked the Appellant to provide all the relevant documents in support of its objection within 7 days to enable the Respondent to review the validity of the objection.

23. According to the documents placed before the Tribunal, the Respondent was very specific on the documents it sought from the Appellant. The Respondent itemized the documents in an email dated 27<sup>th</sup> October, 2020. They were as follows;

- a. Opening and closing excise stamp balances (Jan 2015-31-08-2020)
- b. Opening and closing balances of finished products (Jan 2015-31-08-2020)
- c. Manual excise returns for the period Jan 2015-April 2016
- d. Manual VAT returns for the period Jan 2015-Nov 2015



- e. Opening and closing balances for
  - i. Caps
  - ii. Bottles
  - iii. Labels
- f. Quantities of wastage (stamps and packaging material) if any for each year.
- g. Audited financial statements for the company for the years 2015-2019.
- h. Payrolls for years 2015-2019

24. I note Thatthe Appellant subsequently provided a reconciliation schedule for stamps, spirits, and finished products. This court notes Thatthe reconciliation provided by the Appellant was not even among the list of documents Thatthe Respondent had asked for.

25. I have relooked at the Record of Appeal and all the documents produced before the Tribunal. However, there is no evidence Thatthe Appellant ever produced the documents it had been required to produce. In addition, the Appellant has not provided any reason or an explanation why it was unable to provide the documents Thatthe Respondent had demanded from it so as to validate its objection. Thus, this court cannot fault the Tribunal for holding Thatthe Appellant did not provide evidence to show Thatthe required documents were ever supplied to the Respondent.

26. The failure of a taxpayer to provide documents to support its objection vitiates the validity of the Notice of Objection. Courts have consistently held Thata notice of objection Thathad not been supported by necessary documents is invalid. In *Builders Junction Limited v Commissioner of Investigations and Enforcement (Income Tax Appeal E073 of 2021)* [2023] KEHC 24805 (KLR) (Commercial and Tax), the court held as follows;

“In the present appeal, it was Builders Junction’s duty to provide documents when objecting to the assessment to enable the Commissioner review, reconsider, amend or allow the objection. In the absence of evidence Thatdocuments were provided at the time of the objection which the Commissioner ignored and the TAT failed to appreciate such anomaly, this court is unable to fault the finding of fact by the TAT, ThatBuilders Junction did not provide documents to support its objection.”

27. Similarly, in the case of *Family Fashion Clothing Limited v Commissioner of Investigations and Enforcement (Income Tax Appeal E050 of 2021)* [2023] KEHC 17608 (KLR) (Commercial and Tax), the Court observed as follows;

“29. I concur with the finding above. Once the Respondent found Thatthe documents adduced by the Appellant were insufficient the burden lay squarely on the Appellant to disprove this. Further, the law allowed the Respondent could ask for additional documents/evidence if it found Thatthe documents provided were not sufficient, which it did, and the Appellant was under an obligation to satisfy the said demand, in order to sustain its claim and discharge its burden as set by the law above.

30. I note further Thatin this appeal and the one before the Tribunal, the Appellant did not adduce the documents Thatit claimed it had provided to the Respondent to prove purchases from its suppliers. Therefore, this court,



just like the Tribunal, cannot analyse the said documents in order to determine whether the Appellant acquired stock from the suppliers in question.

31. The upshot of the above findings is Thatthe Appellant has not discharged its burden of proof despite having the opportunity to furnish sufficient proof. The appeal as filed is dismissed and the decision of the Tribunal upheld in its entirety.”

### **Whether the Respondent’s Objection Decision was made within the legal timelines.**

28. The Appellant argued Thatthe Commissioner’s Objection Decision was null and void because it was issued out of time contrary to Section 51 (11) of the [Tax Procedures Act](#). It argued Thatthe above provision provides Thatan objection notice must be allowed where the Commissioner had not made an objection decision within 60 days from the date Thatthe taxpayer lodged the objection notice. It argues Thatit filed its Objection on 10<sup>th</sup> November, 2021 but it received the Respondent’s Decision to invalidate the Objection on 30<sup>th</sup> September, 2022, which was 10 months after the lodge of the Objection. It argued Thatits Objection had been allowed by operation of law.
29. This question requires this court to ascertain the law Thatgoverned Objections particularly at the time when the Appellant lodged their objection. As at 10<sup>th</sup> November, 2021, when the Notice of Objection was lodged, the timelines around objection processes were governed by Section 51 of the [Tax Procedures Act](#), which THEN provided as follows:
51. Objection to tax decision
- (1) A taxpayer who wishes to dispute a tax decision shall first lodge an objection against Thattax decision under this section before proceeding under any other written law.
  - (2) A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision.
  - (3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—
    - (a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;
    - (b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment Thatis not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1); and
    - (c) all the relevant documents relating to the objection have been submitted.
  - (4) Where the Commissioner has determined Thata notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing Thatthe objection has not been validly lodged.
  - (5) Where the tax decision to which a notice of objection relates is an amended assessment, the taxpayer may only object to the alterations and additions made to the original assessment.
  - (6) A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.



- (7) The Commissioner may allow an application for the extension of time to file a notice of objection if—
  - (a) the taxpayer was prevented from lodging the notice of objection within the period specified in subsection (2) because of an absence from Kenya, sickness or other reasonable cause; and
  - (b) the taxpayer did not unreasonably delay in lodging the notice of objection.
- (8) Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner's decision shall be referred to as an "objection decision".
- (9) The Commissioner shall notify in writing the taxpayer of the objection decision and shall take all necessary steps to give effect to the decision, including, in the case of an objection to an assessment, making an amended assessment.
- (10) An objection decision shall include a statement of findings on the material facts and the reasons for the decision.
- (11) The Commissioner shall make the objection decision within sixty days from the date of receipt of—
  - (a) the notice of objection; or
  - (b) any further information the Commissioner may require from the taxpayer, failure to which the objection shall be deemed to be allowed.

30. The Court notes Thatthe [Tax Procedures Act](#) has since undergone major amendments That have changed the timelines and the procedure for challenging a Tax Decision. One of the effected sections was Section 51 (11). It was amended in 2022 by [Act No. 22 of 2022](#), s. 44. The amendment came into effect on 1<sup>st</sup> July 2022. The new Section 51 (11) now reads;

“(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed”.

31. Notably, there is a change in the wording of the Section. The initial version provided Thatthe Commissioner could make the decision within 60 days of receiving the objection notice or within 60 days of receiving any further information the Commissioner may require from the taxpayer.

32. I note Thatwhile invalidating the Appellant's objection, the Respondent asked the Appellant to provide all the relevant documents in support of its objection within 7 days to enable the Respondent to review the validity of the objection. In my view, the Commissioner's request for additional information brought it under purview of Section 51 (11) (b) which required the Commissioner to issue the Objection Decision within 60 days of receiving the requested information.

33. I have also seen Appellant's email to the Respondent sent on 24<sup>th</sup> February, 2022 where the Appellant informed the Respondent Thatthey were ready and willing to provide the supporting documents to validate their objection. It read in part: “Kindly note Thatall the required information is available to support the objection and shall be availed to your offices.” In the email, it went on to state as follows;



“However, we request Thatwe may know the officer handling the matter so Thatwe can arrange for a meeting and agree on how the required information shall be relaid.”

34. The Appellant admitted in its Statements of Facts dated 21<sup>st</sup> November, 2022 Thatafter 24<sup>th</sup> February, 2022, the Respondent continued to send reminders for documentation. I have also seen the Respondent’s communication addressed to the Appellant dated 30<sup>th</sup> September, 2022 stating Thatthe Respondent had sent several reminders to the Appellant concerning the its request for additional supporting documents. In the said communication, the Respondent stated Thatthe Appellant had failed to provide the requested information.
35. I have ascertained Thatthe Appellant failed to supply the requested information. Having failed to produce the information, the Appellant cannot plead Thatthe Commissioner made the objection decision outside the 60 day timeline. This is because the Commissioner’s duty under Section 51 (11) (b) depended on the receipt of the requested information, and the 60 days started running from the receipt of the requested information. The Commissioner never received such information from the Appellant despite several reminders.
36. The Appellant relied on the case of *Commissioner of Domestic Taxes v Sketchers Limited (Tax Appeal E011 of 2023)* [2024] KEHC 5569 (KLR) (Commercial and Tax) (8 May 2024) (Judgment) to argue Thatthe Commissioner had to make the Objection Decision within 60 days of receipt of the Notice of Objection. However, I do not think the said authority applies to the current circumstances because in Thatcase the court dealt with the subsequent amended versions of Section 51 the Act, which versions do not apply to the current facts.
37. A reading of the decision of the Tax Appeals Tribunal shows Thatthe Tribunal considered the issue about the validity of the Appellant’s Notice of Objection and rendered a reasoned determination on the issue. This Court has also re-evaluated the evidence on record and is satisfied Thatthe Tribunal properly applied itself to the facts, evidence and the law in reaching the conclusion Thatthe Appellant’s Appeal before it was for dismissal.
38. Having found Thatthe Appellant’s Notice of Objection was invalid for lack of supporting documents, the Court will not delve into the other issues as the same will amount to an academic exercise.

### **Disposition**

39. This Appeal fails and is hereby dismissed.
40. The decision of the Tax Appeals Tribunal delivered on 20<sup>th</sup> December, 2023 is hereby upheld.
41. Each party to bear its own costs of the Appeal.
42. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 10<sup>TH</sup> DAY OF MARCH, 2025.**

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**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

For Appellant – Advocate Maero and Advocate Chelangat Koskei



For Respondent - Advocate Kamau holding brief for Advocate Mwongera

