



REPUBLIC OF KENYA



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**Fone Planet Limited v Commissioner of Domestic Taxes (Income Tax Appeal E045 of 2023)
[2025] KEHC 3664 (KLR) (Commercial and Tax) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E045 OF 2023**

BK NJOROGE, J

MARCH 13, 2025

BETWEEN

FONE PLANET LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

JUDGMENT

1. This appeal arises from the decision of the Tax Appeals Tribunals delivered on 6th October 2023 as follows;

“The upshot of the foregoing is that the Appeal succeeds and the Tribunal accordingly proceeds to make the following orders;

- a. The appeal be and is hereby allowed.
- b. The Respondent’s notice of objection invalidation dated 17th August 2022 be and is hereby set aside.
- c. The Respondent to review the objection and determination supplied by the Appellant and issue an objection decision within sixty days from the date of delivery of this Judgement.
- d. Each party to bear its own costs.”

Background facts

2. The Appellant is the Tax Payer and was the Appellant before the Tax Appeals Tribunal. The Respondent is the Commissioner of Domestic taxes.



3. The Respondent by Demand and Assessment notices which are dated 8th February 2022, demanded taxes from the Appellant.
4. The Appellant lodged a Notice of Objection with the Respondent on 8th March 2022. This was within the 30 days provided by Section 51 of the [Tax Procedures Act](#).
5. The Respondent proceeded to issue the Appellant with an Assessment Order before KRA 202201779929 dated 7/7/2022 which sets out the Income tax and VAT additional assessments for Tax periods in 2017,2018,2019 and 2020. This was after a tax verification exercise had been undertaken by the Respondent. This is after the Appellant's tax returns and documents.
6. The Appellant on 6/8/2022 lodged its Notice of Objection to the assessment under Assessment Order Reference KRA 202201779929 dated 7/7/2022.
7. Upon receipt of the Notice of Objection, the Respondent invalidated the Appellant's objection through a letter dated 17/8/2022. The Respondent cited that the Notice of Objection had been filed out of time.
8. The Appellant dissatisfied with the decision aforesaid moved to the Tax Appeals Tribunal in Tax Appeal No. 954 of 2022. It submitted that it had lodged its objection on time and that it was not liable to pay any additional taxes for the period under review.
9. The Tax Appeals Tribunal considered the dispute and allowed the Appeal. It found that the Notice of Objection was filed within the stipulated time. Therefore, the Respondent erred when it invalidated it on the basis that it was filed out of time.
10. The Tax Appeals Tribunal therefore set aside the Notice of Objection Invalidation dated 17/8/2022. It directed the Respondent to review the objection and the documentations supplied and issue an Objection decision within sixty (60) days from the date of the delivery of the Judgement.
11. The Appellant is aggrieved by the period of time granted to the Respondent by the Tribunal, and this is what has triggered this Appeal.

The Appellant's case

12. The Appellant has filed a Memorandum of Appeal which contains 4 grounds. In essence, the Appeal challenges what it perceives to be the actions of the Tax Appeals Tribunal in extending time within which an Objection decision can be made under Section 51(11) of the [Tax Procedures Act](#).
13. Pursuant to the directions given in this matter, the Appellant has filed written submissions dated 19/6/2024.
14. It submits that it was wrong for the Tribunal to refer the dispute back to the Respondent for fresh reconsideration. What the Court hears the Appellant to submit is that once it determined the Notice of Objection was filed on time, it should have found that since no determination had been rendered within sixty (60) days, the operation of Section 51 (11) of the [Tax Procedures Act](#) had kicked in. The Notice of Objection should have been allowed. The Appellant relies upon *Eastleigh Mall Limited vs Commission of Investigations and Enforcement (Income Tax Appeal E068 of 2020) (2023) KEHC 2000 (KLR) (Commercial & Tax) (17 July 2023) (Judgement)*, *Neutral Citation (2023) KEHC 2000 (KLR)*.
15. It was also submitted that once the sixty (60) days expired, a legitimate expectation had kicked in favour of the Appellant. That the objection ought to be upheld. The Court was referred to [Kenya Revenue](#)



Authority vs Export Trading Company Limited (Petition 20 of 2020) (2022) (Judgement) Neutral Citation (2022) KESC 31 (KLR).

16. The Court was also referred to *Equity Group Holdings Limited vs Commissioner of Domestic Taxes (Civil Appeal E069 & E025 of 2020)* (2021) KEHC 25 (KLR) (Commercial & Tax) (23 August 2021) (Judgement) and Republic vs Commissioner of Customs Services Ex-Parte Unilever Kenya Limited (2012) eKLR to buttress the same submissions.
17. The Court was urged to allow the Appeal and set aside the determination of the Tax Appeals Tribunal.

The Respondent's Case

18. The Respondent takes issue with the entire objection application by the Appellant, the subject matter of this appeal. To the Respondent's, since the Appeal hinges upon an Objection Application dated 8th February 2022, allegedly, it has to fail. This is because the finding of the Tax Appeals Tribunal is that the Notice of Objection was lodged on 6/8/2022.
19. The Respondent also submits that the Tribunal had powers to refer the matter back to the Commissioner of Domestic Taxes, for purposes of making a decision. This was a power donated to the Tax Appeals Tribunal by dint of Section 29 of the *Tax Appeals Tribunal Act* Cap 469 A of the Laws of Kenya. This is the provision that allows the Tax Appeals Tribunal to refer a matter back to the Commissioner for reconsideration in accordance with any directions or recommendations of the Tribunal.

Issues of Determination

20. The Court frames two (2) issues for determination in this Appeal;
 - a. Whether the Appeal is merited
 - b. What reliefs flow from the Appeal?

Analysis

21. Appeals to this Court from the decisions of the Tax Appeals Tribunal are pursuant to Section 53 of the *Tax Procedures Act* Cap 469 B of the Laws of Kenya. The Section states as follows;
 53. Appeals to High Court

A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court in accordance with the provisions of the *Tax Appeals Tribunal Act* (Cap. 469A).

a) Whether the Appeal is merited

22. The decision that fell under consideration by the Tax Appeal Tribunal was a Notice of Objection lodged on 6/8/2022.
23. The Respondent had invalidated the Notice of Objection under Section 51(4) of the *Tax Procedures Act*, stating that it had been lodged outside the stipulated timelines. The Notice of Invalidation was dated 17/8/2022.
24. The Tax Appeals Tribunal considered the Appeal against the invalidation



25. By a decision rendered on 6/10/2023, it upheld the Appeal. It determined that the Notice of Objection had been filed within time. This means that the Notice of Invalidation by the Commission of Domestic Taxes dated 17/8/2022 was improper.
26. Having done so, the Tax Appeals Tribunal invoked its jurisdiction under section 29 (2) of the [Tax Appeals Tribunal Act](#) Cap 469 of the Laws of Kenya which states as follows;
29. Decisions of the Tribunal
- (1) The decision of the Tribunal shall be by majority vote of the members present, and in the case of equality of votes, the Chairperson shall have a casting vote in addition to his deliberative vote.
 - (2) The Tribunal shall make a decision in writing or through electronic means—
 - (a) affirming the decision under review;
 - (b) varying the decision under review; or
 - (c) setting aside the decision under review and either—
 - (i) making a decision in substitution for the decision so set aside; or
 - (ii) referring the matter to the Commissioner for reconsideration in accordance with any directions or recommendations of the Tribunal.
 - (3) The Tribunal shall give reasons in writing or through electronic means for its decision, including its findings on material questions of fact and reference to the evidence or other material on which those findings were based.
 - (4) The Tribunal shall cause a copy of its decision, including the reasons for the decision, to be served on each party to the proceeding.
 - (5) Subject to subsection (4), a decision of a Tribunal shall come into operation on date the notice of the decision is given or on such other date as may be specified by the Tribunal in the notice.
 - (6) A decision of the Tribunal shall have effect as and be enforceable as if it were a decision of a court.
 - (7) Subject to subsection (9), all decisions of the Tribunal and all evidence received by it, including a transcript of the report of the hearings, are public records open to inspection of the public.
 - (8) Subject to subsection (9), a Tribunal shall provide for the publication of its decisions, including reasons, in such form and manner as may be adapted for public information and use, and such authorized publication is evidence of the decisions of the Tribunal in all courts of Kenya without any further proof of authentication.
 - (9) The Tribunal shall ensure that in releasing, or allowing access to, information under subsection (7) or (8) measures are taken to prevent the disclosure of trade secrets or other confidential information.
27. The Appellant would have this Court adopt the position that once the Tax Appeals Tribunal held that the appeal had been filed on time, the Commissioner had run out of time for making a decision. Section 51 (11) of the [Tax Procedures Act](#) Cap 469B of the Laws of Kenya states as follows;



51. Objection to tax decision

- (1) A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax 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 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.
- (4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.
- (4A) Despite subsection (3), where a taxpayer fails to provide the information required under subsection (4) or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was 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 shall consider and may allow an application under subsection (6) 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.
- (7A) The Commissioner shall notify the taxpayer of the decision made under subsection (7) within fourteen days after receipt of the application,
- (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 valid notice of objection failure to which the objection shall be deemed to be allowed.
 - (12) A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.
28. In this case, the sixty (60) days had long expired. The Appellant would therefore have this Court declare that time having ran out, the Objection stood, unopposed so to speak. That pursuant to the operations of the law, the Appellant had escaped from the tax liabilities due to effluxion of time.
29. To hold so is to ignore the powers donated to the Tribunal to refer the matter back to the Commissioner for reconsideration.
30. This Court is not in any doubt that the Tax Appeals Tribunal acted within its mandate and jurisdiction in referring the matter back to the Commissioner. The law as stipulated clearly allowed it to do so. To declare otherwise would be to read an absurdity into the law, where no such absurdity exists.

b) What reliefs flow from this Appeal?

31. To this Court the Appeal lacks merit
32. Costs ordinarily follow the events. The Court sees no reason to depart from this position. The Appellant will bear the costs of the Appeal.

Determination

33. The Appeal herein is dismissed in its entirety.
34. The Appellant is to bear the cost of the Appeal.
35. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MARCH, 2025.

NJOROGE BENJAMIN K

JUDGE

In the presence of

Miss Kerubo for the Appellant

Mr. Muhoro for the Respondent

Court Assistant Mr. Luyai.

