



Commissioner of Domestic Taxes v Rabdiya Constructions Company Ltd (Income Tax Appeal E065 of 2023) [2025] KEHC 5015 (KLR) (Commercial and Tax) (22 April 2025) (Judgment)

Neutral citation: [2025] KEHC 5015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E065 OF 2023**

MN MWANGI, J

APRIL 22, 2025

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

RABDIYA CONSTRUCTIONS COMPANY LTD RESPONDENT

(Being an Appeal against the judgment of the Tax Appeals Tribunal delivered on 17th March 2023 in TAT NO. 365 OF 2022)

JUDGMENT

1. The appellant contended that it carried out a returns' review on the respondent for the period 2015 to 2018 covering Corporation Tax and VAT. That it subsequently issued the respondent with an assessment on 29th June 2021. Vide a letter dated 8th June 2021, the respondent objected to the said assessment asserting that all its VAT monthly returns had been incurred in line with the nature of its business operations and that all of the said returns were fully supported. The respondent further averred that it had already settled a tax liability amounting to Kshs.1,000,000/=, and it had invoices for the balance due, which would invalidate the balance of taxes claimed.
2. In an objection decision issued on 24th February 2022, the appellant confirmed the assessments previously made and issued to the respondent. Aggrieved by the said decision, the respondent lodged an appeal at the Tax Appeals Tribunal (hereinafter referred to as "the Tribunal") against the appellant's objection decision vide a Memorandum of Appeal and statement of facts both filed on 7th April 2022.
3. Upon consideration of the parties' pleadings, the documents attached to the appeal and submissions, the Tribunal identified four issues for determination, being; whether the appellant's objection was allowed by operation of the law; whether the respondent's assessments were in contravention of the provisions of Section 29(5) of the Tax Procedures Act (TPA); whether the respondent erred in its



decision to disallow Input VAT; and whether the respondent erred in assessing additional Corporation Tax.

4. In its judgment delivered on 17th March 2023, the Tribunal found that the respondent's objection was not allowed by operation of any law in respect to the first issue. In respect of the 2nd issue, the Tribunal found that given that the assessments were issued in June 2021, they could only apply up to returns filed in July 2016, therefore the appellant erred in assessing any VAT beyond the month of June, 2016. On the third & fourth issues, the Tribunal held that the appellant did not err in its decision to disallow the Input VAT for the period beginning July 2016 and in assessing the resultant Corporation Tax.
5. Dissatisfied with the Tribunal's holding, the appellant lodged the instant appeal against the said decision vide a Memorandum of Appeal dated 15th May 2023 raising the following grounds of appeal –
 - i. That the Honourable Tribunal erred in law and fact in finding that the VAT assessments for the months of July 2015, October 2015, February 2016 and May 2016 were issued on 2nd June 2021 hence outside the statutory limit;
 - ii. That the Honourable Tribunal erred in law and fact to failing to appreciate that four assessments were issued on 3rd May 2018 (three of them) and 4th May 2018 and not 2nd June 2021 hence within the five year statutory limit as set under Section 31(4) *Tax Procedures Act, 2015*; (sic); and
 - iii. That the Honourable Tribunal erred in law and fact in failing to recheck the dates of the four VAT Assessments as attached by both parties in the pleadings before making a pronouncement that they had been issued on 2nd June 2021 hence outside the set statutory timeline.
6. The appellant's prayer is for this Court to allow the instant appeal with costs, and set aside the judgment of the Tax Appeals Tribunal delivered on 17th March 2023 in Tax Appeal No. 365 of 2022 to the extent that it relates to VAT assessments made earlier than July 2016.
7. The appeal herein was canvassed by way of written submissions. From the record, there is no evidence of submissions having been filed by the respondent in opposition to the instant appeal. The appellant's submissions were filed on 29th August 2024 by Mr. G. O. Ochieng, Advocate.
8. Mr. Ochieng, learned Counsel for the appellant submitted that in this appeal, the appellant seeks the Court's interpretation of Section 31(4) of the TPA regarding the calculation of time. He further submitted that the VAT assessments in question were issued on 3rd May 2018 and 4th May 2018 but the Tribunal erroneously recorded the date as 2nd June 2021. Counsel cited the provisions of Section 31(4) of the TPA and argued that the appellant had five (5) years from the self-assessment date to issue additional assessments. He argued that since VAT assessments are filed monthly, the Commissioner had until June 2021 to issue any additional assessments, making the assessments herein compliant with the provisions of Section 31(4) of the said Act.

Analysis and Determination

9. This Court is alive to the provisions of Section 56(2) of the TPA which provides that an Appeal to the High Court from the decision of the Tax Appeals Tribunal shall be on a question of law only. The Court of Appeal in *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR, 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”.

10. Accordingly, this Court is not permitted to substitute the Tribunal’s decision with its own conclusions based on its own analysis and appreciation of the facts, unless the Tribunal’s decision cannot be supported by any evidence.
11. Upon consideration of the Memorandum of appeal, the Record of appeal, the statement of facts and the written submissions filed by the appellant’s Counsel, the issue that arises for determination is if the Tribunal misdirected itself in arriving at the judgment delivered on 17th March 2023.
12. This Court has been called upon to interpret the provisions of Section 31(4) of the TPa and determine whether the Tribunal’s interpretation of it was correct. The said Section states that –
The Commissioner may amend an assessment -
 - a. in the case of gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, at any time; or
 - b. in any other case, within five years of -
 - i. for a self-assessment, the date that the self-assessment taxpayer submitted the self-assessment return to which the self-assessment relates; or
 - ii. for any other assessment, the date the Commissioner notified the taxpayer of the assessment:
Provided that in the case of value added tax, the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.
13. In this case, the appellant’s contention is that VAT assessments for the months of July 2015, October 2015, February 2016 and May 2016 were issued on 3rd May 2018 and 4th May 2018 and not 2nd June 2021 as stated by the Tribunal. He submitted that since VAT assessments are filed monthly, the Commissioner had until June 2021 to issue any additional assessments, making the assessments herein compliant with the provisions of Section 31(4) of the TPA.
14. The import of the provisions of Section 31(4) of the TPA and more specifically, Section 31(4)(b) thereof is that amendment of assessments by the Commissioner can only be done within five (5) years of the date of the original assessment. The Tribunal in its judgment found that since the assessments for the year 2015 were filed in 2016, and the Commissioner’s additional assessment was issued in June 2021, the said assessment was issued outside the prescribed timelines.
15. On perusal of the documents availed before the Tribunal by both the appellant and the respondent, I note that the assessments for the months of July 2015, October 2015 and May 2016 were issued on 3rd May 2018 and 4th May 2018. This is well captured in the assessments themselves and in the respondent’s application for late objection dated 8th June 2021. This Court did not find a copy of the assessment issued for the month of February 2016, thus it cannot make a determination of whether or not it was issued within the prescribed statutory timelines.
16. In the end, it is my finding that the Tribunal’s findings that the assessments in question were issued outside the prescribed timelines is not supported by any evidence



17. The upshot is that the appeal herein is merited. It is hereby allowed as prayed.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF APRIL 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. Ochieng for the applicant

No appearance for the respondent

Ms B. Wokabi - Court Assistant.

