



REPUBLIC OF KENYA



Commissioner of Domestic Taxes v Imperial Industry Park Company Limited (Income Tax Appeal E196 of 2023) [2025] KEHC 4475 (KLR) (Commercial and Tax) (8 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E196 OF 2023**

BM MUSYOKI, J

APRIL 8, 2025

BETWEEN

THE COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

IMPERIAL INDUSTRY PARK COMPANY LIMITED RESPONDENT

(Being an appeal against part of judgment of the Tax Appeals Tribunal in its appeal number 1021 of 2022 dated 6-10-2023)

JUDGMENT

1. The appellant conducted investigations on the respondent's tax affairs for the period between January 2017 and December 2020. The appellant claimed that the respondent had failed to declare or had under-declared its income tax and VAT for the said period. Upon investigations, the appellant issued an additional assessment on 29-11-2021 to which the respondent did not object in time. On an application by the respondent, the appellant on 9-03-2022 allowed filing of late objection following which the respondent filed the objection to the assessment on 18-03-2022. The appellant did not respond to the objection until 5-08-2022 where it confirmed the income tax assessment of Kshs 42,104,924.00 and Kshs 123,653.00 for VAT.
2. The respondent lodged an appeal before the tribunal challenging the appellant's decision dated 5-08-2022. In its judgment, the tribunal held that the letter dated 5-08-2022 which it referred to as invalidation notice was issued out of time and therefore invalid by virtue of section 51(4) of the *Tax Procedures Act* and consequently the issue of correctness of the assessment had been overtaken by events as the objection was considered to have been allowed by the operations of the law. The appellant was aggrieved with this decision and has approached this court on the following grounds of appeal;



1. The tribunal erred in law and fact by failing to consider the merits of the appeal and focused on technicalities of timelines for issuing an objection decision.
2. The tribunal erred in law and fact by setting aside the respondent's (sic) decision dated 5th August 2022 where it confirmed the assessment on income tax and VAT for Kshs 42,104,924.00 and Kshs 123,653.00 respectfully, which taxes are due and payable.
3. The tribunal erred in failing to determine whether the respondent's additional assessment was justified and payable and in holding that the same was overtaken by events.
3. This appeal was disposed by way of written submissions. I have read the appellant's submissions dated 2-10-2024 and those of the respondent dated 31-10-2024. I discern from the submissions and the contents of the record of appeal that there are only two issues for determination in this appeal. The first issue is whether the tribunal was right in holding that the appellant's notice dated 5-08-2022 was out of time and the second one is, what was the effect of the late notice.
4. The appellant's letter which is the genesis of the matter appears on page 54 of the record of appeal. I have looked at the letter and it is clear to me that the contents of the same was declaring the respondent's objection filed on 18-03-2022 as invalid and at the same time confirming its assessment dated 29th November 2021. In its judgment, the tribunal referred to the letter as an invalidation notice whereas the parties especially the respondent termed it as an objection decision. Despite this difference in references, the tribunal held that, whichever way one looked at it, the appellant's decision contravened mandatory provisions of the [Tax Procedures Act](#) and it was thus invalid.
5. The appellant has argued that Section 51(11) of the [Tax Procedures Act](#) applies where there is a valid objection filed and since it had invalidated the respondent's objection, the Section was not applicable. If one was to go by the appellant's stand, it would mean that there was no valid objection to be considered in the first place. I find this to be a very interesting argument as one would wonder why was the appellant confirming its assessment if there was no valid objection worth of consideration.
6. The appellant's above stand arises from its interpretation of Section 51(4) of the same [Act](#) which provides that;

'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.'
7. If I understand the appellant, it takes position that the above Section does not give timelines within which the Commissioner should make decision on validity of the objection and that is why it sees nothing wrong with its letter dated 5-08-2022 declaring the respondent's objection invalid. This position would imply that timelines provided in Section 51(11) of the [Act](#) starts running after the information or documents demanded by the Commissioner under Section 51(4) are supplied by the taxpayer. What I get from this argument is that the Commissioner can take as long as he wants in making a decision on the validity of an objection. If this were the position, then the appellant should have in its letter dated 5-08-2022 declared the objection invalid and proceeded to call for documents and/or information in terms of Section 51(4) of the [Act](#). However, in the said letter the appellant proceeded to confirm its assessment dated 29-11-2021.
8. It is true that the Section 51(4) does not explicitly state how long should the Commissioner take in making his decision on validity of an objection. However, it is my position that it was not intended to give the Commissioner indefinite period in reaching a decision on validity. Holding so would be



giving too narrow interpretation of the statute. The whole of Section 51 give timelines within which the Commissioner and the taxpayer should do a contemplated act and Subsection 4 as it relates to a decision on validity of objection should not be an exemption. The Commissioner cannot be expected to take his time and keep the taxpayer in suspense as to the validity of their objection.

9. It is my holding that for the purposes of interpretation, the Commissioner's decision on the validity of an objection under Section 51(4) of the *Tax Procedures Act* should be made within fourteen days of filing of the objection and if the objection is found to be invalid, the communication thereof should be done within fourteen days. Otherwise would mean that the Commissioner can sit on an objection for eons and suddenly wake up and decide that the objection was invalid in order to circumvent the timelines provided for in Section 51(11) of the *Act*. Tax proceedings are based on clarity, certainty and expediency. Since it is in the discretion of the Commissioner to determine validity or otherwise of objection, he is bound in law to act expeditiously so that the taxpayers are not kept in a state of assumptions, confusions and uncertainties. In the premises, I do uphold the holding of the tribunal that the appellant's decision dated 5-08-2022 was made out of time.
10. The other issue is what was the effect of the making the communication or the decision out of time. The appellant argues that the failure to adhere to timelines is a matter of a technicality and therefore not fatal to its assessment. It is my position that where timelines are given by a statute, the parties must stick to the timelines or seek extension and approval of the court or the relevant authorities and failure to do so renders fatal any action taken. Acting outside the dictate of statute is a breach of the same law the appellant sought to enforce and implement. This is position in law was held in *Archer & Another v Archer & 2 Others* (2024) KECA 188 (KLR) thus;

‘The rationale for strict adherence to rules of practice and procedure was explained in *Chelashaw v Attorney General & another* [2005] 1 EA 33, where it was held that without rules of practice and procedure the application and enforcement of the law and the administration of justice would be chaotic and impossible and their absence or non-adherence would lead to uncertainty of the law and total confusion since laws serve a purpose and they enhance the rule of law.’

11. In the premises of the above analysis, I do not see any reasons for disturbing the tribunal's judgment. This appeal is therefore dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF APRIL 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Judgment delivered in presence of Miss Onyango for the appellant and Miss Muinde for Mr. Kioko for the appellant.

