



REPUBLIC OF KENYA



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**Bluejay Limited v Commissioner of Domestic Taxes (Income Tax Appeal E099 of 2020)
[2025] KEHC 6361 (KLR) (Commercial & Admiralty) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6361 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
INCOME TAX APPEAL E099 OF 2020**

NW SIFUNA, J

MAY 22, 2025

BETWEEN

BLUEJAY LIMITED APPELLANT

AND

THE COMMISSIONER OF DOMESTIC TAXES RESPONDENT

*(Being an Appeal from the Judgement of the Tax Appeal Tribunal at Nairobi
delivered on 18th September 2020 in Tax Appeals Tribunal Appeal No. 87 of 2019)*

JUDGMENT

1. This is an Appeal from the judgment of the Tax Appeals Tribunal. By it, the Appellant seeks to overturn the Tribunal's decision delivered on 18th September 2020. In which decision, the Tribunal set aside the Appellant's objection concerning the tax assessment issued by the Respondent.
2. The Respondent issued a Demand Notice to the Appellant for Withholding Tax on winnings amounting to Ksh 137,404,817= for the income year 2016. The total sum comprises the principal tax, penalty, and interest.
3. The Appellant duly filed an Objection to the Demand Notice by submitting letters dated 15th January 2018 and 5th February 2018. Which were later followed by subsequent meetings between the Respondent's officers and the Appellant's officials.
4. Despite the Appellant's objection, the Respondent issued a revised tax assessment on 1st November 2018 of Ksh 146,504,558= for the same year (2016). This revised assessment included Withholding Tax on winnings and professionals' fees, as well as PAYE on Directors' fees. Also the assessment on Corporation Tax charges relating to wrongful capital expenses amounting to Ksh 6,897,331=.



5. In response to the revised assessment. The Appellant proposed an alternative payment structure, wherein it proposed to pay Withholding Tax on professional fees of Ksh 603,664= instead of PAYE of Ksh 4,817,242=, Withholding tax on winnings of Ksh 37,537,044=, and the disputed Corporation Tax fees. Which proposal, the Respondent rejected.
6. The Appellant then challenged the revised assessment before the Tas Appeal Tribunal. Which on 18th September 2020, ruled in the Respondent's favour and set aside the Appellant's objection. Dissatisfied with the Tribunal's said decision, the Appellant filed this Appeal in this Court; seeking to overturn this decision. The Appeal is based on the following grounds stated in the Memorandum of Appeal dated 30th September 2020.
 1. That the Tribunal misapprehended the nature of the appeal before it.
 2. That the Tribunal acted without jurisdiction in purporting to extend beyond 60 days the period within which the Respondent may respond to an objection made by the tax payer.
 3. That the Tribunal erred in not allowing the appeal of the Appellant with costs and dismissing with costs the respondent's cross-appeal.
 4. That the Tribunal misconstrued section 51(11) of the Tax Procedure Act and article 159 (2) (d) of *the Constitution*.
 5. That the Tribunal contravened the rule in Provincial Insurance Company of East Africa v. Nandwa 1995- 1998 EACA 2888. Which rule bars a court from deciding a matter on issues which have not been pleaded by the parties.
 6. That the Tribunal overlooked the fact that the *Tax procedures Act* 2015 has not extended the period beyond 69 days of the Respondent rendering an objection decision.
 7. That the Tribunal erred in acting as though there was a jurisdiction under the Tax Procedure Act for it to extend time for rendering an objection decision, the respondent appealed for an extension, the same was argued and allowed.
 8. That the Tribunal erred in not vacating the Respondent's assessment dated 1st November 2018 of Kshs 131,739,327 as withholding tax on winnings.
 9. That the Tribunal erred in not striking out the Respondent's purported additional assessment dated 1st November 2018 in which the Respondent claimed from the appellant Kshs 146,504,588 for being barred by res judicata doctrine made applicable by section 51(11) of Tax Procedure Act.
 10. That the Tribunal erred in not holding that by virtue of not responding to the appellant's objection dated 5th February 2018 to the assessment of 15th December 2017, the Respondent had put itself out of power to claim from the appellant any withholding tax in respect of the year 2016.
 11. That the Tribunal erred in not upholding the Appellant's objection dated 15th November 2018 to the Respondent's purported additional assessment dated 1st November 2018.
 12. That the Tribunal erred in assuming jurisdiction to hear the Respondent's cross appeal based on non-existent assessment.
 13. That the Tribunal erred in not allowing the Appellant's appeal.



7. The Appellant has urged this Court to allow the Appeal, and set aside the Tribunal's impugned Judgment of 18th September 2020, and substitute it with an order allowing the Appeal.
8. The Respondent the Tax Authority, has for its part opposed the Appeal and asserted that the decision was proper and in accordance with the law.
9. The Appeal proceeded by way of written submissions; which each party filing its submissions. I have in reaching a determination in this Appeal, considered the Appeal, the Respondent's filed response, as well as the parties' rival submissions.

Analysis and determination.

10. This Appeal has invoked the Court's jurisdiction under Section 56(2) of the Tax Procedure Act (TPA). Which provision limits appeals to questions of law only. The provision states as follows: "An appeal to the High Court or to the Court of Appeal shall be on a question of law only".
11. The Appellant has in arguing the Appeal contended that impugned decision upheld the Respondent's tax assessment, despite the objection decision being issued beyond the statutory period prescribed under section 51(11) of the TPA. The grounds of this Appeal can be condensed into two primary issues, namely:
 - a. Whether the objection decision having been issued outside the statutory timelines was fatal to the assessment process,
 - b. Whether in the tribunal erred in upholding the respondent's assessment on Corporation tax given the aforementioned delay.
12. On the first ground, it is not in dispute that the Respondent issued the objection decision beyond the 60-day period stipulated under Section 51(11) of the TPA; which provides as follows:

"The Commissioner shall make the objection decision within sixty days from the date of

 - a. The notice of objection; or
 - b. Any further information the Commissioner may require from the tax payer,

Failure to which the objection shall be deemed to be allowed."
13. The Appellant contends that the failure to issue the decision within the prescribed period renders the objection deemed allowed by operation of law. To this, the Respondent responded that the Tribunal was right in holding that the delay was due the then ongoing negotiations between the two disputants (the Appellant and the Respondent), and in purporting to rely on Article 159(2)(d) of *the Constitution*. Which provision urges the resolution of disputes without undue regard to procedural technicalities.
14. While the Tribunal's intention to ensure substantive justice is commendable, the provisions of Section 51(11) of the TPA are unequivocal, mandatory, and peremptory in nature. The statute requires that the Commissioner's decision be issued within 60 days, and that failing which, results in the objection being deemed allowed. There is no provision in the TPA granting the Tribunal the discretion to extend this period or to otherwise interfere with the clear statutory directive.



15. The reliance on Article 159(2)(d) of *the Constitution*, which aims to ensure that justice is administered without undue regard to procedural technicalities, is misplaced in this context. In *Equity Group Holdings v. Commissioner of Domestic Taxes* [2021] KEHC 25 (KLR), the court observed as follows:

“Section 51 (11) of the TPA is couched in peremptory terms. 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). First, there was no decision at all. The decision had ceased to exist by operation of the law. Second, the provisions of section 51 (11) (b) had kicked in. The Objection had by dint of the said provision been deemed as allowed. Third, the TAT had no discretion to either extend time or to entertain the matter further. Fourth, discretion follows the law and a tribunal cannot purport to exercise discretion in clear breach of the law.

The TAT premised its decision on the provisions of Article 159 (2) (d) of *the constitution* which requires courts to determine matters without undue regard to technicalities of procedure. On the face of a clear statutory dictate, I do not see how the TAT could term the express statutory edict as a matter of procedural technicality. This was a gross misapprehension of the law. Article 159 (2) (d) of *the constitution* was not meant to oust express statutory provisions and to open a window for disregard of statutory requirements.”

16. The Tribunal's attempt to override the clear statutory provisions by invoking constitutional principles was, in my view, a misapplication of the law. The law is clear: Section 51(11) is not merely procedural but substantive, and the failure to comply with its terms renders the objection automatically allowed.
17. On the second ground, having concluded that the objection was deemed allowed by operation of law due to the Respondent's failure to issue a timely decision, it follows that the Respondent's original tax assessment ceased to have a valid legal basis. The Tax Appeals Tribunal, in upholding the assessment despite the statutory default, erred in law.
18. The Tribunal's decision to proceed with the dispute, despite the operation of Section 51(11), amounted to an improper exercise of jurisdiction. Once the Respondent failed to issue the decision within the statutory timeframe, the assessment became legally untenable. The Tribunal, therefore, had no lawful basis to uphold the tax assessment, which was effectively nullified by the Appellant's deemed allowance of the objection.
19. In light of the foregoing analysis, it is my finding that the Tax Appeals Tribunal erred in both its interpretation of Section 51(11) of the Tax Procedure Act and its decision to uphold the Respondent's tax assessment.
20. In the end, the Appeal is hereby allowed, with the consequence that:
- The decision of the Tax Appeals Tribunal dated 18th September 2020 is hereby set aside.
 - The Respondent's tax assessment dated 1st November 2018, was null and void hence unenforceable; while the Appellant's Objection thereto is deemed to have been allowed by operation of law under section 51(11) of the Tax Procedure Act.
 - The Appellant shall have the costs of this Appeal.

DATED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF MAY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

