



**Commissioner of Domestic Taxes v Techsavana Company Limited (Income Tax Appeal E228 of 2023) [2025] KEHC 6643 (KLR) (Commercial and Tax) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6643 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E228 OF 2023**

**H NAMISI, J**

**MAY 23, 2025**

**BETWEEN**

**COMMISSIONER OF DOMESTIC TAXES ..... APPELLANT**

**AND**

**TECHSAVANA COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Appellant is a principal officer appointed under section 13 of the [Kenya Revenue Authority Act](#), charged with the responsibility, inter alia, of assessment, collecting, accounting and the general administration of tax revenue on behalf of the Government of Kenya.
2. Through a letter dated 5 June 2020, the Appellant notified the Respondent of its intention to verify the records of the Respondent. The verification exercise was to commence on 10 July 2020. The Appellant issued its preliminary finding on 17 October 2020 for the financial period 2016 to 2019. The Respondent replied vide letter dated 23 October 2020.
3. The Appellant issued a notice of assessment on 26 July 2021 for Kshs 73,856,356/= for VAT and Kshs 3,546,603/= for withholding tax. The Respondent objected to the VAT assessment on 31 March 2021 through iTax platform. Subsequently, after engagement by the parties, the Appellant issued its objection decision on 1 September 2021. Being dissatisfied with the same, the Respondent appealed to the Tax Appeals Tribunal.
4. The Respondent's case to the Tribunal was that the Appellant erred by charging VAT on outsourced labor. The Respondent argued that it was contracted by its customers, including Safaricom PLC and Kenya Commercial Bank Ltd, to supply staff (developers) who were to come under the recipient's direction and control. The Respondent's role was that of an agent, where it would source the human capital, based on the specification and salary scale of the customers. After performance of the specified



- duties, the Respondent would pay the staff and be compensated by the customers. The Respondent would also receive a commission.
5. The Appellant's case was that the Respondent was providing professional and technical services to its customers, which translates to supply of services and which attracts VAT.
  6. In allowing the appeal, the Tribunal's view was that the Respondent had demonstrated that the clients were directly responsible for the remuneration and management of outsourced staff and that the Respondent was merely facilitating the payments.
  7. Aggrieved by the decision of the Tribunal, the Appellant lodged this appeal on the following grounds:
    - i. That the Honourable Tribunal erred in law and in fact in finding that the Respondent erred in its assessment for VAT on the amounts paid to the Appellant for provision of outsourced developers.
    - ii. That the Honourable Tribunal erred in law and in fact in finding that the Appellant's staff at all times were under the direct supervision by Safaricom and that the Appellant was, therefore, a mere facilitator in the recruitment and facilitating their salary payments.
    - iii. That the Honourable Tribunal erred in law and in fact in finding that the amounts paid to the outsourced developers were disbursements and not a service subject to VAT.
    - iv. That the Honourable Tribunal erred in law and in fact in failing to appreciate that VAT act does not deal with provision of outsourced labour but has provisos for provision of services and goods only.
    - v. That the Honourable Tribunal erred in law and in fact in failing to appreciate that the contract between the Appellant and its client was for provision of service.
    - vi. That the Honourable Tribunal erred in law and in fact in finding that the Appellant was not liable to charge VAT on the services they rendered.
    - vii. That the Honourable Tribunal erred in law and in fact in failing to appreciate yet the invoices the Appellant issued to its client did not distinguish the amounts attributable to the disbursements and amounts attributed to the margin for recruitment of outsourced labors.
    - viii. That the Honourable Tribunal erred in law and in fact in misinterpreting Section 13 (4) of the VAT which states that 'the consideration for a supply shall include the amount charged for: (c) any liability that the purchaser has to pay to the vendor by reason of or in respect of the supply in addition to the amount charged as price.
    - ix. That the Honourable Tribunal erred in law and in fact in failing to appreciate that the preceding provision clearly explained that VAT should have been charged on the full amount including the salaries.
    - x. That the Honourable Tribunal erred in law and in fact in failing to make a determination on whether the supply of outsourced labourers fell under supply of services or goods and whether the same were subject to VAT or exempt.
    - xi. That the Honourable Tribunal misapplied and misdirected itself on the law and therefore came to the incorrect decision.
  8. The appeal was canvassed by way of written submissions, which I have read and carefully considered. Ultimately, this appeal rests on whether the amounts paid to the outsourced developers were



disbursements and not a service subject to VAT. It raised the proverbial question: who held the purse strings?

9. I will depart from tradition and begin with the Respondent's submissions. It was the Respondent's submissions that a disbursement is an expense which one pays on behalf of the client. In the case of disbursement, the payer acts as an agent when settling the amount due to the supplier, gets the invoice in the customer's name and collects the sum paid.
10. The Respondent argued that in the Service Level Agreement with its customers, the Respondent was merely an agent of the customers, charged with getting developers as per the agreed qualifications and cadre. As per the Agreement, the Respondent would receive money on behalf of the Developers from the Principal, and pay the Developers (the Employees) in full, a transaction that involved no value Addition. The Respondent contended that the payments received from the customer represented the compensation of salary and other employment costs paid to the Developers supplied.
11. The Respondent further argued that the Agreement clearly indicated that each developer would be paid a gross salary and was entitled to statutory benefits, including NHIF and NSSF, and further benefits such as medical scheme, communication and overhead. From the Agreement, it was also clear that the staff were at all times under the direct supervision of the customer, in this instance Safaricom PLC, and the Respondent was a merely facilitator.
12. Section 13 of the VAT Act provides as follows:
  - (1) Subject to this Act, the taxable value of a supply, including a supply of imported services, shall be—
    - (a) the consideration for the supply; or
    - (b) In calculating the value of any services for the purposes of subsection (1), there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply to the client: Provided that, if the Commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value.
13. The question that lies is whether the Respondent made disbursements to the staff (Developers) as an agent of its customers. In addressing this question, I am minded to interrogate the provisions of the Agreement.
14. The Agreement dated 1 August 2016 between the Respondent and Safaricom PLC termed "Agreement for the Provision of Outsourced Developers" defines various terms, inter alia:

"Outsourced Staff" means the personnel to be provided by the Supplier as is further described in Schedule 1(The Services).

"Services" means the provision of outsourced developers to be provided by the Supplier as set out in Schedule 1(The Services).

"Service Fee" means remuneration payable by Safaricom to the Supplier for the provision of the Services as set out in Schedule 3 (Service Fee and Payment Terms). "Sites" means Safaricom offices countrywide where the Outsourced Staff will be assigned.
15. The role and general functions of the Respondent are laid out at Clause 4 of the Agreement as follows:
  - i. Recruitment of the Outsourced Staff although the final decision on the staff to be engaged will be approved by Safaricom and Safaricom reserves the right to attend and participate in



interviews for the Outsourced Staff. For the avoidance of doubt the approval by Safaricom for the engagement of the Outsourced Staff shall not excuse the Supplier from its obligations under this Agreement including the obligation to vet all Outsourced Staff and the Supplier will be required to vet all candidates in accordance with the provisions of clause 7.1 (c) prior to engagement of the Outsourced Staff.

- ii. Remuneration management of the Outsourced Staff (payroll and statutory obligations and deductions). In this regard, the Supplier shall maintain complete and comprehensive documents and accounts and will supply to Safaricom on the last day of each month records relating to payroll and submission or payment of all the relevant tax.
  - iii. Appointments and contract management Disciplinary management upon such standards and within such processes as Safaricom shall determine
  - iv. Performance management in liaison with Safaricom
  - v. Training in particular soft skills training in the course of term of this Agreement as per Schedule 7 (Training by the Supplier). The Supplier will also verify prior to recruitment that the staff are computer - literate, well groomed, confident and fit for the job under consideration;
  - vi. Leave management in liaison with the relevant Safaricom supervisor;
  - vii. Supervision of the Outsourced Staff is the overall responsibility of the Supplier;
  - viii. Provision of an outpatient medical scheme for the Outsourced Staff.
  - ix. Obtaining sufficient insurance cover to cater for any indemnities to be provided to Safaricom.
16. Operational and performance management was to be carried out by Safaricom PLC.
17. Clause 6.1 (a) provides that in consideration of the carrying out of the Services, Safaricom shall pay the Supplier the Service Fee. The Service Fee is denoted to include the gross wages/salaries, statutory and essential benefits of the outsourced staff as well as an agency margin at 16%.
18. Clause 7,6 on remuneration of the outsourced staff provides as follows:
- a. The Supplier shall be responsible for its Outsourced Staff remuneration's, benefits, transport to and from the sites, employee related taxes, any insurances required to be taken out by an employer by law and the Supplier shall hold Safaricom harmless for claims regarding such remuneration, insurances or taxes. Safaricom shall not incur any liability to the Supplier or any other person by reason of any failure on the part of the Supplier to honour any contract entered into with the Outsourced Staff nor by failure by the Supplier to comply with any laws in relation to the employee including but not limited to any health and safety regulations.
  - b. The Supplier shall pay to the Outsourced Staff all applicable wages, commissions and rewards (where applicable) and benefits in a timely manner and in any event no later than the 27 day of each month in which such remuneration is payable for the Services performed by the Outsourced Staff and shall provide evidence of such timely payment upon written demand from Safaricom. The Supplier shall ensure that all Outsourced Staff receive their payslips on the 25<sup>th</sup> day of every month.
19. Other relevant provisions of the Agreement include clause 7.12 which provides that it is the sole responsibility of the Supplier (Respondent) to manage the outsourced staff.



20. In summary, to answer the question posed herein above, it is the Respondent who held the purse strings. It is as clear as day that the Respondent, a software development company, entered into a contract to provide a service to its customers, which service was to identify and second qualified personnel to its customers for purposes of developing software for them.
21. In the premise, the appeal is meritorious and the same succeeds. I hereby set aside the decision of the Tribunal dated 2 June 2023 in Tax Appeal No. 655 of 2021 and uphold the decision of the Appellant in assessing the VAT on the services rendered by the Respondent to its clients.
22. Costs are awarded to the Appellant assessed at Kshs 50,000/=.

**DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF MAY 2025.**

**HELENE R. NAMISI**

**JUDGE**

Delivered on virtual platform in the presence of:

.Ms. Otieno..... for the Appellant

Mr. Maero..... for the Respondent

Libertine Achieng .....Court Assistant

