



**Karen Hospital Limited v Commissioner of Domestic Taxes (Income Tax Appeal E266 of 2024) [2025] KEHC 5560 (KLR) (Commercial and Tax) (2 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5560 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E266 OF 2024**

**RC RUTTO, J**

**MAY 2, 2025**

**BETWEEN**

**KAREN HOSPITAL LIMITED ..... APPELLANT**

**AND**

**COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT**

*(Being an Appeal from the judgment and decree of the Tax Appeals Tribunal at Nairobi delivered on 4th October 2024 in the Tax Appeals Tribunal Cause No. E236 of 2024)*

**JUDGMENT**

1. The appellant is a private health facility operating at Nairobi in Kenya. The respondent is the Commissioner of Domestic Taxes appointed under the [Kenya Revenue Authority Act](#) as an agency of the government of Kenya to collect and receive revenues.
2. The genesis of this dispute is a decision rendered by the Tax Appeals Tribunal (TAT) No. E236 of 2024. The appellant's appeal to file a late objection to a tax decision made by the respondent was dismissed.
3. As per the record, the background of this matter is as follows. The appellant undertook construction works in its premises. Thereafter, on 8<sup>th</sup> January 2015, it applied to the Commissioner of Domestic Taxes for leave to claim capital deduction in respect of expenditure on building and machinery. It made a follow up letter on this on 8<sup>th</sup> December 2016. By a letter dated 5<sup>th</sup> November 2018, the respondent declined the appellant's application.
4. The appellant by another letter dated 20<sup>th</sup> December 2021, while referring to their letter dated 8<sup>th</sup> January 2015 stated that the respondent had not responded to or dealt with the issues raised by the appellant to which the respondent replied by letter dated 29<sup>th</sup> July 2022. The appellant objected to this letter by letters dated 26<sup>th</sup> August 2022 and 11<sup>th</sup> November 2022.



5. On 18<sup>th</sup> November 2022, the respondent wrote to the appellant informing it that the letter of 29<sup>th</sup> July 2022 was not a tax decision but simply a detailed response where the respondent informed the appellant why it did not merit the capital deductions.
6. Dissatisfied with the respondent's reply, the appellant on 20<sup>th</sup> December 2022 filed TAT No. 1554 of 2022 seeking that the TAT set aside the contents of the letter dated 18<sup>th</sup> November 2022 and allow for the capital deductions on the hospital building.
7. The respondent raised a preliminary objection challenging the jurisdiction of the TAT on grounds that the appeal was against correspondence and was not an appealable decision pursuant to section 52(1) of the Trade Procedures Act; the letter of 18<sup>th</sup> November 2022 for which the Notice of Appeal was lodged did not contain any decision to which an appeal can lie; and the letter of 18<sup>th</sup> November 2022 was not an objection decision and it merely stated that the letter of 29<sup>th</sup> July 2022 was not a tax decision to which an appeal could be preferred. The respondent sought for the appeal to be dismissed with costs.
8. The Tribunal framed two issues for determination: whether the preliminary objection was merited and whether appellant qualified for capital deduction under Schedule Two of the ITA.
9. In a judgement dated 20<sup>th</sup> December 2023, the Tribunal found that the correct course of action was for the appellant to object respondent's decision contained in the letter of 5<sup>th</sup> November 2018. It struck out the appeal and ordered each party to pay its own costs.
10. Subsequently, the appellant on 17<sup>th</sup> January 2024 wrote to the respondent requesting to be allowed to file a late objection. By a letter dated 29<sup>th</sup> January 2024, the respondent declined the application for extension of time to lodge an objection notice on the basis that the appellant made the application unreasonably late.
11. Dissatisfied by this decision, the appellant on 23<sup>rd</sup> February 2024 filed TAT Cause E236 of 2024. Herein, the issue for determination was whether the respondent was justified in rejecting the appellant's application for late objection.
12. The Tribunal, in its decision dated 4<sup>th</sup> October 2024, found that that the tax decision was issued on 5<sup>th</sup> November 2018, and the appellant ought to have lodged its objection on or before 5<sup>th</sup> December 2018. The Tribunal determined that the respondent in its letter dated 5<sup>th</sup> December 2018 was clear in its conclusion that this letter was a formal assessment. It held that the appellant's application for late objection was lodged on 19<sup>th</sup> January 2024, more than 5 years late.
13. The Tribunal found that the litigation in TAT Cause No. 1554 of 2022 which started in December 2022 could not explain the delay in lodging an objection to the respondent's assessment of 5<sup>th</sup> November 2018. Further, that from the date the appellant was served with the letter of 5<sup>th</sup> November 2018, there was no follow up from the appellant till its letter dated 20<sup>th</sup> December 2021 which was more than two years later.
14. Consequently, the Tribunal found that the respondent was justified in rejecting the appellant's application for late objection. It dismissed the appeal, upheld the respondent's letter dated 29<sup>th</sup> January 2024 and ordered each party to pay its own costs.
15. It is this decision that precipitated the appeal before me. In its memorandum of appeal dated 8<sup>th</sup> October 2024, the appellant seeks that the appeal be allowed; that the judgment and orders issued by the Tax Appeals Tribunal in the TAT Cause No.E236 of 2024 be set aside; that this court considers the evidence afresh and issue orders that the respondent accept the late objection by the appellant to the



respondent's decision contained in the letter of 4<sup>th</sup> November 2018; any other orders this court may deem fit, just and appropriate to grant and the respondent to bear the costs of this appeal.

16. The appeal is based on the following five grounds to wit that; the Honourable Chairperson of the TAT erred in law in upholding the respondent's decision dated 29<sup>th</sup> January 2024; the Honourable Chairperson of the TAT erred in law; in failing to set aside the respondent's decision to reject the appellant's application for late objection; in failing to find that the pendency of the TAT/E1554/2022 constituted a reasonable cause for the respondent to extend the time for filing a notice of objection; in law in failing to deal with the question as to whether the appellant qualified to claim for capital deductions in respect of the expenditures on building and machinery; in failing to consider all facts and evidence presented by the appellant with respect to its claim for capital tax deductions.
17. The appeal was disposed of by way of submissions. In its submissions dated 15<sup>th</sup> November 2024, the appellant framed two issues, for determination namely; whether the appellant's application for late objection to the decision contained in the letter dated 5<sup>th</sup> November 2018 was merited, and whether the judgment of the TAT should be set aside.
18. It submitted that there are sufficient grounds to compel the respondent to accept the appellant's late objection under the provisions of Sections 51(6) and (7) of the Tax Procedure Act, which empower the respondent to allow an application for the extension of time to file a notice of objection under the following conditions: (a) Where the tax payer 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) Where the tax payer did not unreasonably delay in lodging the notice of objection.
19. It was further submitted that the aforementioned provisions should be read disjunctively. It was urged that to satisfy this first leg of the conditions, the appellant only needs to prove one of the following: absence from Kenya, sickness or some other reasonable cause.
20. The appellant submitted that it only needed to prove that it was prevented from lodging its objection against the tax decision contained in the letter dated 5<sup>th</sup> November 2018 by some other reasonable cause and that it had actually proved, but was ignored by the respondent.
21. It was its submission that the Tax Procedure Act does not define what would amount to a reasonable cause, neither does it provide a comprehensive list of circumstances that defines it. Therefore, it was necessary to consider the specific circumstances surrounding the tax payer's failure in order to take an action contemplated under the Act.
22. The appellant submitted that it did not occur to it that the letter dated 5<sup>th</sup> November 2018 was the respondent's tax decision that should have attracted its objection. Instead, it understood that the tax decision was contained in the respondent's letter dated 29<sup>th</sup> July 2022, in which the respondent informed the appellant that it did not qualify for capital deduction. It was the appellant's case that it appealed this decision of 29<sup>th</sup> July 2022. The appellant submitted that this false belief subsisted until the TAT rendered its judgment in the appeal on 4<sup>th</sup> October 2024.
23. Further, it was submitted that the erroneous belief that the tax decision was contained in the letter against which the appellant lodged an appeal at the TAT and prosecuting the same to the end objectively amounts to a reasonable cause for not filing an objection against the letter dated 5<sup>th</sup> November 2018.
24. On whether there was unreasonable delay in lodging the notice of objection, the appellant submitted that reference ought to be made to the date the appellant had the knowledge that the respondent's tax



- decision was contained in its letter dated 5<sup>th</sup> November 2018; that this date was 4<sup>th</sup> October 2024, when the TAT determined with certainty that the tax decision against which the appellant could have lodged an objection was the one dated 5<sup>th</sup> November 2018.
25. It was submitted that in considering the application for late objection, the respondent took into account the date on which the appellant received the respondent's letter dated 5<sup>th</sup> November 2018, which was a wrong and unobjective consideration to arrive at the conclusion that there was an unreasonable delay.
  26. It was submitted that there was no unreasonable delay on the part of the appellant and the respondent and the Tribunal, properly applying their mind would have allowed the application for late objection. It was therefore urged that the respondent and the Tribunal robbed the appellant the opportunity to benefit from the provisions of Sections 51(6) and (7) of the Act despite the fact that it objectively qualified for the same.
  27. The appellant further submitted that the capital deductions sought was allowable for the appellant's hospital building under the 2<sup>nd</sup> Schedule of the *Income Tax Act*.
  28. The respondent in its submissions dated 27<sup>th</sup> November 2024 framed one issue for determination; whether the respondent erred in declining the appellant's late Objection.
  29. It was the respondent's case that an appeal to this court is limited to matters of law pursuant to section 56(2) of the *Tax Procedures Act*. Thus, the appellate court is not permitted to substitute the Tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts. The respondent relied on the decision in *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR to buttress this assertion.
  30. The respondent submitted that the Tribunal correctly applied the relevant law to the facts of the case. The respondent submitted that it considered the explanation provided for the late objection and concluded that the same was not merited for the Objection was submitted unreasonably late. This notwithstanding, it was the respondent's case that even if the appellant had lodged the TAT Appeal No. 1554 of 2022 as the objection the same would still be inordinately late having been filed on 20<sup>th</sup> December 2022, 4 years later. To support this argument reliance was made to the following decisions *Gachugu v Karaine & 3 others* (Civil Application 208 of 2020) [2022] KECA 1411 (KLR) (16 December 2022) (Ruling) and *Thomas K'bahati t/a K/Bahati & Co Advocates v Janendra Raichand Shah* [2021] eKLR.
  31. The respondent further, submitted that the Tribunal did in fact consider the appellant's explanation for the delay as explained but it did not persuade the respondent or Commissioner to consider the late objection.
  32. I have considered the appeal, the entire record before court as well as the respective parties submissions and the issue arising for determination is, whether the respondent erred in declining the appellant's application for late objection.
  33. The appellate jurisdiction of this Court is stipulated by section 56(2) of the *Tax Procedures Act* which provides that "An appeal to the High Court or to the Court of Appeal shall be on a question of law only".
  34. The Supreme Court has binding precedent on what constitutes appeals on matters of law only. In *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others*, Petition 2B of 2014 [2014] eKLR, the Court held as follows: From the foregoing review of the comparative judicial experience, we would characterize the three elements of the phrase "matters of law" as follows:



- a. the technical element: involving the interpretation of a constitutional or statutory provision;
  - b. the practical element: involving the application of *the Constitution* and the law to a set of facts or evidence on record;
  - c. the evidentiary element: involving the evaluation of the conclusions of a trial Court on the basis of the evidence on record.
35. Guided by the above, I note that the Section 51 (2) of the *Tax Procedures Act* provides that:
- “(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.”
36. Sections 51(6) and (7) of the same act provide respectively:
- “(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.”
37. Pursuant to Section 51(2) of the *Tax Procedures Act*, the appellant if aggrieved by the tax decision, have an option to lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision. However, if this is not done a party, can still seek reprieve under Sections 51(6) and (7) of the Act which allows a party to write to the commissioner for extension of time to lodge an appeal.
38. The *Tax Procedures Act* is categorical that a taxpayer aggrieved by a tax decision, should apply in writing to the Commissioner for an extension of time to lodge a notice of objection and show that they were prevented from lodging the notice of objection within 30 days of being notified of the decision because of an absence from Kenya, sickness or other reasonable cause. In addition, the taxpayer must show that it did not unreasonably delay in lodging the notice of objection.
39. Indeed, the appellant on 17<sup>th</sup> January 2024 wrote to the respondent to lodge a late objection to the decision of 5<sup>th</sup> November 2018. The respondent considered this to be inordinate delay and rejected the application. This decision was affirmed in the TAT Cause No. E236 of 2024 dated 4<sup>th</sup> October 2024.
40. At this juncture, I must point out that statutory timelines are made with special and unique considerations to ensure fairness of procedures to all parties. However, circumstances may cause a taxpayer to be unable to comply with stipulated timelines in lodging an objection to a tax decision. In such instances, two limbs are considered by the Commissioner. Firstly, if the taxpayer is absent from Kenya, sick or has any other reasonable cause. Secondly, the Commissioner may also grant an extension of time if there has been no unreasonable delay.



41. In the circumstances of this case, the appellant was not sick or absent from Kenya. The appellant claims that it had reasonable cause not to lodge a tax objection within the statutory timelines. It submitted in its submissions dated 15<sup>th</sup> November 2024, “in all truth and honesty, it did not occur to the Appellant that the letter dated 05 November 2018 was the Respondent’s tax decision that should have attracted its objection. Instead, it understood that the tax decision was contained in the Respondent’s letter dated 29 July 2022, in which the Respondent informed the Appellant that it did not qualify for capital deduction.
22. The erroneous belief that the tax decision was contained in the letter against which the Appellant lodged an appeal at the TAT and prosecuting the same to the end objectively amounts to a reasonable cause for not filing an objection against the letter dated 05 November 2018. Unfortunately, the Respondent and, later, the Tax Appeals Tribunal failed to be satisfied with this argument.”
42. Going by the evidence on record, the appellant, in its letter dated 8<sup>th</sup> December 2016 following up on the application for deduction in respect of capital expenditure in industrial building and capital allowance on machinery, wrote ‘Being a hospital of its own type in Kenya, we define the hospital as an industrial building under paragraph 5 of the second schedule. ....There being no specific reference in the second schedule of a hospital building for purposes of claiming the capital deductions and since the hospital building qualifies for the claim as per the spirit of the schedule hence the reason to classify it under Para 5 (iv).(emphasis mine)
43. The respondent, in its letter dated 5<sup>th</sup> November 2018 stated:
- “Para 1.3: Investment Deduction
- Your application to be allowed claim investment deductions in line with paragraph 5 sub paragraph (vi) of the *Income Tax Act* (cap 470) was reviewed. However, we established that the hospital’s operations are not supported by the conditions set out in paragraph 5 of the second schedule to warrant claim of investment deductions”
44. Applying the law to this set of facts and evidence of record, I am unconvinced in light of the foregoing excerpts that the appellant had reasonable cause that prevented it from lodging an objection to the tax decision. To my mind, the applicant had clearly requested that it be classified “as an industrial building under paragraph 5 of the second schedule and the respondent was categorical that the appellant’s operations are not supported by the conditions set out in paragraph 5 of the second schedule to warrant claim of investment deductions.” In my view, the respondent’s response as at 5<sup>th</sup> November 2018 was sufficiently clear that the appellant’s investment deductions were denied and by parity of reason was the tax decision in response to the appellant’s application made on 8<sup>th</sup> January 2015 and followed up on 8<sup>th</sup> December 2016. From the record, subsequent communication by the respondent only reiterated this fact. I am therefore not persuaded that the appellant had reasonable cause to believe that the letter dated 5<sup>th</sup> November 2028 did not constitute a tax decision, as claimed. Consequently, the appellant had no reasonable cause for failing to lodge a notice of objection to that decision within the prescribed timelines. The second limb to be considered is that the taxpayer must show that it did not unreasonably delay in lodging the notice of objection. I have already found that the respondent’s response in its letter dated 5<sup>th</sup> November 2018 was sufficiently clear that the appellant’s request for investment deductions was denied. Therefore, time for the appellant started running on the receipt of the letter dated 5<sup>th</sup> November 2018. The appellant in this case, after receiving the letter dated 5<sup>th</sup> November 2018, next communicated to the respondent on 20<sup>th</sup> December 2021 which was more than three years later. In



addition, I do not see how the appeal in TAT Cause No. 1554 of 2022 which started in December 2022 explains the delay in lodging an objection to the respondent's assessment of 5<sup>th</sup> November 2018. Furthermore, the appellant's application for late objection was lodged on 19<sup>th</sup> January 2024, more than 5 years late. In the circumstances of this case therefore, I find the delay in lodging the late objection inordinate and unjustified.

45. The appellant had no reasonable cause for not lodging its objection against the decision contained in the letter dated 5<sup>th</sup> November 2018 in time and it unreasonably delayed in lodging the application for extension of time to lodge an objection notice. It is evident that the appellant's application for consideration of the late objection was only made in reaction to the TAT decision. Having opted to pursue the late objection application and not appealed to the High Court at the time, the present appeal appears to be an attempt at a second bite of the process having unsuccessfully pursued a different course.
46. In light of the above position, I am of the opinion that the respondent correctly applied the relevant law to the facts of the case.
47. The upshot is that the appeal herein is found to lack merit and is dismissed. Each party to bear its own costs.
48. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 2<sup>ND</sup> DAY OF MAY, 2025.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....for Appellant

.....for Respondent

Sam Court Assistant:

