



**Commissioner of Domestic Taxes v Liberty Life Assurance Kenya Limited (Tax Appeal E090 of 2024) [2025] KEHC 8634 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8634 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
TAX APPEAL E090 OF 2024  
JWW MONG'ARE, J  
JUNE 13, 2025**

**BETWEEN**

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

**AND**

**LIBERTY LIFE ASSURANCE KENYA LIMITED ..... RESPONDENT**

**RULING**

1. Before the court for determination is the Respondent's Notice of Motion dated 14<sup>th</sup> June 2024 that seeks to strike out the Appellant's ("the Commissioner") Notice of Appeal and Memorandum of Appeal. Through grounds set out on the face of the application and the supporting affidavit of the Respondent's Legal Officer, Ruth Kemunto sworn on 14<sup>th</sup> June 2024, the Respondent seeks the aforementioned order for reasons inter alia that the Notice of Appeal and the Memorandum of Appeal have been filed and served out of time and that the Memorandum of Appeal is accompanied by an unsigned copy of the Tax Appeal Tribunal's ("the Tribunal") judgment.
2. The Commissioner has responded to the application through the replying affidavit of its officer and advocate, Chelang'at Mutai, sworn on 3<sup>rd</sup> July 2024. In addition to these pleadings, the parties have filed written submissions which I have carefully considered and I will be making relevant references to the same.
3. As stated, the Respondent argues that the Commissioner filed and served its appeal out of time and that the Tribunal's judgment accompanying the appeal is unsigned. It relies on section 32 of the [Tax Appeals Tribunal Act](#) (Chapter 469A of the Laws of Kenya) which provide as follows:
  32. Appeals to the High Court on decisions of the Tribunal



- (1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.
  - (1A) A party that has appealed against the decision of the Tribunal in subsection (1) shall within two days of lodging a notice of appeal, serve a copy of the notice on the other party.
- (2) The High Court shall hear appeals made under this section in accordance with rules set out by the Chief Justice.

4. The Respondent thus states that the Tribunal's decision, having been delivered on 23<sup>rd</sup> February 2024, then the Notice of Appeal ought to have been filed by 24<sup>th</sup> March 2024 and not 25<sup>th</sup> March 2024 as is the present case. The Respondent further relies on Rule 3 of the [\*Tax Appeals Tribunal \(Appeals to the High Court\) Rules\*](#) which provides as follows:

3. Time for filing of memorandum of appeal

The appellant shall, within thirty days, after the date of service of a notice of appeal under section 32(1), file a memorandum of appeal with the Registrar and serve a copy on the respondent.

5. The Respondent therefore states that the Commissioner ought to have filed and served its Memorandum of Appeal on 25<sup>th</sup> April 2024 and not 15<sup>th</sup> May 2024 as was done in this case. The Respondent further relies on Rule 5(e) of the Rules which provide that a memorandum of appeal must be accompanied by among other things, a copy of the Tribunal's decision and that section 23 of the [\*Tax Appeals Tribunal Act\*](#) envisages a decision of the Tribunal as one that is signed by its members. However, the Respondent avers that the appeal is accompanied by an unsigned copy of the Tribunal's judgment.
6. In response, the Commissioner depones that the Tribunal delivered and electronically sent the judgment to the parties on 23<sup>rd</sup> February 2024 and that in compliance with the statutory timelines, the Notice of Appeal was filed on 22<sup>nd</sup> March 2024 at 4.51 pm and the same was served upon the Respondent's then tax agents on 22<sup>nd</sup> March 2024. That 22<sup>nd</sup> March 2024 was on a Friday and the Notice of Appeal was endorsed by the Deputy Registrar of the Tribunal on Monday, 25<sup>th</sup> March 2024 which is within the purview of the Deputy Registrar, of the Tribunal and not the Commissioner. As such, the Commissioner contends that the electronic filing of the Notice of Appeal was done within the statutory timelines and therefore the Respondent's application is devoid of merit.
7. The parties do not dispute that the judgment was delivered and notified to the parties on 23<sup>rd</sup> February 2024 via email and that the appeal ought to have been filed within 30 days from this date, meaning that the Notice of Appeal was to be filed by 24<sup>th</sup> March 2024 latest. The Commissioner has annexed a copy of the Judiciary's e-filing extract and receipt which indicate that the Notice of Appeal was ordered on 22<sup>nd</sup> March 2024. It is a matter of law and practice that a court filing receipt is proof that a pleading has been filed (see [\*South Nyanza Sugar Company Limited v Samwel Osewe Ochillo P/A Ochillo & Company Advocates\*](#) [2007] KECA 175 (KLR)). As the receipt indicates that the order for the Notice of Appeal was made on 22<sup>nd</sup> March 2024, I find that the same was filed within time. As to whether the Notice of Appeal was served within 2 days from this date, the Commissioner has annexed an extract of an email indicating that the Notice of Appeal was served upon the Respondent's then tax agents on 22<sup>nd</sup> March 2024 at 6.56 pm. This demonstrates that the Notice of Appeal was served within time.



8. On the Memorandum of Appeal being accompanied by an unsigned copy of the Tribunal's judgment, the Respondent has relied on section 23 of the [Tax Appeals Tribunal Act](#) to state that this provision envisages a decision of the Tribunal as one signed by its members. However, my reading of the said provision reveals nothing of the sort as the same is about Expert Evidence. In any case, I agree with the Commissioner's submission that the fact that the judgment was not signed is not fatal as the same was pronounced to both parties via email, the substance of the judgment is common to the parties and its validity has not been impugned. I am persuaded that no prejudice has actually been suffered by the Respondent and I find that such a signed judgment can always be made available at a later date before the appeal is heard on its merits.
9. For the above reasons, I find that the Respondent's application dated 14<sup>th</sup> June 2024 is without merit and it is hereby dismissed. Costs will abide the outcome of the appeal.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF JUNE 2025**

.....  
**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Mr. Wainaina holding brief for Ms. Chelangat for the Appellant/ Applicant.

Mr. James Kimani for the Respondent.

Amos- Court Assistant

