



**Commissioner of Investigations and Enforcement v Kasema (Income Tax Appeal E116 of 2024) [2025] KEHC 8463 (KLR) (Commercial and Tax) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8463 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E116 OF 2024**

**RC RUTTO, J**

**JUNE 13, 2025**

**BETWEEN**

**COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT**

**AND**

**ROY KASEMA ..... RESPONDENT**

*(Being an Appeal against the judgment delivered on 22nd March 2024 at the Tax Appeals Tribunal in Tax Appeals Tribunal Case No. E191 of 2023)*

**JUDGMENT**

1. This judgment relates to an appeal arising from the judgment delivered by the Tax Appeals Tribunal in Appeal No. E191 of 2023. In the said matter, the Respondent being dissatisfied with the Appellant's income tax liability assessment for the period 2015, 2016 and 2017 lodged an appeal before the Tax Appeal Tribunal (the Tribunal). According to the Appellant herein, the Respondent failed to provide documentation in support of alleged costs for expenditures incurred by the Respondent to support the Respondent's objection in order for it to consider the same.
2. At the Tax Appeals Tribunal, the Respondent urged the Tribunal to dismiss the appeal. He contended that he had registered the business name and opened the bank account under the false and fraudulent instructions of his sister's estranged husband, Shawn Mwangi Mwachofi, who was trading as Jewel Enterprises. The Respondent asserted that Jewel Enterprises was the actual beneficiary of the tenders nominally awarded by Kirinyaga County and was in full control of the bank accounts. However, it operated in bad faith and with the intention of defrauding him after he had provided his company details to facilitate trade with Kirinyaga County. The Respondent further stated that, in an effort to mitigate the assessment, he held consultative meetings with the Appellant to redirect the assessment



to the rightful party. As a sign of good faith, he undertook to review the bank statements to determine the Appellant's rightful share of the proceeds amounting to Kshs. 1,373,306/=.

3. The Respondent contended that the Appellant had approved a payment plan for the settlement of the self-assessed liability and had issued him with a payment registration number to facilitate the first instalment, which he duly paid. However, he was not issued with additional payment registration numbers to enable him to make subsequent instalment payments, despite sending reminders to the Appellant requesting the same. The Respondent further argued that the assessment ought to have taken into account the aforementioned facts and the existence of a payment plan under which part payments had already been made.
4. The Tax Appeals Tribunal identified a single issue for determination: whether the Respondent erred in assessing the Appellant for income tax liability. The Tribunal held that the assessments for the years 2015 and 2016 fell outside the statutory period within which the Respondent ought to have assessed the Appellant. The Tribunal further found that the Respondent had not discharged its burden of proof, the discharge of which would have necessitated a different computation of the tax assessments by the Appellant. Consequently, the appeal was partly allowed: the assessments for the years 2015 and 2016 in respect of income tax were set aside, while the assessment for the year 2017 was upheld.
5. The Appellant being aggrieved with the part of the judgment, lodged this appeal vide the Memorandum of Appeal dated 20<sup>th</sup> May 2024 setting out the following grounds of appeal; that the Honourable Tribunal erred in law in adjudicating on an issue, relating to the Income Tax assessments for the years 2015 and 2016 being contrary to Section 31 (4) (b) of the *Tax Procedures Act* 2015 which was not raised nor pleaded by the parties; erred in law in determining issues and grounds which were not in the Respondent's Notice of Objection, the Appellant's Objection Decision and the appeal documents without giving parties an opportunity to submit on the same contrary to Section 56 (3) of the *Tax Procedures Act* 2015 and Section 13 (6) of the *Tax Appeals Tribunal Act* 2013; erred in law in failing to afford the Appellant a reasonable opportunity as required under Section 26 of the *Tax Appeals Tribunal Act* 2013 to present his case and respond to the issue of the validity of the Income Tax Assessments for the years 2015 and 2016; erred in assuming the jurisdiction it did not have to consider issues or grounds not forming part of the objection decision and the appeal contrary to Sections 3 and 12 of the *Tax Appeals Tribunal Act* 2013; erred in raising issues suo moto that were neither pleaded nor forming part of the appeal and making a finding on the said issues without affording the parties an opportunity to be heard on these issues.
6. The Appellant prayed that the appeal be allowed and the Income Tax assessments for the years 2015 and 2016 as confirmed in Appellant's Objection Decision dated 20<sup>th</sup> March 2023 be upheld and that the judgment of the Tax Appeals Tribunal dated 22<sup>nd</sup> March 2024 be set aside or in the alternative, the matter be referred back to the Tribunal for parties to be heard on the issues on merit and costs of the appeal be awarded to it.
7. The Respondent filed a Statement of Facts dated 24<sup>th</sup> June 2024 in response to the Appeal. In the Statement of Facts, the Respondent sought that the appeal be dismissed and the decision of the Tribunal dated 22<sup>nd</sup> March 2024 be upheld and that the Appellant be ordered to pay costs of the appeal.
8. The appeal was argued through written submissions, with the Appellant's submissions dated 31st October 2024 and the Respondent's submissions dated 24th September 2024



## Appellant's Submissions

9. The Appellant provided an introduction and set out the background. It identified one issue for determination, that is, whether the Tribunal erred in setting aside the Income Tax Assessments for the years 2015 and 2016.
10. The Appellant submitted that the Tribunal erred setting aside the income tax assessments for the years 2015 and 2016 on the grounds that they were time-barred pursuant to Sections 29(5) and 31(4) of the *Tax Procedures Act*. While relying on the case of David Sirona Ole Tukai v. Francis Arap Muge & 2 others [2014] eKLR, the Appellant argued that there was no dispute as to whether the income tax assessments for the subject years were issued within the prescribed timelines. It contended, therefore, that the Tribunal ventured into speculation when it framed and determined that the income tax assessments for the years 2015 and 2016 were time-barred by statute, thereby unjustly denying it justice.
11. Citing Mars Logistics Limited v. Commissioner of Domestic Taxes [2021] eKLR, the Appellant argued that the Tribunal exceeded its jurisdiction by addressing an issue that was neither disputed nor properly presented before it. According to the Appellant, the Tribunal's jurisdiction is derived solely from the Respondent's Notice of Objection dated 29th November 2022. Therefore, since the issue of statutory time-barred assessments was not raised in that Notice, it could not rightfully be considered in the appeal.
12. Furthermore, the Appellant contended that introducing new grounds and submitting additional documents before the Tribunal must adhere to Section 56(3) of the *Tax Procedures Act*, which is reinforced by Section 13(6) of the *Tax Appeals Tribunal Act*. Thus, by addressing matters beyond those outlined by the Respondent, the Tribunal was accused of overstepping its mandate and effectively assuming a role reserved for the Respondent, thereby violating the applicable statutory provisions.
13. The Appellant further submitted that the issue of whether the income tax assessments for the years 2015 and 2016 were issued within the statutory period is not a pure point of law. Relying on Section 31 of the *Tax Procedures Act*, the Appellant argued that the computation of the statutory five-year limitation is anchored on the date on which a taxpayer submits a self-assessment return. Accordingly, for the Tribunal to determine whether the taxes assessed by the Appellant were within the prescribed period, it was imperative to ascertain the exact date on which the Respondent submitted the relevant self-assessment return. The Appellant contended that, in the circumstances of this case, the Tribunal made no reference to any specific submission date, and there was no evidence presented in that regard. Consequently, the Appellant submitted that the findings at paragraph 42 of the impugned judgment are speculative at best, as they are premised on the unproven assumption that the Respondent submitted a self-assessment return prior to November 2018.
14. The Appellant submitted that, even after framing the issue albeit undisputed, that the Tribunal failed to afford it a reasonable opportunity to be heard and to respond to the matter. In support of this argument, the Appellant cited Section 4 of the *Fair Administrative Action Act* as well as Articles 47(1) and 50(1) of *the Constitution* of Kenya, maintaining that it was entitled to a fair and reasonable opportunity to address the issue which the Tribunal, on its own motion, framed, considered, and determined. The Appellant further relied on the case of Commissioner of Domestic Taxes v Ibagua Investments Co. Limited [2023] eKLR, in submitting that the Tribunal's findings were erroneous and rendered in total disregard of the applicable legal provisions.
15. The Appellant concluded its submissions by praying that the Memorandum of Appeal dated 20<sup>th</sup> May 2024 be allowed.



## Respondent's submissions

16. This appeal was opposed by the Respondent who began his submissions by giving a brief background of the case. The Respondent raised two issues for determination; first, whether a court of law can on its own motion determine a matter of law not pleaded by parties and secondly, whether determining a matter of law that was not pleaded implicitly amounted to denying the Appellant an opportunity to be heard.
17. On the first issue, the Respondent made reference to Section 29 of the *Tax Procedures Act*, the case of Kenya Agricultural and Livestock Research Organisation v Okoko & Another (Civil Appeal 36A of 2021) [2022] KEHC 3302 (KLR) (29 June 2022), and Pancras T. Swai v Kenya Breweries Limited [2014] eKLR, in submitting that courts have previously considered and held that a court can make a determination on a point of law that not expressly pleaded. The Respondent argued that the jurisprudence affirms that matters of law do not necessarily need to be pleaded, as courts are empowered to determine issues of law on their own motion.
18. The Respondent further submitted that the first issue raised is dispositive of the second, and as such, the Appellant was accorded a reasonable opportunity to present its case, inspect relevant documents, and make submissions. Therefore, the Respondent argued, the Appellant was not denied the right to be heard, contrary to its assertions.
19. In conclusion, the Respondent urged the Court to uphold the Tribunal's decision rendered on 22<sup>nd</sup> March 2024.

## Analysis and Determination

20. This court acknowledges that by dint of Section 56(2) of the *Tax Procedures Act* (TPA), its jurisdiction is limited to matters of law. The section provides that "An appeal to the High Court or to the Court of Appeal shall be on a question of law only." For guidance on what constitutes an issue of law see the following cases; Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others, Petition 2B of 2014 [2014] eKLR; Peter Gichuki King'ara Vs IEBC & 2 Others, Nyeri Civil Appeal No. 31 Of 2013, (Court of Appeal) (Visram, Koome & Odek, JJA) and John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others [2018] eKLR).
21. Having considered the record of appeal, the statement of facts and the written submissions and authorities cited, this court discerns that the only issue for determination is Whether the Tribunal erred holding that the Appellant's income tax assessment for the years 2015 and 2016 was time barred.
22. The Tribunal at Paragraphs 42 and 43 of its decision held that;

"The Income Tax assessment covered the period 2015, 2016 and 2017 and the assessments were issued to the Appellant on 7<sup>th</sup> November 2022. The period of years 2015 and 2016 is without the statutory provisions within which the Respondent ought to have assessed the Appellant.

The Tribunal finds that the Appellant has not discharged its burden of proof and which discharge would have triggered the Respondent to compute the tax assessments differently. However, the Applicable and proper tax assessment in the circumstances is only for the year 2017 as per the applicable law."



- 23. The essence of the Appellant’s appeal is that the Tribunal ruled on an issue that was not raised in the Respondent’s Notice of Objection—specifically, the statutory time limitation under Section 29(5) and Section 31(4) of the *Tax Procedures Act*.
- 24. The Appellant argues that the computation of the five-year statutory limitation is based on the date the taxpayer submitted a self-assessment return. Therefore, before making such a determination, the Tribunal should have first established the exact date of submission. Additionally, the Appellant claims that they were not given an opportunity to present evidence on this matter, which they contend was a procedural unfairness.
- 25. Little has been submitted by the Respondent besides him agreeing that the court can suo moto raise an issue of law.
- 26. It is well settled that points of law can be raised at any time during the proceedings and as such this court will not belabour on it. Statutory limitation is recognized as a matter of law that goes to the justiciability of a matter. If it found that the assessment by the appellant was filed out of time, the Tribunal would lack jurisdiction to determine the issues on its merit and would proceed to make a determination based on the time.
- 27. In this instance, I agree with the Appellant’s position. Upon determining that the assessment was time-barred, the Tribunal should have first allowed the parties to present their arguments. The court finds that this issue was not purely a question of law, as it required a factual assessment before concluding that the claim was time-barred. While the Tribunal was justified in raising the statutory timeline issue suo moto, the error occurred when it proceeded to rule on the matter without affording the parties an opportunity to be heard.
- 28. Although the statutory limitation is a matter of law, the Tribunal’s conclusion is flawed due to the lack of procedural fairness in its determination. Before making its decision, it should have provided an opportunity for the parties to respond.
- 29. Based on the above, this court therefore finds as follows: -
  - a. The finding of the Tax appeal Tribunal that the assessments for the period 2015 and 2016 in reference to income tax is without the statutory provisions within which the Appellant ought to have assessed the Respondent is set aside. The Appeal is remitted back for determination on validity of the assessments.
  - b. Each party shall bear its own costs of the appeal.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 13<sup>TH</sup> DAY OF JUNE 2025.**

**RHODA RUTTO**  
**JUDGE**

In the presence of;

.....For Appellant  
 .....For Respondent  
 .....Court Assistant

