



Commissioner of Investigations and Enforcement v Kanyago (Income Tax Appeal E201 of 2024) [2025] KEHC 10435 (KLR) (Commercial and Tax) (16 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10435 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E201 OF 2024
JK NG'ARNG'AR, J
JULY 16, 2025**

**BETWEEN
COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT
AND
PETER TIRAS KANYAGO RESPONDENT**

(Being an appeal from the Judgment of the Tax Appeals Tribunals delivered on 14th June, 2024 Tax Appeal No. 177 of 2022)

JUDGMENT

1. The respondent is a limited liability company and is in the business of computer consultancy and computer facilities management activities.
2. The appellant is a principle officer appointed under the [Kenya Revenue Authority Act](#) Cap. 469 and is charged with the mandate of assessment, collection and accounting for all revenues and taxes on behalf of the Government of Kenya.
3. The appellant conducted a tax audit on the appellant for the tax period of May 2018 wherein it discovered inconsistencies in the claims as per the respondent's invoices as well as its suppliers' invoices. The appellant then sent notices to the respondent to amend the VAT returns and eliminate the inconsistencies but the respondent did not comply thus an assessment was issued. Out of Kshs. 968,465/=. The appellant allowed Kshs. 44,788/= and disallowed the balance of Kshs. 923,676/= on grounds that the amount lacked supporting documents.
4. The respondent was dissatisfied with the assessment and filed an objection dated 27/11/2029. The respondent delivered its objection decision on 17/7/2020 confirming the assessment on rejection of VAT of Kshs. 923,676/= prompting the respondent to file an appeal to the tribunal vide notice



of appeal dated 28/1/2022. The tribunal delivered its judgment dated 26/5/2023 in favor of the respondent herein.

5. Being dissatisfied with that decision, the appellant filed the instant appeal vide memorandum of appeal dated 6/12/2023 which was based on 3 grounds. Those grounds included that the tribunal erred in holding that the respondent's objection decision was not valid, erred in failing to consider the appellant's case on merit, and that the tribunal misdirected itself on both facts and law and thus arrived at an erroneous decision.
6. The appellant thus prayed that the judgment be set aside and its objection decision be upheld.
7. Despite being granted two opportunities, the respondent did not file its statement of facts and did not participate in the appeal.
8. The respondent filed its statement of facts dated 22/7/2021.
9. The appeal was canvassed by way of written submissions. The appellant's were dated 22/11/2024. The respondent did not comply. This Court has considered those submissions alongside the pleadings and record of appeal before it.
10. There is one main issue for determination; whether the appellant's decision was valid.
11. On this, the appellant submitted that there was no valid objection to the assessment. That the tribunal could not fault the objection decision whereas the respondent's objection was invalid thus the assessment stood. That despite being given time to validate its objection, the respondent still failed to issue a valid objection. That on the basis of Section 51(4) of the TPA, the appellant informed the respondent that its objection was invalid and sought for documentation to validate it but the respondent failed to adhere to timelines and provide the necessary documents. That the respondent did not discharge its burden under Section 56(1) of the TPA and further failed to meet the threshold in Section 51(3) of the TPA by failing to provide the clear basis for which the appellant could amend the assessment nor did it attach necessary documents for the appellant to consider before varying the assessment.
12. It was thus submitted that it was upon the respondent to prove that a tax decision was incorrect but it failed to do so. That since the objection issued by the respondent was erroneous and void, the issue of validity of the objection decision should not have been an issue for determination at the tribunal as the assessment stood confirmed. It was submitted that the objection decision was valid.
13. This Court has considered the record of appeal. The respondent filed the notice of objection on 27/11/2019 and the respondent issued its objection decision on 17/7/2020. I do note that the appellant submitted that the objection was not valid thus the assessment stood. The Tax Procedure Act clearly provides for the procedure to be followed where a taxpayer lodges an invalid objection. Section 51(4) of the TPA provides: -

“Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged.”
14. I have carefully perused the record and note that there was no such notification issued to the respondent. The appellant did not direct this court to any particular letter written to the respondent on the basis of the above section. I do agree with the tribunal's finding that the appellant proceeded to issue the objection decision after reviewing the respondent's objection based on the documents availed.



The appellant did not invalidate the objection nor did it request the respondent to validate it. This was done on the basis of Section 51(8) which provides: -

“Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner’s decision shall be referred to as an objection decision.”

15. Contrary to the appellant’s submission, I do find that the appellant indeed issued an objection decision in line with Section 51(9) of the TPA partly allowing the objection and the issue of whether or not the objection decision was valid was correctly an issue for determination before the tribunal.
16. As to whether the objection decision was valid, the applicable law is to be found at Section 51 of the TPA which provides that: -

“

- “1. A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax decision under this section before proceeding under any other written law.
- (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.
- (3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—
 - (a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;
 - (b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1); and
 - (c) all the relevant documents relating to the objection have been submitted.
 - (4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged.

....

- (11) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed.

17. From the foregoing, it is evident that the appellant ought to have issued its objection decision within 60 days from the date of receipt of a valid notice of objection and in the event of none compliance with the strict timelines, the objection shall be deemed to be allowed.



18. I have again carefully perused the record before me. The respondent wrote to the appellant on 27/1/2020 inquiring on the status of the notice of objection having supplied the required documents. The respondent once again wrote to the appellant on 27/2/2020 confirming that there was a physical meeting at the appellant's office wherein the appellant requested for more time as it was still verifying documents. The respondent again confirmed that it had earlier on provided documents in a box file.
19. The appellant responded vide its letter dated 4/3/2020 wherein it communicated that the matter was under review and that the respondent would be informed once the review was complete within 60 days from when it availed records. Going back to the respondent's letter, there was confirmation that the documents had been availed before 27/2/2020 and time was already ticking. As correctly found by the tribunal, the appellant did not request for any further documents. It is then correct that even going by the appellant's own letter of 4/5/2020, 60 days would have lapsed on 4/5/2020.
20. However, the respondent only issued its decision on 17/7/2020, way past the 60-day statutory period. I do find that the tribunal's finding that the appellant's objection decision was beyond the statutory timelines was sound. It then follows that by operation of the law, the respondent's notice of objection was deemed to have been allowed at the expiry of 60 days from when the respondent availed all documents in February 2020. In *Republic v Commissioner of Domestic Taxes ex parte Fleur Investment Ltd (2020) eKLR*, Hon. Mativo, J. (as he then was) held: -

“I find backing in *Republic v Commissioner of Customs Services Ex-Parte Unilever Kenya Limited* in which the court stated that if the Commissioner does not render a decision within the stipulated period, the objection is deemed as allowed by operation of the law. The act requires that where the Commissioner has not made an objection decision within 60 days from the date the tax payer lodged the notice of objection, the objection shall be allowed. This means that the issues that the tax payer had raised in the notice of objection will be accepted.”

21. Further, in the case of *Equity Group Holdings Limited v Commissioner of Domestic Taxes (Civil Appeal E069 & E025 of 2020)* [2021] the court observed that: -

“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.”

22. Mabeya, J. while also dealing with the same issue under Section 51 (11) of the *Tax Procedures Act* in *Eastleigh Mall Limited v Commissioner of Investigations & Enforcement (Income Tax Appeal E068 of 2020)* [2023] KEHC 20000 (KLR) pronounced himself as follows: -

“It is clear from the forgoing that the provisions of section 51(11) of the *Tax Procedures Act* are mandatory. They are not cosmetic. Parliament in its wisdom knew that in matters tax, time is very crucial as those in commerce need to make informed decisions. If the Commissioner is allowed to exercise his discretion and stay ad-indefinitum before issuing an objection decision, the tax payer would be unable to make crucial decisions and plan his/her business properly. The timelines set are mandatory and not a procedural technicality.”



23. From the foregoing authorities and the provision of Section 51 (11) of the *Tax Procedures Act*, it is clear that it is mandatory for the Commissioner to adhere to the statutory timelines provided for by law and give its objection decision within 60 days. In the present case, the objection decision herein was filed outside the prescribed timelines. This court therefore is in agreement with the decision of the Tribunal that the Appellant's failure to issue its objection decision within 60 days was fatal. The notice of objection was therefore allowed by operation of the law.
24. Having found that the objection decision was made out of the statutory period provided for under Section 51(11) of the *Tax Procedures Act*, the court will not delve into the other issue as the same will amount to an academic exercise.
25. In the upshot, this court finds no merit in the appeal and the same is dismissed. The decision of the Tax Appeals Tribunal delivered on 12th May 2023 is hereby upheld.
26. Noting that the respondent did not participate, the appeal is dismissed with no orders as to costs.

It is so decreed.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JULY, 2025
IN THE PRESENCE OF;**

Warigi for the Appellant

Njuguna for the Respondent

Mark/Siele (Court Assistants)

.....

J. NG'ARNG'AR

JUDGE

