



**Commissioner of Domestic Taxes v Ison Technologies Limited (Income Tax Appeal E210 of 2023) [2025] KEHC 9982 (KLR) (Commercial and Tax) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9982 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E210 OF 2023**

**RC RUTTO, J**

**JULY 4, 2025**

**BETWEEN**

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

**AND**

**ISON TECHNOLOGIES LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment of the Tax Appeals Tribunals delivered on 12th May 2023 in Tax Appeal No. 177 of 2022)*

**JUDGMENT**

1. The Respondent is a limited liability company engaged in the business of computer consultancy and computer facilities management services.
2. The Appellant is a Principal Officer appointed under the [Kenya Revenue Authority Act](#), Cap. 469, and is mandated to assess, collect, and account for all revenues and taxes on behalf of the Government of Kenya.
3. The Appellant conducted a tax audit on the Respondent for the tax period of May 2018. During the audit, the Appellant identified inconsistencies between the Respondent's VAT claims and the invoices submitted by its suppliers. The Appellant issued notices to the Respondent, requesting amendments to its VAT returns to address the discrepancies. However, the Respondent failed to comply, prompting the Appellant to issue a tax assessment. Of the total VAT claim of Kshs.968,465/=, the Appellant allowed Kshs.44,788/= and disallowed the remaining Kshs.923,676/= on the grounds that the claim lacked adequate supporting documentation.
4. Dissatisfied with the assessment, the Respondent filed a notice of objection dated 27th November 2019. The Appellant issued its objection decision on 17th July 2020, confirming the disallowance



of VAT amounting to Kshs.923,676/=. In response, the Respondent filed an appeal before the Tax Appeals Tribunal via a Notice of Appeal dated 28th January 2022. The Tribunal subsequently delivered its judgment on 26th May 2023 in favour of the Respondent.

5. Aggrieved by the Tribunal's decision, the Appellant filed the present appeal through a Memorandum of Appeal dated 6th December 2023. The appeal is premised on three grounds: that the Tribunal erred in law and fact by holding that the Appellant's objection decision was invalid; that it failed to consider the Appellant's case on its merits; and that it misdirected itself on both fact and law, thereby arriving at an erroneous and unreasonable decision.
6. The Appellant now seeks to have the judgment and orders of the Tax Appeals Tribunal set aside and its objection decision upheld.
7. Despite being granted an opportunity to respond, the Respondent did not file a Statement of Facts and did not participate in the appeal proceedings. The Appellant filed its submissions dated 22nd November 2024. Accordingly, this Court has considered the Appellant's submissions, together with the pleadings and the record of appeal.
8. The issue for determination in this appeal is whether the Appellant's objection decision was valid.
9. In its submissions, the Appellant argued that there was no valid objection to the tax assessment and, therefore, the Tribunal erred in faulting the objection decision. The Appellant maintained that the Respondent failed to submit a valid objection despite being granted time to do so. Relying on Section 51(4) of the *Tax Procedures Act* (TPA), the Appellant stated that it had informed the Respondent that the objection was invalid and requested supporting documentation to validate it. However, the Respondent allegedly failed to comply with the timelines and did not provide the necessary documents.
10. The Appellant further submitted that the Respondent failed to discharge its burden under Section 56(1) of the TPA and did not meet the threshold set under Section 51(3). Specifically, the Respondent failed to clearly state the grounds for amending the assessment and did not attach the relevant documents necessary for the Appellant to consider varying the assessment. As such, the Appellant contended that it was upon the respondent to prove that a tax decision was incorrect but it failed to do so. It was therefore submitted that since the objection issued by the respondent was erroneous and void, the assessment stood confirmed. Consequently, the Appellant argued that the validity of the objection decision should not have been an issue before the Tribunal, and that the objection decision was properly issued hence valid.
11. This Court has carefully examined the record of appeal. It is not in dispute that the Respondent filed a notice of objection on 27th November 2019, and that the Appellant issued an objection decision on 17th July 2020. While the Appellant now claims that the objection was invalid and that the assessment stood by operation of law, the procedure under the TPA for handling invalid objections is clear. 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.”
12. Upon review of the record, this Court finds no evidence that the Appellant issued such a written notification to the Respondent declaring the objection invalid. The Appellant did not direct the Court to any specific correspondence issued under Section 51(4). On the contrary, the record shows that



the Appellant proceeded to review the objection and issued an objection decision. This conduct is consistent with the procedure under Section 51(8) of the TPA, which states:

“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 the Commissioner’s decision shall be referred to as an objection decision.”

13. Accordingly, the Court agrees with the Tribunal’s finding that the Appellant treated the objection as valid and proceeded to issue an objection decision after considering the documents submitted. The Appellant neither invalidated the objection nor requested the Respondent to validate it. Therefore, contrary to the Appellant’s submissions, the Tribunal was correct in addressing the validity of the objection decision as a live issue for determination.

14. On the question of whether the objection decision itself was valid, the applicable legal framework is found in Section 51 of the TPA. The relevant provisions are as follows:

“(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.”

15. In this case, the Appellant did not issue a written notice of invalidity under Section 51(4), nor did it reject the objection on procedural grounds. Instead, it reviewed the objection and issued a decision partially disallowing the claim. This conduct confirms that the Appellant treated the objection as valid.



Therefore, the Tribunal was right to consider the validity of the objection decision, and this Court finds no error in that approach.

16. From the foregoing, it is evident that under Section 51(11) of the *Tax Procedures Act* (TPA), the Appellant was required to issue an objection decision within 60 days from the date of receipt of a valid notice of objection. Failure to comply with this statutory timeline results in the objection being deemed allowed by operation of law.
17. Upon further review of the record, it is clear that the Respondent wrote to the Appellant on 27th January 2020 inquiring about the status of its objection, having already submitted the required supporting documents. The Respondent followed up again on 27th February 2020, confirming that a physical meeting had taken place at the Appellant's offices, during which the Appellant requested additional time to complete its review. The Respondent also reiterated that it had earlier submitted the necessary documents in a box file.
18. In response, the Appellant issued a letter dated 4th March 2020, indicating that the matter was under review and that the Respondent would be informed of the outcome within 60 days from the date the documents were received. Based on the Respondent's correspondence, it is clear that the documents had been submitted prior to 27th February 2020. As correctly found by the Tribunal, the Appellant did not request any further documentation. Therefore, even by the Appellant's own admission in its letter of 4th March 2020, the 60-day period would have lapsed by 4th May 2020.
19. However, the Appellant only issued its objection decision on 17th July 2020 well beyond the statutory 60-day period. This Court agrees with the Tribunal's finding that the objection decision was issued out of time. Consequently, by operation of law, the Respondent's notice of objection was deemed allowed as of the expiry of the 60-day period in early May 2020.
20. In *Republic v Commissioner of Domestic Taxes ex parte Fleur Investment Ltd* (2020) eKLR, Hon. Mativo, J. (as he then was) held that where the Commissioner fails to issue an objection decision within the prescribed period, the objection is deemed allowed by operation of law. The Court emphasized that the taxpayer's grounds of objection must be accepted in such circumstances.
21. Similarly, in *Equity Group Holdings Limited v Commissioner of Domestic Taxes (Civil Appeal E069 & E025 of 2020)* [2021], the Court underscored the mandatory nature of Section 51(11) of the TPA, holding that once the 60-day period lapses without a decision, the objection is deemed allowed and the Tribunal has no discretion to extend time or entertain the matter further.
22. This principle was reaffirmed by Mabeya, J. in *Eastleigh Mall Limited v Commissioner of Investigations & Enforcement (Income Tax Appeal E068 of 2020)* [2023] KEHC 20000 (KLR), where the Court emphasized that the timelines under Section 51(11) are not procedural technicalities but are substantive and binding. The Court noted that adherence to these timelines is essential for certainty and fairness in tax administration.
23. In light of the above authorities and the clear wording of Section 51(11) of the TPA, it is beyond doubt that the Appellant's failure to issue the objection decision within the statutory period was fatal. The objection was therefore deemed allowed by operation of law, and the Tribunal was correct in so finding.
24. The upshot of the above is that, this Court finds no merit in the appeal. The appeal is hereby dismissed, and the judgment of the Tax Appeals Tribunal delivered on 26th May 2023 is upheld in its entirety. Given that the Respondent did not participate in the appeal proceedings, there shall be no order as to costs.

It is so ordered.



DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 4<sup>TH</sup> DAY OF JULY, 2025

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Appellant

.....Respondent

