



**Commissioner of Legal Services & Board Coordination v Stealth Africa Consulting LLP (Income Tax Appeal E156 of 2024) [2025] KEHC 9733 (KLR) (Commercial and Tax) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9733 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E156 OF 2024**

**CM KARIUKI, J**

**JULY 4, 2025**

**BETWEEN**

**COMMISSIONER OF LEGAL SERVICES & BOARD  
COORDINATION ..... APPELLANT**

**AND**

**STEALTH AFRICA CONSULTING LLP ..... RESPONDENT**

*(Being an Appeal from the entire Judgment of the Tax Appeals Tribunal Appeal delivered in Nairobi dated 24th January 2025 in TAT Appeal No. E134 of 2024)*

**RULING**

**Ruling On Preliminary Point Of Law**

**The Background of the Case**

1. The Respondent filed a Preliminary Objection dated 2nd June 2025 seeking for orders that the Appellant's entire Appeal be struck out for being filed and served out of time. The sought orders are premised on grounds that.
  - i. This Court lacks the jurisdiction to hear and determine the dispute between the Appellant and Respondent as brought under the Appeal dated 13th June 2024, the decree was executed and the amount fully utilized with the consent of the Appellant as per S. 29(5) & (6) of the [Tax Appeal Tribunal Act](#).
  - ii. The appeal ought to be vacated as they are as it is defective, irregular, and improper, as it was filed and served contrary to Section 32 of the [Tax Appeal Tribunal Act](#) (CAP 469A) & Order 5 of the [Civil Procedure Rules](#).



2. In opposing the said Application, the Appellant rely on the Appellant's Notice of Motion Application Supporting Affidavit sworn by Sega Addah and submissions filed. The Judgement of the Tribunal was delivered on 24th April 2024, the Applicant filed and served a Notice of Appeal dated 26th May 2024 and subsequently filed a Memorandum of Appeal dated 24th June 2024 on 28th June 2024.
3. Being dissatisfied with the Judgement of the Tribunal delivered on 24th April 2024, the Applicant filed and served a Notice of Appeal dated 26th May 2024 and subsequently filed a Memorandum of Appeal dated 24th June 2024 on 28th June 2024. The Judgement of the Tribunal was delivered on 26th April 2024, and the Notice of Appeal is dated 24th May 2024 (Page 28) and Memorandum of Appeal dated 13th June 2024. The Respondent's submissions in support of the Preliminary Objection dated 2nd June 2025, which challenge the competence of the appeal on two primary grounds:
4.
  - a) That the appeal was filed and served out of time, contrary to the mandatory provisions of Section 32 of the Tax Appeals Tribunal Act, No.7 of 2022 ("the Act"), and b). That the appeal has been overtaken by events, pursuant to Sections 29(5) and 29(6) of the Act.

#### Legal Framework And Analysis

Section 32(1) of the Act stipulates: "A party who is dissatisfied with the decision of the Tribunal may, within thirty days after being notified of the decision or within such other period as the Court may allow appeal against the decision to the High Court."

5. In the present case, the Tribunal rendered its judgment on 26th April 2024. Accordingly, the 30-day window within which to lodge an appeal expired on 27<sup>th</sup> May 2024. The Appellant, however, filed its appeal on 19th May 2025, nearly a
6. year after the lapse of the statutory period. Critically, no application for extension of time or leave of the Court was sought or obtained. Rule 3 of the *Tax Appeal Tribunal (Appeals to the High Court) Rules, 2015* provides that: 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 service a copy on the respondent.
7. In this case, the Notice of Intention to Appeal was not filed and or served on the Respondent, and the appeal was only filed out of time. A whole year after the time had lapsed, and without the leave of the court. The Court of Appeal in *Commissioner of Domestic Taxes v Lifecare International Brokers Ltd* [2020] eKLR underscored the binding nature of statutory timelines:
 

"It is our view, whether or not an appeal is filed on time goes to the jurisdiction of this Court. It is trite that this Court has jurisdiction to entertain appeals filed within the requisite time and/or appeals filed out of time with leave of the Court.

To hold otherwise would upset the established clear principles of the institution of an appeal in this Court. Consequently, we find that an appeal filed out of time is not curable under Article 159."
8. The Respondent thus, submits that the present appeal, having been filed out of time without leave, is a nullity ab initio. The Respondent relies on the principle that
9. jurisdiction cannot be conferred by conduct or waiver where the enabling law is clear and mandatory. Leave of Court ought to have been sought and obtained, allowing this appeal to be filed out of time.



10. B. Section 29(5) of the *Act* provides:” If no appeal is lodged within the period specified under this Act, the decision of the Tribunal shall be final and binding to the parties.”

11. Section 29(6) further authorizes the enforcement of such a decision:

“ A party may enforce the decision of the Tribunal as if it were a decree of a court.”

12. In the instant matter, following the lapse of the appeal period, the Appellant complied with the Tribunal’s decision by permitting the Respondent to utilize tax refunds to offset outstanding tax obligations. This conduct amounts to acquiescence and reflects that the decision has been implemented. As such, the

13. appeal is not only time-barred but has also been overtaken by execution, rendering it void.

14. C. Order 5 Rule 1(1) of the *Civil Procedure Rules* provides:

“When a suit has been filed, a summons shall issue to the defendant ordering him to appear within the time specified therein.”

15. In this matter, the Appellant served the Record of Appeal on 20th May 2025, almost a year after filing the Memorandum of Appeal. Such inordinate delay in service violates the procedural framework and undermines the Respondent’s right to a fair hearing. In *Equity Bank Ltd v West Link Mbo Ltd* [2013] eKLR, the Court of Appeal held:” The issue of jurisdiction is not a mere procedural technicality that can be cured under Article 159 of the *Constitution*. Where jurisdiction is lacking, the court must down its tools.”

16. Failure to serve pleadings within a reasonable time prejudices the Respondent and cannot be cured under the doctrine of substantial justice.

Appellant response to the preliminary objection

The appellant reaction to the PO was by way of the application dated 18.6.2025 which sought reliefs.

- i. That this Application be certified as urgent and be dispensed with at first instance.
- ii. That this Honourable Court be pleased to extend time within which to file Notice of Appeal and Memorandum of Appeal against the Judgement of the Tribunal delivered on 24th April 2024 in TAT Appeal No. E114 of 2023.
- iii. That, the Applicant’s Notice of Appeal and Memorandum of Appeal be deemed to have properly been served.

### **Issues, Analysis and Determination**

17. After going through the material on record, find the issues are whether the appeal was filed out of time thus invalid and incurable by extension of time? Whether court has jurisdiction to entertain same appeal.

18. Section 32(1) of the *Act* stipulates:

“ A party who is dissatisfied with the decision of the Tribunal may, within thirty days after being notified of the decision or within such other period as the Court may allow appeal against the decision to the High Court.”



19. In the present case, the Tribunal rendered its judgment on 26th April 2024. Accordingly, the 30-day window within which to lodge an appeal expired on 27<sup>th</sup> May 2024. The Appellant, however, filed its appeal on 19th May 2025, nearly a year after the lapse of the statutory period. Critically, no application for extension of time or leave of the Court was sought or obtained. Leave of Court ought to have been sought and obtained, allowing this appeal to be filed out of time.
20. B. Section 29(5) of the Act provides:
- “If no appeal is lodged within the period specified under this Act, the decision of the Tribunal shall be final and binding to the parties.”
- Section 29(6) further authorizes the enforcement of such a decision:
- “A party may enforce the decision of the Tribunal as if it were a decree of a court.”
21. In the instant matter, following the lapse of the appeal period, the Appellant complied with the Tribunal’s decision by permitting the Respondent to utilize tax refunds to offset outstanding tax obligations. This conduct amounts to acquiescence and reflects that the decision has been implemented. As such, the appeal is not only time-barred but has also been overtaken by execution, rendering it void. Order 5 Rule 1(1) of the Civil Procedure Rules provides:
- “When a suit has been filed, a summons shall issue to the defendant ordering him to appear within the time specified therein.”
22. In this matter, the Appellant served the Record of Appeal on 20th May 2025, almost a year after filing the Memorandum of Appeal. Such inordinate delay in service violates the procedural framework and undermines the Respondent’s right to a fair hearing.
23. In Kenya Hotel Properties Limited vs. Attorney General & 5 others (Application 2 (E004 of 2021) of 2021) [2021] KESC 49 (KLR), the Supreme Court found that an Appeal filed out of time without leave of Court is irregular and the Court ought not to invoke ‘novel’ principles so as to validate such a petition and deem it properly filed.
24. . The impact of filing pleading out of time without leave is that it denies the Tribunal the jurisdiction to entertain the Appeal as Nyarangi J stated in The Owners of the Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Limited, “jurisdiction is everything. Without it, the court must down its tools.”
25. The appellant attempts via the application dated 18.6.2025 to validate the time barred appeal which by dint of the cited authority of the supreme court above cannot not happen even by invocation of trying to invoke ‘novel’ principles so as to validate such a petition/pleading and deem it properly filed.
26. In Equity Bank Ltd v West Link Mbo Ltd [2013] eKLR, the Court of Appeal held:
- “The issue of jurisdiction is not a mere procedural technicality that can be cured under Article 159 of the Constitution. Where jurisdiction is lacking, the court must down its tools.”
27. Failure to serve pleadings within a reasonable time prejudices the Respondent and cannot be cured under the doctrine of substantial justice.



**Conclusion**

- 28. It is the Respondent’s respectful submission that: The appeal was filed outside the statutory period prescribed by Section 32 of the Act. No leave for extension of time was sought. The appeal has been overtaken by events, pursuant to Section 29(5) and (6) of the Act; and. Service of the Record of Appeal was inordinate, compounding the procedural impropriety.
- 29. Thus makes the following orders.
  - i. The entire appeal and application to extend time dated---are struck out with orders that costs to the respondent.
  - ii. Orders accordingly.

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

.....

**CHARLES KARIUKI**

**JUDGE**

