



**Desert Runner Services Limited v Commissioner of Legal Services  
& Board Coordination (Income Tax Appeal E105 of 2024)  
[2025] KEHC 10004 (KLR) (Commercial and Tax) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10004 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E105 OF 2024**

**RC RUTTO, J**

**JULY 4, 2025**

**BETWEEN**

**DESERT RUNNER SERVICES LIMITED ..... APPELLANT**

**AND**

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

*(Being an Appeal against the Ruling delivered on 19th April 2024 at the  
Tax Appeals Tribunal in Nairobi Tax Misc. Application No. E106 of 2023)*

**JUDGMENT**

1. This appeal arises from the Ruling delivered by the Tax Appeals Tribunal in Tax Miscellaneous Application No. E106 of 2023. The Appellant filed an application dated 17th August 2023 seeking an extension of time to file its Notice of Appeal and the requisite supporting documents. The application was prompted by additional tax assessments issued by the Respondent on 13th April 2023 for the period 2018–2021, amounting to Kshs. 15,892,012/=.
2. The Appellant’s Managing Director, Mr. Stephen Gakere Macharia, contended that he had been unwell and on bedrest, which prevented him from instructing the Appellant’s tax agent in a timely manner to lodge an objection to the assessment. Although he later applied for an extension of time to file the objection, the Respondent declined the request through a letter dated 19th June 2023.
3. The Appellant contends that the Managing Director’s illness hindered timely decision-making, resulting in the delay in filing both the objection and the subsequent appeal.



4. The Respondent opposed the application, arguing that the Appellant had already sought leave to lodge a late objection on 7th June 2023, citing delayed access to the relevant email. A Respondent's officer stated that, due to the urgency of the matter, he made two phone calls to the Appellant's tax agent on 16th and 19th June 2023 requesting the necessary documentation. The Appellant failed to submit the documents within the prescribed 14-day period, prompting the Respondent to issue a rejection notice on 20th June 2023. The Respondent maintained that the Appellant had not demonstrated reasonable cause to justify an extension of time.
5. Upon hearing the application, the Tax Appeals Tribunal identified the key issue for determination as whether the Appellant had established reasonable cause for the delay. The Tribunal found that the reasons advanced by the Appellant did not amount to reasonable cause and consequently dismissed the application.
6. Dissatisfied with the Tribunal's ruling, the Appellant filed this appeal through a Memorandum of Appeal dated 15th May 2024, raising the following grounds: the Tribunal erred in law and fact by dismissing the application despite evidence confirming the Managing Director's was unwell; making an assumption that the Appellant was in a position to file the Application the subject of this appeal in June in absence of contrary evidence of his well being; finding that the Appellant did not explain the length of non-access of his emails while the length of his sickness was clearly indicated in the doctor's letters; failing to appreciate the Appellant's efforts to instruct their Tax Agent despite their Managing Director's sickness and instead using these efforts against the Appellant and condemning the Appellant on ground of the delay by his Tax agent whereas it is trite that a litigant ought not to be punished for the mistakes of his representatives.
7. The Appellant prayed that the Court allows the appeal with costs, sets aside the Tribunal's ruling, and grants leave to file the appeal out of time.
8. In response to the Memorandum of Appeal, the Respondent filed its Statement of Facts dated 12th June 2024, the Respondent responded to each ground of appeal as follows: on the first ground of appeal, the Respondent contended that the Tribunal properly exercised its discretion in dismissing the Appellant's application, as the evidence presented was insufficient to prove that the Appellant's Director was unable to file the appeal within the prescribed timelines. on the second ground, the Respondent asserted that the Appellant was in a position to file the application, as it had instructed its tax agents to audit its books of account rather than to file an appeal before the Tribunal; on the third ground, the Respondent maintained that the Appellant failed to satisfactorily demonstrate how, and for how long, it was hindered from accessing its email; on the fourth ground, the Respondent argued that the Tribunal correctly appreciated that the Appellant had instructed its tax agent to conduct an audit of its books instead of filing an appeal against the Respondent's objection decision. As such, the Appellant could not attribute the delay to the agent's failure, as the agent was acting within the instructions given. In response to the fifth ground, the Respondent submitted that the Tribunal properly found that the instructions issued to the tax agent were clear and specific to auditing the Appellant's books, and not to file an appeal and thus the delay could not be attributed to the agent's failure.
9. The appeal was canvassed through written submissions. The Appellant's submissions were dated 13th November 2024, while the Respondent's submissions were dated 20th November 2024.

### **Appellant's Submissions**

10. Counsel for the Appellant began by providing a brief overview of the case, consistent with the background. The Appellant's submissions centered on: whether the Tax Appeals Tribunal exercised



its discretion judiciously under Sections 13(3) and (4) of the [Tax Appeals Tribunal Act](#) and Rule 10 of the Tax Appeals Tribunal (Procedure) Rules.

11. The Appellant relied on the Court of Appeal's decision in [Mwangang'anzi & 32 Others v Kenya Ports Authority & 4 Others \(Civil Application E096 of 2023\)](#) [2024] KECA 698 (KLR), to underscore that while the extension of time is a discretionary remedy, such discretion must be exercised judiciously and in accordance with established legal principles which include; the length of the delay; the reason for the delay; whether the intended appeal is arguable or raises triable issues; and whether granting the extension would prejudice the Respondent.
12. Citing Sections 13(3) and 13(4) of the [Tax Appeals Tribunal Act](#) and Rule 10 of the Procedure Rules, the Appellant emphasized that the Tribunal has the discretion to extend time where the applicant demonstrates that the delay was caused by illness, absence from the country, or any other reasonable cause. In support of this, the Appellant submitted two medical reports: one dated 20th June 2023 from Ruaraka Uhai Neema Hospital, and another dated 10th August 2023 from Upper Hill Medical Centre. Both reports confirmed that the Appellant's Managing Director was unwell and undergoing treatment from 13th June 2023 through to at least 10th August 2023. The Appellant argued that this illness rendered the Director incapable of attending to tax matters, including instructing the filing of an appeal.
13. The Appellant further cited the Tribunal's own decisions in [Superserv Limited v Commissioner of Investigation & Enforcement \(Appeal E047 of 2023\)](#) [2023] KETAT 982 and [Kinyanjui v Commissioner of Domestic Taxes \(Misc. App. E136 of 2023\)](#) [2023] KETAT 633, where similar applications for extension of time were allowed on grounds of illness. The Appellant contended that the Tribunal's departure from its prior reasoning in those cases, despite comparable facts, amounted to an inconsistent application of the law. Moreover, the Appellant argued that the Tribunal improperly assumed the role of a medical expert in an area outside its jurisdiction when it dismissed the medical evidence provided.
14. On the issue of representation, the Appellant submitted that a tax agent acts strictly on the instructions of the taxpayer. Any deviation from those instructions would constitute professional misconduct. The Appellant clarified that the Managing Director fell ill on 13th June 2023, prior to the issuance of the objection decision on 20th June 2023. Therefore, any instructions given to the tax agent before the Director's illness could not be construed as authority to lodge an appeal during the period of incapacitation. The Tribunal, the Appellant argued, erred in equating earlier instructions to engage with the Respondent's office with a mandate to file an appeal.
15. Relying on the [Mwangang'anzi & 32 Others v Kenya Ports Authority & 4 Others](#) (supra) decision, the Appellant emphasized that the delay in filing the application before the Tribunal was less than one week. It submitted that this delay was neither intentional nor unreasonable, especially in light of the Director's medical condition, and should therefore be excused.
16. On the question of whether the intended appeal raised arguable or triable issues, the Appellant submitted that the Tribunal failed to consider this factor altogether. The Appellant maintained that it had presented credible evidence showing that its business operated as an intermediary earning commission, rather than as a principal contractor. As such, the tax assessment should have been based on commissions earned, not the gross contract value. These were substantive issues, the Appellant argued, that warranted a hearing on the merits to determine the correct tax liability. Furthermore, it contended that allowing the appeal to proceed would not occasion any prejudice to the Respondent.



17. In conclusion, the Appellant urged the Court to allow the appeal, arguing that failure to do so would amount to condemning it unheard. It further submitted that the resulting tax liability would be financially crippling and could potentially drive the business into closure.

### **Respondent's Submissions**

18. Similar to the Appellant, the Respondent began its submissions by outlining the background of the matter. It addressed a single issue for determination: whether the Tribunal judiciously exercised its discretion in dismissing the Appellant's application for extension of time.
19. The Respondent first addressed the legal framework governing the Tribunal's discretion to extend time for filing an appeal. It cited Section 13 of the *Tax Appeals Tribunal Act* and Rule 10 of the Tax Appeals Tribunal (Procedure) Rules, 2015, submitting that the Tribunal acted within its statutory mandate and properly exercised its discretion. In support, the Respondent relied on the decision in *Apungu Arthur Kibira v Independent Electoral and Boundaries Commission & 3 Others* [2019] eKLR, arguing that the Appellant had failed to demonstrate that the Tribunal's decision was arbitrary, prejudicial, or capricious so as to warrant interference by this Court.
20. The Respondent submitted that it issued the Appellant with an invalidation decision on 19th June 2023, thereby triggering a 30-day window within which the Appellant could file an appeal before the Tribunal. However, instead of pursuing an appeal, the Appellant instructed its tax agent to audit its accounts and subsequently submitted a fresh objection to the additional assessments on 27th June 2023. The Respondent argued that this conduct demonstrated that the Appellant was capable of acting within the statutory timelines but chose an alternative course of action.
21. While acknowledging that the Appellant's Managing Director may have been unwell between 13th June and 10th August 2023, the Respondent contended that the Appellant failed to provide sufficient evidence to establish that it was entirely incapacitated from filing the appeal within the prescribed period.
22. On the issue of email access, the Respondent submitted that the Appellant did not adequately demonstrate how or for how long it was unable to access its email. Citing the Supreme Court's decision in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR, the Respondent emphasized that once the Tribunal found that no reasonable explanation for the delay had been provided, the other criteria for the exercise of discretion became irrelevant, as the threshold for extension of time had not been met.
23. In conclusion, the Respondent urged this Honourable Court to dismiss the appeal with costs.

### **Analysis and Determination**

24. Having carefully considered the record of appeal, the parties' written submissions, and the legal authorities cited, the key issue for determination is whether the Tribunal properly exercised its discretion in dismissing the Appellant's application for extension of time.
25. Section 13(3) of the *Tax Appeals Tribunal Act* (TAT Act), Cap 469A, grants the Tribunal the discretion to extend the time for filing a notice of appeal and accompanying documents. It provides:

“The Tribunal may, upon application in writing, extend the time for filing the Notice of Appeal and for submitting the documents referred to in subsection (2).”



26. Section 13(3) of the *Tax Appeals Tribunal Act* (TAT Act), Cap 469A, grants the Tribunal the discretion to extend the time for filing a notice of appeal and accompanying documents. It provides:

“The Tribunal may, upon application in writing, extend the time for filing the Notice of Appeal and for submitting the documents referred to in subsection (2).”

27. Section 13(4) of the same Act outlines the grounds upon which such an extension may be granted, it provides;

“An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from filing the notice of appeal or submitting the documents within the specified period.”

Rule 10(3) of the Tax Appeals Tribunal (Procedure) Rules, 2015, reiterates these grounds, by stating that;

“(3) The Tribunal may grant the extension of time if it is satisfied that the Applicant was unable to submit the documents in time for the following reasons –

- (a) Absence from Kenya;
- (b) Sickness; or
- (c) Any other reasonable cause.”

28. It is clear from the above provisions that the power to extend time is discretionary and not automatic. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR laid down guiding principles for the exercise of such discretion. These include:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

29. Applying these principles to the present case, the Court must determine whether the Tribunal erred in law in its interpretation and application of Sections 13(3) and 13(4) of the TAT Act when it dismissed the Appellant’s application.



30. In its ruling, the Tribunal concluded as follows:

“ 36. It is therefore evident that the Applicant was indeed in a position to cater to its tax matters despite the apparent sickness of its Managing Director. There was nothing keeping it from filing the instant application on time.

37. The Applicant has also not satisfactorily shown to the Tribunal how it was hindered from accessing its email and for how long it was unable to access the same. This is put into issue when it is evident that the Applicant had in fact engaged a tax agent to lodge its late notice of objection and to pursue the tax dispute. Nothing is said of the default by the tax agent to pursue the appeal process subsequent to the Respondent issuing the decision rejecting the late objection.

38. It is therefore the Tribunal’s finding that the reason tendered by the Applicant has not been established to be a reasonable cause for delay.

39. The Tribunal finds no reason to delve into an analysis of the remaining criteria given the finding above as doing so has been rendered moot.”

31. The factual background as outlined by the Tribunal is largely undisputed. The Appellant submitted two medical reports one from Ruaraka Uhai Neema Hospital dated 20th June 2023, and another from Upper Hill Medical Centre dated 10th August 2023 confirming that its Managing Director was under medical care from 13th June 2023 through at least 10th August 2023. The central question, therefore, was whether this illness constituted “sickness” within the meaning of Section 13(4) of the TAT Act and whether it reasonably explained the delay in filing the notice of appeal and supporting documents.

32. In the Court’s view, the Tribunal appears to have acknowledged the Director’s illness but failed to fully consider whether that illness, in the context of the Appellant’s operational structure and reliance on the Managing Director for decision-making, constituted a reasonable cause for delay. The Tribunal’s conclusion that the Appellant “was in a position to cater to its tax matters” appears to overlook the uncontested evidence that the Director was the sole decision-maker and was medically incapacitated during the relevant period.

33. In the case of *George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others* [2014] eKLR, Mohammed J (as he then was) addressed the issue of delay and emphasized that:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favorably exercised.”

34. In the present case, while the Tribunal acknowledged the Managing Director’s illness, it found the explanation insufficient to constitute reasonable cause. The critical question for this Court is whether that conclusion was supported by the evidence and grounded in reason.

35. Section 13(4) of the *Tax Appeals Tribunal Act* expressly provides that sickness is a valid ground for seeking an extension of time. In this case, the Appellant provided two medical reports confirming that its Managing Director was under medical care from 13th June to at least 10th August 2023. This explanation was not challenged by the Respondent, and the authenticity of the medical evidence was



not disputed. The Respondent’s argument was instead that, despite the illness, the Appellant was still able to act hence the need to evaluate the surrounding circumstances.

36. It is essential to assess whether the delay was reasonable in light of those circumstances. The Respondent issued its objection decision on 20th June 2023. Notably, the Appellant had already lodged a notice of objection dated 19th June 2023, albeit late. This indicates that the Managing Director, despite being unwell, made some effort to engage with the process. The illness and the delay were contemporaneous, and the delay in filing the application, approximately two months was not inordinate. In the Court’s view, the explanation provided was plausible and fell within the statutory grounds for extension.
37. The next issue is whether the intended appeal is arguable. The Appellant annexed a draft Memorandum of Appeal containing six grounds, all of which relate to the justification and basis of the assessed tax liability. These grounds raise substantive legal and factual issues, including whether the Appellant operated as an intermediary earning commission or as a principal contractor. This Court is satisfied that the intended appeal raises triable issues deserving of a hearing on the merits.
38. The final consideration is whether the Respondent would suffer prejudice if the application were allowed. In *D. Chandulal K. Vora & Co. Ltd v Kenya Revenue Authority* [2017] eKLR, the Court of Appeal held that where no prejudice would be occasioned to the opposing party, the application for extension should be granted. The Court stated:
- “Taken in totality, the circumstances herein should entitle the parties in this suit to have their day in court to fully ventilate the claims they have against each other and bring it a meritorious closure. This is especially since a hearing would cause no greater prejudice to either party. However, lack of it, would greatly prejudice the appellant.”
39. In this case, the Appellant has demonstrated that it stands to suffer significant prejudice if denied the opportunity to challenge the tax assessments. On the other hand, the Respondent has not identified any specific prejudice it would suffer if the appeal were allowed. The balance of prejudice clearly tilts in favor of the Appellant.
40. This appeal is therefore allowed. The Appellant is hereby directed to file its appeal within 14 days of this Judgment before the Tax Appeal Tribunal. Each party to bear their cost of the appeal

Orders accordingly.

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

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Appellant

..... Respondent

