



End to End Limited v Commissioner of Domestic Taxes (Commercial Appeal E143 of 2024) [2025] KEHC 9711 (KLR) (Commercial and Tax) (4 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E143 OF 2024**

CM KARIUKI, J

JULY 4, 2025

BETWEEN

END TO END LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

RULING

1. The Respondent raise a Preliminary Objection on points of law and pray that the Appeal be struck out in limine with costs on the grounds that:
2. The Appellant’s Memorandum of Appeal flaunts provisions of Section 32 of the [Tax Appeals Tribunal Act](#), Section 53 of the Tax Procedure Act and Rule 5 of the Tax Appeals Tribunal (Appeals to the High Court) Rules (the Rules) to the extent that:
 - a. It is filed outside the statutory timelines and without leave of the Court.
 - b. It does not include:
 - i. an index of all documents supporting the appeal; and
 - ii. the Notice of Appeal.
4. The Tribunal delivered the Judgment herein subject to appeal on 9th May 2024. By virtue of statutory timelines, the Appellant had until 8th June 2024 to file its Appeal. The Appeal was filed on 26th September 2024 which is 4 months and 2 weeks late from delivery of the judgment. In addition, the Appellant failed to seek leave from the court to file its Appeal late which is contrary to the statutory provisions reproduced above.



5. The pleadings filed before this Honourable Court lack a Notice of Appeal contrary to the provisions of the law. The Respondent's position is that validity of the Appeal is dictated by the timeline and compliance of the stipulated by law. Therefore, for there to be a valid appeal, both the Notice of Appeal and the Memorandum of Appeal must themselves be compliant with the stated timelines.
6. Parties were directed to canvass via submissions, but the appellant has failed to comply.
7. Respondent submissions
8. Section 32 of the [Tax Appeals Tribunal Act](#) and Section 53 of the Tax Procedure Act provide:

“A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.”
9. Section 53 of the Tax Procedure Act provides:

“A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court in accordance with the provisions of the [Tax Appeals Tribunal Act](#).”
10. Rule 4 of the Tax Appeals Tribunal (Appeal to the High Court) Rules provides that:

“The Court may extend the time specified in rule 3 if the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant.”
11. Further, Rule 5 of the Tax Appeals Tribunal (Appeal to the High) Rules provides:

“A memorandum of appeal shall—

 - i. Court be signed by the appellant.
 - ii. contain an address of service of the appellant.
 - iii. set out concisely under consecutively numbered distinct heads, the grounds of appeal without any arguments or narrative.
 - iv. contain an index of all documents supporting the appeal with number of pages at which they appear; and
 - v. accompanied by a copy of the decision of the Tribunal and the notice of appeal.”
12. The Tribunal delivered the Judgment herein subject to appeal on 9th May 2024. By virtue of statutory timelines, the Appellant had until 8th June 2024 to file its Appeal. The Appeal was filed on 26th September 2024 which is 4 months and 2 weeks late from delivery of the judgment. Your ladyship in addition, the Appellant failed to seek leave from the court to file its Appeal late which is contrary to the statutory provisions reproduced above.



13. Pleadings filed before this Honourable Court lack a Notice of Appeal contrary to the provisions of the law.
14. The Respondent's position is that validity of the Appeal is dictated by the timelines and compliance of the stipulated by law. Therefore, for there to be a valid appeal, both the Notice of Appeal and the Memorandum of Appeal must Respondent submit that the Appellant's Appeal did not comply with the timelines prescribed in law and thus rendering the whole appeal defective, out of time and is in contradiction to Rule 3 read together with Rule 4 of the Tax Appeals Tribunal (Appeals to the High Court) Rules 2015 and Section 32 of the *Tax Appeals Tribunal Act*, 2013.
15. Tax laws are to be construed strictly and if it requires something to be done within 30 days, then has to be complied with. In *Cape Brandy Syndicate V Inland Revenue Commissioner (1921) 1 KB 64* it was stated as follows:

“In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look at the language used. Thus, when the language of a taxing statute is clear, if a person being assessed falls within the four corners of the statute, he is to be taxed; if not, no tax is to be levied.”
16. The Court of Appeal in *Kenya Revenue Authority v Republic (ex-parte Fintel Ltd) NRB CA Civil Appeal No. 311 of 2013[2019] eKLR* cited with the approval the sentiments of Lord Atkinson in *Inland Revenue Commissioners v Duke of Westminster (1936) AC 1* where he stated that:

“It is well established that one is bound in construing Revenue Act to give a fair and reasonable construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by Act of Parliament without words in it clearly showing an intention to lay the burden upon him, that the words of a statute must be adhered to, and that so-called equitable constructions of them are not permissible.”
17. The Appellant having not its Appeal within 30 days as required by Section 32 of the *Tax Appeals Tribunal Act* had an option of seeking leave to have the Appeal deemed properly on record, which was not done. Consequently, the Appeal filed being not in compliance with the law, it lacks legs to stand on and thus is defective.
18. The same ought to be struck out with costs to the Respondent.
19. Issues analysis and determination
20. After going through the pleadings and the submissions on record I find the issues are whether the preliminary objection has merit, thus justification to strike out the application along with the appeal. A preliminary objection is based on undisputed facts or law that may determine an issue (see *Mukisa Biscuits Manufacturing Co., Ltd v West End Distributors [1969] EA 696*). The following facts relevant to this determination, gleaned from the court record, are common ground:
21. The Tribunal delivered the Judgment herein subject to appeal on 9th May 2024. By virtue of statutory timelines, the Appellant had until 8th June 2024 to file its Appeal. The Appeal was filed on 26th September 2024 which is 4 months and 2 weeks late from delivery of the judgment. In addition, the Appellant failed to seek leave from the court to file its Appeal late which is contrary to the statutory provisions reproduced above.



22. It is trite law that a right of appeal is a creation of statute, and its exercise is governed by statutory strictures governing the exercise of that right (see *Nyutu Agrovets Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch (Interested Party)* SCK Pet. No. 12 of 2016 [2019] eKLR). Whether a party has complied with statutory provisions governing exercise of that right is a jurisdictional issue as was held by the Court of Appeal *Patrick Kiruja Kithinji v Victor Mugira Marete* MRU CA Civil Appeal No. 48 of 2014 [2015] eKLR that:
23. “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 institution of an appeal in this Court. Consequently, we find that an appeal filed out of time is not curable under Article 159. Failure to file an appeal within time and without complying with statutory conditions is not a mere technicality that can be overlooked, it goes to the competence of the appeal. Counsel for the Appellant valiantly addressed the court on why the court should validate the appeal.
24. The Respondent’s position is that validity of the Appeal is dictated by the timeline and compliance of the stipulated by law. Therefore, for there to be a valid appeal, both the Notice of Appeal and the Memorandum of Appeal must themselves be compliant with the stated timelines.
25. Section 32 of TATA provides for the right of appeal from decisions of the Tribunal to the High Court as follows:
26. 32(1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.
27. The appellant did not comply with the foregoing provisions of law thus the court order that.
 - i. This appeal is incompetent. It is struck out with costs to the Respondent.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2025.

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CHARLES KARIUKI
JUDGE

