



Fleur Investments Limited v Commissioner of Domestic Taxes (Income Tax Appeal E006 of 2025) [2025] KEHC 10433 (KLR) (Commercial and Tax) (17 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E006 OF 2025**

**BK NJOROGE, J
JULY 17, 2025**

BETWEEN

FLEUR INVESTMENTS LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

JUDGMENT

1. This Judgement is in respect of an Appeal from the decision of the Tax Appeals Tribunal delivered on 21st November, 2024 in Tax Appeal Tribunal Tax Appeal No. E292 of 2024

Background facts

2. The Appellant filed a refund claim on 21st June 2019 for Kshs.2,274,145 relating to the 2018 period. The Respondent requested for supporting documents on 8th November 2019. This was due to variances noted between the income declared in withholding certificates and the gross turnover in the IT2C return. On 10th November 2023, the Appellant lodged a notice of objection against the intention to disallow the refund. The Respondent confirmed the rejection of the application through an objection decision issued on 27th November 2023.
3. Subsequently, on 7th December 2023, the Respondent issued a rejection notice and an additional tax assessment via iTax. The Appellant lodged another objection on 21st December 2023, challenging this action. The Respondent maintained its position and issued a confirming objection decision on 29th January 2023. Dissatisfied with the Commissioner’s decision, the Appellant appealed to the Tribunal, which dismissed the appeal, prompting the filing of the current appeal.



4. The Appellant being dissatisfied with the entire Judgment issued by the Tax Appeals Tribunal at Nairobi and delivered on 21st November 2024 in Tax Appeal No. E292 of 2024, hereby appeals against the entirety of the said Judgment on the following grounds: -
 - a. The Tribunal erred in law and fact in its Judgment by failing to determine the substantive dispute between the Appellant and the Respondent, specifically, whether the Respondent erred in law in issuing the Additional Assessment Order referenced as KRA2023XXXX6575 for the year of income ending 31st December 2018 on a claim for refund and not on income as provided for under the tax legislation.
 - b. The Tribunal erred in law and fact by failing to answer the issue in dispute, which was on an additional Assessment Order issued by the Respondent on an amount of Kshs.2,274, 145.00 claimed in a tax refund claim.
 - c. The Tribunal misdirected itself in making a determination on a refund claim which was not a matter before it and in the event was the subject of a separate case in TAT Appeal No. E943 of 2023 Fleur Investments Limited vs Commissioner of Domestic Taxes.
 - d. The Tribunal erred in law by failing to determine that it was not open in law for the Respondent to tax the Appellant for the tax refund claim merely because the refund claimed was carried forward from the previous year due to the Respondent's failure to make determination on the refund claim.
 - e. The Tribunal erred in law by failing to determine that it was not open for the Respondent to make an assessment for the year 2018 when the self-assessment and financial returns produced by the Appellant clearly showed that since 2012, it neither traded nor realized any income and was assessed merely because it had made refund claim.
 - f. The Tribunal erred in law and in fact by failing to determine whether the Respondent acted unlawfully in issuing the Assessment Order when in fact the Appellant's filed tax return and audited financial statements clearly showed that from 2012 to 2019 the Appellant was not trading and consistently made losses.
 - g. The Tribunal erred in law and in fact by failing to determine whether the Respondent acted unlawfully in issuing the Assessment Order when in fact there were no records showing that indeed the Appellant had in any time received credit from the refund claim or had enjoyed setoff of any tax liability or in any manner benefited from a tax refund of the same amount being demanded via the Assessment Order.
 - h. The Tribunal erred in law and in fact by failing to determine whether the Respondent acted unlawfully in issuing an Assessment Order with regard to refund claim by the Appellant in the sum of Kshs.2,274,145.00 when it had rejected the same without the Appellant being granted any credit refund or applying the same to the Appellant's tax liability.
 - i. The Tribunal erred in law and in fact in its Judgment in failing to consider that the Objection Decision dated 29th January 2024 was bad in law for violating the provisions of the [Tax Procedures Act](#), specifically, Section 51 (10) which provides that the objection decision shall include the reasons for the decision.
5. The Appellant prayed for orders that:
 - a. The Appeal be allowed.



- b. The Judgment of the Tax Appeals Tribunal dated 21st November 2024 delivered in Tax Appeal Tribunal Appeal No. E292 of 2024 be set aside.
 - c. The Court be pleased to find that the Respondent's additional assessment of KES 2,274,145.00 made vide the Additional Assessment Order No. KRA2023XXXX6575 dated 7th December 2023 was erroneous and had no basis in law and the same be and hereby set aside.
 - d. The Court be pleased to and hereby sets aside the Respondent's Objection Decision dated 29th January 2024 and forwarded through an email of 30th January 2024.
 - e. The Respondent be ordered to pay the costs of this Appeal.
 - f. The Court may grant any other alternative relief it deems fit.
6. In response, the Respondent filed a Statement of Facts dated 10th June 2025. The Respondent argued that the Appellant is misleading the Court, while asserting that the issues were conclusively addressed by the Tribunal. The Appellant lodged two separate objections: the first, dated 10th November 2023, opposed the intended rejection of a refund claim of Ksh.2,274,145. This Objection was responded to by an objection decision on 27th November 2023. The Respondent clarifies that the rejection had not yet been implemented on iTax at that point. That the Appellant prematurely objected to a request for documents rather than complying. The second objection, lodged on 21st December 2023, challenged the additional assessment that resulted from the rejected refund claim. This was similarly rejected through an objection decision dated 29th January 2024.
7. The Respondent explained that the credit claim arose from amounts carried forward from previous years under Section 42. That this section provides relief only in cases involving double taxation under special arrangements. The Appellant had no such arrangements, making the claim invalid. The Respondent emphasizes that refund claims must originate from overpayments made in the same tax year and within the statutory timeframe. Since the Appellant's credits were from years prior to 2014 and lacked supporting special tax arrangements, they were rightly disallowed. The Respondent concluded that the additional assessment was lawfully issued under Section 47(2) of the [Tax Procedures Act](#), which authorizes audits of refund claims before approval.

Issues for Determination

8. Having carefully considered the written submissions by both parties, the Appeal, Record of Appeal, and the response by the Respondent, the Court frames the following single issue for determination;
- a) Whether the Tribunal erred in law by dismissing the Appeal and upholding the Objection Decision.

Analysis

9. In determining this Appeal, the Court is cognizant that it is exercising appellate jurisdiction that is circumscribed by Section 56(2) of the [Tax Procedures Act](#) (Chapter 469B of the Laws of Kenya) ("the TPA") which provides that;

An appeal to the High Court or to the Court of Appeal shall be on a question of law only.



a. Whether the Tribunal erred in law by dismissing the Appeal and upholding the Objection Decision.

10. The Appellant argued that the case before the Tribunal was a case opposing the erroneous additional assessment by the Respondent which culminated in the Objection Decision. The Appellant's pleadings before the Tribunal sought to set aside the Assessment Order and the Objection Decision. The Statement of Facts filed by the Appellant before the Tribunal also explained how the Assessment Order was erroneously issued. It also informed the Tribunal that the issue of refund was being separately dealt with in another case. However, when the Tribunal delivered its Judgement, it refused to set aside the additional assessment made through the Assessment Order. It went ahead to uphold the Objection Decision, which erroneously confirmed the said Assessment Order.
11. According to the Respondent, the Appellant was requested to provide the Respondent with additional information. However, the Appellant failed to provide the same. Further, the Appellant has not adduced any evidence to support its case. It therefore has not discharged its burden of proof to demonstrate that these documents were provided to the Respondent.
12. The Court acknowledges that Sections 24 and 28 of the *Tax Procedures Act*, allows a taxpayer to file returns. It further provides that the Respondent is not bound by information provided therein and can assess the tax liability based on any other available information. Further, Section 73 of the *Income Tax Act*, and Section 31 of the *Tax Procedures Act* empower the Respondent to issue additional assessments. This is in cases where a taxpayer has declared a less amount in the returns, based on any additional available information and to the best of its judgement.
13. It is undisputed that the Appellant served the Commissioner with two objection notices. The first, dated 10th November 2023, which opposed the Commissioner's intention to disallow an Income Tax Refund claim of Ksh.2,274,145 (ref number KRA20190XXXX838). The Respondent responded with an objection decision on 27th November 2023, rejecting the claim.
14. Interestingly, the Respondent stated that the second objection, lodged by the Appellant on 21st December 2023, was against an additional assessment of Ksh.2,274,145 resulting from the rejection of the refund application on the iTax platform. The Respondent responded with an objection decision on 29th January 2024, confirming the rejection.
15. The Respondent having rejected the tax refund claim, how then did the additional assessments arise?
16. It was the Appellant's submission that Respondent has violated Section 31(1). This is because the additional assessment in the Assessment Order failed to comply with the requirement that an amended assessment ought to be by way of an alteration to make the taxpayer liable for the correct amount of tax payable. This is in respect of the reporting period to which the original self-assessment tax return relates
17. Section 31(1) of the *Tax Procedures Act* provides;
Amendment of assessments
31. (1) Subject to this section, the Commissioner may amend an assessment (referred to in this section as the "original assessment") by making alterations or additions, from the available information and to the best of the Commissioner's judgement, to the original assessment of a taxpayer for a reporting period, to ensure that—
 - (a) in the case of a deficit carried forward under the *Income Tax Act* (Cap. 470), the taxpayer is assessed in respect of the correct amount of the deficit carried forward for the reporting period;



- (b) in the case of an excess amount of input tax under the *Value Added Tax Act* (Cap. 476), the taxpayer is assessed in respect of the correct amount of the excess input tax carried forward for the reporting period; or
 - (c) in any other case, the taxpayer is liable for the correct amount of tax payable in respect of the reporting period to which the original assessment relates.
- 18. The aforementioned Section empowers the Respondent to make alterations or additions to an original assessment using the available information and based on the Respondent's best judgment to ensure that the correct amount of tax is paid.
- 19. A cursory look at the Tribunal's judgment clearly shows that while the Tribunal found that the refund was time-barred, it did not interrogate the basis for the additional assessment or give its reasons for upholding the Respondent's objection decision dated 29th January 2024.
- 20. Further, the Tribunal erred in law in its Judgment in failing to consider that the Objection Decision dated 29th January 2024 was bad in law for violating the provisions of the *Tax Procedures Act*, specifically, Section 51(10), which provides that the objection decision shall include the reasons for the decision.
- 21. In *PZ Cussons East Africa Limited v Kenya Revenue Authority* ML HC C& HR No. 309 of 2012 [2013] eKLR, the Court held:

“I agree with the KRA that the burden would be upon the Company to show that the amounts taxed was excessive. But to that extent only. It was necessary and indeed in regard to reasonable administrative action to detail how it came to its decision contained in the letter of June 29, 2012 so as to enable the company, if it so wished, to mount challenge if it so wished. The duty to give reasons is now embedded in Article 47(2). I therefore find and hold that the failure by KRA to give information as to how it arrived at the amount was unreasonable.”
- 22. The upshot of the above is that the additional assessment was not justified. The Appeal is hereby upheld and the Objection decision is set aside. As to costs, each party shall bear its own costs in this Appeal and the Tribunal below.

Determination

- 23. The Appeal is allowed in the following terms;
 - a. The Judgement of the Tax Appeals Tribunal dated 21st November 2024 delivered in Tax Appeals Tribunal Appeal No E292 of 2024 is hereby set aside.
 - b. The Respondent's additional assessment of Kshs.2,274,145.00 made vide the Additional Assessment Order No. KRA2023XXXX6575 dated 7th January, 2024 and forwarded through an email of 30th January, 2024 is hereby set aside.
 - c. The Respondent's Objection Decision dated 29th January, 2024 and forwarded through the email of 30th January, 2024 is hereby set aside.
 - d. Each party to bear its own costs of this Appeal as well as those of the Tribunal below.
- 24. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 17th DAY OF JULY, 2025.



NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. William Ochieng for the Appellant

N/A for the Respondent

Mr. Luyai– Court Assistant

