



Nimoron Ventures Limited v Commissioner Legal Services & Board Coordination (Tax Appeal E330 of 2024) [2025] KEHC 10454 (KLR) (Commercial and Tax) (16 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E330 OF 2024
JK NG'ARNG'AR, J
JULY 16, 2025**

BETWEEN

NIMORON VENTURES LIMITED APPELLANT

AND

**THE COMMISSIONER LEGAL SERVICES & BOARD
COORDINATION RESPONDENT**

(Being an Appeal from the Judgment and Decree of the Tax Appeals Tribunal delivered on 22nd November 2024 in TAT No. E936 of 2023)

JUDGMENT

1. This is an appeal from the decision of the Tax Appeals Tribunal delivered on 22nd November 2024 in TAT No. E936 of 2023. The facts giving rise to this appeal are that the appellant underwent an audit pursuant to a notice of intention to audit dated 2nd December 2022. In it, the appellant was requested to furnish its records. The appellant contended that upon submissions, the respondent issued its notice of findings dated 20th April 2023 stating that variances existed between what the appellant had declared vis a vis established income as per bank statements.
2. On 20th June 2023, the respondent urged the appellant to pay the sum of Kshs. 7,767,869.81 being income tax company and VAT assessments as unpaid tax. Dissatisfied with those decisions, the appellant lodged an objection dated 19th July 2023. By decision dated 15th September 2023, the respondent found that the appellant's objection was without merit. Accordingly, the same was dismissed. It is those findings that precipitated the appellant to appeal before the Tax Appeals Tribunal in TAT No. E936 of 2024. In its decision dated 22nd November 2024, the tribunal found that the appellant's appeal lacked merit. It was dismissed.



3. The appellant is aggrieved by those findings. It filed its notice of appeal dated 16th December 2024. It also filed its memorandum of appeal dated 17th December 2024 raising six grounds disputing the findings of the tribunal. In summary, the tribunal erred in finding that it failed to discharge its burden of proof under section 56 (1) of the [Tax Procedures Act](#); the tribunal failed to interrogate whether the documents requested by the respondent were relevant in determining if the VAT and income tax assessments raised were due and payable; the tribunal failed to consider that the appellant in fact delivered documents in its possession to the respondent together with the notice of objection; and the tribunal failed to acknowledge that the burden of proof shifted to the respondent since it had dispatched documents in its possession to the respondent. For those reasons, the appellant prayed that the appeal be allowed by setting aside the findings of the tribunal dated 21st November 2024.
4. The appeal was heard on the basis of the parties written submissions. The appellant filed its written submissions, together with a list and bundle of authorities, both dated 23rd May 2025. It submitted that the tribunal failed to interrogate whether the documents requested by the respondent were relevant or event considered in determining the basis of the taxes in question.
5. It submitted that the respondent, cherry-picked apparent variances, failing to recognize that the variances arising from a comparison of the turnover per the filed returns, and sales over banking deposits which were, because of a difference in accounting treatment on different items of reconciliation. That the respondent applied a bank analysis method without independently interrogating the appellant's actual turnover. These issues, it submitted, were neither controverted nor explained to the satisfactory standard of proof.
6. Gathered from the above, the appellant contended that it was certainly clear that the banking method was misapplied to arrive at the erroneous assessment and alleged tax liability. That the tribunal failed to take into account that the respondent did not take into account inter-bank transfers, loans, contra entries, bounced cheques and capital injections contrary to section 3 (2) of the [Income Tax Act](#). In so doing, the respondent failed to make adjustments on non-income deposits from the banking; an issue that was ignored by the tribunal.
7. The appellant continued that since it had provided proof of inappropriate use of the appellant's banking, it had discharged its burden of proof. Accordingly, the burden of proof shifted to the respondent to dispute the appellant's position. That burden was not discharged.
8. Though the respondent did not file any written submissions, it filed its statement of facts dated 14th May 2025. Giving a background summary of the facts giving rise to this appeal, the respondent's position was that the objection decision was issued in consideration of the documents provided by the appellant during the objection review proceedings. That since the appellant failed to submit the documents set out in its letter of 21st July 2023, the respondent could not be faulted on account of the scintilla of information availed by the appellant. It urged this court to affirm its decision dated 15th September 2022.
9. I have considered the memorandum of appeal, the submissions and the statement of facts, examined the record of appeal and supplementary record of appeal and analyzed the law. Section 32 of the [Tax Appeals Tribunal Act](#) provides that a party dissatisfied with the decision of the tribunal may, within thirty days of the decision may, appeal to the High Court. This provision is echoed in section 53 of the [Tax Procedures Act](#) which provides that a dissatisfied party before the Tribunal, in relation to an appealable decision may, within thirty days of the decision, appeal the decision to the High Court in accordance with the provisions of the [Tax Appeals Tribunal Act](#).



10. This is a second appeal. As a second appellate court, the duty imposed upon this court is to determine matters of law only unless it is shown that the courts below considered matters that they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. [See *Otieno, Ragot & Company Advocates vs. National Bank of Kenya Limited* [2020] eKLR].
11. The record before us shows that vide a letter dated 21st July 2013, the appellant was requested by the respondent to submit the following supporting specific documents for review in support of its objection by dint of section 53 (3) of the *Tax Procedures Act*: a reconciliation of the variance between sales declared in VAT vs. Income tax returns for the years under review along with relevant supporting documents; certified copies of bank statements for the period covering the years 2020 to 2022; audited financial statements for the period 2020 to 2022; sales and purchase ledgers for the years 2020 to 2022, evidence of purchases; payment and supplier confirmation of the disallowed inputs; and computation of taxes due for the periods together with supporting documents.
12. Since the appellant had not submitted those documents, the respondent reminded the appellant to submit those documents in its email dated 26th June 2023.
13. It appears that the documents sought by the respondent were critical since they would have enviably supported the appellant's objection. That was however not done. This finding was concurrently noted by the tribunal and by the respondent. As a consequence, the appellant failed to accord itself within the parameters of section 56 (1) of the Tax Procedure Act and section 30 of the *Tax Appeals Tribunal Act*. It was incumbent on the appellant to comply with the respondent's request in order for it to make an informed decision. It further did not disclose any difficulty it faced in complying with those orders.
14. Contrary to the appellant's assertions, the question was not whether the documents it submitted were relevant but whether it had complied with the directions of the respondent. In this case, the answer is no. The respondent was unequivocal in seeking the specific documents. How would the respondent have made a rational decision absent those documents, I ask?
15. In view of the foregoing, I find that there is certainly no basis for its supplication. The appellant was the author of its own misfortune. Be that as it, being a second appeal, I find that the appellant has failed to set out what grounds of law ought to be considered by this court. I therefore find that the appeal is a non-starter. For those reasons, I do not hesitate to find that the present appeal lacks merit. It is hereby dismissed but with no orders as to costs since the respondent elected not to participate in this appeal.

It is so ordered.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16TH DAY OF JULY, 2025
IN THE PRESENCE OF;**

.....

J. NG'ARNG'AR

JUDGE

Waregi for the Appellant

Nyapara for the Respondent

Mark/Siele (Count Assistants)

