



**Primescope Logistics Limited v Commissioner, Legal Services & Board Coordination (Tax Appeal E329 of 2024) [2025] KEHC 10241 (KLR) (Commercial & Admiralty) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10241 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND ADMIRALTY  
TAX APPEAL E329 OF 2024  
JK NG'ARNG'AR, J  
JULY 16, 2025**

**BETWEEN**

**PRIMESCOPE LOGISTICS 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 13th December 2024 in TAT No. E042 of 2024)*

**JUDGMENT**

1. The respondent conducted investigations into the business affairs of the appellant for the years 2020 to 2023. The intention was to ascertain tax compliance and unearth the variations between the IFMIS payments and turnover declared in the income tax and VAT returns of the appellant. Following those investigations, the respondent on 12<sup>th</sup> July 2023 issued the appellant with additional assessments totaling Kshs. 12,352,758.37. The appellant was unhappy with the assessments. It filed its objection on 7<sup>th</sup> October 2023. Upon considering the objection, the respondent issued an objection decision on 4<sup>th</sup> December 2023 dismissing the same.
2. Those findings implored the appellant to file an appeal before the Tax Appeals Tribunal in TAT No. E042 of 2024. In its decision dated 13<sup>th</sup> December 2024, the tribunal found that the appellant's appeal was merited. Accordingly, the same was dismissed. In the same vein, the tribunal upheld the respondent's objection decision dated 4<sup>th</sup> December 2023.
3. The appellant has now sought a second appeal before this court. It filed its notice of appeal dated 16<sup>th</sup> December 2024. It also filed its memorandum of appeal dated 17<sup>th</sup> December 2024 raising six grounds



disputing the tribunal's findings. In precis, the appellant lamented that the tribunal improperly found that it had not discharged its burden of proof in line with section 56 (1) of the *Tax Procedures Act*. It complained that the tribunal failed to interrogate whether the documents it adduced were relevant. It maintained that it had in fact submitted the requested documents accordingly together with the notice of objection. The appellant thus prayed that the appeal be allowed and the decision of the tribunal dated 13<sup>th</sup> December 2024 be set aside.

4. The appeal was canvassed by way of written submissions. The appellant filed written submissions dated 15<sup>th</sup> May 2025. It submitted that the tribunal erroneously ignored the question on the validity of the respondent's assessment and the objection decision. In so doing, the tribunal failed to establish whether the documents submitted by the appellant were relevant and even considered. It continued that the respondent's decision was not fair because the respondent cherry picked the information adduced to it. That the respondent subjected the appellant to bank analysis method which prejudicially increased its turnover for the periods in question.
5. The appellant continued that it raised the discrepancies set out by the respondent but the tribunal failed to consider that they were not controverted or explained by the respondent. It argued that upon discharging its burden of proof, having submitted the required documentation, it was incumbent on the respondent to dispute the appellant's narration. However, the respondent failed to discharge its burden of proof to the required standard. For those reasons, the appellant prayed that its appeal be allowed.
6. The respondent opposed the appeal. It filed its written submissions and a bundle of authorities dated 20<sup>th</sup> May 2025 to submit that the judgment of the tribunal was well reasoned absent any misdirection. It argued that after scrutinizing the documents submitted by the appellant, it was confirmed that the appellant had received payments from Bomet County. It explained that the bank credits were RTGS payments with corresponding IFMIS payments.
7. The respondent's investigations into the appellant's affairs revealed that there were variances between the IFMIS payments and the sales declared in the VAT returns and turnover declared in the income returns for the tax period in question; yet it filed nil returns, zero purchases and zero sales. It is for this reason that the respondent issued the appellant with additional VAT assessments for that period. Other than the documents submitted, that is an account statement for Access Bank for the period 17<sup>th</sup> August 2019 to 31<sup>st</sup> December 2022, the respondent stated that the appellant failed to furnish other documentation hence its decision.
8. The respondent explained that the appellant had claimed expenses in their income tax returns for the tax period 2020 – 2021 which the respondent did not disallow as only income net expenses were adjusted in the additional assessments issued. That although the appellant had no claimed any costs of sales and expenses in the self-assessment returns for the tax period 2021/2022 and 2022/2023, the respondent allowed for expenses at 60% of the assessed income since the appellant failed to discharge its burden of proof. It urged this court to dismiss the appeal with costs.
9. I have considered the memorandum of appeal and the written submissions. I have also 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. Gathered from those provisions, 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 *Stanley N. Muriithi & another v. Bernard Munene Ithiga* [2016] eKLR.]
11. The dispute arose as a result of the objection decision dated 4<sup>th</sup> December 2023. As stated, the appellant lodged an objection application notice on 7<sup>th</sup> October 2023 regarding income tax Company VAT additional assessments raised on 12<sup>th</sup> July 2023. In part, the respondent held:
- “You were vide a letter dated 18<sup>th</sup> October 2023 allowed to file the objection out of time and requested to provide all the relevant documents in support of your objection grounds including but not limited to the following...
- You responded vide email on 29<sup>th</sup> October 2023 and submitted your account statement for Access Bank Kenya plc Bomet branch for the period 17<sup>th</sup> August 2019 to 31<sup>st</sup> December 2022. You further requested for an extension of 5 days to submit required documentation and was granted the extension (up to 6<sup>th</sup> November 2023). No further documentation has been received from yourselves.
- A review of the bank statements you submitted confirmed RTGS credits from Bomet county in the periods under review.
- None of the other requested documentation which were key in verifying your contentions were submitted for review. We are therefore unable to verify your contentions.”
12. In view of the above, the appellant’s objection notice was dismissed. In its decision, the tribunal noted that the appellant failed to submit the requested documents even after it sought for extension of time to upload documents in support of its objection. Indeed, I have also not come across any of the documents that ought to have been uploaded following its request for an extension of time. In essence, the appellant was in ostensible breach of section 59 of the *Tax Procedures Act*. As rightly found by the tribunal, the appellant failed to discharge its burden of proof as couched in section 56 (1) of the *Tax Procedures Act*.
13. In the absence of documents supporting its objection, the respondent was left with no alternative but to make a decision from the information availed. I find that the objection decision dated 4<sup>th</sup> December 2023 is bereft of fault and the tribunal rightly upheld it. Accordingly, I do not hesitate to find that the present appeal lacks merit. It is hereby dismissed. I however direct each party to bear its own costs of the appeal.

It is so ordered.

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

Waregi for the Appellant

Ng’ang’a for the Respondent

Mark/Siele (Court Assistants)

.....

**J. NG’ARNG’AR**



**JUDGE**

