



**Fast Conveyors Suppliers Limited v Commissioner of Legal
Services & Board Coordination (Income Tax Appeal E312 of 2024)
[2025] KEHC 12728 (KLR) (Commercial and Tax) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E312 OF 2024
BK NJOROGE, J
SEPTEMBER 18, 2025**

BETWEEN

FAST CONVEYORS SUPPLIERS LIMITED APPELLANT

AND

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

JUDGMENT

1. This is a Judgment arising out of an Appeal against the decision of the Tax Appeals Tribunal delivered on 4th October, 2024. This is in respect to Tax Appeals Tribunal Tax Appeal Case No. E586 of 2023.

Background Facts

2. KRA issued additional income tax assessments for 2019 and 2021 and VAT assessments for December 2021 on 2nd November 2022. The Appellant objected late in June 2023 but was allowed to file the objection out of time. However, the Appellant failed to provide the requested records, leading KRA to reject the objection and confirm the assessments in its Objection Decision of 15th August 2023. Dissatisfied, the Appellant appealed to the Tax Appeals Tribunal, but after considering the parties' submissions, the Tribunal delivered its judgment on 4th October 2024, dismissing the Appeal and upholding KRA's decision.
3. The Appellant herein, being dissatisfied with the Judgment, in its Memorandum of Appeal dated 29th November 2024 has appealed against the entire decision on the following grounds:



- a. The Tribunal erred and misdirected itself in law in holding that the Appellant had failed to discharge its statutory burden of proof whereas it had provided explanations and documentary evidence to demonstrate that the Assessment was excessive and incorrect.
 - b. The Tribunal erred and misdirected itself in law by disregarding the evidence adduced by the Appellant which demonstrated that the Respondent had fallen into error in relying on third-party records such as bank statements to make its Assessment.
 - c. The Tribunal instead assumed that all the monies that passed through the Appellant's bank account were income and sales contrary to Section 3(2) of the *Income Tax Act* and Section 5 of the *Value Added Tax Act*.
 - d. The Tribunal erred in law and violated the Appellant's right to fair administrative action and a fair hearing under Articles 47 and 50 (1) of the *Constitution* by failing to consider and determine all the issues raised by the Appellant in the Appeal filed before it, and thereby occasioning a miscarriage of justice.
 - e. The decision appealed against is to the extent set out herein wrong in law and unjust in effect and, therefore, ought to be set aside.
4. The Appellant prayed that the Court grants the following orders:
- a. This Appeal be allowed.
 - b. The Judgment of the Tax Appeals Tribunal dated 4th October 2024 be set aside.
 - c. The Respondent Objection Decision dated 15th August 2023 be set aside.
 - d. The costs of Appeal herein and the Appeal before the Tax Appeals Tribunal.
5. Vide the Statement of Facts dated 24th December 2024 the Respondent responded that it agrees with the decision of the Tribunal in this matter. This is wherein it held that the Appellant had not satisfactorily complied with the provisions of the law such as Sections 56 (1) of the *Tax Procedures Act* and Section 30 of the *Tax Appeals Tribunal Act*. This is as relates to the Appellant's burden of proof in tax matters.

Issues for Determination

6. The Court has carefully considered the submissions by both parties alongside the Appeal and the Statement of Facts and has drafted the following issues for determination;
- a. Whether the Tribunal erred by holding that the Appellant had not discharged its burden of proof in demonstrating that the Assessment was excessive and incorrect.
 - b. Whether the Tribunal erred in law and violated the Appellant's right to fair administrative action and a fair hearing under Articles 47 and 50 (1) of the *Constitution* by failing to consider and determine all the issues raised by the Appellant in the Appeal filed before it, and thereby occasioning a miscarriage of justice.

Analysis

7. In determining this Appeal, the Court is cognizant that it is exercising an appellate jurisdiction that is circumscribed by Section 56(2) of the *Tax Procedures Act* (Chapter 469B of the Laws of Kenya) ("the TPA"). The Section 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 by holding that the Appellant had not discharged its burden of proof in demonstrating that the Assessment was excessive and incorrect.

8. Did the Tribunal err in law by dismissing the Appeal and upholding the Objection Decision? It was the Appellant's case that the Tribunal erred by holding that the Appellant had failed to supply documentary evidence to support, despite the Respondent having erroneously applied the banking test.
9. Under Section 30 of the *Tax Appeals Tribunal Act*, the burden lies with the taxpayer to prove that a tax decision is incorrect. Moreover, Section 56 of the *Tax Procedures Act* provides that the burden of proof rests on the taxpayer to prove that a tax decision is incorrect. The Section stipulates as follows: -
 56. General provisions relating to objections and appeals
 1. In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.
10. The Court notes from its reading of the Tribunal's judgment that the Appeal was disallowed on grounds that the Respondent had requested the Appellant to submit specific documents in support of its submissions. However, the Appellant submitted the same bank statements it had submitted earlier in the course of engagement with the Respondent. The Tribunal proceeded to state that there was no evidence of submission of supporting documentation by the Appellant.
11. The Appellant contended that the Tribunal erred in law by holding that the Appellant had not discharged its burden of proof in demonstrating that the Assessment was excessive and incorrect.
12. The Objection decision dated 15th August 2023 indicates that the Respondent requested the Appellant to provide: audited financial statements and balances; sales invoices and ledgers; bank statements; contract agreements; and any other relevant documents in support of their grounds of objection. However, the Appellant only submitted bank statements, which the Respondent found were not enough to substantiate the Appellant's ground of objection.
13. In the case of *Commissioner of Domestic Taxes v Trical and Hard Limited* (Tax Appeal E146 of 2020) [2022] KEHC 9927 (KLR) the Court held as follows with regard to the evidential burden of a taxpayer: -

“From the above, it is clear that the evidential burden of proof rests with the taxpayer to disprove the Commissioner and that once competent and relevant evidence is produced, then this burden now shifts to the Commissioner. I have emphasized and underlined ‘competence’ and ‘relevance’ because it is only evidence that meets these two tests that demolishes presumption of correctness and swings the burden to the Commissioner. This means that even if one avails evidence but then it is found that the same is incompetent or irrelevant, then the burden continues to remain with the taxpayer.”

 - (3) Every person required under subsection (1) to keep records shall, at all reasonable times, avail the records to an authorized officer for inspection and shall give the officer every facility necessary to inspect the records.”
14. It is the Court's opinion and in agreement with the Tribunal's judgment that the burden continued to remain with the Appellant since the Appellant did not provide the records to support its arguments. There was no material provided to shift this burden.



15. As pointed out by the Tribunal in its judgment, the Appellant submitted the same bank statements it had submitted earlier in the course of engagement with the Respondent. It was now upon the Appellant to prove whether all the monies that passed through the Appellant's bank account were income and sales, which it failed to do. It was as if the Taxpayer expected the Tax Authority and the Tribunal to deduce a certain narrative from the Bank Statements. A casual look at the bank statements would only show movements of monies in and out, deposits and withdraws. It would be for the Taxpayer to provide information by way of documentation to show which payments represent sales and which withdrawals represent expenses. The nature of the documentation would depend on the circumstances of the case and engagement undertaken by the Taxpayer.
16. The Court further agrees with the Tribunal that, the Appellant having failed to provide documentation, the Respondent was within its mandate to apply the banking analysis method as an alternative and indirect method of assessing the Appellant's estimated tax liability.
17. The onus then was on the Appellant to prove its averment that the banking analysis was misapplied in arriving at the assessment. The Court in *Hole v. The Queen*, 2016 TCC 55, opined that:

“There are two primary ways in which a taxpayer can challenge a bank deposit analysis. The first is to prove that his or her records were adequate and thus that his or her income should have been determined using those records. The second, and more common, method is to challenge the actual determination of income made by the Minister under the bank deposit analysis.”

 - b. Whether the Tribunal erred in law and violated the Appellant's right to fair administrative action and a fair hearing under Articles 47 and 50 (1) of the [Constitution](#) by failing to consider and determine all the issues raised by the Appellant in the Appeal filed before it, and thereby occasioning a miscarriage of justice.
18. Lastly, the Court notes that the Appellant averred that the Tribunal erred in law and violated the Appellant's right to fair administrative action and a fair hearing under Articles 47 and 50 (1) of the [Constitution](#). This is by failing to consider and determine all the issues raised by the Appellant in the Appeal filed before it, and thereby occasioning a miscarriage of justice.
19. It is evident that the Appellant did not point out what issues the Tribunal failed to consider and determine thus this ground also fails.
20. The Appeal lacks merit, and the Court upholds the Tribunal's finding. As to costs, each party will bear its own costs.

Determination

21. The Appeal is dismissed in its entirety as lacking in merits.
22. Each party to bear its own costs.
23. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 18TH DAY OF SEPTEMBER, 2025.

NJOROGE BENJAMIN. K.

JUDGE



In the presence of: -

Mr. Mandela for the Appellant.

Mr. Wainaina for the Respondent.

Mr. Wabwire - Court Assistant.

