



**Kiu Construction Limited v Commissioner of Investigations & Enforcement Department (Income Tax Appeal E074 of 2024)
[2025] KEHC 12751 (KLR) (Commercial and Tax) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12751 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E074 OF 2024
BK NJOROGE, J
SEPTEMBER 18, 2025**

BETWEEN

KIU CONSTRUCTION LIMITED APPELLANT

AND

**COMMISSIONER OF INVESTIGATIONS & ENFORCEMENT
DEPARTMENT RESPONDENT**

JUDGMENT

1. This Judgment arises from an Appeal against the judgement of the of the Tax Appeals Tribunal delivered on 8th March 2024 in respect of Tax Appeals Tribunal Case No. 998 of 2022.

Background Facts

2. KRA investigated the Appellant’s tax affairs for 2015–2019 and in May 2020 issued findings demanding over Kshs. 655 million from the company and Kshs. 36 million on the director’s rental income. KRA later revised the demand in April 2021 to Kshs. 277 million plus rental tax. The Appellant’s objection filed in July 2021 was rejected as out of time. Although a Notice and Memorandum of Appeal were filed in September 2022, the Respondent argued the Objection and Appeal were lodged outside the statutory timelines under the *Tax Procedures Act* and the *Tax Appeals Tribunal Act*. On 8th March 2024 the Tribunal upheld this position, striking out the Appeal without addressing the substantive issues raised therein.
3. The Appellant being dissatisfied with the entire decision of the Tax Appeals Tribunal (hereinafter referred to as the “Tribunal”) rendered on 8th March 2024, appeals against that decision on the following grounds: -



- a. The Tribunal erred in law and in fact by failing to appreciate that the Respondent had raised assessments that were outside the five (5) year statutory period contrary to Section 31(4)(b) of the *Tax Procedures Act*, and as such, the said assessments were null and void.
 - b. The Tribunal erred in law and fact by failing to appreciate that the burden of proof was placed on the Respondent to demonstrate fraud on the part of the Appellant in order to justify the demand for taxes.
 - c. The Tribunal erred in law and in fact by failing to appreciate that the Respondent's demand notice of 6th April 2021 was null and void as it offended Article 47 of *the Constitution* on the right to fair administrative action as read together with Section 51 of the *Tax Procedures Act* that allows an aggrieved party the right to object to an assessment.
 - d. The Tribunal erred in law and fact by failing to appreciate that the Respondent's demand notice of 6th April 2021 was egregiously un-procedural, that it was not an assessment that could not give rise to an Objection under Section 51 of the *Tax Procedures Act*, and as such, the Respondent could not purport to later on apply Section 51(7) of the *Tax Procedures Act* to deny the Appellant audience.
 - e. The Tribunal erred in law and in fact by failing to appreciate that the Respondent had breached the Appellant's legitimate expectation that the tax dispute had been settled in TAT No. 82 of 2018 where two consents had been signed on 29th November 2018 and 13th December 2018 respectively, pursuant to an ADR process.
 - f. The Tribunal erred in law and fact by failing to appreciate that the Respondent had indeed admitted in its response to the appeal that there were ADR Agreements covering the period of the impugned demand notice.
 - g. The Tribunal erred in law and fact by failing to appreciate that the Respondent was enjoined by Section 31 of the *Tax Procedures Act* as read together with Article 47 of *the Constitution* to issue an amended assessment and not a demand notice.
 - h. The Tribunal erred in law and in fact by failing to appreciate that the Respondent had failed to distinguish the Appellant from its directors as required by settled law.
 - i. The Tribunal erred in law and in fact by failing to appreciate that the Respondent had misapplied the provisions of Section 17 of the VAT Act in arriving at the additional VAT assessments by failing to consider the documentation provided to support VAT input claims.
 - j. The Tribunal erred in law and in fact by failing to appreciate that the Respondent had misapplied the provisions of Section 15 of the *Income Tax Act* in arriving at the additional Income Tax Assessments by failing to consider allowable deductions.
 - k. The Tribunal erred in law and in fact by failing to appreciate that the Respondent had misapplied the 'best judgment principle' under the *Tax Procedures Act* by imposing an average net profit margin of 14% without justification.
 - l. The Tribunal misapplied the law and facts and therefore arrived at the wrong decision.
4. The Appellant prayed that the Court;
- a) Allows the Appeal herein and sets aside the decision of the Tribunal dated 8th March 2024.
 - b) Makes any other order it may deem fit in the circumstances.



- c) Grants the costs of this Appeal to the Appellant.
5. The Respondent's response was vide the Statement of Facts dated 27th August 2024. The Respondent maintained that the Commissioner had a valid basis for the tax assessment spanning five years. That the Appellant was obligated to account for the identified variance, which could not be dismissed as a reconciliation error. It was further argued that the demand notice, supported by an earlier ADR agreement, justified the additional assessment and that the Appellant failed to specify any flaws in it. The Appellant did not discharge the burden of proof by providing contrary evidence during objection or trial, making their claims mere unsupported assertions. That therefore, the Tribunal properly applied the relevant law to the facts.

Issues for determination

6. The Court has carefully considered the submissions by the parties alongside the Appeal. The Record of Appeal as well as the Statement of facts and identifies the following issue for determination;
- a. Whether the Appeal herein is merited.

Analysis

7. 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](#) which provides that
- “An appeal to the High Court or to the Court of Appeal shall be on a question of law only”.
8. The background of this Appeal is that the Respondent issued additional assessments for VAT, PAYE and Corporation tax of Kshs.277,794,009.19 and rental income for Kshs.36,350,373 on 6th April 2021. The Appellant lodged an Objection on 19th July 2021. The Appellant challenged the Commissioner's decision dated 23rd July 2021, wherein the Appellant's Objection was invalidated for being lodged out of time. On 23rd July 2021 the Respondent issued a confirmation of the assessment and invalidated the Appellant's Objection for being lodged out of time.
9. Therefore, it was the Respondent's submission that the Appellant failed to invoke the Tribunal's jurisdiction to extend time to lodge an Appeal; thus, the same was properly struck out.

Whether the Appeal herein is merited.

10. Is the Appeal herein merited? The Appellant stated that it was appealing against the decision of the Tribunal. However, a cursory look at the Grounds of Appeal reveals that the grounds therein are not based on the decision of the Tribunal. It is clear that the Tribunal's decision was that the Appeal was invalid and therefore it did not determine the other issues as they were rendered moot. The Tribunal stated as follows;

“In this case, there is no evidence that the Appellant sought for extension of time within which to file a Notice of Appeal against the Respondent's decision and/or that leave was granted to the Appellant by this Tribunal to file its appeal out of time. For this reason, the Tribunal finds that there is no proper and/or valid Appeal filed by the Appellant before it for consideration.

In view of the foregoing and the fact that the Appeal herein is invalid, the Tribunal shall not determine the other issues earlier identified for determination as they have been rendered moot.



The upshot of the above is that the Appeal is incompetent and the Tribunal lacks jurisdiction to entertain it. The Tribunal accordingly proceeds to make the following Orders: -

- (a) The Appeal be and is hereby struck out.
- (b) Each party to bear its own costs.”

11. Section 51(12) of the [Tax Procedures Act](#) states as follows

“A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.”

- 12. The Court finds that the Appeal herein is unrelated to the findings of the Tribunal and this Court should not be conducting a fresh trial on facts that were not considered by the Tribunal. None of the grounds of the Appeal relates to the striking out of the Appeal for being invalid for being filed late. Furthermore, the Appellant did not appeal against the striking out of the Appeal by the Tribunal. It opted instead to deal with the Appeal on its merits, whereas in fact the Tribunal did not deal with the appeal in substance.
- 13. The Appellant seems to suggest that the decision of the Respondent was not one that invited an Appeal to the Tribunal. That argument cannot turn as it is the Appellant who presented the Appeal to the Tribunal. This Court is not persuaded that the decision was not appealable.
- 14. The Court dismisses the Appeal herein and maintains the Tribunal's finding was that the Appellant did not seek an extension of time within which to file the Notice of Appeal against the Respondent's decision. Thus, there was no proper Appeal before it for consideration. The decision of the Court in *Gillys Security & Investigations Services Ltd v Commissioner (High Court) [2023] KEHC 488 (27 Jan 2023)* is persuasive on this point.
- 15. The upshot is that the Appeal does not succeed. The Court is unable to find fault in the reasoning by the Tribunal.
- 16. As to costs, the Court directs that each party does bear its costs.

Determination

- 17. The Appeal is dismissed in its entirety as it lacks merit.
- 18. Each party is to bear its own costs of this Appeal.
- 19. It is so ordered.

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

NJOROGE BENJAMIN. K.

JUDGE

In the presence of: -

Miss Kosgey holding brief for Maero for the Appellant.

Miss Nyakundi for the Respondent

Mr. Wabwire - Court Assistant.

