



Wec Lines (K) Limited v Commissioner of Domestic Taxes (Income Tax Appeal E082 of 2022) [2024] KEHC 2392 (KLR) (Commercial and Tax) (8 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E082 OF 2022**

A MABEYA, J

MARCH 8, 2024

BETWEEN

WEC LINES (K) LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

*(eing an appeal from the Judgment of the Tax Appeals Tribunal
at Nairobi dated 26/8/2022 in Tax Appeal No. 747 of 2022)*

JUDGMENT

1. This is an appeal against the decision of the Tax Appeals Tribunal delivered on 26/8/2022. The appellant had filed various applications in the ITAX Platform for tax refunds between the years November 2015 and January 2017 for a total of Kshs 8,573,549/-. This prompted the respondent to raise several debit adjustments and ultimately issued an audit report.
2. The appellant filed a notice of objection on 30/9/2019 whereby an objection decision was made on 7/10/2021. Aggrieved thereby, the appellant appealed to the Tax Appeals Tribunal (“the Tribunal”) on 18/11/2021 which the Tribunal dismissed on 26/8/2022.
3. Being dissatisfied thereby, the appellant lodged this appeal vide a Memorandum of Appeal dated 28/10/2022. The appeal is based on 9 grounds of appeal which can be summarized as follows -
 - a. That the Tribunal erred in fact and law by finding that the appellant failed to provide the documents to support its objection.
 - b. That the Tribunal erred in failing to consider section 51(11) of the [Tax Procedures Act](#) which holds that an objection decision should be issued within 60 days from the date of receipt of a valid notice.



- c. That the Tribunal erred in failing to consider the submissions of the appellant and determine all the issues raised by the appellant in the appeal before it.
4. In opposition to the appeal, the respondent filed a statement of facts dated 1/2/2023. She contended that there was no error on the part of the Tribunal in determining the dispute and in holding that it emanated from an earlier matter TAT 247 OF 2020. That the appellant had been asked to provide necessary documents to prove that the respondent's assessment was wrong but failed to do so. Further, that under section 23(1)(c) of the [Tax Procedures Act](#) ("TPA"), the appellant was obliged to keep documents for a period of 5 years. That the judgment was proper and had considered all the relevant factors.
5. The appeal was canvassed by way of written submissions which I have considered. This being a second appeal, this Court is obliged to deal with matters of law only unless a misdirection on a matter of fact by the Tribunal amount to an issue of law.
6. The appellant submitted that in a letter dated 4/5/2020, the respondent admitted its objection and sought for a breakdown of the income by way of delivery order (fees) for the year 2016. That the said letter was meant to take advantage of section 51(11) of the TPA in order to buy time for the respondent to issue an objection decision.
7. That the objection decision was issued on 7/10/2021 which was after 150 days of the objection. That the applicant had already satisfied the provisions of section 17(3) and (5) of the VAT Act by having provided the required documents for its VAT application. That the respondent took advantage of the powers given to her by the [Tax Procedures Act](#) to illegally and un-procedurally ask for irrelevant information. That the Tribunal failed to interrogate whether the documents requested for in the letter of 4/5/2020 were relevant.
8. On the other hand, it was submitted for the respondent that the appellant was required to produce documents for purposes of ascertaining its tax liability. That the appellant failed to provide the specific relevant documents relating to the objection and as a result, the objection was not upheld. It was the respondent's submissions that the appellant did not discharge its burden of proof and neither did it provide the said documents at the Tribunal.
9. I have considered the record and the submissions by Learned Counsel. The grounds raised by the appellant are threefold. On the first ground, the appellant faulted the respondent for taking advantage of section 51(11) of the TPA and issuing the objection decision after 150 days from the time the notice of objection was lodged.
10. According to the appellant, upon receipt of the notice of objection, the respondent issued a letter dated 4/5/2020 seeking an analysis of the fees earned for the period of January 2016 to December 2016 broken down under agency fees, bill of lading fees, demurrage fees, delivery order fees and many others.
11. Section 51 (11) of the [Tax Procedures Act](#) provides that: -

"Where the Commissioner has not made an objection decision within sixty days from the date that the taxpayer lodged a notice of the objection, the objection shall be allowed."
12. In *Equity Group Holdings Limited v Commissioner of Domestic Taxes (Civil Appeal E069 & E025 of 2020)* [2021], the court observed that: -

"Section 51 (11) of the TPA is couched in mandatory terms. Having correctly found that the decision was made after the expiry of 60 days, the TAT had no legal basis to proceed as it did



and to invoke article 159(2) (d). First, there was no decision at all. The decision had ceased to exist by operation of the law. Second, the provisions of section 51 (11) (b) had kicked in. The Objection had by dint of the said provision been deemed as allowed. Third, the TAT had no discretion to either extent time or to entertain the matter further. Fourth, discretion follows the law and a tribunal cannot purport to exercise discretion in clear breach of the law.

The TAT premised its decision on the provisions of Article 159 (2) (d) of *the Constitution* which requires courts to determine matters without undue regard to technicalities of procedure. On the face of a clear statutory dictate, I do not see how the TAT could term the express statutory edict as a matter of procedural technicality. This was a gross misapprehension of the law. Article 159 (2) (d) of *the Constitution* was not meant to oust express statutory provisions and to open a window for disregard of statutory requirements.”

13. The same position obtained in *Vivo Energy Kenya Limited v Commissioner of Customs & Border Control, Kenya Revenue Authority & another* [2020] wherein it was held: -

“The provisions of the TPA are clear that where the Commissioner fails to make a decision on an objection within sixty days, the objection shall be allowed. This means that the objection dated 8th November, 2016 in which the Applicant sought for the revision of the Commissioner’s decision to demand the excise duty amounting to Kshs 127,183,364/= was allowed by operation of the law by dint of Section 51(11) of the TPA. Therefore, the 1st Respondent should not have continued to demand the payment of the excise duty through the letters dated 23rd, November, 2016, 3rd, February, 2017, 3rd, October 2019, 24th October 2019, and 7th, November 2019. All those demands amounted to nothing in law.”

14. In the present case, the appellant issued a notice of objection to the assessment on 30/9/2019. The respondent wrote a letter to the appellant for further particulars on 4/5/2020 and the objection decision was issued on 7/10/2021. Drawing guidance from the foregoing dictums, failure to issue the objection decision before the lapse of 60 days is detrimental to the respondent as the appellant’s objection is deemed to have been accepted. In this case the objection decision dated 7/10/2021 was not valid since it was issued outside of the prescribed timelines.
15. The existence of strict timelines in taxation matters is to ensure certainty and predictability in matters revenue and finance. The government revenue must be collected timeously and the tax payer must know his/her liability at the earliest for planning purposes. In this regard, the Tribunal erred in entertaining the fact that the assessment stood yet the objection had succeeded by operation of law.
16. Having found as such, there arise no need to address the other grounds raised in this appeal as they would be of no consequence.
17. Accordingly, I find merit in the appeal and the judgment of the Tribunal dated 26/8/2022 is hereby set aside.

It is so decreed.

DATED and DELIVERED at Nairobi this 8th day of March, 2024.

A. MABEYA, FCI Arb

JUDGE

2

