



Commissioner of Domestic Taxes v Hotpoint Appliances Limited (Income Tax Appeal E074 of 2023) [2024] KEHC 4053 (KLR) (Commercial and Tax) (18 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E074 OF 2023**

A. ONG'INJO, J

APRIL 18, 2024

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

HOTPOINT APPLIANCES LIMITED RESPONDENT

(Being an appeal from the judgment of the Honourable Tribunal delivered on 23rd day of December 2022 in TAT No. 208 of 2021)

RULING

1. The Commissioner of Domestic Taxes Lodged the appeal herein concurrently with the application dated 23rd May 2023 pursuant to Rule 4 of the *Tax Appeals Tribunal (Appeal to the High Court) Rules*, Section 32 of the *Tax Tribunals Act* and Article 159 of *the Constitution*.
2. In the application, it was sought that leave be granted for the appeal to be heard out of time and that the Memorandum of Appeal be deemed as having been properly filed.
3. The appeal was heard by way of written submissions. The appellant's submissions are dated 14th June 2023 while the Respondent's submissions are dated 16th June 2023.
4. The appellant averred that they filed Notice of Appeal on 23rd January 2023 but they did not get certified copies of the proceeding and judgment in good time. In addition, Mr. Wainaina Advocate for the appellant also argued that the file was misplaced and that upon getting the certified copies of the proceeding and judgment, they filed their appeal on 23rd May 2023. The also contended that a delay of one month was not inordinate and that the error in delay to file the appeal on time should not be visited upon the appellant that the appellant had an arguable appeal that should be allowed to proceed on the basis of merit to its logical conclusion.



5. The appellant relied on the holdings in the following authorities to support the position that the delay in filing the appeal was not inordinate: -
 - a. *Utalii Transport Co. Ltd & 3 Others v NIC Bank Ltd & Another* (2014) eKLR
 - b. *Stecol Corporation Limited v Susan Awuor* (2021) eKLR
 - c. *Shashikant C. Patel v Oriental Commercial Bank* (2005) eKLR
 - d. *Inland Beach Enterprises Ltd v Sammy Chege & 15 Others* (2012) eKLR
6. Ms. Renee Omondi Advocate for the Respondent opposed the application for leave to file appeal out of time by the Replying Affidavit Sworn on 2nd June 2023 and submissions dated 16th June 2023.
7. She argued that the provisions of the *Civil Procedure Rules* are not applicable to matters under the *Tax Appeals Tribunals Act* as Rule 5 provides for documents that are required to be included at the time of filing the Memorandum of Appeal. She said the reason for the delay of 2 months and 14 days as averred in the Supporting Affidavit was different from the reason given by the Advocate in the submissions.
8. While relying on the authorities of *Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Others* (2013) eKLR and *Charles Mwangi Kiiru v Boniface Maina Gichomo & Joseph Mwangi Thuo* (2021) eKLR, Counsel for the Respondent argued that a delay is a delay and urged the court to dismiss the appeal that sufficient reason had not been advanced to warrant extension of time and the affidavit in support was devoid of information as to when the file was lost and when it was traced. It was explained that since pleadings are filed online at the tribunal, the appellant had the option of retrieving them.
9. A further contention was that there was no tax due from the respondent to the appellant and that the appellant had admitted that there was no loss and therefore the appeal cannot be regularized. The Respondent's counsel also argued that the application to extend time ought to have been filed with the appeal and not after filing of the appeal.
10. The application herein has been considered together with the submissions and authorities cited and there is no dispute that there was a delay on the part of the appellant to lodge the appeal. However, a delay of 2 months and 14 days cannot be deemed to be inordinate delay. The appellant explained the steps taken towards filing of the appeal. The judgment of the tribunal was delivered on 23rd December 2022 and a Notice of Appeal filed on 20th January 2023. The appellant has explained when they received certified copies of the proceedings and judgment from the tribunal and explained why it took them 2 months and 14 days to file the appeal after the certified copies of judgment and proceedings were availed.
11. This court finds that the delay of 2 months and 14 days cannot be deemed to be inordinate delay in consideration of the explanation given. The appellant's application to file appeal out of time is therefore allowed. The Memorandum of Appeal dated 23rd May 2023 is deemed to be properly on record. Directions are given that the Respondent will have 30 days to file their Statement of Fact. This matter will be mentioned on 16th May 2024 before the Presiding Judge, Commercial and Tax Division to give directions on the hearing of the appeal.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS THIS
18TH DAY OF APRIL 2024**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

