



**Commissioner of Investigations and Enforcement v Rama Auto Parts (Income Tax Appeal E183 of 2021) [2023] KEHC 3100 (KLR) (Commercial and Tax) (14 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3100 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E183 OF 2021**

**A MABEYA, J**

**APRIL 14, 2023**

**BETWEEN**

**COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT**

**AND**

**RAMA AUTO PARTS ..... RESPONDENT**

**JUDGMENT**

1. The appellant is a principal officer of the Kenya Revenue Authority, an Agency established under the *Kenya Revenue Authority Act* cap 469 Laws of Kenya and charged with the administration and collection tax revenue on behalf of the Government of Kenya.
2. The respondent is a Limited Liability company incorporated in Kenya under the *Companies Act* CAP 486 Laws of Kenya and is in the business of importation and sale of motor vehicles.
3. By a letter dated 7/10/2016, the appellant raised an assessment against the respondent and demanded additional tax of Kshs. 15,484,177/-. The respondent objected to the assessment vide a letter dated 8/11/2016. *Vide* a letter dated 6/4/2017, the appellant confirmed the assessment (hereinafter “the objection decision”).
4. Dissatisfied with the objection decision the respondent lodged an appeal at the Tax Appeals Tribunal (“the Tribunal”). By its judgment of 13/8/2021, the Tribunal allowed the appeal in favour of the respondent and set aside the confirmation of assessment dated 6/4/2017.
5. Dissatisfied with the that decision, the appellant lodged this appeal setting out 11 grounds of appeal which can be summarized into 2 as follows: -
  - a. That the Tribunal erred in relying on procedural technicalities instead of deciding the appeal on merit.



- b. That the Tribunal erred in failing to hold and find that there was no valid appeal.
6. The respondent filed its statement of facts dated 17/3/2022 in which it contended that, by a letter dated 8/4/2015, the appellant gave an intention to audit its accounts for the period of January 2012 to December 2014, VAT January 2013 to January 2015 and PAYE January 2012 to June 2014. That the appellant confirmed to the respondent that the audit had been concluded and assessments were issued for the years 2012 to 2015.
  7. The respondent objected to the assessment and provided the required documentation. It was further contended that, in contravention of section 51 of the *Tax Procedures Act* 2015, the appellant issued additional assessment on 6/4/2017. That its appeal was allowed on the grounds that the appellant was under an obligation to notify the taxpayer of an invalidly lodged notice of objection.
  8. The appeal was canvassed by way of written submissions which I have considered. It was the appellant's submission that vide various correspondence between the parties, he had requested for documents from the respondent which were not supplied. That he confirmed the assessment on 6/4/2017 because the respondent had failed to validate the objection. That the taxpayer was under an obligation to provide evidence to support their grounds of objection a fact that was ignored by the respondent.
  9. It was further submitted that, the Tribunal failed to make findings on the preliminary objection raised by the appellant which challenged the appeal. According to the appellant, the appeal was filed contrary to section 13 of the *Tax Appeals Tribunal Act* which requires an appeal to be filed within 30 days. That the Tribunal should have heard the matter on merit.
  10. On its part, the respondent submitted that the appellant's objection decision was made four months and twenty-seven days after the objection to the assessment which was outside the statutory timelines. That the objection was deemed allowed when the appellant failed to issue an objection decision within 60 days as per the requirements of section 51(11) of the *Tax Procedures Act* 2015.
  11. I have carefully considered the record, the statement of facts and the written submissions. This being a first appeal, the Court has to re-evaluate and analyze the evidence afresh and come to its own independent conclusions and findings. See *Selle & Another vs. Associated Motor Boat Company* [1968] EA 123.
  12. A brief background d to the case is that the respondent lodged an appeal before the Tribunal against the objection decision of 6/4/2017. Both parties raised preliminary objections to the appeal and to the objection decision. The appellant's objection was dated 13/12/2017 whereas that of the respondent was dated 25/6/2017 sought to dismiss the objection decision on the grounds that the same was not made within 60 days.
  13. In its decision of 13/8/2021, the Tribunal upheld the respondent's objection dated 25/6/2017 and dismissed the objection decision on the grounds that it was not lodged within 60 days as required by the law.
  14. On the first ground of appeal as summarized above, the appellant faulted the Tribunal for dismissing the objection decision on procedural technicalities rather than allowing the appeal to be determined on merit.
  15. The appellants case was that the respondents notice of objection was not validly lodged and that the respondent failed to validate it despite being given an opportunity to do so. It was the appellant's submission that the respondent had lodged several objections but did not attach evidence in support of the said objections. That the objection decision was given after the Commissioner had given the respondent enough time to provide and supply the documents required to validate the objection.



16. In its judgment, the Tribunal observed that the Commissioner was under a statutory mandate to notify the taxpayer of an objection that had been invalidly lodged. According to the Tribunal, notification to the tax payer went to the soul of the appeal and could not be dismissed as a technicality.

17. Section 51 of the *Tax Procedures Act* (“the Act”) provides: -

- “ 1. A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax decision under this section before proceeding under any other written law.
2. A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision.
- 3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—
  - a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;
  - b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1); and
  - c) all the relevant documents relating to the objection have been submitted.
- 4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged.
- 5) Where the tax decision to which a notice of objection relates is an amended assessment, the taxpayer may only object to the alterations and additions made to the original assessment.
- 6) .....
- 11) The Commissioner shall make the objection decision within sixty days from the date of receipt of—
  - a) the notice of objection; or
  - b) any further information the Commissioner may require from the taxpayer, failure to which the objection shall be deemed to be allowed.”

18. From the foregoing, it is clear that section 51(3) of the *TPA* provides that for a notice of objection to be validly lodged, it should contain the grounds of objection, any amendments to be made and the supporting documents. In the event the Commissioner is of the view that an objection decision has not been validly lodged, the Commissioner is required by section 4 of the *Act* to immediately inform the taxpayer of that fact. That requirement is mandatory. The reason why the Commissioner is required to notify a tax payer of that fact immediately is because of the timelines given by the section and for the



reason that failure to give such notification, the tax payer may be entitled to assume that his objection has succeeded.

19. In the present case, it is not disputed that the notice of objection was lodged on 8/11/2016. There was no communication by the Commissioner until 6/4/2017 when he issued the objection decision. The appellant's contention was that since the notice of objection had not been properly lodged, there was no obligation on his part to issue an objection decision as the objection remained invalid.

20. In *Vivo Energy Kenya Limited v Commissioner of Customs & Border Control, Kenya Revenue Authority & another* [2020] eKLR, the court 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 8<sup>th</sup> 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 1<sup>st</sup> Respondent should not have continued to demand the payment of the excise duty through the letters dated 23<sup>rd</sup>, November, 2016, 3<sup>rd</sup>, February, 2017, 3<sup>rd</sup>, October 2019, 24<sup>th</sup> October 2019, and 7<sup>th</sup>, November 2019. All those demands amounted to nothing in law.”

21. In this regard, the time within which Commissioner should make an objection decision is prescribed by statute. The law provides that an objection decision should be made within 60 days from the receipt of the notice of objection or receipt of any other information required from the taxpayer.

22. In this case, since the Commissioner had not received any information or documents from the respondent, time started running after receipt of the notice of objection. In the premises, the objection decision was filed outside the prescribed timelines and therefore the objection was deemed to be allowed by dint of section 51(11) of the *Act*.

23. The appellant further faulted the tribunal for failing uphold its preliminary objection and finding that there was no valid appeal. The record shows that on 22/10/2020, the Tribunal gave directions that both preliminary objections be heard simultaneously. In its judgment, the Tribunal declined to deliberate on the issue as to whether the appeal before the Tribunal was valid stating that the same had been rendered moot.

24. The view this Court takes is that, in the circumstances of this case, the view taken by the Tribunal that the notice of objection had been allowed by dint of the appellant's failure to lodge the objection decision within the prescribed time cannot be faulted. The competence or otherwise of the appeal could not arise as the objection decision was already deemed allowed by law. I therefore find no error on the part of the Tribunal in its decision of 13/8/2021.

25. The upshot is that the appeal lacks merit and is therefore dismissed with costs.

26. It is so decreed.

**DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF APRIL, 2023.**

**A. MABEYA, FCI Arb**

**JUDGE**

