



**Commissioner of Investigations and Enforcement v Traneshvi Limited
(Income Tax Appeal E142 of 2023) [2025] KEHC 13447 (KLR)
(Commercial and Tax) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13447 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E142 OF 2023
CM KARIUKI, J
SEPTEMBER 26, 2025**

**BETWEEN
COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT
AND
TRANESHVI LIMITED RESPONDENT**

*(Being an Appeal on the Judgment of the Tax Appeals Tribunal dated
14th July 2023 in Tax Appeals Tribunal Appeal No. 450 of 2022)*

JUDGMENT

26/09/2025

Background and Procedural History

1. This appeal arises from the decision of the Tax Appeals Tribunal in Tax Appeal No. 450 of 2022, delivered on 14th July 2023, in which the Tribunal found in favour of the Respondent, Traneshvi Limited. The dispute concerned additional tax assessments issued by the Commissioner of Investigation and Enforcement against the Respondent, which the latter challenged before the Tribunal. Upon hearing both parties, the Tribunal held that the Respondent had provided sufficient evidence to demonstrate that the assessments were erroneous, and consequently, it set aside the Commissioner's tax demands.
2. Aggrieved by the entire decision, the Commissioner of Investigation and Enforcement lodged the present appeal by way of a Memorandum of Appeal dated 8th September 2023. In its memorandum, the Appellant faulted the Tribunal on several grounds.



Firstly, the Appellant contended that the Tribunal erred in law and in fact by holding that the taxpayer had adduced sufficient evidence to disprove the tax assessments. According to the Appellant, the Tribunal failed to appreciate that the assessments had been properly raised and that the taxpayer's documentation did not satisfactorily displace the same.

3. Secondly, the Appellant argued that the Tribunal erred in shifting the evidential burden onto the Commissioner, contrary to established principles of tax law. It was the Appellant's position that under section 56(1) of the *Tax Procedures Act*, the legal and evidential burden in tax disputes lies with the taxpayer, and the Tribunal therefore fell into error when it required the Commissioner to avail additional evidence to justify the assessments.
4. Thirdly, the Appellant asserted that the Tribunal erred in finding that the assessments were unjustified. The Appellant maintained that the assessments were lawfully raised, based on the Commissioner's mandate under the *Tax Procedures Act* and the *Income Tax Act*, and that the Tribunal failed to give due weight to this statutory framework.
5. Based on these grounds, the Appellant prayed that this Court allows the appeal, set aside the Tribunal's judgment of 14th July 2023, and uphold the Commissioner's decision demanding taxes from the Respondent. The Appellant further sought an award of costs of the appeal.

The Respondent's Case

6. The Respondent, Traneshvi Limited, filed a Statement of Facts dated 19th August 2024 in response to the appeal. The Respondent describes itself as a limited liability company engaged in the real estate business, owning and managing several apartment complexes in Nairobi, including Viraj Apartments in Kilimani, Mushembi Road Flats in Ngara, Viraj Gardens in Kileleshwa, Viraj Court Apartments in Pangani, and Viraj Village Apartments in Katani. Its rental operations are conducted through renewable 11-month tenancy agreements, with monthly rental income received in cash depending on the size, location, and nature of each apartment.
7. The Respondent narrated that in 2018, the Appellant conducted an audit covering the years 2015–2017, which reconciled with the Respondent's declared rental income and verified all its claimed expenses. However, in May 2020, the Appellant commenced fresh investigations, including impromptu site visits, tenant interviews, and requests for documents. The Respondent claims it fully cooperated, availing of tenancy agreements, financial statements, receipts, ledgers, payroll records, permits, and bank statements, among other documents.
8. Despite this, the Appellant issued preliminary audit findings on 24th May 2021, computing a corporate income tax liability of Kshs. 43,879,331 for the years 2015–2019. The Respondent challenged these findings, supplying detailed reconciliations and explanations. Nonetheless, on 25th January 2022, the Appellant confirmed a revised assessment of Kshs. 76,369,287, contrary, in the Respondent's view, to section 31(4)(b) of the *Tax Procedures Act*, which bars assessment beyond five years from the filing of self-assessment returns.
9. The Respondent lodged a formal objection on 23rd February 2022, again providing voluminous supporting material, including tenancy agreements, receipts, maintenance



records, ledgers, iTax returns, audited accounts, payroll evidence, permits, and bank records. Notwithstanding this evidence, the Appellant issued an objection decision on 23rd March 2022 confirming the assessment. The Respondent therefore appealed to the Tax Appeals Tribunal, which on 9th June 2023 allowed its appeal and set aside the objection decision.

10. In response to the present appeal, the Respondent submits that the Tribunal properly evaluated the evidence before it and rightly found that the assessments were not justified. On Ground 1, it contends that it had provided sufficient evidence to disprove the assessments, thereby discharging its statutory obligation under section 56(1) of the [Tax Procedures Act](#). The Appellant's blanket assertion that evidence was insufficient, without specifying the alleged deficiencies, was unmerited.
11. On Ground 2, the Respondent argues that the Tribunal correctly held that once a taxpayer has provided comprehensive documentation supporting its tax position, the burden of proof shifts back to the tax authority to rebut the evidence. The Tribunal rightly applied the principle that the burden of proof in tax matters is not static but shifts like a pendulum depending on the circumstances. The Appellant failed to demolish the Respondent's evidence with specificity and thus could not fault the Tribunal's conclusion.
12. On Ground 3, the Respondent maintains that the Tribunal properly exercised its mandate in finding the assessments unjustified, given the overwhelming documentary evidence produced. The Appellant, it is argued, has not demonstrated with any particularity why the Tribunal's findings were erroneous, but merely made sweeping allegations against the adequacy of evidence.
13. In sum, the Respondent submits that the Tribunal's decision was sound in law and fact, that the Appellant's grounds of appeal are baseless, and that the present appeal ought to be dismissed with costs.

Directions of the court.

14. The Court directed that the appeal be canvassed by way of written submissions, which were duly filed and exchanged by the parties.

Appellant's Submissions

15. The Appellant, the Commissioner of Investigation and Enforcement, filed submissions dated 13th May 2025. The Appellant reiterates that its appeal is anchored on three main grounds: that the Tribunal erred in finding that the Respondent had provided sufficient evidence to disprove the assessments; that the Tribunal wrongly imposed an obligation on the Commissioner to avail further evidence while the onus of proof in tax matters rests with the taxpayer; and that the Tribunal erred in holding that the impugned tax assessments were unjustified.
16. The Appellant submits that the central issue for determination is whether the Tribunal erred in law and fact in shifting the evidential burden from the taxpayer to the tax authority. Counsel relies on section 56(1) of the [Tax Procedures Act](#), which expressly provides that in any proceedings under Part VIII, "the burden shall be on the taxpayer to prove that a tax decision is incorrect." The Appellant emphasizes that the law is clear



that it is the taxpayer, and not the Commissioner, who must demonstrate by way of cogent evidence that an assessment is erroneous or excessive.

17. In support of this position, the Appellant cites several authorities, including *Commissioner of Investigation and Enforcement v Pearl Industries Limited* [2022] eKLR, where the Court held that under section 56 of the TPA, it is incumbent upon the taxpayer to provide evidence and supporting documentation to dislodge the Commissioner's findings. Similarly, in *Commissioner of Investigation and Enforcement v Evans Odhiambo Kidero* [2022] eKLR, the Court reiterated that the taxpayer bears the burden of proving an assessment to be incorrect, in line with section 107 of the *Evidence Act*, which places the obligation of proof on the party who asserts.
18. The Appellant further relies on *Tumaini Distributors Company (K) Limited v Commissioner of Domestic Taxes* [2020] eKLR, *Saniken (K) Limited v Commissioner of Investigations and Enforcement (Income Tax Appeal E049 of 2021)* [2023] KEHC 23536 (KLR), and *Branso Distributors Ltd v Commissioner of Investigations and Enforcement (Income Tax Appeal E041 of 2021)* [2023] KEHC 23224 (KLR), all of which affirm the principle that the taxpayer bears the burden of disproving tax assessments. Counsel also referred to section 30 of the *Tax Appeals Tribunal Act* and the decision in *Commissioner of Domestic Taxes v Structural International Kenya Limited (Income Tax Appeal E089 of 2020)* [2021] eKLR, where the High Court confirmed that the burden of proof lies with the taxpayer to show that an assessment is excessive or a tax decision incorrect.
19. The Appellant argues that in computing the impugned taxes, it relied on information drawn from both its internal systems and third-party sources, in circumstances where the taxpayer had failed to provide adequate supporting documents. The banking test, it submits, was applied only as a corroborative method, while the bulk of the assessment was based on the documents available, including those availed by the Respondent. In the Appellant's view, the Respondent did not discharge its statutory burden under section 56(1) of the TPA, and the Tribunal therefore erred in faulting the Commissioner's decision.
20. In conclusion, the Appellant urges this Court to find that the Tribunal misapprehended the law on the burden of proof, to allow the appeal, to set aside the judgment of the Tribunal, to uphold the objection decision confirming the tax assessments, and to award costs of the appeal to the Appellant.

Respondent's Submissions

21. The Respondent, Traneshvi Limited, filed its submissions dated 17th June 2025 in opposition to the appeal. At the outset, it was argued that the appeal was fatally defective as it improperly sought to reopen factual findings of the Tax Appeals Tribunal, contrary to Section 56(2) of the *Tax Procedures Act*, 2015, which restricts appeals to questions of law. Reliance was placed on *Romageco Kenya Ltd v Commissioner of Customs Services (CA No. 37 of 2018)* and *Commissioner of Investigations & Enforcement v Doshi Enterprises Ltd* [2025] KEHC 4501, where the courts underscored that findings of fact by the Tribunal cannot be disturbed save where irrational or unsupported by evidence. On that basis, the Respondent urged the Court to decline jurisdiction and dismiss the appeal.



22. On the merits, the Respondent identified four issues for determination: (i) whether it had provided sufficient documentation to support rental income and expenses for the years 2015–2019; (ii) whether the Appellant erred in deeming non-revenue bank deposits and cash items as rental income despite explanations and evidence tendered; (iii) whether expenses on repairs and maintenance were wrongly disallowed; and (iv) whether expenses on salaries and wages were improperly rejected.
23. On documentation, the Respondent submitted that it had furnished the Appellant and the Tribunal with comprehensive records, including tenancy agreements, rent receipts, audited financial statements, iTax filings, supplier listings, cash and bank ledgers, repair and maintenance receipts, staff roll books, NSSF/NHIF contribution schedules, property sale agreements, permits, and reconciliations of bank and cash statements with rental income declarations amounting to Kshs. 286,836,500. It was contended that these documents sufficiently substantiated the declared income and expenses. The Appellant, on the other hand, merely made bare allegations of insufficiency without pointing to any specific gaps or discrepancies. The Respondent argued that once the taxpayer produces credible evidence, the evidentiary burden shifts to the Commissioner to disprove it, citing *Commissioner of Domestic Taxes v Trical & Hard Ltd* [2022] KEHC 9927, *Republic v KRA*; *Proto Energy Ltd (Ex parte)* [2022] KEHC 5, and *Alfred Kioko Muteti v Timothy Miheso* [2015] eKLR.
24. On the use of alternative assessment methods, the Respondent faulted the Commissioner for resorting to the banking test in computing “expected rental income.” It was submitted that this approach was arbitrary, misleading, and contrary to the law, as it ignored legitimate explanations for certain deposits, including proceeds from the sale of apartments amounting to Kshs. 152,000,000; refundable security deposits from tenants, which are not income; and rental receipts already accounted for in cash before being banked. The Respondent relied on *Republic v KRA Ex parte Jaffer Mujtab Mohamed* [2015] eKLR, where it was held that the Commissioner cannot arbitrarily “pluck figures from the air,” and on *Cape Brandy Syndicate v IRC* [1921] 1 KB 64, which affirmed that taxation must be based strictly on income actually received as provided in statute. It was emphasized that under Section 6(1) of the *Income Tax Act*, rental tax is chargeable only on rent actually received and not on “expected” income.
25. On expenses, the Respondent submitted that the Commissioner unlawfully disallowed expenses on repairs and maintenance amounting to Kshs. 90,663,251. It was argued that the Respondent had produced receipts, vouchers, master roll books, and audited accounts supporting the expenditure, which was incurred wholly and exclusively in generating rental income. Reliance was placed on Section 15(2)(f) of the *Income Tax Act*, which expressly allows deductions for repair and maintenance costs necessary for preserving rental premises. The Appellant, it was contended, failed to demonstrate that the expenses were fictitious or unsupported. Similarly, on salaries and wages, the Respondent maintained that the expenses were substantiated through payroll records, NSSF/NHIF payment schedules, and supporting documents, and were therefore deductible under the law.
26. In conclusion, the Respondent maintained that it had discharged its statutory burden of proof under Section 56(1) of the *Tax Procedures Act* by providing detailed and verifiable documentation, whereas the Appellant failed to controvert the evidence or



to justify the additional assessments. The Tribunal was therefore correct in holding in favour of the Respondent. The Court was urged to find that the present appeal was unmerited, dismiss it with costs, and uphold the decision of the Tribunal delivered on 14th July 2023.

Analysis and Determination.

27. Having considered the pleadings, the record of appeal, the grounds set out in the Memorandum of Appeal, the Statement of Facts, and the rival submissions, the following issues arise for determination:
- i. Whether this Court has jurisdiction to entertain the appeal in light of Section 56(2) of the *Tax Procedures Act*, 2015, which limits appeals from the Tax Appeals Tribunal to questions of law.
 - ii. Whether the Tax Appeals Tribunal erred in law in its application of the burden of proof under Section 56(1) of the *Tax Procedures Act* and Section 30 of the *Tax Appeals Tribunal Act*.
 - iii. Whether the Tribunal erred in law in holding that the Respondent had provided sufficient evidence to disprove the Commissioner's assessment of income tax.
 - iv. Whether the Tribunal erred in law in rejecting the Appellant's reliance on indirect methods of assessment, including the banking test.
 - v. Whether the Tribunal erred in law in upholding the Respondent's claims for deductions on repairs and maintenance, and salaries and wages.
 - vi. What orders should issue, including as to costs.

(1) Jurisdiction under Section 56(2) of the TPA

28. Section 56(2) of the *Tax Procedures Act* provides that "An appeal to the High Court or to the Court of Appeal shall be on a question of law only." The Respondent contends that the Appellant is merely inviting this Court to re-evaluate factual findings, particularly on whether the Respondent supplied sufficient documentation.
29. It is settled that an appellate court will not interfere with findings of fact unless they are unsupported by evidence, are irrational, or where the Tribunal is shown to have misdirected itself on the law (see *Romageco Kenya Ltd v Commissioner of Customs Services* (CA No. 37 of 2018) and *Doshi Enterprises Ltd* [2025] KEHC 4501). In the present case, although some grounds of appeal are framed as factual disputes, the Appellant has also raised questions of law — particularly the proper allocation of the burden of proof in tax disputes, and whether the Tribunal applied Section 56(1) of the TPA correctly. This Court is therefore seized of jurisdiction to interrogate those issues, though it cannot simply reweigh evidence afresh.



(2) Burden of Proof in Tax Disputes

30. Section 56(1) of the TPA expressly provides that “In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.” This principle has been consistently upheld (see *Commissioner of Investigation & Enforcement v Pearl Industries Ltd* [2022] eKLR, *Commissioner of Investigation & Enforcement v Evans Odhiambo Kidero* [2022] eKLR, and *Tumaini Distributors Co. (K) Ltd v Commissioner of Domestic Taxes* [2020] eKLR).
31. However, jurisprudence also clarifies that once the taxpayer produces credible evidence, the evidentiary burden shifts to the Commissioner to rebut it (see *Republic v KRA; Proto Energy Ltd (Ex parte)* [2022] KEHC 5 and *Commissioner of Domestic Taxes v Trical & Hard Ltd* [2022] KEHC 9927).
32. The Tribunal was alive to this balance and found that the Respondent had indeed furnished voluminous supporting documentation which the Commissioner did not controvert. The legal question is therefore whether the Tribunal misapplied the law in so holding.

(3) Sufficiency of Evidence by the Taxpayer

33. The Appellant contends that the Tribunal erred in law in finding that sufficient evidence had been tendered. Yet, the record shows that the Respondent provided tenancy agreements, rent receipts, audited accounts, statutory returns, payroll records, NSSF/NHIF contributions, repair and maintenance receipts, and reconciliations with declared income.
34. In *Alfred Kioko Muteti v Timothy Miheso* [2015] eKLR, the Court emphasized that pleadings and bare allegations are not evidence. The Appellant failed to specifically identify gaps or inconsistencies in the documentation presented. In the circumstances, the Tribunal cannot be faulted in law for holding that the Respondent had discharged its burden.

(4) Use of Indirect Methods — Banking Test

35. The Commissioner employed the banking test to derive “expected rental income.” While indirect assessment methods are permissible in certain cases where records are absent or unreliable, they must be applied reasonably and in accordance with statute. In this case, the Tribunal found that the Respondent’s rental income had already been evidenced through primary records, and that the deposits the Commissioner treated as income included proceeds of apartment sales, refundable deposits, and double-counted receipts.
36. Section 6(1) of the *Income Tax Act* charges income tax actually received. As underscored in *Republic v KRA Ex parte Jaffer Mujtab Mohamed* [2015] eKLR, the Commissioner cannot arbitrarily pluck figures “from the air.” The Tribunal’s rejection of the banking test was therefore consistent with law and principle.



(5) Deductibility of Repairs, Maintenance, and Salaries

- 37. The Commissioner disallowed the repair and maintenance expenses of Kshs. 90,663,251/= and salaries/wages despite the Respondent producing receipts, vouchers, staff rolls, payrolls, and statutory contribution schedules.
- 38. Section 15(2)(f) of the *Income Tax Act* allows deductions for expenses “incurred in the production of income, including repair and maintenance of premises used to generate such income.” Similarly, wages and salaries are deductible if wholly and exclusively incurred in the production of rental income. The Tribunal found that the Commissioner had not demonstrated that the expenses were fictitious or outside the scope of allowable deductions.
- 39. In law, once a taxpayer produces prima facie evidence, the burden shifts to the Commissioner to rebut the same. No such rebuttal was made. The Tribunal cannot, therefore, be faulted for treating the expenses as deductible.

(6) Final Orders; Having reviewed the record and submissions, this Court finds no misdirection of law by the Tribunal thus court makes the orders.

- i. The appeal is therefore without merit and thus dismissed.
- ii. Parties to bear their own costs
- iii. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAIROBI THROUGH TEAMS APPLICATION, THIS 26TH DAY OF SEPTEMBER, 2025.

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CHARLES KARIUKI
JUDGE

