



**Havi t/a Havi & Company Advocates v Commissioner General - Kenya  
Revenue Authority (Tax Appeal E044 of 2025) [2025] KEHC 13603 (KLR)  
(Commercial and Tax) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13603 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
TAX APPEAL E044 OF 2025  
FR OLEL, J  
SEPTEMBER 30, 2025**

**BETWEEN  
NELSON ANDAYI HAVI T/A HAVI & COMPANY ADVOCATES .. APPELLANT  
AND  
COMMISSIONER GENERAL - KENYA REVENUE  
AUTHORITY ..... RESPONDENT**

*(Being an appeal from the judgment of the Tax Appeals Tribunal, delivered  
on 12th February 2025, in Tax Appeals Tribunal Appeal No E345 of 2024)*

**JUDGMENT**

**A. Introduction**

1. This appeal arises from the judgment/decree of the Tax Appeals Tribunal dated 12.02.2025, where the said tribunal held that the Appellant did not file an objection to the tax decision made by the respondent on 03.02.2021, and his subsequent objections lodged on 21.05.2021 and 06.04.2021 were time-barred.
2. The tribunal further held that the Appellant did not object to the preliminary findings made by the respondent on 22.04.2022 and that his responses, made on 12.05.2022 and 19.07.2022, lacked elements of an objection as set out under Section 51(3) of the [Tax Procedures Act](#), Cap 469B, Laws of Kenya.
3. Finally, the tribunal also held that the demand made by the respondent to the Appellant on 28<sup>th</sup> August, 2023, the agency notices issued by the respondent in respect to the Appellants accounts on 29<sup>th</sup> August, 2023, adjustments made on the Appellants I-Tax portal on 6<sup>th</sup> and 27<sup>th</sup> September, 2023 and



their refusal to issue the appellant with a Tax compliance certificate on 26<sup>th</sup> October, 2023 ( hereinafter collectively referred to as the respondents five decision's) were all not appealable decision's for purposes of Section 3 of the Tax Appeals Procedures Act, Cap 469B laws of Kenya. Based on the foregoing, the Tribunal held that it lacked jurisdiction to handle the Appeal filed and proceeded to strike it out. Each party was to bear their own costs.

## **B. Case Background & Pleadings.**

### **i. Appellants pleadings**

4. The Appellant relied on his statement of facts dated 25<sup>th</sup> March, 2024, together with the supporting documents attached thereto. He averred that on 28<sup>th</sup> August, 2023, the respondent demanded from him tax arrears totalling Kshs.17,081,968.63, comprising Income Tax of Kshs.1,050,960.88 for the period January 2015 to December 2020 and Value Added Tax of Kshs.16,031,007.75 for the period April 2016 to July 2023. Subsequently, on 29<sup>th</sup> August 2023, the respondent issued agency notices to all his bankers, demanding tax arrears as aforementioned.
5. It was his contention that the tax demand of Kshs.17,081,986.63 was made in disregard of various correspondences exchanged and prior settlements reached by the parties herein. He further noted that, within the period of 3<sup>rd</sup> February, 2021 to 27<sup>th</sup> February, 2023 the respondent had made contradictory tax demand upon him, namely;
  - a. Kshs.12,900,559.40 on 3<sup>rd</sup> February, 2021
  - b. Kshs.92,384.00 on 22<sup>nd</sup> April, 2022 and
  - c. Kshs.8,963,204.20 on 13<sup>th</sup> February, 2023
6. He had demanded a clarification to clear the air on these contradictory demands, but none was offered. His deduction, therefore, was that any revenue officer assigned to handle his tax file would ignore all the previous settlements made or arrived at, and would proceed as though it were a fresh investigation. To that extent, the respondents' demands were unreasonable, unjustified, and logically should have been removed and/or rectified on his I-Tax portal.
7. Arising from the demands of 28<sup>th</sup> August, 2023, and Agency notices issued on 29<sup>th</sup> August, 2023, the Appellant did respond to the said letters through his letter dated 31<sup>st</sup> August, 2023, and also opted file Judicial Review Application No. E129 of 2023, Nelson Andayi Havi Vrs Kenya Revenue Authority, challenging the unlawful demands and closure of his Bank accounts. Before the said judicial review Application was heard, the Respondent did give him a reprieve by suspending the Agency notice issued to his bankers.
8. The Appellant further bitterly lamented and specifically pleaded instances between 2018 to September 2023 when the respondent unilaterally revised his returns on his I-Tax portal and saddled him with interest and penalties totalling Kshs.41,194,998.00 as indicated on the said portal as at 27<sup>th</sup> September, 2023.
9. To his mind, the actions on his I-Tax portal did not amount to a valid tax decision on assessment by the Commissioner General in terms of PART VII of the *Tax Procedures Act* No 29 of 2015, but out of abundance of caution, on 3<sup>rd</sup> October, 2023 wrote to the respondent requesting the reversal of the entries made on his I-Tax portal and to be furnished with the reasons that informed the actions taken by the respondent together with relevant documents supporting the said actions. He noted that no response was made to the aforementioned letter by 3<sup>rd</sup> October,2023, or at all.



10. As the Tax dispute raged on, he applied for his Tax Compliance certificate on 1<sup>st</sup> November 2023, but his application was rejected on account of the outstanding tax dispute. On 2<sup>nd</sup> November, 2023, he sent a reminder to the respondents to act on his letter of 3<sup>rd</sup> October, 2023 and got no reply therefrom.
11. Exasperated by the obtaining circumstances, the appellant opted to file the 2<sup>nd</sup> Judicial review Application, being Judicial review Application No E185 OF 2023, Nelson Andayi Havi Vrs Kenya Revenue Authority, and as the two judicial review applications were pending, the respondent revised his tax liability to Kshs.2,618,853.00. He requested the respondent to allow him to pay for the same to enable him get his tax compliance certificate. Unfortunately, before an agreement could be reached on 15th January, 2024, the respondent engaged the reverse gear and slapped him with an additional tax assessment totalling Kshs.74,020,520.49.
12. Considering the new position taken, he opted to await the outcome of Judicial review Application No E129 of 2023 and Judicial review Application No E185 of 2023. In the meantime, he paid part of the sum of Kshs.2,618,853.00 and was issued with a Tax compliance certificate valid until 11<sup>th</sup> March, 2025. A ruling on the judicial review Application was subsequently made on 25<sup>th</sup> March, 2025, directing that his dispute with the respondent should be pursued by way of an appeal to the tax Appeal tribunal.
13. The Appellant was categorical that there was no justification for the respondent to ask him to pay excess tax in the manner demanded on 28<sup>th</sup> August, 2023, the unilateral adjustments on his returns made on 6<sup>th</sup> September, 2023, or the additional tax assessment made on 28<sup>th</sup> September, 2023, but formally communicated to him on 15<sup>th</sup> January, 2024 and urged the court to set aside all the said tax demands on grounds that they were unlawful.
14. The Appellant further pointed out that on 3rd October, 2024, the respondent had made an objection decision, where they had upheld his objection to the tax demand of 6<sup>th</sup> April, 2021, and 21<sup>st</sup> May, 2021 and dropped the entire tax demand of Kshs.12,900,959.40. This new development affirmed his position that the aforementioned tax issue had been resolved and was not due as decreed.

## **{ii } Respondents Pleadings**

15. The respondent relied on their statement of facts dated 25<sup>th</sup> April, 2025, together with the supporting documents filed therewith. They averred that pursuant to their statutory mandate, they did conduct investigations into the Appellants' tax affairs due to his failure to declare income tax and VAT returns correctly. As part of the due process, they sought and received information and documents, which they reviewed in comparison to the undeclared withholding certificates and self-assessment records in the Appellants' ledger.
16. Upon conclusion of this process, they established that the Appellants declared returns as per income tax returns compared against withholding certificates, turnovers, and VAT returns had unexplained variances, which they tabulated and proceeded to raise assessments as mandated under Section 31 of the *Tax Procedures Act*, 2015. The said assessments were shared with the Appellant, and he was invited to provide extricating explanations, but he failed to do so within the thirty (30) day statutory timeline provided under Section 51 of the Tax Procedure Act. He was therefore to be blamed for the misfortune that befell him.
17. Having fully complied with the due process, and in compliance with Article 201(b),(i) of *the Constitution* of Kenya, 2010, which provides that tax burden shall be shared fairly, they did on



28<sup>th</sup> August, 2023, demand from the Appellant due tax arrears amounting to Kshs.17,081,968.63 comprising of income tax of Kshs 1,050,960.00 and value added tax of Kshs.16,031.007.75 for the period January 2015 to December 2020 and subsequently on 29<sup>th</sup> August, 2023 issued agency notices to the Appellants bankers.

18. Turning to specific issues raised by the Appellant, that they ignored his documentation provided in support of his position and prior settlement resolutions reached during reconciliation meetings, the respondent, while affirming that indeed several correspondences were exchanged and meetings held, they had considered all of the said documents and the Appellant view of the whole matter, but still arrived at the conclusion that there was still variance between the grossed up amounts from the withholding certificates with what was declared for the assessed years of income.
19. Further, the respondent also pointed out that it was not bound by the appellants returns, information or self-assessment pursuant to provision of Section 24(2) of the Tax Procedure Act and also re-emphasized the provision of Section 17 of the *Tax Procedures Act*, which allowed the commissioner to carry out additional assessments based on the documentation under its custody and use their best judgment to come up with the tax payable. To that extent, the tax assessment/demand made was lawful.
20. The respondent also reiterated that the burden of proving that the tax assessment was wrongly done and/or if the Tax demand was excessive and therefore unjustified lay with the Appellant, under Section 108 of the *Evidence Act*, and Section 56 of the Tax Procedure Act. They noted that despite being handed ample opportunity, the Appellant had failed to discharge this burden.
21. Regarding the fact that they gave the Appellant his “Tax Compliance Certificate” before the tax dispute was resolved, the respondent clarified that the commission could issue the same if satisfied that the tax payer had complied with the tax law in respect of filing returns and has paid all the taxes due based on self-assessment and/or in the alternative had made arrangements with the commissioner to pay any tax due as provided under section 3 as read with sections 28 & 72 of the Tax Procedure Act, 2015.
22. The Appellant had made a self-assessment totalling Kshs,618,849.91 on diverse dates between April 2016 and November 2023, and was allowed to process his tax compliance certificate based on arrangements to pay this sum.
23. Based on the foregoing it was clear that the assessment carried out was valid, the Appellant was informed why/how they had arrived at their decision, and having complied with due process, they could not be faulted for demanding tax arrears that were rightfully due from the Appellant. They thus urged the tribunal to uphold the same and proceed to dismiss the Appeal filed.
24. The Tax tribunal did consider the evidence presented, the parties' submissions, and held that the Appellant did not file an objection to the tax decision made by the respondent on 3<sup>rd</sup> February, 2021, and that the objections subsequently lodged by the Appellant on 21<sup>st</sup> May and 6<sup>th</sup> April, 2021, were time-barred.
25. The Tax tribunal further held that the Appellant did not object to the tax demands made vide the respondents' letters dated 28<sup>th</sup> August, 2023, 6<sup>th</sup> September, 2023, and 27<sup>th</sup> September, 2023 and crowned it all by holding that the 8 Agency notice issued by the respondent were already suspended by the time the Appeal at the tribunal was filed and thus could not form a basis of an appeal.
26. Being dissatisfied with the said decision, the Appellant filed his memorandum of Appeal, where he raised the following grounds of Appeal, namely that:-



- a. The Tax Appeals Tribunal erred in fact and law in holding that the Appellant did not object to the tax demand for Kshs 12,900,959.40 made upon him on 3<sup>rd</sup> February, 2021, by the Respondent.
- b. The Tax Appeals Tribunal erred in fact and law in holding that the Appellant was not granted an extension of time within which to object to the tax demand of Kshs.12,900,959.40, when that fact was not an issue
- c. The Tax Appeals Tribunal erred in fact and law in failing to hold that the Respondents' failure to make an objection decision within 60 days in respect to the objection lodged by the Appellant on the tax demand of Kshs.12,900,959.40 deemed the objections as allowed.
- d. The Tax Appeal tribunal erred in law in holding that the letter dated 22<sup>nd</sup> April, 2022, from the Respondent to the Appellant was a tax decision.
- e. The Tax Appeals Tribunal erred in law in holding that the Appellant ought to have lodged a tax objection by 22<sup>nd</sup> May, 2022, in response to the letter dated 22<sup>nd</sup> April, 2022, from the Respondent.
- f. The Tax Appeals Tribunal erred in law in holding that the letters dated 12<sup>th</sup> May, 2022, and 19<sup>th</sup> July, 2022, from the Appellant to the Respondent were inconsequential as responses to the Respondent's preliminary findings on tax investigations upon the Appellant.
- g. The Tax Appeals Tribunal erred in law in holding that the letters dated 12<sup>th</sup> May, 2022, and 19<sup>th</sup> July, 2022, from the Appellant did not address the queries arising from the tax investigations on the Appellant as notified in the letter dated 22<sup>nd</sup> April, 2022, from the Respondent.
- h. The Tax Appeals Tribunal erred in fact in holding that the Appellant did not lodge a tax objection in respect to the tax demand for Kshs.17,081,968.63 made upon the Appellant by the Respondent on 28<sup>th</sup> August, 2023.
  - i. The Tax Appeals Tribunal erred in fact and in law in holding that the 8 agency notices issued by the respondent in respect to the Appellant on 29<sup>th</sup> August, 2023, were suspended and could not form a basis for an Appeal.
- j. The Tax Appeals Tribunal disregarded the objection lodged by the Appellant on 31<sup>st</sup> August, 2023, against the tax demand of Kshs.17,081,968.63 made upon the Appellant by the Respondent on 28<sup>th</sup> August, 2023.
- k. The Tax Appeals Tribunal erred in fact and law in holding that the Appellant did not object to the Respondents' tax assessment of Kshs.41,194,998.00 made upon the Appellant on 6<sup>th</sup> September, 2023.
- l. The Tax Appeals Tribunal erred in fact and law in holding that the Appellant did not object to the Respondent's tax assessment of Kshs74,020,520.49 made upon the Appellant on 27<sup>th</sup> September, 2023.
- m. The Tax Appeals Tribunal disregarded the objections lodged by the Appellant on 3<sup>rd</sup> October, 2023, and 2<sup>nd</sup> November, 2023 against the tax assessment of Kshs.41,194,998.00 made on 6<sup>th</sup> September, 2023, and Kshs.74,020,520.49 made upon the Appellant by the Respondent on 27<sup>th</sup> September, 2023.



- n. The Tax Appeals Tribunal deliberately ignored evidence in support of the appeal before it and disregarded the express provisions of the Tax Procedure Act, CAP 468B, and the case law in holding that the Appellant's Appeal was incompetent.
27. The Appellant thus prayed that this Appeal be allowed, and the tribunal findings be set aside.

### **C. Parties Submissions**

#### **{i} Appellants Submissions**

28. The Appellant relied on his submissions dated 17<sup>th</sup> June, 2025, and submitted that contrary to the respondents' assertions, the Appeal filed raised poignant issues of law and undisputed facts, and pointed out the glaring and contradictory errors made by the tribunal in determining the same. Reliance was placed on the holdings in *Bracegirdle Vs Oxley (2)*, (1974) 1 ALL ER 126, *Attorney General Vr David Murakaru (1960) EA 484* & *Patel Vs Uganda (1966) EA 311*.
29. The second issue raised was that the tribunal had erred in finding that he did not file an objection to the various tax decisions made by the respondent, to wit: -
- a. With respect to the tax demand of 3<sup>rd</sup> February, 2021, he had objected to the same vide his response dated 21<sup>st</sup> May, 2021, and 6<sup>th</sup> April, 2021
- b. The preliminary finding of the respondent made on 22<sup>nd</sup> April, 2022, was responded to vide his letters dated 12<sup>th</sup> May, 2022, and 19<sup>th</sup> July, 2022.
- c. The decisions made by the respondent on 28<sup>th</sup> and 29<sup>th</sup> August, 2023 and 6<sup>th</sup> and 27<sup>th</sup> September, 2023 and 26<sup>th</sup> October, 2023 were responded to by the appellant on 31<sup>st</sup> August, 2023, 3<sup>rd</sup> October, 2023 and 4<sup>th</sup> October, 2023.
30. He emphasized that his responses to the respondents' actions and decisions were tax objections and failure by the respondent to render decisions on all the objections in terms of Section 51 (4), (8), (9), and (11) of the Tax Procedure Act, deemed the objections as allowed. Reliance was placed in the case of *Republic Vrs Kenya Revenue Authority, Ex Parte M-Kopa Kenya, Limited (2018) KEHC 9059 (KLR)*, and *Vivo Energy Kenya Limited Vrs Commissioner of Customs & Border Control, Kenya Revenue Authority & Another (2020)EKLR*, where similar conclusion had been arrived at.
31. The final issue raised by the Appellant was that the Tax tribunal had made a glaring error in determining that the five decisions made by the respondents dated 28<sup>th</sup> and 29<sup>th</sup> August, 2023, 6<sup>th</sup> and 27<sup>th</sup> September, 2023, and 26<sup>th</sup> October, 2023 were not appealable decisions. Intriguingly, before the High Court in *Havi Vrs Kenya Revenue Authority (Judicial Review Application E129 of 2023)*, (2024) KEHC 3006 (KLR), the respondent had argued that the said decisions were appealable tax decisions, that should have been challenged before the Tax tribunal as the first port of call. The high court, in its ruling delivered in the said matter, agreed with the respondent's position and were therefore estopped from taking a different position in the matter.
32. The Appellant urged this court to find that the Tax Tribunal made erroneous findings in law, which were inconsistent with the facts not in dispute before it. Consequently, he urged the court to set aside the entire judgment of the Tribunal made on 12<sup>th</sup> February, 2025, and allow his appeal arising therefrom dated 8<sup>th</sup> April, 2025.
- (ii) Respondents' Submissions.



33. The respondent relied on their submission dated 20<sup>th</sup> May 2025 and posited that the appeal lacked merit as the Tax Tribunal had rightly observed and held that they did not sight an appealable decision due to the Appellants' failure to comply with the provision of Section 13(2) of the Tax Appeal Tribunal Act in filing his Appeal. Appellant had not filed any of his objections within the prescribed time, especially in relation to the tax demands of 2021 and 2023, and therefore could not benefit from his inaction. Reliance was placed in the case of Commissioner of Domestic Taxes Vrs Thuo ( Income Tax Appeal No E026 of 2022),{2024} & Achola Vrs Onyango ( Civil Application E041 of 2024), (2025)KECA 638 (KLR).
34. They also noted that the Appellant had claimed that he was granted an extension of time to object to the two tax demands dated 3<sup>rd</sup> February 2021 and 22<sup>nd</sup> April 2021, but failed to table the letter dated 12<sup>th</sup> May 2021(extension of time letter) to support this contention. Guidance was placed in the case of Alfred Kioko Muteti Vrs Timothy Miheso & Another (2015) eKLR, where the case of Daniel Toroitich Arap Moi & Another Vrs Mwangi Stephen Murithi & Another (2004) KLR.
35. The respondents also urged this court to uphold the Tax tribunal finding that their jurisdiction could only be invoked where the tax Appeal was based on an, “appealable decision”, which includes an objection decision. Since no valid objections were lodged within the prescribed time, there was no objection decision to appeal against. Reliance was placed in Republic Vrs Kenya Revenue Authority; Ex partes: Krystalline salt Limited; Judicial Review Application No 359 of 2018.
36. In light of the foregoing, the respondent urged the court to dismiss the Appellants Appeal dated 8<sup>th</sup> April, 2025 and uphold the judgment of the Tax Appeals Tribunal dated 12<sup>th</sup> February 2025.

#### **D. Analysis And Determination**

37. In determining this Appeal, this court, exercising Appellate jurisdiction that is circumscribed by Section 56(2) of the Tax Procedure Act, which provides that, “ An appeal to the High Court or to the court of Appeal shall be on a question of law only”. An appeal limited to matters of law does not permit the appellate court to substitute the tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts. In John Munuve Mati Vr The returning officer, Mwingi North Constituency & 2 others (2018) eKLR, what amounts to “matters of law” was described as:-

“(38) The interpretation or construction of *the constitution*, statute, or regulations made thereunder or their application to the sets of facts established by the trial court. As far as facts are concerned, our engagement with them is limited to background and context, and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into consideration of the credibility of witnesses or which witnesses are more believable than others; by law, that is the province of the trial court.”

38. The demarcation of the parameters of appellate intervention on account of a question of law was also discussed in *Bracegirdle v. Oxley (2) {1947} 1ALL ER 126*, where it was held that:-

“The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witness and proved by testimony;



conclusions from those facts are inferred deduced by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusion from those facts are sometimes conclusion of fact and sometimes conclusion of law. In a case under the Road Traffic Act, 1930,s 11, the question whether a speed is dangerous is a question of a degree, and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts was not one that could reasonably be drawn from them.” (Emphasis added)

39. This Court has examined the Record of Appeal, the grounds of appeal, and given due consideration to the submissions by the parties’ respective Counsel. The appellant raised fourteen grounds of appeal, but the same can be compressed down to the following four (4) issues, which are determinative of all the issues raised;
- i. Competency of the Appeal.
  - ii. Whether the Appellant did object to the tax decision dated 3<sup>rd</sup> February,2021 & 22<sup>nd</sup> April,2022.
  - iii. Whether the Tax decision made by the Respondents on 28<sup>th</sup> and 29<sup>th</sup> August, 2023, 6<sup>th</sup> and 27<sup>th</sup> September 2023, and 26<sup>th</sup> October 2023 were appealable decisions, and if so, whether the Appellant lodged any objection against the same.
  - iv. The objection decision dated 3<sup>rd</sup> October,2024,
  - v. Costs of the Appeal
- (i) Competency of the Appeal filed.
40. In their statement of facts dated 29<sup>th</sup> April,2025, and submissions dated 20<sup>th</sup> May,2025, the respondent did assert that the entire appeal filed questioned the findings of fact by the tribunal, and therefore, the appeal as filed was incompetent and ripe for striking out.
41. The appeal questions the Tax Tribunal’s finding regarding;-
- a. Statutory timelines as to when the appellant was supposed to lodge his objection,
  - b. The determination that the objection lodged did not amount to an objection as his letter lacked the elements of an objection as set out under Section 51(3) of the Tax Procedure Act; and
  - c) The contradictory findings of the Tribunal as to whether the decisions made by the Respondent on 28<sup>th</sup> and 29<sup>th</sup> August,2023, 6<sup>th</sup> and 27<sup>th</sup> September, 2023, and 26<sup>th</sup> October, 2023 were appealable decisions, and whether the Appellant did not lodge an objection to the same.
42. In the opinion of this court, the issues raised touch on the interpretation or construction of the tax statute, regulations made thereunder, and their application to the sets of facts established by the trial court. A determination of the same amounts to a determination on “matters of law”. The Appeal filed is therefore competent.
- (ii) Whether the Appellant did object to the tax decisions dated 3<sup>rd</sup> February, 2021 & 22<sup>nd</sup> April,2022.



43. On 3<sup>rd</sup> February, 2021, the respondent raised a tax demand of Kshs.12,900,959.40 against the Appellant, which amount was inclusive of principal tax, penalties, and interest with respect to PAYE, Income tax, and VAT. The appellant formally objected to the said demand through his letter dated 6<sup>th</sup> April, 2021, and his agent's letter dated 21<sup>st</sup> May,2021.
44. It was noted that in their letter of 21<sup>st</sup> May,2021, that the Appellant's tax agent made reference to a letter dated 12<sup>th</sup> May 2021, through which the respondent had extended time for the Appellant to lodge his Appeal, but inexplicably, the said letter was not made available and was not part of the Appellant's bundle of documents relied/filed during trial.
45. Before the resolution of the said tax demand, on 2<sup>nd</sup> February, 2022, the Appellant was issued with a fresh "notice of tax investigations" from the respondent, and this culminated in a fresh demand issued vide the respondent's letter dated 22<sup>nd</sup> April, 2022, seeking a sum of Kshs.92,384,015.00 comprising of income Tax, VAT and additional VAT outstanding on his I-Tax ledger. To this demand, the Appellant filed his letter dated 12<sup>th</sup> May, 2022, seeking an extension of time to challenge the tax demand issued.
46. The Appellants' request was allowed by the Respondent, who, through their letter dated 6<sup>th</sup> June,2022, granted the Appellant 60 days to file his objection with effective from 22<sup>nd</sup> April, 2022. Accordingly, the new statutory deadline by which time the Appellant was to lodge his objection fell due on 22<sup>nd</sup> June,2022.
47. Again, the appellant did not utilize this opportunity and filed his objection on 19<sup>th</sup> July, 2022. The tribunal did consider the facts as outlined above and held that both objections filed against the two aforementioned tax demands were filed out of the timelines stipulated under Section 51(2) of the Tax Procedure Act, and were deemed irregular and time-barred. This position was wholly supported by the respondent in this Appeal, and they urged this court to uphold the tribunals findings on this issue.
48. The Appellant on the other hand, faulted the Tax tribunal's findings on the basis that tribunal had jumped the gun, as the respondent had not determined that no objection had been validly lodged challenging the tax demand of 3<sup>rd</sup> February, 2021 nor had they communicated any such determination to the Appellant within 14 days of his objection as required under Section 51(4) of the [Tax Procedures Act](#).
49. Additionally, no decision allowing or disallowing the objection made by the Appellant, if any, was communicated to him within 60 days of his objection as required by Section 51(11) of the [Tax Procedures Act](#), which obligated the respondent to communicate their decision even if the taxpayer had allegedly acted out of time. More fundamentally, the Appellant also urged the court to note that the question of whether the objections lodged on 6<sup>th</sup> April,2021, and 21<sup>st</sup> May,2021 were time-barred had not been raised by the respondent, and to that extent the tribunal had erred in determining an issue not pleaded.
50. As to whether the tribunal determined an issue not pleaded, this court reiterates that the common law position, that parties are bound by their pleadings and are not allowed to raise an issue not pleaded or call evidence on the same, with the exception being made in situations where even though the issue was not before the court, the parties were heard on the said issue. The main question usually is whether or not the appellant suffered any prejudice or injustice by the course that the proceedings took. See *Odd Jobs vs. Mubia* (1970), *Mohammed Fugicha -vs- Methodist Church in Kenya* (Suing through its registered trustees) & 3 Others [2016] eKLR *Herman P. Steyn vs. Charles Thys* [1997] KACA 395 (KLR) & *Rawal V JSC* (2016) KECA 534



51. Respectfully, though I do find and hold that the respondent did specifically raise the issue of timelines for filing an objection under Section 51 of the Tax Procedure Act in paragraph 15 of their statement of fact filed before the tribunal, Submissions were made by both parties in respect thereof, and the tribunal was rightfully seized of the matter and its determination made thereto lawful.
52. On the second issue raised, as to whether his objections were filed out of time and/or if the appellant first needed to respond to the said objection as mandatorily required under section 51(4) and 51(11) of the Tax Procedure Act, the court makes the following observation and determination.
53. Section 51 of the Tax Procedure Act, Cap 469B provides that;
- “(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) Notify the taxpayer in writing that the objection has not been validly lodged and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.
    - (4A) Despite subsection (3), where a taxpayer fails to provide the information required under subsection (4) or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged.
  - (5) ...
    - ...
    - ...
  - (11) The commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection; failure to which the objection being deemed to be allowed.”
54. An analysis of the pleadings and supporting documents filed before the tribunal conclusively confirms that the appellant filed his objection against both the tax decisions dated 3<sup>rd</sup> February, 2021, and 22<sup>nd</sup>



April, 2022, out of the 30-day statutory period provided for under Section 51(2) of the Tax Procedure Act, which act rendered his appeal invalid ab initio. See *Equity Holdings Ltd v Commissioner of Domestic Taxes*, Civil Appeal E069 and E025 of 2020 (2021) KEHC 25 (KLR) & *Mwawasi v Shaka* ( Court of Appeal Civil Application E053 OF 2023),(2024) KECA 632(KLR).

55. The Appellants' "shield" raised in defence under section 51(4) of the Tax Procedure Act cannot hold, because whether he was informed that his objection was invalid or not would not cure the invalidity already in place. Similarly, Section 51 (11) of the Tax Procedure Act would only apply where the commissioner had received a valid notice of objection, which was not the case herein. In short, the court cannot be called upon to enforce an act which is a nullity, since it is void and every proceeding founded on it is also in law a nullity. See *Scott v Brown, Doering, MC NAB & Co.* (3), (1892) 2 QB 724 & *Wambui v Mwanqi & 3 others* [Civil Appeal 465 of 2019] KECA 144 (KLR) (19 November 2021) (Judgment).
- (ii) Whether the Tax decision made by the Respondents on 28<sup>th</sup> and 29<sup>th</sup> August, 2023, 6<sup>th</sup> and 27<sup>th</sup> September 2023, and 26<sup>th</sup> October 2023 were appealable decisions, and if so, whether the Appellant lodged any objection against the same.
56. The appellant faulted the tribunal for finding that the above-referred-to decisions (hereinafter referred to as five decisions) were not appealable decisions, and secondly for holding that he had not lodged any objection against the same, which findings were contradictory and not supported by the primary facts before the tribunal and the law.
57. It was his contention that these findings were not reasonable as the respondent in their pleadings filed before the high court in *Havi V Kenya Revenue Authority* (Judicial review Application E129 of 2023) had expressly taken the position that the said decisions, where appealable decision's, which ought to have been determined before the Tax tribunal and the court in its ruling had upheld the said contention.
58. The Tax tribunal had also negligently and recklessly omitted his responses to each of the said letters, which were filed before the tribunal, and not responded to by the respondent. The failure to render a decision on the objection filed within the time deemed the objection filed unopposed in terms of Section 51(4), (8), (9), and (11) of the Tax Procedure Act.
59. The interpretation of what constitutes an "appealable decision" is outlined under Section 3 of the Tax Procedure Act, which states thus;-

"appealable decision" means an objection decision and any other decision made under a tax law other than:

- a. A tax decision; or
- b. A decision made in the course of making a tax decision.

"Tax decision" means –

- a. An assessment;
- b. A determination under Section 17(2) of the amount of tax payable or that will become payable by the taxpayer
- c. A determination of the amount that a tax representative, appointed person, director, or controlling member is liable for under Section 15, Section 17, and Section 18
- d. A decision on an application by a self–assessment taxpayer under Section 31(2)



- e. Deleted by Act No. 4 of 2023 S.49(a);
  - f. A decision under Section 48 requiring repayment of a refund; or
  - g. A demand for penalty.”
60. The “five decisions” challenged raised and/or delved into the following issues;
- a. The letter dated 28<sup>th</sup> August, 2023, was titled “Tax Arrears” and in the said letter the Respondent demanded immediate settlement of the said arrears.
  - b. The eight (8) letters dated 29<sup>th</sup> August, 2023, were Agency notices issued to the Appellants’ bankers.
  - c. The letter dated 6<sup>th</sup> September 2023 was a Tax assessment by the Respondent outlining the adjustments made to the Appellants’ returns.
  - d. The letter dated 27<sup>th</sup> September, 2023, was an assessment order.
  - e. The letter dated 26<sup>th</sup> October,2023, was a rejection of the Appellants’ request to be issued with a TCC
61. Section 3 of the Tax Procedure Act defines the parameters as to what would be an “appealable decision” and exempts what would be termed as routine/ administrative tax decision made in the ordinary course of work by the respondent from being appealed against directly to the tribunal. In other words, internal mechanism of dispute resolution must first be invoked and exhausted before the tribunal’s jurisdiction can be exercised.
62. Based on the foregoing, it is clear that all the other decisions dated 28<sup>th</sup> and 29<sup>th</sup> August, 2023, 6<sup>th</sup> September, 2023, 27<sup>th</sup> September 2023, and 26<sup>th</sup> October, 2023 were correctly rejected for not being “appealable tax decisions.”
- iii. Objection decision dated 3<sup>rd</sup> October,2024.
63. First and foremost, it is noted that no appeal was raised with respect to this objection decision, which the Appellant filed through his supplementary record of Appeal dated 16<sup>th</sup> June, 2025, and reliance was placed on this document to emphasize that the tax demand of Kshs.12,900,959.40 had been set aside.
64. The said objection decision dated 3<sup>rd</sup> October, 2024, referred to the tax assessment issued to the Appellant on 6<sup>th</sup> September,2023, and his objection thereto dated 4<sup>th</sup> June, 2024. The commissioner, in response thereto, requested the Appellant to apply for extension of time to appeal against the said tax decision, and in compliance thereto, the respondent did so vide his letter dated 23<sup>rd</sup> July,2024. His application for extension of time was approved, and subsequently, he lodged his late objection on 7<sup>th</sup> August, 2024. The objection decision dated 3<sup>rd</sup> October,2024, was in response to the said objection.
65. In the tax objection decision above referred to, the respondent analyzed the Appellants’ tax compliance status from the year 2016 to 2020, covering his Income Tax, VAT computations, and the documents supplied by the appellant to support his objection to the said demand. Whereas the commissioner initially demanded a sum of Kshs.92,384,015.00 from the appellant, upon considering the said objection, the sum was revised downward to Kshs.65,253.483 as per the review finding, which sum would still attract interest as long as the principal sum remained unpaid.
66. The tax demand of 22<sup>nd</sup> April, 2022, and 6<sup>th</sup> September 2023 both sought the sum of Kshs.92,384,015.00 from the appellant, and the period of assessment also remains constant.



Considering the reduction effected, it was the appellant's submissions that by their action, the appellant had in effect upheld his objection dated 6<sup>th</sup> April, 2021, and 21<sup>st</sup> May, 2021, to drop the tax demand of Kshs.12,900,959.40.

67. The court notes that in their pleading before the tribunal, none of the parties referred to the objection decision of 3<sup>rd</sup> October, 2024. Be that as it may, considering its relevance and the fact that the respondent did not object to the admissibility of the said document nor did they dispute its finding, it goes without saying that the court can safely proceed to consider the said document.
68. The court also takes solace in the provisions of Section 35 of the *Evidence Act*, Cap 80, which allows for the admissibility of documentary evidence, which speaks to facts in issue, where the maker of the said document has personal knowledge of the matters dealt with and the document in question is or forms part of the continuous record made by a competent person in the performance of their duty.
69. The respondent allowed the appellant to file an objection against their decision dated 6<sup>th</sup> September 2023, which covered a similar period as the previous two disputed tax decisions of 3<sup>rd</sup> February 2021 and 22<sup>nd</sup> April 2022. After considering the appellant's objection, the same was partly upheld, and the tax arrears initially demanded of Kshs.92,384,015 was reduced to Kshs.65,253,488. It then becomes axiomatic that upholding the initial tax demand for the same period would lead to double taxation and prejudice the Appellant.

#### **E. DISPOSITION**

70. This Upshot, having considered all the issues raised in this Appeal, I do find that only grounds 1 and 3 of this Appeal succeed. The initial tax demand of Kshs.12,900,959.40 made against the appellant on 3<sup>rd</sup> February 2021 is set aside.
71. All other grounds of appeal lack merit and are dismissed.
72. Each party will bear their own costs.
73. It is so ordered.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

In the presence of : -

Mr. Havi.....Appellant

Mr. Osoro..... Respondent

Julie.....Court Assistant

