



**Commissioner of Investigations & Enforcement v Isaack (Income Tax Appeal E012 of 2025)
[2025] KEHC 14586 (KLR) (Commercial and Tax) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E012 OF 2025**

F GIKONYO, J

OCTOBER 9, 2025

BETWEEN

COMMISSIONER OF INVESTIGATIONS & ENFORCEMENT APPELLANT

AND

ABDULLAHI IBRAHIM ISAACK RESPONDENT

JUDGMENT

1. This is an appeal against the Tax Appeals Tribunal's judgment dated 22nd November 2024 in Tax Appeal No. E769 of 2023; Abdullahi Ibrahim Isaack V Commissioner of Investigations & Enforcement.
2. Aggrieved, the appellant instituted this appeal and filed a memorandum of appeal dated 16th January 2025, on the following grounds:-
 1. That the Honourable Tribunal erred in law and fact in determining that the Appellant had failed to comply with orders issued in its Judgement issued on 15th December 2021 in TAT Appeal No. 591 of 2020.
 2. That the Honourable Tribunal erred in law and fact in determining that the Appellant was wrong in calling for additional documents whereas the order (a) Judgement issued on 15th December 2021 in TAT Appeal No. 591 of 2020 directed the Appellant to consider documents it had received from the Respondent plus any other documents in helping to render the decision.
 3. That the Honourable Tribunal erred in determining that the Appellant ought to have reviewed the documents issued by the Respondent at the Objection stage and was thus wrong in calling



for additional documents yet the Appellant had clarified that the Respondent's letter of dated 25th November 2020 had no supporting documents attached thereto.

4. That the Honourable Tribunal erred in law in setting aside the Appellant's Objection Decision issued on 11th February 2022 yet the Respondent had not fulfilled the burden of proof set in Section 30 of the *Tax Appeals Tribunal Act*.
5. That the Honourable Tribunal misdirected itself on both facts and law, and thereby arrived at wrong, erroneous and absurd findings/decision.

Response

3. In opposition to the appeal, the respondent filed its statement of facts dated 3rd June 2025.

Background

4. The respondent is a registered taxpayer in the business of selling and distributing cereals, legumes and related products.
5. The appellant investigated the respondent's business for the period 2014 to 2019 to determine whether it had declared all income and paid all requisite taxes.
6. Following the investigations, the appellant issued an assessment for taxes of Kshs. 58,601,159 on 31st August 2020.
7. The respondent issued a letter of objection to the assessment dated 30th September 2020.
8. The appellant issued its objection decision on 2nd November 2020.

TAT No. 591 of 2020

9. Discontent, the respondent filed TAT No. 591 of 2020 on the main contention that it had supplied the appellant with the documents including financial statements and sample copies of invoices on 25th November 2020.
10. The Tribunal, issued the judgment dated 15th December 2021. It found that the respondent supplied the documents and set aside the objection decision. It also directed the appellant to consider the documents and render an objection decision within 60 days of the judgment. It further directed that in default of the appellant complying with the said order, the notice of objection will be deemed to have been allowed.
11. The appellant issued the respondent with the objection decision dated 11th February 2022.
12. Still dissatisfied, the respondent appealed to the Tribunal through a memorandum of appeal dated 2nd November 2023, filed on 3rd November 2023. The respondent's gravamen was that the objection decision dated 11th February 2022 did not comply with the Tribunal's orders and merely rehashed the previous one of 27th November 2020.
13. Through the judgment that is the subject of this appeal, the Tribunal set aside the objection decision issued on 11th February 2022.

Directions of the court

14. The appeal was canvassed through written submissions. The appellant and the respondent filed written submissions dated 27th May 2025 and 3rd June 2025 respectively.



Appellant's submissions

15. The appellant urged the court to allow its appeal with costs; that the Judgment of the Tax Appeals Tribunal and the resultant Orders issued on 22nd November 2024 against the Appellant be set aside, and that its objection decision issued on 11th February 2022 be found to be valid and be upheld.
16. The appellant relied on:-
 1. Pearson v Belcher CH.M Inspector of Taxes) Tax Cases Volume 38
 2. PZ Cussons East Africa Limited Vs. Kenya Revenue Authority (2013) eKLR
 3. Kenya Revenue Authority v Man Diesel & Turbo Se, Kenya [2021] eKLR

Respondent's submissions

17. The respondent urged the court to dismiss the appeal with costs and to uphold the Tribunal's judgment of 22nd November 2024.
18. The respondent relied on:-
 1. Mombasa Civil Appeal No. 24 of 2018; Kenya Revenue Authority & 2 others vs Darasa Investments Limited [2018] eKLR
 2. Pevans East Africa Limited & another vs Chairman Betting Control and Licensing Board & 7 others [2017] eKLR
 3. Commissioner of Domestic Taxes v Block International Limited (Income Tax Appeal E103 of 2023) [2024] KEHC 8889 (KLR) (11 July 2024) (Judgment)

Analysis and Determination

Duty of court

19. In such an appeal the court's mandate is limited to consideration of questions of law. Section 56 (2) of the [Tax Procedures Act](#)
20. The court's interaction with the questions of fact is limited to background, context and to considering "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." John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others NRB CA EPA NO. 5 OF 2018 [2018] eKLR
21. Out of the five grounds of appeal, there are three issues before the court:-
 1. Whether the appellant complied with the Tribunal's orders issued in its Judgement of 15th December 2021 in TAT Appeal No. 591 of 2020.
 2. Whether the appellant's request for additional documentation was proper.
 3. Whether the respondent discharged its burden to prove that the assessment was incorrect.

Whether the appellant complied with the Tribunal's orders issued in its Judgement of 15th December 2021 in TAT Appeal No. 591 of 2020.

22. It is the appellant's argument that the Tribunal erred in finding that it had failed to comply with orders issued in its Judgement issued on 15th December 2021 in TAT Appeal No. 591 of 2020.



23. The Tribunal's findings on this issue are reproduced below:-

“62. The tenor of the Tribunal’ judgment was that the Appellant had already provided the documents that were required of it. It is these documents that the Respondent was required to consider and issue its objection decision.

...

64. The fact that the documents in issue were indeed handed over to the Respondent was captured in paragraph 63 of the Judgment where the Tribunal stated thus:-

“The documents were delivered and acknowledged on 25th November 2020.”

65. Having held that the Respondent had acknowledged receipt of the documents on 25th November 2020, the Respondent was required to issue its decision based on and in consideration of these documents that had been provided by the Appellant. The excuse that it had not been supplied with documents was thus not available to it unless it had requested for other additional documents that were different and separate from the ones that had been supplied.

67. The Respondent’s action of ignoring or failing to consider documents that it had acknowledged as having been received on 25th November 2020 and instead reaffirming its Objection decision dated 27th November 2020 without showing that it had considered the documents that the Appellant had provided for its consideration was not justified.

68. Indeed, it amounted to the re-issuance of the Objection decision of 27th November 2020 which the Tribunal had set aside in its Judgment of 15th December 2021 without providing a basis or justification for re- affirming an Objection decision that had been set aside.

69. This latter Objection decision dated 11th February 2022 must thus suffer the same fate as the previous Objection decision dated 27th November 2020 to the extent that it was premised on grounds upon which the Tribunal had already pronounced itself when it directed the Respondent to consider the documents supplied by the Appellant.

70. The Respondent’s utter disregard of the Tribunal's directions to issue an objection decision upon due consideration of the Appellant’s documents by proceeding to aver that it had not been supplied with the documents when the Tribunal had held that it had already been supplied with the documents amounted to an open and flagrant disregard of the Tribunal’s order. The Tribunal would thus not be enjoined in upholding an objection decision that has openly disregarded its clear orders and directions.”

24. The appellant asserted that it complied with the judgment of 15th December 2021. It highlighted that order (iii) of the judgment directed it to “consider the documents supplied by the Appellant, together with any other documents and render and objection decision within 60 days.”

25. The appellant also asserted that it had earlier informed the respondent that it received its letter of objection dated 25th November 2020, but it had no attachments such as invoices or signed financial



- statements, for review. It also engaged with the respondent's tax agent upon issuance of the judgment and requested the documents not provided.
26. On the other hand, the respondent argued that the appellant failed to comply with the judgment. It faulted the appellant for denying that it received the documents supplied on 25th November 2020, a shift from its statement of facts wherein it acknowledged receipt of the documents.
 27. The respondent also argued that in calling for additional documents, the appellant went beyond the scope of the Tribunal's orders.
 28. Conversely, the appellant asserted that from the Tribunal's orders, it was bound not only to consider what had been provided at the objection stage, but also allowed to call for additional documents from the respondent in reviewing the objection.
 29. The appellant therefore submitted that it was justified in upholding the assessment and that its objection decision of 22nd November 2022 was justified.
 30. Para. 65 of the impugned judgment, the Tribunal observed that The excuse that it had not been supplied with documents was thus not available to it unless it had requested for other additional documents that were different and separate from the ones that had been supplied.
 31. The respondent's contention that in calling for additional documents, the appellant went beyond the scope of the Tribunal's orders fails.
 32. The respondent asserted that it supplied the following documents to the appellant's offices on 25th November 2020
 - a. Finalized Financial Statements covering the period 2014 to 2018.
 - b. Bank statements for the period 2014 to 2018; and
 - c. Sample copies of invoices (which he noted were bulky) for which he requested for a meeting with the Appellant in his offices.
 33. The appellant asserted that the documents referred to above included unsigned and unverified financial statements, which cannot be used for tax purposes. It argued that it was justified in asking the respondent to provide additional documents to support its objection. That the respondent having failed to provide additional documents to support its objection, it had no option but to maintain its assessment and not to depart from the objection decision of 27th November 2020.
 34. At page 137 of the record of appeal, the respondent's letter of 25th November 2020, reads in part that:-

“ We refer to your letter dated 20th November 2020 on the above subject. Kindly find attached the finalized financial statements covering the period 2014 to 2018, bank statements for the period 2014 to 2018 and sample copies of invoices (the invoices are quite bulky and I request you visit our offices for verification). Please advise if this will be appropriate with yourselves. Additional supporting documents will be delivered before Friday 27th November 2020.”
 35. The documents mentioned in the letter of 25th November 2020 are not on record.
 36. At page 89 of the record of appeal, the objection decision of 11th February 2022, reads in part that:-

“ Following delivery of the judgment, we immediately engaged your tax agent with a view to complying with the Tribunal's directions on the review of documents. However, your agent



is yet to submit the documents requested or make any proposal on the settlement of the taxes.

We have reviewed your letter of 25th November 2020, and established that there were no attachments as indicated therein. No documents were attached to enable the Commissioner to reach a different conclusion on the assessment. In the circumstances, the Commissioner's decision on the assessment (objection decision) remains as communicated in our letter dated 27th November 2021..."

37. Section 30 of the [Tax Appeals Tribunal Act](#) and section 56 of the Tax Procedure Act place the burden of proof on the taxpayer to prove that an assessment is excessive or a tax decision is incorrect.
38. Therefore, it was the burden of the respondent to prove that the appellant's assessment was excessive or incorrect.
39. The court captured the rationale for this in *Kenya Revenue Authority v Man Diesel & Turbo Se, Kenya* [supra], as follows:-

"Placing the burden of proof in tax cases on the Taxpayer reflects the unique nature of the tax system. This is evident from the three-fold justifications for placing the burden on the taxpayer. These are: (a) the presumption of correctness (b) the government's need for revenue' and (c) the taxpayer's possession of evidence. The taxpayer's burden of proof comprises two parts:-establishing, with evidence, the underlying facts on which the law is to operate (and in this regard, the standard of proof to which each fact must be proved is relevant; and that the operation of law when applied to those facts establishes that the assessment is excessive or erroneous."

40. In light of its foundational decision, and the law, the Tribunal erred in finding and determining that the appellant had failed to comply with orders issued in its Judgement issued on 15th December 2021 in TAT Appeal No. 591 of 2020.
41. I also find that the Tribunal erred in finding that the appellant was wrong in calling for additional documents whereas the order (a) Judgement issued on 15th December 2021 in TAT Appeal No. 591 of 2020 directed the appellant to consider documents it had received from the respondent plus any other documents in helping to render the decision.
42. It follows therefore that grounds 3, 4 and 5 are merited.
43. Nonetheless, the Tribunal dismissed the objection decision on the purported failure to comply with its directions in its foundational judgment but not on its merit. Making it just and desirable that the appeal before the Tribunal is determined on merit so as to determine the rights of and remedies for the parties.

Conclusion

44. In the upshot, the appeal is allowed.
 1. The Tribunal's judgment of 22nd November 2024 is set aside.
 2. The appeal is remitted back to the Tribunal-except the panel that heard it- for hearing on merit within the framing in this decision.
 3. Each party to bear its costs.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025
THROUGH TEAMS ONLINE APPLICATION.**

F. GIKONYO M

JUDGE

In the presence of : -

Ms. Onyango for KRA

Manoti for Respondent

CA- Kinyua

