



Nextgen Management Company Limited v Commissioner of Domestic Taxes (Tax Appeal E173 of 2024) [2025] KEHC 14506 (KLR) (Commercial and Tax) (9 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
TAX APPEAL E173 OF 2024
BK NJOROGE, J
OCTOBER 9, 2025**

BETWEEN

NEXTGEN MANAGEMENT COMPANY LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

JUDGMENT

1. This Judgement arises from the decision of the Tax Appeals Tribunal at Nairobi delivered on 26th April, 2024 in Tax Appeals Tribunal tax Appeal No. 1496 of 2022.

Background Facts

2. The Respondent issued the Appellant a notice of audit in July 2021 and requested supporting documents. After review, preliminary audit findings were issued in December 2021, and following the Appellant's unsatisfactory response, an additional tax assessment of Kshs. 119,873,193 was raised on 18th August 2022. The Appellant objected but only partially provided the requested supporting documents. KRA reviewed the submissions and confirmed the assessment on 3rd November 2022. Dissatisfied, the Appellant filed an Appeal on 3rd December, 2022, which was heard by the Tax Appeals Tribunal. The Tribunal ruled in favour of the Respondent, prompting the present Appeal.
3. The Appellant filed the Memorandum of Appeal dated 20th June 2024 and appealed against the judgment on the following grounds;
 - a. The Tribunal erred in law by failing to find that the Appellant had discharged its burden of proof as required by law.
 - b. The Tribunal erred in law by failing to consider the grounds of appeal in the Appellant's Memorandum of Appeal before it, dated 3rd December 2022.



- c. The Tribunal erred in law by misdirecting itself and failing to find that the Appellant had submitted the documents required to the Respondent, being the Memart, detailed clarification on the company's activities as well as copies of sample agreements, sub-leased agreements, and AGM minutes for 2017 to 2020.
 - d. The Tribunal erred in law and in fact by failing to consider the Appellant's contentions and arguments.
 - e. Any other grounds to be adduced at the hearing
4. The Appellant sought the following orders;
- a. The Appeal be allowed with costs.
 - b. The judgment of the Tribunal delivered on 26th April 2024 be varied.
 - c. The judgment of the Tribunal delivered on 26th April 2024 be set aside.
 - d. The court do make such orders as it may deem appropriate.
 - e. Costs of the Appeal be awarded to the Appellant.
5. The Respondent in response to the Appeal file the statement of facts dated 18th October 2024 and contended that in 2016, the Appellant claimed unsupported office expenses amounting to Kshs. 2,669,071, which were disallowed for lack of documentation. Further, the Appellant claimed costs associated with services offered to business occupants of its premises, which the Respondent argued should have been subjected to tax. Despite being granted several opportunities during the audit, objection review, and even by the Tribunal through leave to provide documents, the Appellant failed to supply the necessary records to substantiate its claims.
6. The Respondent emphasized that the Tribunal correctly noted that the documents submitted by the Appellant were not those requested and did not address the issues raised. Since the burden of proof under Section 56(1) of the *Tax Procedures Act* rests with the Appellant, its failure to provide adequate evidence justified the assessment. The Tribunal reviewed the additional documents provided and found them irrelevant and insufficient, leading it to uphold the Respondent's assessment as accurate.
7. The Appellant filed an application dated 7th November, 2024 seeking to introduce additional documents in the Appeal. This Application was allowed by a consent recorded on 24th February, 2025 before Ado J. The Respondent was granted leave to file an Amended Statement of Facts, The Court has seen the Supplementary Record of Appeal dated 24th February, 2025.

Issues for determination

8. Having carefully considered the submissions, the Appeal, Statement of Facts, the Record of Appeal as well as the Supplementary record of Appel, the Court frames the following issues for determination;
 - a. Whether the Tribunal erred in finding that the Appellant had failed to discharge its burden of proof.
 - b. Whether the Tribunal erred in law by misdirecting itself and failing to find that the Appellant had submitted the documents required to the Respondent, being the Memart, detailed clarification on the company's activities as well as copies of sample agreements, sub-leased agreements, and AGM minutes for 2017 to 2020.



Analysis

9. The Court is guided by Section 56(2) of the [Tax Procedures Act](#), which expressly limits the jurisdiction of the High Court in tax appeals to questions of law only.
10. Sections 56 of the [Tax Procedures Act](#) outlines the general provisions relating to objections and appeals. It provides that: -
 56. General provisions relating to objections and appeals
 - (1) In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.
 - (2) An appeal to the High Court or to the Court of Appeal shall be on a question of law only.
 - (3) In an appeal by a taxpayer to the Tribunal, High Court or Court of Appeal in relation to an appealable decision, the taxpayer shall rely only on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.
11. Similarly, Section 30 of the [Tax Appeals Tribunal Act](#) provides that in proceedings before the Tribunal, the Appellant bears the burden of proving;
 - (a) where an appeal relates to an assessment, that the assessment is excessive; or
 - (b) in any other case, the tax decision should not have been made or should have been made differently.

a) Whether the Tribunal erred in finding that the Appellant had failed to discharge its burden of proof.

12. In *Commissioner of Domestic Taxes v Metoxide Limited* [2021], the Court held that: -

“Section 56(1) of the [Tax Procedures Act](#) provides that the taxpayer has the burden of proving that a tax decision is incorrect. It is common knowledge that, the Kenyan system of taxation is based on self-assessment. The taxpayer assesses self and remits what he/it considers to be the tax due to the tax authorities. In this regard, the tax laws mandate the appellant to later on assess the taxpayer in order to ascertain whether the tax remitted was proper or not. Ordinarily, the assessment is made years after the tax has fallen due and been paid or the economic activity or commercial transaction for which the tax arises has been undertaken. It is for this reason that the tax laws shoulder the taxpayer with the burden of disproving the correctness of the Appellant’s tax decision.”
13. It is undisputed that the Respondent asked the Appellant to avail the following;
 - i. Payment of the tax not in Dispute (Kshs. 742,823)
 - ii. Memorandum & Articles of Association for the company detailing the company's activities.
 - iii. Exemption certificate from VAT for the company or the authority on which you base your ground that the company income is exempt from Tax.
 - iv. Detailed clarification on the operations of the company from income to expenditure as well as treatment of Surplus & Deficits in the company books.



- v. Copy of your General Ledger for years 2017 to 2020 demonstrating your income & expenditure for those years.
 - vi. Copies of sample sale agreements, sublease agreements, as well as AGM minutes for 2017 to 2020.
14. The Tribunal in its judgment pointed out that the Appellant was requested to supply documents which ought to have been in its custody, and it failed to provide the said documents. It added that the Appellant only supplied the sale and lease agreements out of the documents it had been requested to supply. It is on this basis that the Tribunal found that the Appellant had failed to discharge its burden of proof.
 15. A cursory look at the objection decision reveals that the Respondent acknowledged receipt of the Memorandum & Articles of Association for the Appellant company detailing the company's activities.
 16. Further, the Respondent submitted that from the Appellant's documents, particularly the Memorandum and Articles of Association (Memarts), pleadings before this Court and iTax portal before the Tribunal, it is apparent that the Appellant is a Limited liability Company dealing in real estate activities; particularly, the Appellant manages the Nextgen Mall on Mombasa Road.
 17. Therefore, contrary to the findings of the Tribunal, the Appellant did not only supply the sale and lease agreements out of the documents it had been requested to supply, but it also provided the Memorandum and Articles of Association. It also provided some detailed clarification of the company's activities as well as copies of sample agreements, sub-lease agreements and AGM minutes for 2017 to 2020. Thus, the Tribunal erred by failing to find that the Appellant had submitted the documents required to the Respondent, being the Memarts, detailed clarification on the company's activities, as well as copies of sample agreements, sub-leased agreements, and AGM minutes for 2017 to 2020.
 18. It would thus be erroneous for the Honourable Tribunal to find that the Appellant had failed to discharge the burden of proof, yet it ignored and did not consider the documents aforesaid.

b) Whether the Tribunal erred in law by misdirecting itself and failing to find that the Appellant had submitted the documents required to the Respondent, being the Memart, detailed clarification on the company's activities as well as copies of sample agreements, sub-leased agreements, and AGM minutes for 2017 to 2020.

19. Flowing from the findings on the first issue above, the Court reaches a finding that documents requested by the Respondent had been provided but were ignored by the Tribunal in its deliberations and decision. That the denied the Respondent a fair hearing of the Appeal and thus this Court is bound to interfere with the decision. The Tribunal should have given some consideration and weight to the documents already provided by the Appellant before making a final determination.
20. So, what should the Court do with this Appeal in view of the trajectory that this Appeal is now taking? The Court follows the decisions in *Gachui v Commissioner for Domestic Taxes* [2025] KEHC 9327 (KLR) and *Hashi v Commissioner of Domestic Taxes* [2024] KEHC 12793 (KLR) and remits this matter back to the Tribunal for hearing.
21. The Tribunal's holding was erroneous and the Court determines that the appropriate order is that the matter is remitted back to the Tribunal for it to be heard on the merits by a panel other than that which dealt with it before.
22. As to costs, the same lie at the discretion of this Court. Let each party bear its own costs.



Determination

23. The Appeal is allowed in the following terms;
- a. The judgment of the Honourable Tribunal delivered on 26th April 2024 is hereby varied, set aside and quashed.
 - b. The matter is remitted back to the Honourable Tribunal to be heard on merits by a panel other than that which dealt with it before.
 - c. Each party to bear its own costs of the Appeal.
24. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 09TH DAY OF OCTOBER, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Miss Otieno for the Appellant

Miss Kuria for the Respondent

Mr. Peter Wabwire– Court Assistant

