



Karwima Enterprises/Ali Abdullahi Mahad (Deceased) v Commissioner of Domestic Taxes (Tax Appeal E123 of 2024) [2025] KETAT 15 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KETAT 15 (KLR)

**REPUBLIC OF KENYA
IN THE TAX APPEAL TRIBUNAL
TAX APPEAL E123 OF 2024
CA MUGA, CHAIR, BK TERER, EN NJERU, E NG'ANG'A & SS OLOLCHIKE, MEMBERS
JANUARY 17, 2025**

BETWEEN

**KARWIMA ENTERPRISES/ALI ABDULLAHI MAHAD
(DECEASED) APPLICANT**

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

RULING

Background

1. The Applicant moved the Tribunal vide a Notice of Motion Application dated 20th June 2024 seeking the following Orders:
 - i. That the Tribunal be pleased to grant leave to the Applicant to file and/or lodge the Appeal out of time.
 - ii. That the costs of the Application be in the cause.
2. The Application was supported by a Sworn Affidavit dated 13th June 2024 and filed on 13th November 2024 by Mahabub Abdullahi (the deceased Applicant's son), citing the following grounds:
 - i. That the Respondent on 6th March 2018, 30th November 2018 and 5th December 2018 issued the Applicant with assessment orders totalling Ksh 19,597,514.05 in relation to VAT for the month of April 2016 and income tax for year 2015 and 2017 respectively.
 - ii. That the Applicant lodged a late objection against the assessments on 15th March 2019 which was rejected by the Respondent on even date. This was followed by an objection decision on 24th July 2019 confirming the assessments.



- iii. That the Applicant now deceased died on 11th September 2021, as a result his children took over his business affairs and were not privy of any pending tax matters and only became aware upon issuance of demand notice dated 7th May 2024 demanding Ksh 31,104,391.00 from the Applicant.
 - iv. That among the deceased's children, one of them, the son herein, visited the Respondent's offices where details of the tax arrears were shared but the Appeal period had already lapsed and this was the primary reason the Applicant was requesting for time to lodge the Appeal late.
3. On 28th November 2024, the Tribunal directed the matter to be canvassed by way of written submissions. The Respondent was directed to file and serve a response against the Application on or before 10th December 2024 and failed to do so. Additionally, parties were directed to file and serve upon each other their written submissions on or before 20th December 2024. Neither of the parties complied with these Tribunal directions.

Analysis and Findings

4. The Tribunal notes that this Application by the deceased's son seeks to indulge the Tribunal to exercise its discretion and grant extension of time within which to file its Appeal against the Respondent's objection decision dated 24th July 2024 in relation to VAT for the month of April 2016 and income tax for 2015 and 2017 years of income respectively.
5. The Tribunal observes that the Applicant herein (who is now deceased) stated that upon being served with assessments on 6th March 2018, 30th November 2018 and 5th December 2018, lodged a late objection on 15th March 2019 but the Respondent confirmed the assessments vide an objection decision dated 24th July 2019. The Applicant had two options at his disposal; the first one was to settle the taxes as assessed or lodge an Appeal at the Tribunal against the decision within thirty days as provided by by Section 51(12) of the TPA which states as follows:
- “A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.”
6. The Tribunal further observes that the Applicant died on 11th September 2021 without having lodged an Appeal against the Respondent's decision. It is this particular decision that the deponent wishes to be granted time by the Tribunal to challenge on behalf of the deceased applicant. However before delving into the crux of the matter the Tribunal refers to Section 17(1), (2) and (3) of the TPA which denotes the following powers to a person appointed to manage the tax affairs of a deceased person. The Section provides as follows;

“ 17. Duties of appointed person

- (1) An administrator, personal representative, executor of a will, trustee-in-bankruptcy, receiver, or liquidator (referred to as the “appointed person”) who has been appointed to administer, manage, liquidate, or wind up the affairs of a taxpayer, including a deceased taxpayer, shall notify the Commissioner, in writing, of the appointment within fifteen days of the date of the appointment.
- (2) The Commissioner shall notify an appointed person in writing of the amount of tax that is payable or will become payable by



the taxpayer whose assets are under the control of the appointed person within two months of the Commissioner receiving a notification under subsection (1).

- (3) Subject to subsection (4), an appointed person shall—
 - (a) not dispose of an asset of the taxpayer whose assets are under the control of the appointed person without prior approval of the Commissioner until the appointed person has been notified under subsection (2) or the two-month period specified in subsection (2) has expired without the Commissioner notifying the appointed person of the tax payable;
 - (b) set aside the amount notified by the Commissioner under subsection (2) out of the proceeds of sale of an asset, or a lesser amount as is subsequently agreed to by the Commissioner; and
 - (c) be personally liable to the extent of the amount required to be set aside for the tax payable by the taxpayer who owned the asset.”

7. The Tribunal having examined the record and affidavits sworn by Mr. Mahabub Abdullahi did not sight any evidence of him having been granted by a court of law letters to administer the estate of the deceased neither did it sight any evidence of the dependent having being appointed by the Respondent in accordance with Section 17 of *TPA*.
8. Accordingly, the Tribunal finds that the Application fails on the basis that it is incompetent as the deponent did not demonstrate that they had capacity to make this application on behalf of the deceased's estate.

Disposition

9. The Tribunal in the circumstances is persuaded that the Application fails and accordingly proceeds to make the following Orders:
 - a. The Application be and is hereby struck out.
 - b. No orders as to costs.
10. It is so Ordered.

DATED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF JANUARY, 2025.

CHRISTINE A. MUGA - CHAIRPERSON

BONIFACE K. TERER - MEMBER

ELISHAH N. NJERU - MEMBER

EUNICE N. NG'ANG'A - MEMBER

OLOLCHIKE S. SPENCER - MEMBER

