Transmara Sugar Company Ltd v Commissioner of Domestic Taxes (Income Tax Appeal E009 of 2024) [2025] KEHC 15504 (KLR) (Commercial and Tax) (27 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15504 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

INCOME TAX APPEAL E009 OF 2024

FG MUGAMBI, J

OCTOBER 27, 2025

BETWEEN

TRANSMARA SUGAR COMPANY LTD ..... APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES ..... RESPONDENT

JUDGMENT

Background and Introduction

1. The appellant describes itself as a sugar production company that set up a sugar processing factory in Kilgoris in 2011. Between the financial years 2011 and 2018, it undertook substantial capital investments aimed at increasing its factory capacity. The appellant states that the *Income Tax Act* (ITA) grants tax incentives to investors, allowing capital expenditure incurred in furtherance of business operations to be deducted when computing taxable profits.

2. The appellant specifically relies on the provisions of the Second Schedule to the ITA, which stipulate that; "Investments worth 200 Million Kenya shillings situated outside Nairobi, Mombasa, Kisumu attract a 150% investment allowance". Based on this provision, the appellant claimed capital allowances, a significant portion of which was at the enhanced investment deduction rate of 150%.

3. Due to the scale of its capital investment in setting up and constructing the factory, the appellant remained in a tax loss position for an extended period. This situation was compounded by low sugarcane production nationally. Consequently, the appellant carried forward losses from one financial year to the next, as permitted by law, in determining the taxes payable, if any.

4. At the material time, Section 15 of the ITA (now repealed) limited the carry-forward period for losses to ten years, unless extended by the Cabinet Secretary (CS) for the National Treasury upon the recommendation of the Kenya Revenue Authority (KRA). The appellant's losses for the years 2011

and 2012 exceeded the ten-year limit, prompting it to apply for an extension by a letter dated 24th July 2019.

5. In a decision dated 29th September 2022 (the impugned decision), the respondent partially approved the appellant's application, allowing only KES 774,809,156/= out of the claimed KES 1,840,023,570/= to be carried forward as losses. The appellant contends that no reasons accompanied this decision, leading it to seek clarification through emails dated 4th and 12th October 2022. The respondent replied on 14th October 2022, providing reasons for the decision.

6. The respondent maintains that it reviewed the appellant's application, recommended to the CS the approval of KES 774,809,156/=, and that the CS approved the request as recommended. This decision was communicated to the appellant on 29th September 2022.

7. Dissatisfied with the respondent's decision, the appellant lodged an appeal before the Tax Appeals Tribunal. However, in its judgment dated 24th November 2024, the Tribunal held that it lacked jurisdiction to hear and determine the matter and dismissed the appeal. This dismissal has now given rise to the present appeal before this Court.

Analysis and Determination

8. I have considered the pleadings and submissions filed by the parties. The issues for determination are as follows:

    i. Whether the Impugned decision was made by the respondent or the CS Treasury?

    ii. Notwithstanding and without prejudice to the foregoing, whether the decision dated 29th September 2022 was, in any event, an appealable decision under Sections 3 and 52 of the *Tax Procedures Act*?

    iii. Whether the Tax Appeals Tribunal had the jurisdiction to hear the appellant's appeal?

    iv. Whether the respondent's reasons for its impugned decision dated 29th September 2022 were fatally defective in any event?

Whether the Impugned decision was made by the respondent or the CS Treasury:

9. In its judgment, the Tribunal held that the impugned decision was not the respondent's but rather a decision of the CS Treasury and secondly, that being the case, the Tribunal had no jurisdiction to hear and determine the appeal before it.

10. The appellant challenges this finding. It contends that the impugned decision was issued on the official letterhead of the KRA and signed by the Deputy Commissioner, Domestic Taxes, on behalf of the Commissioner for Domestic Taxes. The covering email forwarding the decision expressly described it as "the Commissioner's ruling to your application", leaving no ambiguity as to its source. Further, the reasons and detailed computations underlying the decision were furnished by the Commissioner.

11. The appellant further submits that no written decision of the CS Treasury was produced before the Tribunal, nor was there any correspondence evidencing that the CS had independently determined the matter. In the absence of such proof, the appellant argues, the only reasonable inference is that the decision was the respondent's.

12. Having placed the impugned letter and its attendant reasons before the Tribunal, the evidential burden shifted to the respondent to disprove its authorship under Section 107 of the *Evidence Act*, a burden which, the appellant contends, was not discharged.

13. The respondent on the other hand maintains that the Tribunal was correct in its finding for want of jurisdiction, relying on Section 52(1) of the *Tax Procedures Act* (TPA), which confines the Tribunal's mandate to hearing appeals from "tax decisions" made by the respondent.

14. Citing Section 3 of the TPA, the respondent argues that "tax decisions" do not encompass ministerial approvals and that the letter of 29th September 2022 was merely a communication of the CS's approval, not an appealable determination. On that basis, the respondent asserts that the appellant's recourse lay in judicial review before the High Court, which is concerned with process rather than merits.

15. From my analysis, the following facts are uncontested: that the impugned decision appears on the respondent's official letterhead, that it bears the signature of the Deputy Commissioner for Domestic Taxes, on behalf of the Commissioner, that it was transmitted under the heading "the Commissioner's ruling to your application" and that the reasons and computations were prepared and furnished by the respondent.

16. In my considered opinion, authorship and legal accountability must rest with the authority that formally communicates and justifies a decision to the affected party. Where a public institution issues a determination on its official letterhead, duly signed by its authorized officer, and accompanied by the rationale for the decision, that institution, through its designated officer, assumes ownership of the decision for all legal and administrative purposes. The action binds the institution to the consequences of that act.

17. To hold otherwise would undermine transparency, frustrate accountability, and permit institutions to obscure responsibility behind internal processes. This remains the case irrespective of any internal deliberations, consultations, or approvals that may have preceded the communication.

18. The repealed Section 15(5) of ITA provided:

> "Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension. ..."

19. This provision clearly made the Commissioner the primary statutory actor: the taxpayer's application had to be lodged through the Commissioner, who would evaluate the evidence and make a recommendation to the Minister. The Minister's approval was contingent upon, and derived from, that recommendation.

20. In substance, the Commissioner controlled the process by receiving the application, quantifying the allowable loss, and communicating the result. Unless the CS directly issued a written decision to the taxpayer, the operative decision in law remained that of the Commissioner. No such ministerial decision was shown in this case.

21. Even supposing I was wrong on this front, on the legal framework, Section 3(1) of the TPA draws a deliberate distinction between a "tax decision" and an "appealable decision." A "tax decision" covers core acts such as assessments, penalty determinations, and refund decisions, which a tax payer takes up with the Commissioner as a first point of call. An "appealable decision" on the other hand includes any other decision made under a tax law, other than a tax decision or a decision made in the course of making a tax decision.

22. This residual category captures final and substantive determinations, like the present one, made under a tax law that directly affect a taxpayer's rights or obligations. The impugned determination fixed the

quantum of losses the appellant could carry forward under ITA, with significant impact on its future taxable income. It was neither a preparatory act nor an internal step; it was a final outcome.

23. To exclude such a decision from the Tribunal's jurisdiction would effectively shield it from merits review, confining challenges to judicial review which, as the respondent concedes, is limited to procedural scrutiny. That cannot have been Parliament's intent in enacting the residual limb of the "appealable decision" definition.

Whether the Tax Appeals Tribunal had the jurisdiction to hear the appellant's appeal?

24. The Tribunal's decision to decline jurisdiction rested exclusively on its finding that the impugned decision was made by the CS for the National Treasury, and therefore did not qualify as an appealable decision under Section 52(1) of the TPA.

25. However, for the reasons set out above, I have found that the impugned decision was, in fact, made by the Commissioner for Domestic Taxes and is properly characterized as an "appealable decision" within the meaning of Section 3(1) of the Act. That finding restores the jurisdictional foundation for the Tribunal to hear and determine the matter.

26. Section 52(1) of the TPA provides that: "a person who is dissatisfied with an appealable decision may appeal the decision to the Tribunal in accordance with this Part." In light of the other provisions that I have referred to, it is my view that where a statute confers a right of appeal against an administrative decision, that right should not be defeated by an unduly restrictive construction of the statutory language.

27. To interpret the provision narrowly, as excluding decisions like the one in issue, would have the practical effect of shielding from appellate scrutiny determinations with direct and substantial impact on a taxpayer's tax liability or entitlements. Such a result would undermine both the legislative purpose and the constitutional guarantees of fair administrative action and access to justice under Articles 47 and 48 of *the Constitution*.

28. In this light, the Tribunal's characterization of the impugned decision as "ministerial" and beyond its jurisdiction was a misdirection in law. No evidence was adduced to establish that the CS made or communicated any operative decision to the appellant. The only decision on record was that of the Commissioner, a decision squarely within the Tribunal's jurisdiction to review on its merits under Section 52 of the TPA.

29. In view of my findings, which conclusively dispose of the question of jurisdiction, I consider it inappropriate to determine the remaining grounds of appeal. Those grounds, which touch on the merits of the impugned decision and the adequacy of the reasons furnished, properly fall to be addressed by the Tribunal as the primary forum for merits review under Section 52 of the TPA.

Disposition

Accordingly,

i. The appeal is allowed.

ii. The finding of the Tax Appeals Tribunal dated 24th November 2024, that it lacked jurisdiction to hear and determine the appellant's appeal, is hereby set aside.

iii. The matter is hereby remitted to the Tax Appeals Tribunal for hearing and determination on the merits, in accordance with the provisions of the *Tax Procedures Act*, and with due regard

to the reasons and computations already furnished by the Commissioner pursuant to Section 51(10) of the Act.

iv. Each party shall bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER 2025.

F. MUGAMBI

JUDGE