



**Kellico Limited v Commissioner of Domestic Taxes (Income Tax Appeal E188 of 2024)
[2025] KEHC 16672 (KLR) (Commercial and Tax) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16672 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E188 OF 2024
MN MWANGI, J
NOVEMBER 7, 2025**

BETWEEN

KELLICO LIMITED APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

JUDGMENT

1. On 14th June 2018, the respondent issued the appellant with an original tax assessment notice covering Income Tax, Value Added Tax, Withholding Tax and Capital Gains Tax for the period 2014 to 2017. Subsequently, on 3rd April 2020, the respondent pursuant to Section 31 of the [Tax Procedures Act](#), amended the assessment of 14th June 2018 which the appellant objected to on 24th April 2020. Upon review, the respondent vide a notice of invalidation issued in a letter dated 24th September 2020, found the appellant's objection invalid for failure to comply with the mandatory requirements of Section 51(3) of the [Tax Procedures Act](#), in that the appellant did not specify the grounds of objection, the proposed amendments, or the reasons for such amendments, and that the objection was not supported by any accompanying documentation.
2. Dissatisfied by the respondent's position, the appellant lodged an Appeal with the Tax Appeals Tribunal (hereinafter referred to as "the Tribunal") against the appellant's objection decision vide a Memorandum of Appeal and statement of facts both dated 14th November 2022. In response thereto, the respondent filed a statement of facts dated 6th March 2023.
3. Upon consideration of the parties' pleadings, documents attached to the said Appeal and parties' submissions, the Tribunal identified three issues for determination; whether the appellant's Appeal as lodged was valid, whether the respondent's agency notices were properly issued and whether the notice of invalidation issued on 24th September 2020 was properly issued.



4. In its Judgment delivered on 24th May 2024, the Tribunal determined on the first issue that the appellant's Appeal was directed against the respondent's amended assessment dated 3rd April 2020, which did not amount to a tax decision and was therefore not an appealable decision. Consequently, the Tribunal held that the appellant had no valid Appeal before it in relation to the decision of 3rd April 2020.
5. On the second issue, the Tribunal relying on Section 42(2) of the [Tax Procedures Act](#) held that the respondent was justified in issuing the agency notice dated 9th December 2020 to the appellant's tenant. Further, it found that the agency notice dated 6th April 2021, which had been issued against the appellant's Director in respect of his personal bank account with Prime Bank Limited, had not been challenged by the said Director. The Tribunal therefore held that the appellant could not purport to advance claims on behalf of its Director regarding matters affecting his personal rights in his individual capacity. The Tribunal also found that the Director had not demonstrated that the respondent was wrong in deeming the funds in his personal account to be held on behalf of the appellant. In conclusion, the Tribunal held that the respondent was justified in issuing the agency notice dated 6th April 2021.
6. Dissatisfied with the Tribunal's decision, the appellant filed the Appeal herein, vide a Memorandum of Appeal dated 19th July 2024 raising the following grounds of Appeal –
 - i. The Tribunal erred in law by holding that the appellant had not presented an objection decision before the Tribunal and yet overlooked the fact that the respondent's reliance of the objection decision of 24th September, 2020 as its ground for a Preliminary Objection was by itself invalid, null and void ab initio by operation of the law having been issued past the statutory period of sixty (60) days set under Section 51(11) of the [Tax Procedures Act](#), thus an illegal decision could not amount to a valid objection by law and that would in any event require the appellant to move the Tribunal for its setting aside or shift the burden of proof to the appellant;
 - ii. The Tribunal erred in law by failing to make a determination on a key issue in the proceedings as to whether the notice of invalidation of Objection Decision issued on 24th September 2020 was properly issued even though the Tribunal had narrowed down the question as an issue for determination;
 - iii. The Tribunal erred in law by holding that there was no valid Appeal before it while at the same time recognizing that an Agency Notice is an appealable decision and hence rendered a decision which was not only contradictory but also an incorrect interpretation of Sections 2 & 52 of the [Tax Procedures Act](#), Cap 469B and the [Income Tax Act](#);
 - iv. The Tribunal erred in law by lightly divesting itself jurisdiction to determine the validity of the respondent's impugned Agency Notices dated 3rd April 2020, 9th December 2020 & 6th April 2021 and instead elevated procedural technicalities over substance by undertaking a narrow and restrictive interpretation of an appealable decision under Section 3 of the [Tax Procedures Act](#) contrary to the provisions of Article 159(2)(d) of [the Constitution](#) of Kenya;
 - v. The Tribunal misdirected itself in faulting the appellant for inaction of appealing against the respondent's Objection Decision issued on 24th September 2020 contrary to its previous Ruling granting leave to the appellant to file an Appeal out of time following its own findings that there existed reasonable grounds which prevented the appellant and its sole Director from taking action within the prescribed timelines;



- vi. The Tribunal erred in law by failing to consider the argument raised by the appellant claiming denied commercial building allowance of Kshs.15,302,672.00 for the period 2015 - 2018 incurred on the expansion and substantial renovation of the appellant's complex on property LR. No. 20914096 & L.R. No. 209/14097, Nairobi whereas Section 15 of the [Income Tax Act](#), Cap 470 as read with the Second Schedule Paragraph 7 of the said Act allowed the appellant to claim commercial building allowance as capital expenditure;
 - vii. The Tribunal erred in law by failing to consider the argument raised by the appellant claiming denied interest expense of Kshs.78,017,252.00 on loans that were borrowed and used to clear substantial loans of the appellant company;
 - viii. The Tribunal erred in law by upholding the Agency Notices issued by the respondent without factoring in the permitted tax deductions of the appellant in relation to expenses incurred for repairs and maintenance costs on its buildings LR. No. 209/14096 & L.R. No. 209/14097, interest expenses on loans in the sum of Kshs.81,721,500/=, wear and tear allowances in the aggregate sum of Kshs.2,059,439.00 for the years 2015 - 2018 contrary to the [Income Tax Act](#); and
 - ix. The Tribunal erred in law by upholding the Agency Notice issued against the personal bank account of the appellants Director held in Prime Bank Limited demanding the principal sum of Kshs.59,975,369.00 contrary to its own finding that the appellant's Director is a separate legal entity from the appellant company and the tax liabilities of the appellant are distinct from the appellant's Director.
7. The appellant's prayer is for this Court to allow the Appeal herein with costs, vary and/or set aside the Judgment delivered by the Tribunal on 24th May 2024 and for the respondent's objection decision dated 24th September 2020 be declared illegal, null and void. The appellant further seeks for an order that the tax demand of Kshs.78,017,252.00 for the period 2015–2018 together with the respondent's decisions dated 3rd April 2020, 9th December 2020 and 6th April 2021, be set aside in their entirety and for the respondent to be ordered to make a full refund of the sums paid with interest at Court rates.
 8. The Appeal was canvassed by way of written submissions. The appellant's submissions were filed on 18th December 2024 by the law firm of Onyango & Ameyo Advocates, whereas the respondent's submissions were filed by Nick Otieno Osoro, Advocate on 23rd January 2025.
 9. Ms Mulomi, learned Counsel for the appellant submitted that though the Tribunal framed the issue of whether the objection decision dated 24th September 2020 was properly issued, it failed to analyze or determine it. She relied on the case of Equity Group Holdings Limited v Commissioner of Domestic Taxes [2021] KEHC 25 (KLR), and argued that the appellant's objection was dated 24th April 2020, but the respondent issued its objection decision four (4) months later on 24th September 2020 rejecting the appellant's objection, contrary to Section 51(11) of the [Tax Procedures Act](#), which requires a decision to an objection be made within sixty (60) days, failure to which the objection is deemed as allowed. Counsel asserted that for the said reason, the respondent's objection decision was invalid, and the subsequent tax demands were unlawful.
 10. Ms Mulomi contended that although the Tribunal in its Judgment acknowledged that the decisions of 9th December 2020 & 6th April 2021 were Agency Notices issued under Section 42 of the [Tax Procedures Act](#), thus recognized as appealable decisions under Section 52 of the Act, it still went ahead to find that there was no valid Appeal regarding the 3rd April 2020 assessment and failed to address the merits of the Agency Notices. Counsel argued that was contradictory for the Tribunal to acknowledge



that the appellant and its Director are separate legal entities with distinct tax liabilities, then go ahead and uphold Agency Notices against the appellant's Director's personal bank account to recover taxes allegedly owed by the appellant. She argued that failure by the deceased Director to challenge those Notices did not validate them nor did it establish that the funds in his personal account were company assets.

11. Counsel submitted that under Section 42(2) of the *Tax Procedures Act*, the respondent was required to prove that the Director held funds on behalf of the appellant, which it failed to do. Further, that by targeting the Director's personal account, the respondent effectively pierced the appellant's corporate veil without justification, contrary to established principles of corporate law and fairness under Article 47 of *the Constitution*.
12. Mr. Osoro, learned Counsel for the respondent, submitted that the right of Appeal under the *Tax Procedures Act* is conditional upon strict compliance with Sections 51(1), (2) & (3) thereunder, which require the lodging of a valid objection. He argued that in this matter, the Tribunal dismissed the appellant's primary Appeal on the basis that its objection was invalid. Counsel explained that the respondent had communicated audit findings to the appellant on 14th June 2018, and subsequently issued an amended assessment on 3rd April 2020 and thereafter issued Agency Notices on 6th April 2020 & 9th December 2020 to secure undisputed taxes in arrears. He stated that on 24th September 2020, the respondent further issued an invalidation notice against the appellant's objection, and that he appellant later sought to challenge both the amended assessment of 3rd April 2020 and the Agency Notices of December 2020 and April 2021.
13. Counsel argued that the Tribunal rightly held it lacked the jurisdiction to entertain objections to tax assessments, noting that its mandate is circumscribed by Section 3 of the *Tax Procedures Act* and Section 13(2) of the *Tax Appeals Tribunal Act*, the latter requiring that an Appeal be accompanied by the appealable decision, which the appellant failed to provide. He maintained that the appellant could not rely on the invalidation notice of 24th September 2020, as its Memorandum of Appeal was neither based on that Notice, nor was the Notice attached to the Appeal. Further, that the appellant did not attach its objection application of 24th April 2020, leaving the respondent's finding to the effect that it had failed to comply with Section 51(3) of the *Tax Procedures Act*, uncontroverted. Counsel added that under Section 51(4) of the *Tax Procedures Act* as it stood in 2020, there was no prescribed time limit within which an invalidation notice had to be issued, thus the respondent acted lawfully and within its powers.
14. Counsel submitted that the period preceding the invalidation notice of 24th September 2020 was not unduly long, as the respondent had made efforts to engage the appellant. He argued that the Agency Notices of 9th December 2020 and 6th April 2021, though appealable under Section 42(2) of the *Tax Procedures Act*, were validly issued following the invalidation of the appellant's objection. He asserted that the respondent acted within its rights to issue them between 24th September 2020 and 25th May 2021, when the appellant eventually filed its Appeal. Mr. Osoro noted that the Tribunal was correct in finding that Classic Moulding Limited, as a tenant of the appellant, fell within the scope of Section 42 of the Act, thereby justifying the Agency Notice of 9th December 2020. He contended that in respect to the Notice of 6th April 2021 issued against the late Director, Alex Chege Waithaka, the Tribunal properly held that the company and its Director are distinct legal entities and thus the appellant lacked capacity to contest the Notice on his behalf. Moreover, the Director himself had not demonstrated that his personal bank accounts did not contain funds held on behalf of the company.



Analysis And Determination.

15. I am mindful of the provisions of Section 56(2) of the *Tax Procedures Act*, which restricts an Appeal to the High Court from a decision of the Tax Appeals Tribunal, or further to the Court of Appeal, to questions of law only. The Court of Appeal in *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] KEHC 8738 (KLR), clarified what constitutes “matters of law” as follows –

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 considerations of the credibility of witnesses or which witnesses are more believable than others; by law that is the province of the trial court.

16. This Court while exercising its appellate jurisdiction, cannot substitute the Tribunal’s decision with its own, unless it is shown that the Tribunal’s decision lacked any evidential basis, or that the Tribunal misdirected itself on issues of law.
17. Upon consideration of the Memorandum of Appeal, the Record of Appeal, the statement of facts filed by the respondent and the written submissions filed by Counsel for the parties, the issues that arise for determination are –
- i. Whether there was a valid Appeal lodged at the Tax Appeals Tribunal by the appellant; and
 - ii. Whether the Respondent’s Agency Notices were properly issued.

Whether there was a valid Appeal lodged at the Tax Appeals Tribunal by the appellant.

18. Upon perusal of the Notice of Appeal dated 25th May 2021 filed by the appellant before the Tax Appeals Tribunal, it is evident that the appellant expressed its intention to lodge a late Appeal against the respondent’s decision of 3rd April 2020. However, both the Memorandum of Appeal and the statement of facts filed on 14th November 2022 explicitly indicate on their face and from the reliefs sought, that the Appeal was directed against the Agency Notices issued on 3rd April 2020, 9th December 2020 and 6th April 2021. In view of this, the Tribunal in considering the merits of the Appeal before it, ought to have confined itself to those Agency Notices.
19. Upon reviewing the Record of Appeal, this Court notes that no Agency Notice dated 3rd April 2020 exists. Instead, what is on record is a revised Notice of Assessment dated 3rd April 2020, issued pursuant to Section 31 of the *Tax Procedures Act*, which provides for the amendment of assessments. Accordingly, the letter dated 3rd April 2020 constitutes an amended assessment as acknowledged by the Tribunal at paragraph 67 of its Judgment, which forms the subject of this Appeal. To determine whether the appellant’s Appeal to the Tribunal against that assessment was competent, this Court must first consider whether it qualifies as an appealable decision within the meaning of Section 3 of the *Tax Procedures Act*, which provides that –

“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;
20. Section 3 of the [Tax Procedures Act](#) goes further to state that –
 - “ 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 a 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 a penalty or late payment interest.
21. It is also worthy of note that Section 52(2) of the [Tax Procedures Act](#) expressly recognizes an assessment as an appealable decision. It states that –

A notice of Appeal to the Tribunal relating to an assessment shall be valid if the taxpayer has paid the tax not in dispute or entered into an arrangement with the Commissioner to pay the tax not in dispute under the assessment at the time of lodging the notice. (Emphasis added).
22. Having found that the letter dated 3rd April 2020 constitutes an amended assessment, I am satisfied that it qualifies as a tax decision, and it was therefore an appealable decision before the Tribunal. I therefore find that the Tribunal erred in holding that the amended assessment of 3rd April 2020 was not an appealable decision and that its jurisdiction had not been properly invoked. This is particularly so given that the Tribunal acknowledged at paragraph 65 of its Judgment that the appellant objected to the said assessment through an objection dated 24th May 2020, which was subsequently invalidated by the respondent via its objection decision dated 24th September 2020.
23. In determining the validity or otherwise of the amended assessment dated 3rd April 2020 and the Agency Notices dated 9th December 2020 and 6th April 2021, the Tribunal ought to have considered the propriety of the appellant’s objection dated 24th May 2020 and the respondent’s objection decision dated 24th September 2020.
24. The procedure for objecting to a tax decision is set out under Section 51 of the [Tax Procedures Act](#), which 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. Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days 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. Where the tax decision to which a notice of objection relates is an amended assessment, the taxpayer may only object to the alterations and additions made to the original assessment.
 6. A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.
 7. The Commissioner shall consider and may allow an application under subsection (6) if –
 - a. the taxpayer was prevented from lodging the notice of objection within the period specified in subsection (2) because of an absence from Kenya, sickness or other reasonable cause; and
 - b. the taxpayer did not unreasonably delay in lodging the notice of objection.
 - 7A) The Commissioner shall notify the taxpayer of the decision made under subsection (7) within fourteen days after receipt of the application,
 8. Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner's decision shall be referred to as an "objection decision".
 9. The Commissioner shall notify in writing the taxpayer of the objection decision and shall take all necessary steps to give effect to the decision, including, in the case of an objection to an assessment, making an amended assessment.
 10. An objection decision shall include a statement of findings on the material facts and the reasons for the decision.
 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 shall be deemed to be allowed.
 12. 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.
25. The respondent submitted that under Section 51(4) of the *Tax Procedures Act*, as it was in force in 2020, no specific time limit was prescribed for issuing an invalidation notice. The respondent maintained



that the invalidation notice dated 24th September 2020 was issued lawfully and within its mandate. Upon reviewing the provisions of Section 51(4) of the *Tax Procedures Act*, which was later amended, it is evident that it provided as follows -

Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged. (Emphasis added).

26. The Black's Law Dictionary, 6th Edition (1990) p. 750 defines the term "immediately" as hereunder -
Without interval of time, without delay, straightway, or without any delay or lapse of time. The term is, however, a relative one, and is much used in statutes, contracts, and pleadings, and its meaning is determined by the context. It is not, like the word 'instantly,' so imperative as to exclude all discretion and delay, however slight, nor is it to be construed as synonymous with 'within a reasonable time,' if any other meaning is possible.
27. In our jurisdiction, the term "immediately" as used in contracts or statutes is ordinarily construed to mean "within a reasonable time", when taking into account the nature and circumstances of each case. In light of the provisions of Section 51(4A) & (11) of the current *Tax Procedures Act*, which require the Commissioner to issue an objection decision within sixty (60) days of receiving a notice of objection, it cannot be said that the invalidation notice dated 24th September 2020 was issued within a reasonable time. This is because it was issued approximately one hundred and twenty-three (123) days after the appellant had lodged its objection, and as such. the said Notice cannot be deemed to have complied with Section 51(4) of the Act as it then stood. This position is further buttressed by the subsequent amendment to Section 51(4) of the said Act, which now expressly requires that a Taxpayer be notified in writing of an invalidly lodged objection within fourteen (14) days.
28. From the foregoing, this Court is of the finding that the respondent's failure to notify the appellant within a reasonable time that its notice of objection was invalid amounted to an acknowledgment that the objection lodged against the amended assessment of 3rd April 2020 was valid. It is also noteworthy that apart from alleging about the existence of correspondence between the parties herein during the period preceding the invalidation notice of 24th September 2020, the respondent has not furnished any proof of such correspondence. Consequently, the respondent became obligated to issue an objection decision within sixty (60) days as required under Section 51(11) of the *Tax Procedures Act*, failure to which the appellant's objection was deemed as allowed in line with the provisions of Section 51(11) of the *Tax Procedures Act*.
29. Given the said circumstances, I find that the invalidation notice dated 24th September 2020 having been issued outside reasonable time, amounts to an objection decision rendered beyond the prescribed statutory timelines. Consequently, the appellant's objection dated 24th May 2020 stood allowed by operation of the law pursuant to Section 51(11) of the *Tax Procedures Act*.
30. In light of the foregoing, and given that the Tribunal had already determined that there was no valid Appeal before it, I am of the considered view that the Tribunal lacked any proper basis to assess the validity of the Agency Notices issued by the respondent or to uphold the amended assessment dated 3rd April 2020 together with the Agency Notices dated 9th December 2020 and 6th April 2021.
31. Consequently, and bearing in mind that the appellant's objection dated 24th May 2020 stood allowed by operation of the law, this Court finds that the Agency Notices issued on 9th December 2020 and 6th April 2021 were irregular and therefore not properly issued.
32. In the end, this Court finds that the Appeal herein is merited. It is allowed in the following terms –



- i. The instant Appeal is allowed;
- ii. The Tribunal's Judgment delivered on 24th May 2024 is hereby set aside;
- iii. The respondent's objection decision dated 24th September 2020 is hereby declared illegal, null and void;
- iv. The appellant's objection dated 24th May 2020 is hereby allowed under Section 51(11) of the [Tax Procedures Act](#); and
- v. Each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7TH DAY OF NOVEMBER 2025.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Faith Imbogo h/b for Mr. Odhiambo for appellant

Ms Nzomo for the respondent

Ms B. Wokabi – Court Assistant.

