



**Commissioner of Domestic Taxes v Loyalty Usenge Limited (Income Tax Appeal E193 of 2023)  
[2025] KEHC 17042 (KLR) (Commercial and Tax) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17042 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E193 OF 2023  
CM KARIUKI, J  
NOVEMBER 14, 2025**

**BETWEEN**

**COMMISSIONER OF DOMESTIC TAXES ..... APPELLANT**

**AND**

**LOYALTY USENGE LIMITED ..... RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

1. This appeal arises from the judgment of the Tax Appeals Tribunal delivered on October 6, 2023, in Tax Appeal No. 687 of 2022.
2. The Appellant (Commissioner of Domestic Taxes) conducted a tax review of the Respondent's 2021 returns and issued assessments on January 25, 2022. The Respondent filed notices of objection on February 24, 2022. The Commissioner requested further information and, after receiving some but not all of the requested documents, issued an objection decision dated May 30, 2022.
3. The Tribunal found that this decision was issued beyond the 60 days prescribed by Section 51(11)(b) of the [Tax Procedures Act](#), and accordingly set it aside. The Appellant now appeals to this Court.

**Appellant's Case:**

4. The Appellant's case, as set out in its written submissions dated May 7, 2025, was that the Tax Appeals Tribunal erred in law and in fact by misconstruing the provisions of Section 51(11)(b) of the [Tax Procedures Act](#), 2015, and by misapprehending the import of the words "any further information." The Appellant contended that the Respondent's notice of objection dated February 24, 2022, was not accompanied by all relevant supporting documents as required under Section 51(3) of the Act. It was the Appellant's position that for an objection to be validly lodged, the taxpayer must furnish all



documents in support of the grounds of objection and pay any undisputed tax. The Commissioner, upon receiving the objection, wrote to the Respondent on February 28, 2022, directing it to validate the objection by providing purchase invoices, sales invoices, monthly Z reports, and bank statements for the relevant period.

5. According to the Appellant, the Respondent only furnished some of the requested documents on March 23, 2022, but failed to provide the ETR Z reports, which were critical in determining whether the declared sales were gross or net of VAT. The Appellant argued that the email communication of April 7, 2022, from the Respondent, stating that it had already provided all the relevant information and that it used a Point-of-Sale system rather than an ETR machine, amounted to "further information" within the meaning of Section 51(11)(b) of the Act. Consequently, the sixty-day period within which to render the objection decision began to run from April 7, 2022.
6. The objection decision issued on May 30, 2022, was, therefore, in the Appellant's view, rendered within the statutory period and in compliance with Section 51(11) of the *Tax Procedures Act*. The Appellant further submitted that the Tribunal erred by computing the sixty days from March 23, 2022, and by disregarding the significance of the Respondent's April 7, 2022, communication, which was in itself information necessary to determine the objection. The Appellant therefore urged the Court to find that the Tribunal had misapplied the law and to set aside its judgment, declaring that the objection decision was validly issued within the time limit.

#### **Respondent's Case:**

7. In response, the Respondent, through its written submissions dated July 22, 2025, opposed the appeal in its entirety and supported the findings of the Tribunal. The Respondent argued that the appeal was incompetent because it was filed out of time, contrary to Section 79G of the *Civil Procedure Act*. It was submitted that the Tribunal's judgment was delivered on October 6, 2023, and that although the Appellant filed a notice of appeal on November 2, 2023, the Memorandum of Appeal dated November 24, 2023, was filed on November 27, 2023 - fifty-one days after the judgment - without leave of the Court.
8. The Respondent therefore maintained that no valid appeal lay before this Court, relying on the Supreme Court's decision in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, where the Court held that no appeal can be filed out of time without leave and that such a filing renders the document a nullity. On the merits, the Respondent submitted that the Tribunal correctly interpreted Section 51 (11)(b) of the *Tax Procedures Act* in holding that the sixty-day period begins to run from the date on which the Commissioner receives any further information requested from the taxpayer and not from the date of the request or from any subsequent correspondence.
9. The Respondent maintained that it had furnished all requested documents on March 23, 2022, and that no further information was supplied thereafter. It emphasized that the email of April 7, 2022, did not constitute "further information" as contemplated under the statute but was merely a clarification that all relevant records had already been submitted. On this basis, the Respondent argued that the Commissioner's objection decision of May 30, 2022, was issued beyond the statutory sixty-day period and was thus invalid. The Respondent urged the Court to uphold the Tribunal's reasoning that once the prescribed period lapsed, the objection was deemed allowed by operation of law. It further cited the decision in *Association of Retirement Benefits Schemes v Attorney General & Others* [2017] eKLR to support the principle that statutory provisions must be construed according to their plain and ordinary meaning. The Respondent therefore invited the Court to find that the appeal lacked merit, to dismiss it with costs, and to affirm the Tribunal's judgment delivered on October 6, 2023.



### Issues for Determination:

10. The Court identifies the following issues for determination:
  - i. Whether the appeal is properly before this Court; and
  - ii. Whether the Commissioner's objection decision dated May 30, 2022, was issued within the 60-day statutory period.

### Analysis and Determination:

11. The jurisdiction of this Court is provided in section 56(2) of the *Tax Procedures Act*, which states that an appeal to the High Court or to the Court of Appeal shall be on a question of law only. The Court of Appeal in *John Munuve Mati vs. Returning Officer Mwingi North Constituency & 2 others* [2018] eKLR settled what constitutes a question of law, positing that matters of law include the interpretation or construction of *the Constitution*, statutes, or regulations, and their application to a set of facts as established by the trial court.

### Whether the appeal is properly before this Court

12. It is common ground that the Tribunal's judgment was delivered on October 6 2023. Under Section 32(1) of the *Tax Appeals Tribunal Act*, an appeal to the High Court must be instituted within 30 days from the date of that judgment. The Appellant filed a notice of appeal on November 2, 2023, which is within the 30 days following October 6, 2023. Therefore, the notice of appeal was filed promptly. Although the Memorandum of Appeal was lodged on November 27, 2023 (some 51 days after the judgment), the notice of appeal itself was filed in time and in compliance with Section 32(1) of the *Tax Appeals Tribunal Act*.
13. In any event, in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission, Wilfred Rottich Lesan, Robert Siolei, Returning Officer, Bomet County, Kennedy Ochanyo, Wilfred Wainaina, Patrick Wanyama & Mark Manzo* [2013] KECA 113 (KLR), the Supreme Court reiterated that where the law prescribes a filing period, an appellant must seek extension if time lapses, and an appeal filed without leave is a nullity. Here, however, there was no delay in the notice of appeal; it was filed in time. The Appellant's compliance with the 30-day vesting period vested this Court with jurisdiction. In these circumstances, the Court finds that the appeal is properly before it.
14. Whether the Commissioner's objection decision dated May 30, 2022, was issued within the 60-day statutory period.

Section 51(11) of the *Tax Procedures Act* provides in part that;

“The Commissioner shall make the objection decision within sixty days from the date of receipt of - (a) the notice of objection; or (b) any further information the Commissioner may require from the taxpayer, failure to which the objection shall be deemed to be allowed.”

15. The question is when the 60 - day period begins to run under paragraph (b):

The Appellant contends that the 60 days began to run only on April 7, 2022, when the Respondent replied by email (stating it had "already shared all relevant information"). Thus, the May 30 decision was made within the time frame. The Respondent and the Tribunal interpreted Section 51(11)(b) to mean that the clock starts on the date any requested information is actually received from the taxpayer (here, documents provided on March 23, 2022), not from the date on which the Commissioner's request was made or replied to.



16. On these facts, Section 51(11) clearly states that the objection was deemed allowed by operation of law. As Mativo J held in *Equity Group Holdings Limited v Commissioner of Domestic Taxes* [2021] KEHC 25 (KLR) at paragraphs 52 and 53:

“Parliament, in its wisdom, deployed the word “shall” twice in section 51(11). The provision reads “The Commissioner shall make the objection decision within sixty days from the date of receipt of - (b) any further information the Commissioner may require from the taxpayer, failure to which the objection shall be deemed to be allowed. The classification of statutes as mandatory and directory helps analyze and solve the problem of the effect to be given to their directions.<sup>[28]</sup> There is a well-known distinction between cases where the legislature's directions are imperative and those where they are directory.<sup>[29]</sup> The real question in all such cases is whether a thing has been ordered by the legislature to be done, and what is the consequence if it is not done. The general rule is that an absolute enactment must be obeyed or fulfilled substantially. Some rules are vital and go to the root of the matter; they cannot be broken. Others are only directory, and a breach of them can be overlooked, provided there is substantial compliance.”

Applying these canons, the phrase “any further information the Commissioner may require” must be interpreted in context. Section 51(11)(b) plainly treats the receipt of actual information from the taxpayer as the trigger for the running of the 60 days. The words “from the date of receipt of... any further information” indicate that time starts when the Commissioner receives actual information or documentation that he had required.

17. The Tribunal correctly noted that the content of the Respondent's email of April 7, 2022, (advising that it had no further ETR Z reports to provide) did not itself constitute “information” that would reset the 60-day clock. In other words, an email stating “we have nothing more to submit” is not new substantive information about the transaction in dispute; it is merely a response to a request. The Appellant did not, in fact, receive any additional documentary information on April 7 – the only further documents provided were already received on March 23, 2022, as acknowledged by the Appellant. After that date, no new data was furnished. Strictly construed, Section 51(11)(b) contemplates the timeline running from receipt of new information, not from the taxpayer's general affirmation that no further records exist. The Tribunal's interpretation accords with this reading, and the Court finds it correct as a matter of plain statutory language.
18. Applying the foregoing interpretation, the timeline must be computed from the time the Commissioner received the required information. Here, the Respondent lodged its objection on February 24, 2022. Pursuant to Section 51(11)(a), the Commissioner was initially obliged to decide by April 23, 2022. However, the Commissioner invoked Section 51(11)(b) by requesting additional documents on February 28, 2022, to be furnished by March 24, 2022. The Respondent did send the requested documents (invoices, statements, etc.) on March 23, 2022. That date is when “further information” was actually received. The 60-day period thus began to run from March 23, 2022. Sixty days from March 23 would expire on May 22, 2022. The Commissioner's decision was issued on May 30, 2022 - eight days after the 60-day period had lapsed.
19. The Appellant's contention that the timeline did not start until April 7 (when it received the email reply) is unsustainable under the statute. As noted, the 7th April email did not present new data; it merely indicated that no further electronic reports were available. The Commissioner had already received all documents and was awaiting the Respondent's confirmation. That response, however, was not “information...required” in a substantive sense.



20. Therefore, even accepting the Respondent's 7<sup>th</sup> April email as a prompt, the timeline would still have commenced on the date the requested materials were received. Alternatively, if one were to regard the 7<sup>th</sup> April communication as the trigger, sixty days from April 7 would end on June 6, 2022, and the decision on May 30, 2022, would indeed fall within this period. However, the statute is not satisfied by that result, because it requires the clock to start upon receipt of the information. The Commissioner had already received the material on March 23, so the proper computation yields an expired deadline before May 30.
21. In sum, the Court finds no merit in the Appellant's interpretation. The Tribunal correctly construed Section 51(11)(b) and correctly calculated the running of time. The decision of May 30, 2022, was therefore issued outside the statutory 60-day period. By operation of Section 51(11), that decision is deemed invalid and the objection is deemed allowed. The Tribunal's decision to set aside the Commissioner's decision is upheld.

**Orders;**

22. The Court finds that the appeal was filed promptly and that this Court has jurisdiction. On the merits, the Court upholds the Tribunal's interpretation of Section 51(11)(b) of the *Tax Procedures Act* and its finding that the Commissioner's objection decision dated May 30, 2022, was issued after the 60-day period had elapsed. Thus, the Court makes orders that;
- i. The Commissioner's appeal is therefore dismissed. In consequence, the decision of May 30, 2022, remains set aside as ordered by the Tribunal.
  - ii. Each party shall bear its own costs of this appeal.

It is so ordered.

**DATED AT AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> OF NOVEMBER 2025.**

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**CHARLES KARIUKI**

**JUDGE**

