



Commissioner of Investigations and Enforcement v Sidoman Investments Limited (Income Tax Appeal E126 of 2024) [2025] KEHC 16918 (KLR) (Commercial and Tax) (14 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16918 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E126 OF 2024
CM KARIUKI, J
NOVEMBER 14, 2025**

**BETWEEN
COMMISSIONER OF INVESTIGATIONS AND ENFORCEMENT APPELLANT
AND
SIDOMAN INVESTMENTS LIMITED RESPONDENT**

JUDGMENT

1. This appeal arises from the judgment of the Tax Appeals Tribunal (the Tribunal) delivered on 2nd February 2024 in Tax Appeal No. 548 of 2022. The Appellant, being partially dissatisfied with the said judgment, lodged the present appeal to this Honourable Court pursuant to Section 53 of the [Tax Procedures Act](#) and Section 32(1) of the [Tax Appeals Tribunal Act](#).
2. The Respondent is a limited liability company whose main business activity is clearing, transport, and storage services.
3. The genesis of this dispute lies in investigations conducted by the Appellant into the Respondent's tax affairs for the period 2014 to 2019. Following these investigations, the Appellant issued a Notice of Tax Assessment dated 6th August 2021, demanding a total of Kshs. 607,805,388.00 for Corporation Tax, Value Added Tax (VAT), and Pay as You Earn (PAYE).
4. The Respondent objected to this assessment. The Appellant, vide an Objection Decision dated 15th April 2022, confirmed the assessment in its entirety. Aggrieved, the Respondent filed an appeal at the Tribunal.
5. The Tribunal, in its judgment, partially allowed the appeal. It set aside the Income Tax assessments for 2014 and 2015 and the VAT assessments for the period prior to September 2016, finding that these



assessments were issued outside the statutory five-year limitation period and that the Appellant had not established fraud, wilful neglect, or evasion to justify the extension. The Tribunal, however, upheld the assessments for the later periods.

6. The Appellant is now before this Court, challenging only the part of the Tribunal's decision that set aside the assessments for the earlier years.

Issues For Determination:

7. This Court has carefully considered the material before it. The following issues crystallize for determination:
 - i. Whether the Tax Appeals Tribunal erred in law and fact in holding that the Appellant did not raise the issue of willful neglect, evasion, or fraud to justify an assessment beyond the five-year statutory limitation period.
 - ii. Whether the Tax Appeals Tribunal erred in law and fact in finding that the income tax and VAT assessments for the periods prior to 31st December 2016 and September 2016, respectively, were time-barred.

Analysis And Determination:

8. I will now delve into each issue for determination, not forgetting that this Court derives its jurisdiction from section 56(2) of the *Tax Procedures Act*, which confines appeals to the High Court or the Court of Appeal to questions of law only. In *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others* [2018] e KLR, the Court of Appeal clarified the scope of a “question of law,” holding that it encompasses the interpretation or construction of *the Constitution*, statutes, or regulations, as well as their application to the facts as determined by the trial court. The interpretation of statutory time limits and the legal requirements to overcome them are quintessential questions of law.

Whether the Tax Appeals Tribunal erred in law and fact in holding that the Appellant did not raise the issue of willful neglect, evasion, or fraud to justify an assessment beyond the five-year statutory limitation period.

9. The legal framework for default assessments is set out in Section 29 of the *Tax Procedures Act*. Section 29(5) imposes a five-year time limit for issuing such assessments. However, Section 29(6) provides a crucial exception:

“Subsection (5) shall not apply in the case of gross or wilful neglect, evasion or fraud by a taxpayer.”

A similar exception exists for amended assessments under Section 31(4)(a) of the TPA.

10. The central dispute is who bears the burden of proving the existence of fraud, wilful neglect, or evasion to activate this exception.
11. The Appellant argues that once it alleges fraud and particularizes it, in this case, by pointing to the failure to file returns despite large bank deposits, the burden shifts to the taxpayer to disprove it, in line with the general principle in tax disputes that the burden is on the taxpayer to prove an assessment is incorrect.
12. This Court disagrees with this proposition in the context of Section 29(6). The exception for fraud is a jurisdictional gateway that the Commissioner must unlock to validly assess older periods. The principle



articulated in *Commissioner Investigation and Enforcement v Suma Health Products (K) Limited [2025] KEHC 5244 (KLR)*, which the Appellant heavily relies on, is instructive but must be read in its entirety. In that judgment, Rutto J. held:

35. “...All the Appellant needs to demonstrate before the Tribunal, which acts as a quasi-judicial body, is the presence of willful neglect or fraud that justifies the assessments made under Section 29(6) of the *Tax Procedures Act* within the requisite threshold for a civil dispute...
33. “...Thus, once the respondent raised the issue of limitation under section 29(6) of the Act, the appellant bears the burden of proving that the tax payer engaged in gross or willful neglect, evasion or fraud. It is expected that once the particulars are set out, the tax payer will respond to the same. As this will remain a contestation between the appellant and the taxpayer, it will then be up to the evaluating authority, in this case the Tax Appeals Tribunal to assess the evidence and make a determination as to whether the proviso applies...”
13. This reasoning is sound and aligns with the fundamental principle of evidence encapsulated in Section 107 of the *Evidence Act*: “he who alleges must prove.” The allegation of fraud is a serious one that, if accepted, deprives the taxpayer of the protection of a statutory time limit. It is therefore incumbent upon the Commissioner to not merely allege but to prove on a balance of probabilities, the existence of fraud, wilful neglect, or evasion.
14. In the present case, the Tribunal reviewed the record and found that the Appellant had not discharged this burden. It noted that the Appellant’s assertion of fraud in its internal documents was not backed by evidence presented to the Tribunal. The Appellant failed to provide, for instance, evidence that the bank deposits were indeed undeclared income as opposed to non-taxable receipts or transfers, especially in the context of the Respondent’s business model as a consolidator.
15. The Tribunal was correct. Merely stating in an investigation report that fraud “has been established” is a conclusion, not evidence. The Appellant needed to place before the Tribunal the factual basis for this conclusion. Its failure to do so justified the Tribunal’s finding that the issue of fraud had not been sufficiently raised or proven to warrant the application of Section 29(6).

Whether the Tax Appeals Tribunal erred in law and fact in finding that the income tax and VAT assessments for the periods prior to 31st December 2016 and September 2016, respectively, were time-barred.

16. Given the finding on the first issue, the resolution of this second issue flows logically. Section 29(5) of the TPA is a clear and peremptory provision. As the Tribunal rightly cited from *Partington vs. AG (1869)*, in fiscal legislation, one must adhere strictly to the letter of the law.
17. The Notice of Assessment was issued on 6th August 2021. Therefore, the default position was that assessments could not relate to reporting periods whose deadlines ended before 6th August 2016. The Tribunal correctly calculated that this meant:
 - Income Tax (filed annually): Assessments for periods ending 31st December 2016 and prior were time-barred.
 - VAT (filed monthly): Assessments for periods prior to September 2016 were time-barred.
18. Since the Appellant failed to prove fraud to displace this default position, the Tribunal was legally correct to set aside the assessments for income tax for 2014/2015 and for VAT for periods before September 2016.



Conclusion And Determination

19. In conclusion, this Court finds that the Tax Appeals Tribunal did not err in law. Its judgment was a meticulous application of the relevant provisions of the Tax Procedures Act. The Tribunal correctly identified that the burden was on the Appellant to prove fraud to extend the assessment period and correctly found that this burden was not discharged. Consequently, its decision to set aside the time-barred assessments was proper.

Final Orders

- a. The Appeal is hereby dismissed.
- b. The judgment of the Tax Appeals Tribunal is upheld.
- c. Each party shall bear its own costs of this appeal.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 14TH NOVEMBER, 2025.

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CHARLES KARIUKI
JUDGE

