



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**TAX APPEAL NO 38 OF 2025**

**IBANGUA INVESTMENTS CO. LIMITED .....**  
**APPELLANT**

**VERSUS**

**COMMISSIONER OF DOMESTIC TAXES .....**  
**RESPONDENT**

**JUDGMENT**

**1. BACKGROUND**

- i. The appellant is a limited liability company duly incorporated under the Companies Act of the laws of Kenya, and engaged in the business of distribution of beer and alcoholic spirits on behalf of Kenya Breweries lit and UDV Kenya Limited.*
- ii. The respondent is the principal officer appointed under section 13 of the Kenya Revenue*

*Authority Act, and mandated with the responsibility for the assessment, collection, receipt and accounting for all tax revenue as an agent of the Government of Kenya. The respondent is also mandated with the responsibility for the administration and enforcement of the statutes set out under the schedule to the said Act.*

- iii. The respondent conducted an audit on the appellant's tax affairs pursuant to an assessment Notice dated 8<sup>th</sup> December 2020 and thereafter issued additional assessment on 22<sup>nd</sup> June 2021 for Income Tax and vat totaling the sum of Kshs. 2,092,644 and Kshs. 97,384,343 respectively.*
- iv. The appellant lodged an Objection to the respondent's additional assessments on 22<sup>nd</sup> July 2021.*
- v. The respondent reviewed the appellant's Objection and issued its Objection Decision on 28<sup>th</sup> January 2022.*

*vi. Aggrieved by the respondent's said Objection Decision, the appellant filed its appeal with the Tribunal vide its Notice of Appeal dated and filed on 25<sup>th</sup> February 2022.*

2. On 20/1/2023 the Tribunal found that the objection decision dated 28/1/2022 was in breach of Section 51(11) of the Tax Procedures Act for being issued beyond the 60 days' timelines.
3. The Respondent appealed against that decision, to the High Court. The High Court agreed with the respondent allowed the appeal on 1/12/2023, and the matter was remitted to Tribunal to determine issue of objection.
4. An amended memorandum of appeal was filed on 15/10/2024, setting out the following grounds:
  - a) *That the respondent erred in law by rendering its Objection Decision on 28<sup>th</sup> January 2022 outside the mandatory prescribed statutory timeline of sixty (60) days from the date of receipt of the appellants Notice of Objection dated 22<sup>nd</sup> July 2021.*
  - b) *That the respondent's additional tax assessment of Kshs. 99,476,987 on VAT and Income Tax is*

*illegitimate and erroneous as sufficient information and explanation were provided before the assessment was made; and,*

*c) That the respondent erred in law and fact when it declined to consider the amended self-assessment filed by the appellant within the time limits as provided section 31 (4) (b) (1) of the TPA Cap 469B the Laws of Kenya.*

5. It was the appellant's position that the objection decision was made 150 days from date of receipt of objection by appellant, 97 days beyond statutory period provided for under Section 51 (4) of Tax Procedures Act.

6. That the appellant lodged objection notice on 22/7/2021 to the additional tax assessment of Kshs. 99,476,987 but the respondent issued the objection decision on 28/1/2022. - a whole 130 calendar days.

7. The Tribunal upon hearing the appeal framed 2 issues for determination.

*i. Whether the respondent's Objection Decision issued on 28<sup>th</sup> January 2022 against the appellant was validly issued; and,*

*ii. Whether the respondent's additional assessment for income Tax and VAT for the period 2017-2019 issued against the appellant was justified.*

8. The tribunal found in favour of respondent on both issues hence this appeal.

9. This appeal is on the following grounds;-

1) *That the Honourable Tribunal erred in fact and law in finding that the respondent Objection Decision made on 28<sup>th</sup> January 2022 was issued within the mandatory statutory timelines prescribed in Section 51 (11) of the Tax Procedures Act CAP 469B Laws of Kenya.*

2) *That the Honorable Tribunal erred in fact and law by making the determination that the 60-day mandatory timeline provided under Section 51 (11) of the Tax Procedures Act CAP 469b Laws of Kenya kicked in when the appellant submitted to the respondent its last bundle of requested documentation on 29<sup>th</sup> November 2021.*

3) *That the Honorable Tribunal erred in fact and law in finding that the appellant failed to discharge its*

*burden of proof under Section 30 of the tax appeals Tribunal Act CAP 469A Laws of Kenya.*

- 4) *That the Honorable Tribunal misapplied the law and facts by ignoring all material facts placed before it and based its judgment on a biased approach without due regard to the balance of scales of justice.*
- 5) *That the Honorable Tribunal erred in Law and fact by upholding the respondent's Objection Decision dated 28<sup>th</sup> January 2022.*

10. The appellant seeks that the appeal be allowed and the judgment of the tribunal of 31/1/2025 be set aside.

11. Parties filed written submissions.

12. The appellant set out 5 issues for determination: Whether the tribunal erred in facts and law in;

*i. Finding that the Respondent's objection decision made on 28/1/ issued within the mandatory statutory timelines prescribed by Section 51 (11) of the Tax Procedure Act Cap 469 B Laws of Kenya.*

*ii. Making the determination that the 60 days mandatory statutory timeline. Produced under*

*section 51(11) of the Tax Procedure Act Cap 469 B Laws of Kenya kicked in when the appellant submitted to the respondent its last bundle of requested documentation on 29/11/2021.*

- iii. Finding that the appellant had failed to discharge its branch of proof under Section 30 of the Tax Appeals Tribunal Act Cap 469 Laws of Kenya.*
- iv. Upholding the respondent's objection division of 28/1/2022. And whether the tribunal misapplied the facts and the law by ignoring all material facts placed before it and based its judgment on a biased approach without regard to the balance of the scales of justice.*

13. The respondent raised 2 issues for determination; -

- i. Whether the respondent's decision was issued within statutory timelines.*
- ii. Whether the appellant discharged its burden of proof on the additional assessments.*

14. I have carefully considered the record and the submissions.
15. In view of the appellate jurisdiction of this court limited under section 56 (2) of the Tax Procedure Act to questions of law - it is evident to me that the only issues for determination are on timelines and burden of proof that there was compliance with the law.
16. On timelines - it is not in dispute that the objection was lodged on 22/7/2021 and the applicable law was the 2021 version of the Tax Procedure Act.
17. Section 51(11) of the Tax Procedure Act, 2015 provides that - the commissioner shall make the objection decision within 60 days from the date of the receipt of;
- i. The notice of objection or*
  - ii. Any further information that the commissioner may require from the tax payer; failure from which the objection shall be allowed.*
18. The only contentious issue here is whether the respondent requested for any “further information” from the appellant - so as to extend the period of time for the objection decision to beyond 60 days.

19. It is submitted for the respondent that the last bundle of documents was submitted by the appellant on 29/ 11/ 2021 - and that, pushed to Section 51 (11) (b), the result being that the 60 days began to run from that day.
20. However, the appellant submits that the respondent never, at no time requested for any further documents from the appellant.
21. It is argued for the appellant that the Tribunal erroneously adopted the respondent's argument without interrogation of the statutory framework as required by ***Rongai Tiles & Sanitary Wares Ltd versus Commissioner of Domestic Taxes [2023] KEHC 18546*** where it was held that unless the commissioners had complied with section 51 (4) of the Tax Procedures Act , 60 days limit would run regardless of the completeness or perceived validity of the objection.
22. I have looked at the chronology of events set out by the Tax Appeals Tribunal and paragraph 52 of its judgement. It states

*Hence it is pertinent to establish the chronology of the activities from the time the objection notice was lodged to the time Objection Decision was issued.*

- i. It is not in dispute that the respondent issued the additional assessment on 24<sup>th</sup> June 2021.*
- ii. the appellant lodged its Objection Notice on 22<sup>nd</sup> July 2021.*
- iii. The respondent made a request for further documents on 12<sup>th</sup> August 2021, requesting that the same be submitted by 19<sup>th</sup> August 2021;*
- iv. On 18<sup>th</sup> August 2021, the appellant requested for extension of time by a further 60 days enable to avail the requested documentation, reason being that one of the shareholders who was also the Chief Executive had passed on;*
- v. On 18<sup>th</sup> August 2021 the respondent acknowledged the appellant's request and advised that feedback on its request would be given in by 23<sup>rd</sup> August 2021 (i.e., in 5 days' time).*
- vi. On 24<sup>th</sup> August 2021 the respondent wrote to the appellant confirming that it had allowed them an*

*extension of 30 days to avail the requested documents from 24<sup>th</sup> August 2021, and noted that it was required to conclude the Objection review within the set timelines in line with Section 512 of the TPA;*

- vii. On 24<sup>th</sup> September 2021, the respondent again wrote to the appellant and informed them that the extended period to submit documents had lapsed. It further requested the appellant to provide; sales invoices and receipts, bank statements, audited financial statements, and credit notes; as its Objection Notice was still not valid. The request for provision of documents was further extended to 27<sup>th</sup> September 2021, failure to which the Objection would be invalidated.*
- viii. On 27<sup>th</sup> September 2021 the appellant wrote to the respondent and provided a bundle of the requested bank statements.*
- ix. On 14<sup>th</sup> October 2021 and 15<sup>th</sup> October 2021, the appellant wrote to the respondent providing the requested bank statements.*

- x. *On 29<sup>th</sup> November 2021 the appellant again wrote to the respondent and provided the requested audited financial statements for the years 2017,2018 and 2019, and indicated that the audited statements for the years 2016 and 2020 would be provided in due course;*
- xi. *On 2<sup>nd</sup> December 2021 the respondent wrote to the appellant and requested that the remainder of the documents being the 2016 & 2020 financial statements and the general ledger be provided by 3<sup>rd</sup> December 2021; and,*
- xii. *The respondent sent other reminders on 11<sup>th</sup> January 2022 and 14<sup>th</sup> January 2022 and advised that it will proceed to issue the Objection Decision based on the information provided.*

23. Section 51(4) of the Tribunal Procedure Act states that where the respondent has determined that a notice of objection lodged by a tax payer has not been validly lodged, the respondent will immediately notify the taxpayer in writing that the objection has not been validly lodged.

24. Further Section 51 (11) provides that the respondent shall make the objection decision within 60 days, from the date of receipt.

*(a) of the objection OR*

*(b) Any further information the commissioner may require from the tax payer; failure to which the objection shall be deemed to be allowed.*

25. The appellant's position is that no decision was made and communicated to the appellant as required by Section 51 (4).

26. From the chronology of events - there is nothing on record to show that the respondent made the determination required by Section 51 (4) as to whether the objection notice by the appellant was not validly lodged. I did not find that evidence in the record of appeal, any communication from the respondent pursuant to Section 51 (4) to the effect that the respondent had found the objection filed to be invalid. That would mean that as far as that provision of the law is concerned the respondent received a valid notice of objection and therefore the objection decision came long after the 60 days.

27. It is not disputed that upon receipt of the objection the respondent sought further documents from the appellant. Section 51 (11) does not provide for the respondent to receive the notice and then proceed to seek for documents and then make the decision - it is either the respondent has received the objection, or it has sought for further documents.
28. In this case - an objection was received. No evidence has been placed before the court to show that the appellant was informed that the objection was invalid. Without that notification , the only available determination is that the objection as received was valid and time began to run for the respondent at the time of receipt.
29. The failure to make that determination meant that the notice of objection was valid - and having failed to make the decision within the requisite 60 days - the objection was deemed to have been allowed by dint of law.
30. In the circumstances the request for documents, and the subsequent provision of the same-was over taken by the event of the failure by the respondent to communicate to the appellant that the notice of the objection was invalid.

31. Having made that finding- it is my view that the TAT was in error in finding that the respondent complied with the law with regard to timelines.
32. Having found that notice of objection was deemed as allowed then the appeal is merited. The decision of the Tribunal is set aside.
33. The appeal is allowed with costs.

**Dated, signed and delivered via CTS on this 9<sup>th</sup>  
January 2026**

**Mumbua T Matheka  
Judge**