



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILLIMANI COMMERCIAL & TAX DIVISION**  
**CUSTOMS TAX APPEAL NO. E035 OF 2025**

**EVEREADY SECURITY  
GUARDS LIMITED.....  
APPELLANT**

**VERSUS**

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

**(Being an appeal from the judgment of the Tax Appeals  
Tribunal, delivered on 31<sup>st</sup> January 2025 in Tax Appeals  
Tribunal Appeal Case No E068 of 2024)**

**ARISING FROM**

**EVEREADY SECURITY  
GUARDS LIMITED.....  
.....APPLICANT**

**VERSUS**

## JUDGEMENT

### **A. Introduction**

1. This appeal arises from the judgment/decree of the Tax Appeals Tribunal delivered in Tax Tribunal Appeal No E068 of 2024, dated 31<sup>st</sup> January 2025, where the said tribunal held that the Appellant had made general averments and statements without solid evidence to back their claim that most of their employees ( watchmen) were earning salaries below the PAYE threshold and thus had failed to sufficiently discharge the burden of proof and in view of the foregoing held that the respondent was justified in confirming the tax assessment for the year 2021 in the sum of **Kshs.21,269,640.00**. Their Appeal was thus found to lack merit and was dismissed
2. Being dissatisfied with the said decision, the Appellant filed their memorandum of appeal where they raised the following grounds of appeal, namely that;
  - a) ***THAT the Honourable tribunal erred in fact and law in making the finding that no evidence of the impugned email***

**objection notice dated 8<sup>th</sup> September 2023 was tendered and that its existence amounted to a mere averment by the Applicant.**

- b) THAT the Honourable tribunal erred in fact and in law in making the determination that the respondent had not acknowledged the existence of the impugned email objection notice dated 8<sup>th</sup> September 2023 and therefore it was non-existent.**
- c) THAT the Honourable tribunal erred in fact and law in making the finding that the Appellant's valid objection notice was the one lodged on 23<sup>rd</sup> October 2023 and not the email objection notice lodged on 8<sup>th</sup> September 2023**
- d) THAT the Honourable tribunal erred in fact and law by shifting the burden of proof to the Appellant when it had supplied the Respondent with sufficient supporting documents and explanations as to the variances on PAYE declared for the period 2021 and the payroll payments for the period 2021.**
- e) THAT the Honourable tribunal erred in fact and law by holding that the Appellant had failed to discharge its burden of proof by not rendering sufficient and relevant evidence to prove that the respondent's PAYE assessment**

**of Kshs.21,269,640/= included employees who were below the PAYE threshold.**

**f) THAT the honourable 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.**

**g) THAT the Honourable tribunal erred in law and fact in failing to consider the evidence and submissions tendered by the Appellant.**

**h) THAT the Honourable tribunal erred in law and fact by upholding the respondent's objection decision dated 14<sup>th</sup> December 2023.**

3. The Appellant thus prayed that this Appeal be allowed, and the judgment of the Tax Appeals tribunal dated 31<sup>st</sup> January 2025, be set aside in its entirety. They also urged the court to grant any further relief as the Honourable court may deem fit and just to grant

## **B. Pleadings**

### **(i) The Appellants case**

4. In their statement of facts, the Appellant stated that they were a private limited liability company who were in the business of providing security services for

their clients within the Republic of Kenya. On 17<sup>th</sup> August 2022, the respondent did issue them with a letter/notice of intention to verify tax declarations under **Section 59 of the Tax procedure Act 2015** and following receipt of the said notice, they did respond vide their letter dated 28<sup>th</sup> October 2022 requesting to be granted forty five (45) days to provide the documents requested for, including; general ledger, Sales and Purchase invoices, Bank statements and Payroll for the years 2019, 2020 and 2021.

5. Later, on 9<sup>th</sup> December 2022, and 20<sup>th</sup> January 2023 the respondent did send them a reminder still seeking the aforestated documents, which they eventually delivered on 27<sup>th</sup> January 2023. After carrying out their assessment on the Appellants declared tax returns of the years 2019 - 2021, the respondent vide their assessment notice dated 4<sup>th</sup> August 2023 but delivered by email on 9<sup>th</sup> August 2023 did determine that the Appellant had a tax liability of **Kshs.21,269.640.25/=** demanding immediate settlement of the same.

6. Pursuant to the said notice the Appellant lodged their objection together with their supporting documents through email on 8<sup>th</sup> September 2023 as the

respondent had not uploaded their additional tax assessment on their I-Tax platform by the said date and time for filing the said Appeal would have expired on 9<sup>th</sup> September 2023.

**7.** Eventually the additional tax assessment was lodged on the I-Tax portal on 26<sup>th</sup> October 2023 and the appellant once again lodged its objection on the said portal attaching their initial objection dated 8<sup>th</sup> September 2023, which was acknowledged by the respondent through their email dated 31<sup>st</sup> October 2023, and by the said email, they were also granted seven (7) days to comply with provisions of **Section 51(3) of the Tax Procedure Act 2015**. To this they informed the respondent that they had filed their documents but out of abundance of caution resent the earlier submitted supporting documents for the taxman's consideration.

**8.** The respondent subsequently did render their objection decision dated 14<sup>th</sup> December 2023 dismissing the objection filed and the Appellant did contend that the said objection decision was made 99 days after lodging its objection in contravention of **Section 51(11) of the Tax procedures Act 2015** and therefore by operation of the law their objection

of 8<sup>th</sup> September 2023 was deemed unopposed by operation of the law.

- 9.** Secondly it was also the Appellants contention that the additional tax assessment for the period 2021 was illegitimate and erroneous as sufficient explanation had been provided to the respondent explaining their accounts and salary payroll to show that their employees pay was below the PAYE threshold but the same had been inexplicably ignored by the respondent to their detriment.
- 10.** The Appellant thus urged the tribunal to find that their Appeal had merit and urged them to set aside the respondents objection decision dated 14<sup>th</sup> December 2023.

## **(ii) The Response**

- 11.** The respondent stated that they conducted a review of the Appellants declared tax returns for the tax period 2019 - 2021 which review showed inconsistencies regarding reconciliations relating to bank charges, benevolent deducted twice, double claims by directors, Sacco charges and amounts below PAYE threshold. Further the payroll did reveal that some employees did not have personal/staff numbers, no identity card nor did the

bank statement show details of payments made to the said employees. However, the amounts relating to NSSF and Pension were well supported and formed part of the employment costs claimed in the income tax for the period under review.

- 12.** Consequently, following their conclusion of the review exercise they did issue their assessment notice summing up the amount due to be **Kshs.21,612,991.00** being 25% of PAYE for the year 2020 and 30% PAYE for the year 2021. The appellant had objected to the said assessment vide their letter dated 23<sup>rd</sup> October 2023, which they subsequently uploaded on the I-Tax portal on 26<sup>th</sup> October 2023. Further after reviewing the objection filed they had informed the appellant vide their email dated 31<sup>st</sup> October 2023 that their objection was invalid to which the Appellant had responded vide their email dated 17<sup>th</sup> November 2023 referring to the objection of 23<sup>rd</sup> October 2023 stating that they were compliant with the provisions of **Section 51(3) of the Tax Procedures Act.**
- 13.** The respondent further noted that through various correspondences, they had requested the appellant to validate their objection since they had

abandoned their previous objection dated 8<sup>th</sup> September 2023 for being inconsistent with Gazette Notice No 12048 of 19<sup>th</sup> November 2018. Consequently, they had issued their objection decision dated 14<sup>th</sup> December 2023 upholding all the demanded tax and it was clear that the said decision related to the objection dated 23<sup>rd</sup> October 2023 and indeed was determined within the 60 days timelines prescribed under **Section 51(11) of the Tax Procedures Act**.

14. The respondent thus urged the tribunal to find that the Appeal filed had no merit and proceed to dismiss the same.

### **C. Submissions**

#### **(i) The Appellants Submissions**

15. The Appellant filed their submissions dated 13<sup>th</sup> May 2025, where they urged this court to find that the tribunal had erred in coming to the conclusion that the only valid objection filed, was the one lodged on 23<sup>rd</sup> October 2023 via the I-Tax system, and not the one lodged by email on 8<sup>th</sup> September 2023, which position was legally and factually incorrect as the tribunal had disregarded the uncontested fact that their objection earlier

lodged via email on 8<sup>th</sup> September 2023, was the one filed within the 30 days statutory period as allowed under **Section 51(2) of the Tax Procedures Act, 2015.**

**16.** Further this finding was also contradictory given that in the same judgment the tribunal had acknowledged that an objection could be filed in whatever form and thus, their objection sent by email to the respondent had to be deemed to be valid. It was also to be noted that the respondent had by then not uploaded the assessment notice on the I-Tax platform and had sent the same to them through email and thus they too could not be faulted for emailing their objection to avoid being statutorily locked out. Reliance was placed on the case of **Republic Vs Kenya Revenue Authority, Ex parte Stanley Mombo Amuti {2018} KEHC 9745 (KLR)**, which emphasised that access to justice was a fundamental right, which could only be limited in a manner that could pass the constitutional muster.

**17.** Finally on this issue, it was also critical to note that the respondent never, at any point disputed the existence of the objection dated 8<sup>th</sup> September

2033 in any of the pleadings filed. Its objection decision dated 14<sup>th</sup> December 2023 only referred to ongoing engagement with the Appellant regarding PAYE variances, which would have been impossible if their objection was “non-existent”. Thus, contrary to their contention, the respondent could not be heard to say that their decision was based on the objection lodged on 23<sup>rd</sup> October 2023 as by law the said would have been lodged out of time.

- 18.** The tribunal had thus failed in its duty to evaluate all the documentary evidence before it and had unjustly placed a higher evidentiary threshold than is warranted and in effect erroneously condoned the respondents violation of statutory timelines which in this case resulted in a decision dated 14<sup>th</sup> December 2023, being rendered 99 days late, contrary to the provisions of ***Section 51(11) of the Tax Procedures Act*** that deemed an objection allowed if no decision is rendered within 60 days of receipt of the said objection. Reliance was placed in the case of ***Equity Group limited Vs Commissioner of Domestic Taxes ( Civil Appeal E069 & E025 of 2020),{2021} KEHC***

**25 (KLR)**, Which cited with approval the case of **Republic Vs Commissioner of Customs Services, Ex parte Unilever Kenya Limited.**

**19.** Regarding the actual assessment of the evidence presented to prove that they were tax compliant, the Appellant once again faulted the tribunal for holding that the assessment of ***Kshs.21,269,640/=*** was accurate yet the same was based on mechanical reconciliation of the total payroll expenses versus PAYE declared, and misclassification of the employees pay grade without granular analysis of their evidence which confirmed the fact that most of their employees earned below the PAYE threshold. The tribunal had also failed to give reasons for rejecting the evidence filed in support of their case which then rendered the entire judgment to be null and void. See **Republic Vs Kenya Revenue Authority, Ex parte Uniliver Kenya Ltd (2020) Eklr.**

**20.** The Appellant thus urged this court to find that the Appeal filed had merit and be pleased to set aside the tribunals objection decision dated 14<sup>th</sup> December 2023.

**(ii) The Respondents Written Submissions**

- 21.** The respondent relied on their submissions dated 8<sup>th</sup> May 2025 in opposing this Appeal and clarified that the Appellant did lodge its objection on 23<sup>rd</sup> October 2023, and further uploaded the same on the I-Tax portal on 26<sup>th</sup> October 2023 which they did consider and rendered their objection decision on 14<sup>th</sup> October 2023 which was within the 60 day period as required in law.
- 22.** The Appellants objection of 8<sup>th</sup> September 2023 was invalid on grounds that it had been lodged/directed to the assessing commissioner DTD-Medium Taxpayers office instead of being directed to the independent review of objections (IRO) office domiciled under Commissioner responsible for tax dispute resolution in violated the Gazette Notice No 12048 of 19<sup>th</sup> November 2018 and after review of the same by the parties, the initial objection was abandoned and a fresh objection dated 23<sup>rd</sup> October 2023 lodged. The appellant was therefore estopped by conduct and could not be allowed to rely on the initial objection already abandoned.
- 23.** The Appellants assertion therefore that the proper objection was the one dated 8<sup>th</sup> September 2023

and not the one dated 23<sup>rd</sup> October 2023 must be taken with a pinch of salt as there would have been no need to subsequently lodge the second objection as they did if the first objection was not flawed. The respondent also urged the court to note that in all subsequent correspondences exchanged between the parties, the objection referred to was that dated 23<sup>rd</sup> October 2023 as it was the valid objection that was lodged and was correctly reviewed by the objection decision subsequently issued on 14<sup>th</sup> December 2023.

- 24.** As to whether the assessment done was justified, it was the respondents contention that the burden of providing documents to prove that the assessment done was inaccurate fell on the appellant and they had failed to do so, which issue was captured in the objection decision which gave a summary of the documents that were not adduced. The appellant had thus failed to discharge the burden of proof and made their appeal on this ground to be unmerited. Reliance was placed on **Commissioner of Domestic Taxes Vs Trical and hard limited ( Tax Appeal No E146 of 2020),{2022} KEHC 9927 (KLR) &**

**Commissioner of Domestic services Vs Galaxy Tools Limited (2021) Eklr.**

**25.** The respondent urged that this court to upholds the decision of the tribunal and do find that it was issued in conformity with provisions of the law. The appeal was thus not merited, and they prayed that the same be dismissed for being devoid of merit.

**D. Analysis and Determination**

**26.** A first appeal is a valuable right of the parties and, unless restricted by law, the whole case therein is open for rehearing both on the question of fact and law. The judgment of the appellate court must therefore reflect its conscious application of mind and record the findings supported by reasons, on all issues arising, along with the contentions put forth and pressed by the parties for decision of the appellate court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the appellate court had discharged the duty expected of it. **See**

**Santosh Hazari Vs Purushottam Tiwari  
( Deceased) by L.Rs (2001) 3 SCC 179.**

27. A first appellate court is also the final court of fact, and litigants are entitled to full, fair, independent consideration of the evidence. The parties have a right to be heard both on issues of fact and issues of law, and the court must address itself to all issues raised and give reasons thereof. While considering the entire scope of **section 78 of the Civil Procedure Act**, a court of first appeal can appreciate the entire evidence and come to a different conclusion. See **Kurian Chacko Vs Varkey Joseph AIR 1969 Kerala 316.**
28. I have considered the entire record of appeal, all the pleadings filed, evidence presented therein, and further also considered the parties' respective submissions. The two issues that arise for determination are whether.
- a) The respondent's objection decision dated 14<sup>th</sup> December 2023 was rendered within the statutory timelines**
  - b) Whether the respondent's assessment were justified.**

29. The respondent vide their letter of 17<sup>th</sup> August 2022 addressed to the appellant did issue a notice of intention to verify tax declaration under **Section 59 of the Tax Procedure Act 2015** and after several exchange of correspondences did vide their letter dated 4<sup>th</sup> August 2023 but received by the Appellant via email on 9<sup>th</sup> August 2023 did issue their assessment demanding **Kshs.21,269,640/=** as additional tax from the Appellant.
30. Being dissatisfied by the said assessment, the appellant did lodge their objection to the additional tax assessment via email on 8<sup>th</sup> September 2023, attaching thereto their supporting documents and justified their decision on grounds that time to lodge the same was running out yet the respondent had not uploaded their decision on the I-Tax portal. Eventually on 26<sup>th</sup> October 2023 once the assessment was uploaded on the I-Tax portal they once again uploaded their objection based on same documents earlier lodged in September 2023.
31. It was thus the Appellants contention that the objection decision rendered on 14<sup>th</sup> December

2023 was made 99 days after they had lodged their initial objection and the said decision thus contravened the clear provisions of **Section 51(11) of the Tax Procedure Act 2015** which stipulated that such a decision should have been made within 60 days. A such their objection dated 8<sup>th</sup> September 2023 should have been allowed by operation of law.

32. In response to this contention, the respondent averred that the valid objection decision was the one dated 23<sup>rd</sup> October 2023 and uploaded on the I-Tax system on 26<sup>th</sup> October 2023. The commissioner had subsequently made his decision on 14<sup>th</sup> December 2023 which was within the statutory 60 days allowed in law. They further clarified that the objection filed on 8<sup>th</sup> September 2023 was invalid on ground that it contravened the directives given under Gazette notice No 12048 of 19<sup>th</sup> November 2018, which directed that the appeals should be filed to the IRO unit domiciled under the Commissioner, legal services & Board coordination.
33. The appellant in acknowledgment of their error did file a proper objection on 23<sup>rd</sup> October 2023, and

the same was lodged on the I-Tax portal on 26<sup>th</sup> October 2023. Subsequent correspondences between the parties confirmed it was the valid objection being referred to and thus the decision rendered on 14<sup>th</sup> December 2023 reviewing the said objection had to be valid. The respondent further posited that if indeed the objection earlier filed in September was valid, there would have been no need for the Appellant to file the subsequent objection of October 2023 and they had done so with the explicit knowledge that the initial one filed was invalid and were estopped by their conduct from alleging otherwise.

34. **Section 51(2) of the Tax Procedure Act, 2015** expressly provides that a taxpayer dissatisfied by an assessment decision made by the tax body will have 30 days to file their objection to the same. The respondent assessment decision dated 4<sup>th</sup> August 2023 was communicated to the appellant via email on 9<sup>th</sup> August 2023 and since the same was not uploaded on the I-Tax portal and to avoid a situation where they would be caught flat footed the Appellant deemed it fit to file their objection

dated 8<sup>th</sup> September 2023 through email, which fact is not contested.

35. The respondent's contention that the said objection is invalid for breach of Gazette notice No 12048 of 19<sup>th</sup> November 2018 was discounted by the Tax Tribunal and no cross Appeal was filed against that holding. Therefore, the respondent's contention to this effect was invalid and holds no water. That being so the subsequent objection lodged by email dated 23<sup>rd</sup> October 2023 correctly addressed to IRO unit did not invalidate the objection initially lodged on 8<sup>th</sup> September 2023 nor was it lodged within time to supersede the initial objection lodged.
36. Finally, there was no consideration of the objection dated 8<sup>th</sup> September 2023 and a finding made that it was invalid and thus stuck out, before leave to file a new objection granted. It is this clear that the objection lodged on 23<sup>rd</sup> October 2023 and on the I-tax portal on 26<sup>th</sup> October 2023 were predicated on the initial objection properly lodged within time on 8<sup>th</sup> September 2023 and thus the objection decision subsequently rendered was made out of time in contravention of **Section**

***51(11) of the Tax Procedure Act 2015.*** A such the Appellants objection dated 8<sup>th</sup> September 2023 is to be deemed allowed by operation of the law. See ***Macfoy vs United Africa Company [1961] 3 All ER 1169 & Equity Group limited Vs Commissioner of Domestic Taxes ( Civil Appeal E069 & E025 of 2020), {2021} KEHC 25 (KLR)***, Which cited with approval the case of ***Republic Vs Commissioner of Customs Services, Ex parte Unilever Kenya Limited.***

37. Having so established it is needless to go into the merits of the second issue raised in this Appeal

#### **E DISPOSITION**

38. This Upshot is that this Appeal has merit. The objection decision of the Tribunal dated 14<sup>th</sup> December 2023 is therefore set aside and the objection dated 8<sup>th</sup> September 2023 is upheld.

39. Each party will bear their own costs of this Appeal and the proceedings before the Tribunal.

40. It is so ordered.

**Dated, signed and delivered** virtually at **Marsabit** this **11<sup>th</sup>** day of **February 2026**.

**FRANCIS RAYOLA OLEL**

**JUDGE**

Delivered on the virtual platform, Team this **11<sup>th</sup>** day  
of **February ,2026.**

**In the presence of: -**

N/A .....Appellant

N/A .....Respondent

Mr. Jarso .....Court Assistant