

**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**TAX APPEAL NO. E322 OF 2024**

**BETWEEN**

**PARLIAMENTARY SERVICE COMMISSION.....**  
**APPELLANT**

**AND**

**KENYA REVENUE**  
**AUTHORITY.....RESPONDENT**

*(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 22<sup>nd</sup> November, 2024 in Tax Appeal No. E399 of 2023)*

**JUDGMENT**

**Introduction and Background**

1. By a Memorandum of Appeal dated 11<sup>th</sup> December 2024, the Appellant (PSC) has filed an appeal against the Tax Appeals Tribunal's ("the Tribunal") decision dated 22<sup>nd</sup> November 2024 which upheld the Respondent's (KRA) demand for income tax on motor vehicle reimbursements provided to Members of Parliament (MPs). PSC is seeking to have the Court set aside the Tribunal's

judgment and KRA's decision, and allow their appeal, including costs. The background of the dispute is that in May 2023, KRA demanded tax on motor vehicle reimbursements given to MPs, citing **section 3(2)(a)(ii)** of the ***Income Tax Act(Chapter 470 of the Laws of Kenya)***. The Salaries and Remuneration Commission (SRC) had gazetted that MPs would receive Motor Vehicle Reimbursements of Kshs.7,550,000.00/= each to purchase vehicles for official duties, payable once per parliamentary term. KRA calculated a total tax due of Kshs.1,045,886,400.00/= from the MPs including penalties and interest.

2. PSC objected to this assessment, arguing that MPs are not employees but elected representatives, and that motor vehicle reimbursement is a non-taxable reimbursement for expenses incurred in performing constitutional duties, not a taxable gain or profit. KRA rejected PSC's objection on 29<sup>th</sup> May 2023, leading to the appeal before Tribunal, which was subsequently dismissed on 22<sup>nd</sup> November 2024, hence the present appeal. KRA responded to the appeal through its Statement of Facts dated 30<sup>th</sup> January 2025 and the parties also argued their positions by way of written and oral submissions presented by their respective counsel and I will be making relevant references to the same in my analysis and determination below.

## **Analysis and Determination**

3. In determining this appeal, I am cognizant of the fact that as per **section 56(2)** of the ***Tax Procedures Act(Chapter 469B of the Laws of Kenya)*** (“the **TPA**”) that *“An appeal to the High Court or to the Court of Appeal shall be on a question of law only”*.

This means that an appeal limited to matters of law does not permit the appellate court to substitute the Tribunal’s decision with its own conclusions based on its own analysis and appreciation of the facts (See **John Munuve Mati v Returning Officer Mwingi North Constituency, Independent Electoral and Boundaries Commission & Paul Musyimi Nzengu [2018] KEHC 8738 (KLR)**]

4. In the Tribunal’s judgment, it stated that the only issue falling for its determination was whether KRA was justified to charge tax on the motor vehicle reimbursements. The Tribunal noted that the Gazette Notice by the SRC dated 27<sup>th</sup> July 2022 recognized the Speakers of Parliament and MPs as state officers and that MPs are subject to employment terms under the PSC just like other state officers in other Commissions such as judges are under the Judicial Service Commission. It was the Tribunal’s view that MPs are employees of the PSC and that it was not controverted that MPS

register the motor vehicles in their personal names and further retain the motor vehicles after the expiry of the parliamentary term with the option of disposing the same and retaining the proceeds of the disposal. This, the Tribunal held, amounts to a direct gain to each of the state officer. As such, the Tribunal found that the motor vehicle reimbursement to MPs are gains from employment that is subject to tax as provided for under **section 3(2)** of the ***Income Tax Act*** as read together with **section 5(2)** and that KRA was justified to charge tax on motor vehicle reimbursement.

5. In its appeal and submissions, PSC urges the court to determine the following issues:
- i. Whether the Tribunal failed to adhere to the principle of *stare decisis*
  - ii. Whether KRA's decision complies with the principle of strict interpretation of tax legislation.
  - iii. Whether the motor vehicle reimbursement falls within the provisions of **section 5 (2)** of the ***Income Tax Act***.
  - iv. Whether wholly and exclusively reimbursable expenditure where personal or private consequences is incidental, is a gain or profit.

v. Whether KRA's breached PSC's right to Fair Administrative Action.

6. On *stare decisis*, PSC argues that the Tribunal was bound by this Court's judgment in **County Assemblies Forum v Commissioner Kenya Revenue Authority & 2 others; Salaries and Remuneration Commission (Interested Party) [2023] KEHC 23740 (KLR)**. In that case, this Court held that motor vehicle reimbursements to members of County Assemblies were not allowances and thus not subject to income tax under **sections 3 and 5** of the ***Income Tax Act***. PSC submits that the facts and issues in this case are identical to the present appeal and the Court's decision on the exhaustive nature of **section 5(2)(a)** of the ***Income Tax Act*** is binding. PSC acknowledges that the Court of Appeal in **Kenya Revenue Authority v County Assemblies Forum & 2 others; Salaries Remuneration Commission (Interested Party) [2024] KECA 923 (KLR)** stayed this decision in a separate application, but argues that the Court of Appeal did not overturn the Court's judgment on the interpretation of the law, merely finding that the appeal raised issues for determination.
7. On strict interpretation of tax legislation, PSC contends that tax laws must be strictly construed, and a subject cannot be taxed

unless the taxing statute unambiguously imposes the tax. PSC submits that the SRC clearly stipulated the motor vehicle amount as a "reimbursement" for official duties and **section 5(2)** of the ***Income Tax Act*** does not explicitly include motor vehicle reimbursements in the list of taxable gains or profits. The PSC cites several cases to support the principle that ambiguities in tax law should be resolved in favor of the taxpayer. PSC also argues that MPs are not "employees" within the meaning of **section 5(2B)** of the ***Income Tax Act***, and therefore tax cannot be imposed on them under this provision.

8. On motor vehicle reimbursement under **section 5(2)** of the ***Income Tax Act***, PSC defines reimbursement as "to pay back" or "to indemnify," arguing that the motor vehicle reimbursement is a repayment for money spent by MPs to purchase a vehicle for official parliamentary duties, not income. They refer to **section 5(2)(ii)** of the ***Income Tax Act***, which states that reimbursements for amounts "wholly and exclusively expended in the production of income from the employment or services rendered" should be excluded from the calculation of gains or profits. PSC emphasizes that the reimbursements' sole purpose is to enable MPs to perform their constitutional duties, such as commuting between their constituencies and Parliament and they

also point out that the reimbursement is limited to the amount actually spent on the vehicle, up to a maximum.

9. On wholly and exclusively reimbursable expenditure (incidental personal benefit), PSC submits that any personal or private consequence of using the reimbursed vehicle is purely incidental to its primary purpose of enabling MPs to undertake official duties. Therefore, the reimbursement should not be considered a gain or profit. On breach of fair administrative action, PSC argues that KRA's decision violates their legitimate expectation that the motor vehicle reimbursement falls within the exclusion provided by **section 5(2)(a)(ii)** of the **Income Tax Act** and they also contend that the tax assessment is arbitrary because it assumes all MPs utilized the maximum reimbursement allocation, without accounting for the actual amounts spent. PSC highlights that other countries, such as the United Kingdom, Canada, Australia, and South Africa, generally treat business expenses and reimbursements for official duties as non-taxable or tax-deductible and in conclusion, PSC seeks the Court to set aside the judgment of the Tribunal and quash KRA's tax demand of Kshs.1,045,886,400.00/= arguing that the assessment is based on errors of law and fact, and that the motor vehicle reimbursement is not a taxable gain or profit. PSC also seeks costs for the appeal.

10. In response, KRA maintains that motor vehicle reimbursements provided to MPs are subject to income tax as it considers the reimbursement as a taxable benefit under the ***Income Tax Act***. KRA asserts that its previous communications and actions indicate that such reimbursements, even for County Assembly Members, are taxable benefits under **sections 3 and 5** of the ***Income Tax Act***. KRA argues that the ***Income Tax Act*** provides the framework for taxing all income, and that any amounts received by individuals, including MPs, that constitute a "gain or profit" are subject to tax unless specifically exempted. That while the ***Finance Act, 2023***, amended **section 5(2)** of the ***Income Tax Act*** to exempt mileage claims based on standard rates for official duties, KRA's position on lump-sum motor vehicle reimbursements for purchase of vehicles has been that it is taxable.
11. KRA states that it aims to ensure consistent application of tax laws across all individuals and entities, including state officers and that it followed due process in issuing the tax assessment, engaging with PSC's objection, and proceeding through the Tribunal when the objection was rejected. Thus, KRA's position, as inferred from related tax disputes, is that allowances and benefits, including those for motor vehicles, are generally taxable unless specifically excluded by law

and it emphasizes their role in upholding tax compliance and ensuring that all taxable income is brought within the tax net.

12. In its submissions, KRA has outlined the following issues for the Court's determination:

- i. Whether the Tribunal was bound by a High Court judgment in light of a stay order from a superior court.
- ii. Whether the cash benefit given to MPs and Senators constitutes taxable gains and/or profits.
- iii. Whether the KRA was justified in assessing PAYE on the motor vehicle reimbursement.
- iv. Whether PSC discharged the burden of proof
- v. Whether KRA breached PSC's legitimate expectations.

13. On the binding nature of this court judgment and stay order, KRA acknowledges that this Court in ***County Assemblies Forum v Commissioner Kenya Revenue Authority & 2 others(supra)***, on 12<sup>th</sup> October 2023, ruled that motor vehicle reimbursements to County Assembly Members were not taxable. However, KRA states that it sought a stay of this judgment, and the Court of Appeal, on 26<sup>th</sup> July 2024, granted a stay of execution of this court's judgment in ***Kenya Revenue Authority v County Assemblies Forum & 2 others(supra)*** and that the stay order suspended the enforcement of the Court's judgment, meaning that

the finding on the non-taxability of car grants was effectively stayed and therefore not binding on the Tribunal.

14. In respect of taxability of motor vehicle reimbursement as gains/profits, KRA highlights that the SRC gazetted a motor vehicle reimbursement of Kshs.7,550,000.00/= for MPs to purchase a vehicle for official duties, payable once per parliamentary term. That MPs are allowed to choose their cars, with the amount capped at Kshs.7,550,000.00/= and they register the vehicles in their own names, retaining full control and ownership during their term and after expiry. They also receive this benefit upon re-election. KRA submits that while "reimburse" means to restore an equivalent for something paid, it argues that if the payment leaves a person in a "better position" financially, it amounts to a gain. KRA asserts that the motor vehicle reimbursement constitutes a gain because MPs retain control and ownership of the vehicle, which they did not have before, thus improving their financial and/or net worth position. KRA refers to **section 3(2)(a)(ii)** of the ***Income Tax Act***, which states that income chargeable to tax includes "*gains or profits from...any employment or services rendered.*" KRA thus asserts that any gain from employment, such as this motor vehicle grant, is taxable.

15. In justifying its assessment, KRA emphasizes **Article 210** of the Constitution states that no tax may be imposed or waived except as provided by legislation and that income is only exempt from tax if explicitly stated in legislation, and the **First Schedule** of the **Income Tax Act** does not list motor vehicle reimbursement as an exempted income. That **Article 210(3)** of the Constitution prohibits excluding a state officer from tax payment due to their office or nature of work. KRA cites various authorities to support the principle that tax exemption is a privilege, not a right, and must be legislated, reported, and justified. Therefore, that with no legislation exempting the motor vehicle reimbursement from tax, it remains subject to tax.
16. KRA also points to **Rule 4** of the **Income Tax (PAYE) Rules**, which requires employers (like PSC) to deduct tax from emoluments paid to employees liable for tax. That since PSC failed to deduct PAYE from these reimbursements, KRA submits that PSC committed an offense. KRA maintains that **section 5(2)(a)(ii)** of the **Income Tax Act** broadly includes "*any wages, salary, leave pay, sick pay... or other allowance received in respect of employment or services rendered*" as taxable gains or profits, unless solely for reimbursement of amounts wholly and exclusively expended in the production of income. KRA views the motor

vehicle reimbursement as "other allowances" or "any amount so received in respect of employment or services rendered" and therefore taxable.

17. KRA submits that it is mandated to issue default or additional assessments when tax returns are not filed or to ensure correct tax payment, using its "best judgment" on available information, which it claims it did. As such, KRA prays that the Court upholds the judgment by the Tribunal and dismiss the appeal with costs being awarded to it.
18. I have gone through the record and the parties' submissions that I have highlighted above. As stated, this court's duty is tied to determining whether the Tribunal arrived at the correct legal position that the motor vehicle reimbursements to MPs are taxable under the **Income Tax Act** as they constitute a gain or benefit. I do not think it is in dispute that **section 3(2)** outlines that income tax is chargeable on all income accrued in or derived from Kenya, including benefits, whether they are received directly or indirectly and that a taxable benefit refers to any income, gain, or advantage accruing to an individual, whether in money or otherwise, that is derived from their employment, services rendered, or other specified sources, and is subject to income tax. **Section 5(2)(b)** goes on to define "*gains or profits*" to include "...

*any amount so received in respect of employment or services rendered”*

19. PSC stated that **section 5(2)** of the ***Income Tax Act*** does not explicitly include motor vehicle reimbursements in the list of taxable gains or profits, however, KRA views the reimbursement as "other allowances" or "any amount so received in respect of employment or services rendered" and therefore taxable. PSC has also argued that MPs are not "employees" within the meaning of **section 5(2B)** of the ***Income Tax Act***, and therefore tax cannot be imposed on them under this provision. PSC's argument that MPs are not employees is not an idle one because PAYE, which is what KRA is demanding from PSC, is strictly applicable based on an employer-employee relationship as **section 37(1)** of the ***Income Tax Act*** refers to, "*An employer paying emoluments to an employee...*" in respect of PAYE (Also see **China Road & Bridge Corporation v Commissioner of Domestic Taxes [2021] KEHC 12589 (KLR)**]

20. The Tribunal held that MPs are subject to employment terms under the PSC and as such, they are employees of the Commission. **Section 2** of the ***Income Tax Act*** defines an "employer" to include "*any resident person responsible for the payment of, or on account of, any emoluments to any employee, and any agent,*

*manager or other representative so responsible in Kenya on behalf of any non-resident employer*". The Tribunal also noted that as per the Gazette Notice by SRC, MPs are recognized as state officers. As per **Article 230(4)** of the Constitution, the *"The powers and functions of the Salaries and Remuneration Commission shall be to —(a) set and regularly review the remuneration and benefits of all State officers..."* I find that this constitutional provision negates the Tribunal's finding that MPs are *"subject to employment terms by the Parliamentary Service Commission"*. The correct position is that employment terms of MPs in respect of their remuneration and benefits are set and reviewed by the SRC and not PSC. In any case, I would agree that it is the PSC that manages their remuneration and benefits such as the motor vehicle reimbursements, but this does not classify them as employees.

21. However, whereas MPs do not have an employer-employee relationship with PSC in the traditional sense, it is not lost to me that state officers are "employees" of the Kenyan people in the constitutional sense and that the MPs derive the motor vehicle reimbursement benefit from public funds. I can agree that the reimbursement is intended to facilitate MPs in carrying out their official duties, such as constituency visits and parliamentary functions and that if the vehicle is used exclusively or primarily for

official purposes, the reimbursement is generally not considered a taxable benefit under PAYE. However, I note that PSC did not challenge KRA's contention that MPs are allowed to choose their cars, with the amount capped at Kshs.7,550,000.00/= and they register the vehicles in their own names, retaining full control and ownership during their term and after expiry and that they also receive this benefit upon re-election. The MPs can also dispose of these vehicles and retain proceeds of the same and I agree with the Tribunal that this in itself constitutes a direct gain. I therefore cannot fault the Tribunal's conclusion that such a gain subject to tax under **section 3(2)** of the **Income Tax Act** and that since PSC conceded that the motor vehicles could be used for personal use other than official use, such a cash benefit is taxable.

22. On the application of the decision in **County Assemblies Forum v Commissioner Kenya Revenue Authority & 2 others(supra)** under the principle of *stare decisis*, I am inclined to agree with KRA that since this decision had been stayed by the Court of Appeal in **Kenya Revenue Authority v County Assemblies Forum & 2 others(supra)** that decision could not be relied upon as binding precedent by the Tribunal and that the stay indicated that the decision's legal effect had been paused.

The Tribunal was therefore not bound to apply this decision in its judgment.

23. In the end, it is my finding that the Tribunal did not err in its conclusion that KRA was justified to demand PAYE on the motor vehicle reimbursements to MPs.

### **Conclusion and Disposition**

24. In the upshot, the Appellant's appeal is dismissed but with no order as to costs

**DATED SIGNED and DELIVERED virtually at NAIROBI this  
19<sup>TH</sup> DAY OF MARCH 2026**

.....  
**J.W.W. MONGARE**  
**JUDGE**

### **IN THE PRESENCE OF**

1. Ms. Jara holding brief for Ms. Thanji for the Appellant.
2. Ms. Nyaringita for the Respondent.
3. Amos - Court Assistant