Achievo Limited v Commissioner, Legal Services & Board Coordination (KRA) (Civil Appeal (Application) E188 of 2025) [2026] KEHC 5319 (KLR) (Commercial and Tax) (10 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5319 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

CIVIL APPEAL (APPLICATION) E188 OF 2025

MA OTIENO, J

APRIL 10, 2026

BETWEEN

ACHIEVO LIMITED ..... APPLICANT

AND

THE COMMISSIONER, LEGAL SERVICES & BOARD COORDINATION (KRA ..... RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 16th July 2025 filed by Achievo Limited, the Applicant herein, against the Commissioner of Legal Services & Board Coordination, the Respondent, seeking leave to file an appeal out of time against the judgment of the Tax Appeals Tribunal delivered on 2nd May 2025, stay of execution, and consequential reliefs.

2. The application is brought pursuant to section 32(1) of the *Tax Appeals Tribunal Act*, 2013, section 53 of the *Tax Procedures Act*, and is supported by the affidavit of Peter Mukuha Kago, sworn on 16th July 2025. The Applicant contends that the delay in filing the appeal was occasioned by its bona fide pursuit of the statutory review mechanism before the Tribunal, and that the intended appeal raises substantial questions of law warranting determination by this Court.

3. The Respondent opposed the application through a replying affidavit sworn on 29 July 2025, by Ms. Georgina Kimeu. The Respondent's principal objection is that the Applicant, having elected to pursue and exhaust a review before the Tribunal, forfeited the right to appeal against the Tribunal's original judgment.

4. The Respondent further asserts that the application does not meet the legal threshold for enlargement of time and amounts to an abuse of the Court process. It was further the Respondent's case that the

Applicant is improperly seeking to introduce new evidence (bank statements) through the appellate process.

5. The Application was canvassed by way of written submissions. The Applicant filed submissions dated 22nd August 2025, whilst the Respondent filed submissions dated 13 October 2025.

Analysis and Determination

6. The Court has considered the application, the affidavits on record, the rival submissions by counsel, and the applicable law. The Court identifies the following two issues for determination:

    i. Whether the Court has jurisdiction to entertain the application; and

    ii. Whether the Applicant has satisfied the threshold for enlargement of time to file the appeal.

Whether the Court has Jurisdiction to deal with the present Application

7. The Respondent's principal objection is that the Applicant, having unsuccessfully pursued a review before the Tax Appeals Tribunal, is barred from appealing against the Tribunal's judgment.

8. The Respondent's objection is premised on the proposition that once the Applicant elected to pursue a review before the Tax Appeals Tribunal, it irrevocably lost the right to appeal against the Tribunal's judgment. With respect, that proposition cannot be upheld in the context of the statutory tax appellate framework.

9. It is settled law that jurisdiction flows from *the Constitution* and statute – see, for example, the Supreme Court decision in Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 Others, SC Application No. 2 of 2011; [2012] eKLR. In tax matters, the appellate jurisdiction of the High Court is expressly conferred by Parliament under Section 32(1) of the *Tax Appeals Tribunal Act* and Section 53 of the *Tax Procedures Act*, which grant a right of appeal to this Court on matters of law from decisions of the Tribunal.

10. The Respondent relied heavily on authorities such as Gerald Kithu Muchanje v Catherine Muthoni Ngare & another [2020] eKLR, Madowo v Oluja & another [2023] KEHC 1205 (KLR), and Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Ltd & 2 Others [2020] eKLR. This Court has carefully considered those decisions. There is no doubt that the decisions emphasize that a party should not be permitted to "have a second bite at the cherry" by sequentially invoking both remedies.

11. However, that principle is not absolute and must be applied with regard to the nature of the proceedings, the statutory right of appeal under Section 32(1) of the *Tax Appeals Tribunal Act* and Section 53 of the *Tax Procedures Act*, and the constitutional imperative to facilitate access to justice and determination of disputes on the merits.

12. Further, while the authorities cited by the Respondent rest squarely on Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, which regulate review and appeal within the general civil litigation framework, they do not address, and were not decided within, the context of tax appeals under the *Tax Appeals Tribunal Act*, which constitutes a self-contained and specialised statutory scheme.

13. As the Court of Appeal stated in Republic v Karisa Chengo & 2 Others [2017] eKLR, jurisdiction must always be examined within the context of the legal regime creating the forum and the dispute. Here, the rules governing appeals from the decision of the Tribunal to this Court are specifically provided for under the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015 ("the Rules").

There is no provision in those rules that bars a party from appealing to this Court, even in cases where review proceedings had been undertaken before the Tribunal.

14. The absence of an express statutory bar is dispositive. It would be impermissible for the Court to import limitations from the *Civil Procedure Act* into a specialised tax statute where Parliament deliberately omitted them.

15. Rule 20 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015, expressly recognizes the primacy of the Rules in tax appeals proceedings, and permits the application of the Civil Procedure Rules (to tax appeals), only to the extent that they are not consistent with the Rules.

16. This approach is consistent with the interpretive principle stated in Republic v Commissioner of Domestic Taxes ex parte Barclays Bank of Kenya Ltd [2012] eKLR, where the High Court held that tax statutes must be applied strictly and courts must refrain from introducing additional conditions not expressly enacted.

17. It is also the principle affirmed in numerous judicial decisions, including the Court of Appeal decision in Mount Kenya Bottlers Ltd & 3 others v Attorney General & 3 others [2019] eKLR, where the Court stated that:

> "The above principles apply to general interpretation of statutes. However, when it comes to interpretation of tax legislation, the statute must be looked at using slightly different lenses. With regard to tax legislation, the language imposing the tax must receive a strict construction. Judge Rowlett in his decision in Cape Brandy Syndicate v I.R. Commissioners [1921]1KB(cited by the appellants), expressed the common law position in this area when he stated;
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> > '...in a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used'...." [Emphasis added].

18. The Court is persuaded that a review before the Tax Appeals Tribunal, as set under Rule 19 of the Tax Appeals Tribunal (Procedure) Rules, 2015 (Legal Notice 227 of 2015), serves a limited corrective function and is not an appellate substitute. Treating an unsuccessful review as extinguishing a statutory right of appeal, absent an express legislative command, would be elevating procedural doctrine above statutory text.

19. It is material to note that in this case, the Applicant's review application before the Tribunal did not culminate in a substantive re-determination of the tax dispute. The review application was dismissed, leaving the Tribunal's original judgment intact. The intended appeal raises questions of law arising from that judgment, including statutory interpretation of tax legislation. Such questions fall squarely within this Court's appellate mandate.

20. The Court is persuaded that the reasoning of the Court of Appeal in African Airlines International Ltd v Eastern & Southern African Trade & Development Bank (PTA Bank) [2003] eKLR, where the Court held that the filing of a review does not, of itself, extinguish the right of appeal provided the appeal is directed at a legally appealable decision, though predates the Civil Procedure Rules, 2010, remains relevant, especially in contexts where the governing statute does not expressly prohibit an appeal after review.

21. Accordingly, this Court is not persuaded that it is jurisdictionally barred from entertaining the present application.

Whether the Applicant has satisfied the threshold for enlargement of time to file the appeal

22. Having found that jurisdiction exists, the Court turns to whether the Applicant has met the threshold for extension of time. Rule 3 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015 ("the Rules") provides that an appellant shall, within thirty days, after the date of service of a notice of appeal under section 32(1).

23. Rule 4 provides for the extension of time specified under Rule 3, where the Court, on application, is satisfied that

> "owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant."

24. In Commissioner of Investigations & Enforcement v Ahmed [2021] KEHC 10 (KLR), Majanja J, while allowing the Commissioner's application for extension of time under Rule 4, stated that:

> "Under Rule 4 of the Rules, the court must be satisfied that there is reasonable cause to grant the extension of time. In this case, the Commissioner filed the Notice of Appeal within time. It has explained that that reason it filed the Memorandum and Record of Appeal late was because of the illness by its counsel and that it mistook the date on the ground that date affixed on the receipt stamp was 16th June 2021. This is supported by the evidence and is a reasonable explanation for the delay of 3 days in filing the appeal. While the Commissioner did not produce evidence of it counsel's illness, I am willing to give it the benefit of doubt given that every effort was made to file the appeal and when the misstate was realised, the application for condonation was filed in short order. Lastly, I do not think that the Commissioner should be punished the mistake or inadvertence of its counsel on record.
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> This is case where the Commissioner should be allowed to exercise its statutory right of appeal hence any prejudice that would be occasioned on the Respondent would be assuaged by an order for costs. The Record of Appeal which contains the Memorandum of Appeal has now been filed and served."

25. It is well settled that the power to extend time is discretionary, though such discretion must be exercised judiciously and on sound legal principles. The Court of Appeal in Thuita Mwangi v Kenya Airways Ltd [2003] eKLR articulated the guiding factors to include: the length of delay, the reason for the delay, the arguability of the intended appeal, the degree of prejudice to the respondent, and the wider interests of justice.

26. Similarly, in First American Bank of Kenya Ltd v Gulab P Shah & 2 Others [2002] 1 EA 65, the court emphasized that the discretion is intended to avoid injustice or hardship resulting from accident, inadvertence or excusable error, but not to assist a party who has deliberately sought to obstruct or delay the course of justice.

27. Guided by the foregoing principles, the Court now turns to consider whether the Applicant has satisfied the threshold.

28. On the length of delay, the impugned ruling of the Tax Appeals Tribunal was delivered on 27th June 2025, while the present application was filed on 16th July 2025, a period of approximately 16 days. In

the Court's view, such a period is neither inordinate nor indicative of indolence. The delay herein is minimal and weighs in favour of the Applicant.

29. On the arguability of the appeal, the Court is not required at this interlocutory stage to determine the merits of the intended appeal. It suffices that the appeal raises bona fide questions of law.

30. From the draft memorandum of appeal, the central issue identified by the Applicant concerns the proper interpretation and application of Section 13(5) of the *Value Added Tax Act*, specifically whether staff cost reimbursements constitute taxable supplies.

31. That question, in the Court's view, is neither idle nor frivolous. It raises a substantive point of tax law with potential implications beyond the parties, touching on the correct characterization of reimbursements within the VAT regime. The intended appeal is therefore arguable.

32. This approach accords with Athuman Nusura Juma v Afwa Mohamed Ramadhan [2016] eKLR, where the Court of Appeal held that an arguable appeal is one that merits consideration, not one that must succeed.

33. Regarding possible prejudice to the Respondent, the Respondent contends that the grant of leave would delay the enforcement of a lawful tax assessment. However, it is trite that mere delay, without more, does not constitute prejudice.

34. The Respondent, being a statutory body charged with revenue collection, can be adequately compensated by an award of costs should the appeal ultimately fail.

35. Conversely, refusal to extend time would permanently shut out the Applicant from appellate scrutiny, a consequence far more prejudicial. As stated in Mwangi v Kenya Airways Ltd [2003] KLR 486, the discretion to extend time exists precisely to prevent injustice.

36. Finally, public interest militates in favour of granting the extension. The dispute involves the interpretation of Section 13(5) of the *Value Added Tax Act*, and therefore, transcends the immediate interests of the parties and raises broader questions regarding the administration of VAT, particularly the treatment of reimbursements under the statute.

37. In such circumstances, the Court is enjoined to lean towards sustaining, rather than extinguishing a litigant's right to be heard on appeal.

38. The Respondent's objection regarding documents not forming part of the Tribunal record does not justify refusal of leave to appeal. The admissibility of such material is a procedural matter capable of determination through directions, striking-out applications, or limitation of the record.

39. In Abdirahman Abdi v Safi Petroleum Products Ltd & 6 others [2011] KECA 183 (KLR), the Court of Appeal had the following to say regarding the public interest in having disputes heard on merits:

> " In the days long gone, when the court never hesitated to strike out a notice of appeal or even an appeal if it was shown that it had been lodged out of time regardless of the length of delay. The enactment of sections 3A and 3B of the *Appellate Jurisdiction Act*, Cap 9 Laws of Kenya, and later, Article 159(2)(d) of *the Constitution* of Kenya, 2010, changed the position. The former provisions introduced the overriding objective in civil litigation in which the court is mandated to consider aspects like the delay likely to be occasioned, the cost and prejudice to the parties should the court strike out the offending document. In short the court has to weigh one thing against another for the benefit of the wider interests of justice before coming to a decision one way or the other. Article 159 (2)(d) of *the Constitution* makes it abundantly clear that the court has to do justice between the parties without

undue regard to technicalities of procedure. That is not however to say that procedural improprieties are to be ignored altogether. The court has to weigh the prejudice that is likely to be suffered by the innocent party and weigh it against the prejudice to be suffered by the offending party if the court strikes out its document. The court in that regard exercises judicial discretion." [emphasis added].

40. The upshot of the foregoing is that the Court is satisfied that the Applicant has demonstrated sufficient cause for enlargement of time and that denying the application would result in disproportionate injustice.

41. On the question of stay, given that the intended appeal raises arguable points of law and that enforcement of the Tribunal's decision may render the appeal nugatory, it is in the interests of justice to preserve the subject matter pending the hearing and determination of the appeal.

42. In the result, the Court finds that the application is merited. Accordingly, the Court makes the following orders:

    i. Leave is hereby granted to the Applicant to file an appeal out of time against the judgment of the Tax Appeals Tribunal delivered on 2nd May 2025.

    ii. The draft Memorandum of Appeal annexed to the application is deemed as duly filed and served upon payment of the requisite court fees.

    iii. There shall be a stay of execution of the Tribunal's judgment pending the hearing and determination of the appeal.

    iv. The Applicant shall file and serve the Record of Appeal within fourteen (14) days from the date hereof.

43. Costs of the application shall abide the outcome of the appeal.

44. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBITHIS 10TH DAY OF APRIL 2026

HON. MR. JUSTICE MOSES ADO

JUDGE OF THE HIGH COURT

In the presence of: -

C/A – Moses

Ms. Anaisa h/b for Mubea ..... for the Applicant/taxpayer

Nyapara ..... for the Respondent/Commissioner