

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
INCOME TAX APPEAL NO. E244 OF 2024

COMMISSIONER OF DOMESTIC TAXES.....APPELLANT

VERSUS

**SHREE CUTCHI LEVA PATEL SAMAJ.....
RESPONDENT**

(Being an appeal against the Judgment of the Tax Appeal Tribunal delivered on 1st August 2024 in TAT No. E007 of 2024)

JUDGMENT

1. This appeal arises from the decision of the Tax Appeals Tribunal delivered on 1st August 2024 in Tax Appeal No. E077 of 2024, in which the Tribunal allowed the Respondent's appeal, set aside the Appellant's decision declining a tax exemption, and directed the Appellant to issue a tax exemption certificate within sixty (60) days.
2. The Respondent is an institution previously granted tax exemption as a trust established for the advancement of education. The exemption certificate issued on 27th January 2014 expired after five (5) years, prompting an application for renewal on 18th September 2018.
3. The Appellant rejected that application through a decision dated 15th December 2023, on the basis that the Respondent had not met the statutory requirements for exemption under

Paragraph 10 of Part 1 of the First Schedule to the Income Tax Act.

4. Aggrieved by that decision, the Respondent lodged an appeal before the Tribunal, which was allowed, leading to the present appeal instituted by way of a Memorandum of Appeal dated 20th September 2024, raising the following grounds:

- i. That the Honourable Tribunal erred in law and fact in finding that it has jurisdiction to hear and determine the matter.*
- ii. That the Honourable Tribunal erred in law and fact by finding that the Respondent's application was deemed allowed by operation of the law. The Tribunal misapplied the law in importing the provisions of Section 51 (11) of the Tax Procedures Act to First Schedule Part 1 of Paragraph 10 of the Income Tax Act.*
- iii. That the Honourable Tribunal erred in law and fact by finding that the Respondent proved that it is of a public character established solely for purposes of relief of poverty or distress of public, or for advancement of religion or education, whereas the Respondent's constitution creates it as a society with the intent to promote the welfare of members.*
- iv. That the Honourable Tribunal erred in law and fact in law and fact in its finding that First Schedule Part 1 of Paragraph 10 of the Income Tax Act does not prescribe the manner in which the pillars ought to*

be implemented, whereas the Respondent did not submit evidence of charitable activities and programs undertaken by the institution.

- v. That the Honourable Tribunal erred in law and fact by failing to analyze the actual operations and activities carried out by the Respondent which ought to align with the charitable objectives and purposes prescribed by law.*
- vi. That the Honourable Tribunal erred in law and fact in ignoring the cardinal rule on burden of proof in its determination that the Respondent expended its income exclusively in Kenya and for the benefit of residents in Kenya when they failed to submit the required detailed expenditure report based on their bank transactions but instead submitted evidence belonging to a different entity, Shree Cutchi Leva Patel Samaj Trust.*
- vii. That the Honourable Tribunal erred in law and fact by failing to consider the threshold of “solely” and “exclusively” provided under First Schedule Part 1 of Paragraph 10 of the Income Tax Act.*
- viii. That the Honourable Tribunal misapplied the law and facts and therefore arrived at the wrong decision in setting aside the Appellant’s decision.*
- ix. That the Honourable Tribunal erred in law and fact in failing to consider the Appellant’s case on merit in its finding.*

5. The Appellant's case is anchored on the proposition that the Tax Appeals Tribunal misapprehended both the law and the facts in setting aside its decision declining the Respondent's application for a tax exemption certificate. It is contended that the Tribunal erroneously assumed jurisdiction and further misapplied the provisions of Section 51(11) of the Tax Procedures Act to a process governed exclusively by Paragraph 10 of Part 1 of the First Schedule to the Income Tax Act.
6. The Appellant submits that a tax exemption is not automatic but is subject to strict statutory conditions, namely that the institution must be established solely for charitable purposes and that its income must be applied exclusively to such purposes. It is further argued that the Respondent failed to furnish sufficient documentary evidence to demonstrate compliance with those requirements, despite being accorded multiple opportunities to do so.
7. In addition, the Appellant maintains that the decision dated 15th December 2023 constituted a valid administrative determination made within the confines of the law, and that the Tribunal erred in treating the matter as though it were governed by the objection decision framework under the Tax Procedures Act. It is thus the Appellant's position that the Tribunal effectively substituted its own discretion for that of the Commissioner without a legal basis.
8. On the other hand, the Respondent supports the decision of the Tribunal and contends that the refusal to grant the

exemption certificate was both unlawful and procedurally unfair. It is submitted that the decision constituted a “tax decision” within the meaning of the Tax Procedures Act and was therefore amenable to challenge before the Tribunal.

9. The Respondent further submits that the Appellant failed to render its decision within the statutory timelines, thereby triggering the operation of Section 51(11) of the Tax Procedures Act, under which the objection is deemed to have been allowed. It is argued that, by parity of reasoning, the Respondent’s application for exemption ought to have been treated as allowed upon lapse of the prescribed period.
10. The Respondent also places reliance on the principle of strict interpretation of tax statutes, as articulated in **Cape Brandy Syndicate v Inland Revenue Commissioners [1920] 1 KB 64** and adopted in **Republic v Commissioner of Domestic Taxes ex parte Barclays Bank of Kenya Ltd [2012] eKLR**, to argue that where the statutory conditions are met, the Commissioner has no discretion to deny exemption.
11. It is further submitted that the Respondent qualifies as a charitable institution within the meaning of Paragraph 10 of the First Schedule to the Income Tax Act, and that the Tribunal correctly found that the Appellant’s refusal was not supported by evidence or law.
12. In addition, the Respondent contends that the Tribunal was entitled to intervene where the Appellant failed to exercise its statutory mandate properly, and that the order

directing issuance of the exemption certificate was justified in the circumstances.

13. The Appellant, in reply, reiterates that the Respondent's reliance on Section 51(11) is misplaced, as the exemption process is not an objection proceeding within the meaning of the Tax Procedures Act. It further argues that the Respondent cannot rely on procedural arguments to circumvent the substantive statutory requirements governing tax exemption.

Analysis and determination

14. The Court has carefully considered the respective submissions by the Appellant and the Respondent, together with the statutory framework and authorities relied upon. The following issues arise for determination.

- i. Whether the tribunal has jurisdiction;*
- ii. Whether the provisions of Section 51(11) of the Tax Procedures Act, are applicable; and*
- iii. Whether the Respondent met the statutory threshold for exemption.*

Whether the Tribunal has jurisdiction

15. Jurisdiction is foundational and without it, a court or tribunal must down its tools. This principle was authoritatively stated in **Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd, (1989) KLR 1.**
16. The Appellant's contention is that the decision declining exemption does not constitute an objection decision and is

therefore not amenable to appeal before the Tribunal. The Respondent, conversely, maintains that the refusal directly affected its tax liability and thus qualifies as a tax decision within the statutory framework.

17. The jurisdiction of the Tax Appeals Tribunal is anchored under Section 12 of the Tax Appeals Tribunal Act, which provides:

“A person who disputes the decision of the Commissioner on any matter arising under the provisions of any tax law may, subject to the provisions of the relevant tax law, upon giving notice in writing to the Commissioner, appeal to the Tribunal.”

18. A plain and purposive reading of the foregoing provision reveals that the Tribunal’s jurisdiction extends to disputes arising from decisions of the Commissioner on any matter under a tax law. The phrase “any matter” is deliberately broad and admits of an expansive interpretation, so long as the impugned decision bears on rights or obligations created under a tax statute.

19. In **Republic v Commissioner of Domestic Taxes Large Taxpayer’s Office Ex Parte Barclays Bank of Kenya Ltd [2017] KEHC 9113 (KLR)**, the Court underscored that while tax statutes are to be strictly construed, decisions affecting tax liability must nonetheless conform to the statutory framework and remain amenable to

challenge within the dispute resolution mechanisms provided by law.

20. In the present case, the refusal to grant a tax exemption is not a neutral administrative act. It is a substantive determination with direct legal consequences, the effect of which is to subject the Respondent to taxation from which it would otherwise be relieved.

21. It is trite that public authorities must exercise their statutory powers diligently, fairly, and in accordance with the law. In **Doody v The Home Secretary of State [1993] 1 All ER 151** it was held that:

“Where an Act of Parliament confers administrative power there is a presumption that it will be exercised in a manner which is fair.”

22. Further, a taxpayer is entitled to challenge the exercise of statutory power where it is demonstrated that such power has not been exercised in accordance with the law. See **Re Preston [1985] 1 A.C. 835**, page 836 paragraphs B and C where it was held that:

“a taxpayer could challenge a decision taken by the commissioners in exercising their statutory powers and duties if he could show that they had failed to discharge their statutory duty towards him or that they had abused their powers...”

23. In view of the foregoing, the refusal to grant a tax exemption - being a determination that directly affects the

Respondent's tax liability and legal position under the **Income Tax Act** - is properly amenable to challenge.

24. In the circumstances, I am persuaded that the impugned decision falls within the ambit of a "tax decision" for purposes of Section 12 of the Tax Appeals Tribunal Act. Accordingly, I find and hold that the Tribunal properly assumed jurisdiction to hear and determine the dispute.

Whether Section 51(11) of the Tax Procedures Act applies

25. The Tribunal found that the Respondent's letter dated 15th December 2023 was issued out of time and therefore the applicant's application for exemption deemed allowed by operation of Section 51(11) of the Tax Procedures Act. The Section provides that where the commissioner fails to render an objection decision within sixty (60) days, the objection is deemed allowed.

26. With respect, that finding was erroneous. A proper construction of Section 51(11) reveals that it applies strictly to objection decisions arising from tax assessments. It is a procedural safeguard within the objection framework, intended to prevent inordinate delay in the determination of disputes relating to assessments.

27. The Respondent's application for exemption was not an objection to an assessment but a request for the conferment of a statutory privilege. Such an application is governed by Paragraph 10 of Part I of the First Schedule to the Income Tax Act, which prescribes specific and substantive conditions that must be satisfied before exemption can be granted.

28. It follows that the exemption process is *sui generis* and distinct from the objection and appeal mechanisms contemplated under the Tax Procedures Act. There is therefore no legal basis for importing procedural provisions applicable to objections into the exemption framework.
29. Tax exemption, by its very nature, is not automatic. It is a privilege that must be strictly proved and is only available upon full compliance with the statutory conditions. It is trite law that tax statutes must be interpreted on the basis of clear words of the law and that courts ought not to extend or imply provisions that are not expressly provided.
30. In **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others, SC Petition No. 26 of 2014 [2014] eKLR**, the Supreme Court pronounced that a purposive interpretation should be given to statutes so as to reveal the intention thereof. The Court quoting Lord Griffiths in **Pepper v Hart [1992] 3 WLR** observed that:
- “...The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.”***
31. Similarly, in Judge Rowlett in his decision in **Cape Brandy Syndicate v I.R. Commissioners [1921] 1KB**, expressed the common law position in this area when he stated:

“...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.”

32. There exists no statutory foundation for importing the provisions of Section 51(11) into the exemption regime, to do so would be to impermissibly extend its application beyond the scope intended by Parliament, thereby amounting to judicial legislation.
33. I therefore find that the Tribunal erred in law in applying Section 51(11) of the Tax Procedure Act to the Respondent’s application for tax exemption.

Whether the Respondent met the statutory threshold for a tax exemption

34. The First Schedule, Part 1 in the 10th paragraph of the Income Tax Act provides as follows:

10. Subject to section 26, the income of an institution, body of persons, or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education: -

(a) established in Kenya; or

(b) whose regional headquarters is situated in Kenya,

in so far as the Commissioner is satisfied that the income is to be expended either in Kenya or in circumstances in which the expenditure of that income is for purposes which result in the benefit of the residents of Kenya:

Provided that any such income which consists of gains or profits from a business shall not be exempt from tax unless those gains or profits are applied solely to those purposes and either -

(i) the business is carried on in the course of the actual execution of those purposes; or

(ii) the work in connection with the business is mainly carried on by beneficiaries under those purposes; or

(iii) the gains or profits consist of rents (including premiums or similar consideration in the nature of rent) received from the leasing or letting of land and chattels leased or let therewith and provided further that an exemption under this paragraph-

(A) shall be valid for a period of five years but may be revoked by the Commissioner for any just cause; and

(B) shall, where an applicant has complied with all the requirements of this

paragraph, be issued within sixty days of the lodging of the application.

35. The statutory framework, as set out above, establishes a clear and cumulative threshold: the entity must be of a public character; it must be established solely for the prescribed charitable purposes; and its income must be applied exclusively towards those purposes. These requirements are conjunctive and must all be satisfied.
36. It is a settled principle that a taxpayer seeking exemption bears the burden of demonstrating strict compliance with the statutory conditions. Sections 107 to 109 of the Evidence Act place the burden of proof upon the party who asserts a fact. In this case, that burden rested squarely upon the Respondent.
37. The Tribunal, with respect, appears to have misdirected itself by shifting this burden to the Appellant, faulting it for not disproving the Respondent's entitlement. Such an approach runs contrary to the established principles on burden of proof.
38. While the Respondent placed before the Tribunal various documents, including its registration certificate, constitution, and financial statements, the critical question was not the existence of charitable objects, but whether there was cogent evidence demonstrating actual operations and expenditure aligned exclusively with those objects.
39. The Appellant's position was that, upon scrutiny of the application, there existed gaps in the Respondent's activities,

including duplication of beneficiaries with a related entity and insufficient documentation to substantiate the claimed charitable expenditure. That contention was not adequately addressed by the Tribunal.

40. Further, although it was asserted that funds were expended in the development of schools and a Medical Centre for the benefit of residents of Kenya, no sufficient and verifiable evidence was placed before the Tribunal to demonstrate that such expenditure was indeed incurred exclusively in furtherance of the statutory purposes.
41. The evidentiary burden placed upon the Respondent was therefore not discharged. Mere assertions of charitable intent or general statements of expenditure do not suffice.
42. The Tribunal fell into error in holding that the absence of prescribed modalities in the statute excused the Respondent from demonstrating actual compliance. The absence of procedural detail does not derogate from the substantive obligation to prove compliance with the law.
43. It is not sufficient for an institution to merely proclaim charitable objectives in its constitutive documents. It must demonstrate, through credible, consistent, and verifiable evidence, that its operations and application of income are aligned exclusively with those objectives.
44. In the premises, I find that the Respondent failed to meet the statutory threshold required for the grant of tax exemption.

45. An appellate court will not lightly interfere with the findings of a lower court or tribunal. However, it is entitled to do so where it is demonstrated that the tribunal misdirected itself in law or fact, or where it acted on wrong principles. (See **Mbogo v Shah (1968) EA 93**).
46. In the result, and for the reasons set out hereinabove, I find that the appeal is merited.
47. Accordingly, I make the following orders:
- i. The appeal is hereby allowed.*
 - ii. The decision of the Tax Appeals Tribunal delivered on 1st August 2024 in Tax Appeal No. E077 of 2024 is hereby set aside.*
 - iii. The Appellant's decision dated 15th December 2023 declining the Respondent's application for tax exemption is hereby upheld.*
 - iv. Each party shall bear its own costs of the appeal.*

It is so ordered.

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **April** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Mulinge h/b for Mr. Osiro for Appellant

Ms. Mutesi h/b fr Mr. Mbae for Respondent

Court Assistant: Lispa

