

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL AND TAX DIVISION
TAX APPEAL NO. E088 OF 2025

BETWEEN

COMMISSIONER OF DOMESTIC TAXES.....

APPELLANT

AND

DALBERG RESEARCH LIMITED.....

RESPONDENT

(Being an appeal against the judgment of the Tax Appeals Tribunal at Nairobi dated 14th March 2025 in Tax Appeal No.E642 of 2024)

JUDGMENT

Introduction and Background

1. The Appellant (“the Commissioner”) is appealing the decision made by the Tax Appeals Tribunal (“the Tribunal”) on 14th March 2025 where the Respondent’s appeal was allowed and the Commissioner’s objection decision dated 3rd May 2024 (“the

Objection Decision”) was set aside for being issued late. The crux of the appeal, as set out in the Memorandum of Appeal dated 8th May 2025 is based on the grounds that that the Tribunal erred in law and fact by wrongly determining that the Commissioner had not complied with **section 51(11)** of the ***Tax Procedures Act(Chapter 469B of the Laws of Kenya)*** (“the ***TPA***”), wrongly holding that the Respondent complied with the requirements of **section 51(1-7)** of the ***TPA***, ignoring **Article 159(2)(d)** of the ***Constitution*** as the Tribunal failed to consider that justice should be administered without undue regard to procedural technicalities and that the Tribunal ignored **Articles 201 and 210** of the ***Constitution*** and failed to appreciate the importance of an efficient tax collection system.

2. For the above reasons, the Commissioner is urging the court to set aside the Tribunal’s judgment and uphold the Objection Decision where the Commissioner affirmed the principle taxes of Kshs. 22,634,092.00 due from the Respondent. The Respondent responded to the appeal through the Statement of Facts dated 3rd June 2025 and the parties have also canvassed the appeal by way of written submissions that I have considered together with the

record 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 this court is exercising appellate jurisdiction that is circumscribed by **section 56(2)** of the **TPA** which provides 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. From the submissions, I find that the court is being asked to determine whether the Tribunal was right in setting aside the Objection Decision on the basis that the same was time barred under **section 51(11)** of the **TPA**. The Commissioner submits that the Tribunal at para. 78 of its judgment suggested that the Commissioner had advised the Respondent to file objections out of time, implying misconduct but the Commissioner argues that the

Respondent provided no documentary evidence to support this claim. That the Tribunal ignored the requirements of **section 51(3)** of the **TPA** as a notice of objection is only valid if it meets the conditions set out therein. The Commissioner avers that it determined the objection was invalid and notified the Respondent immediately under **section 51(4)** and that the Commissioner could not issue an objection decision on an invalid objection

5. The Commissioner submits that under **section 51(8)** of the **TPA**, as it then stood, it could consider and decide on an objection only if it has been validly lodged within time but since the objection was not validly lodged, the Commissioner was not required to issue an objection decision within the usual 60-day period under **section 51(11)**. The Commissioner warns that the Tribunal's decision could constrain the ability to manage non-compliant objections effectively, undermining the tax system.

6. In response, the Respondent submits that that the Tribunal was correct in finding that the Commissioner failed to comply with **section 51(11)** of the **TPA**, which requires the Commissioner to issue an objection decision within 60 days of receiving a notice of objection or further information, failing which the objection is deemed allowed by operation of law. The Respondent contends

that because the Commissioner issued its Objection Decision over 3 years late for a 2017 assessment and never issued a decision for the 2015 assessment, both objections were automatically allowed and therefore, the Tribunal's decision should be upheld and the Commissioner's appeal dismissed.

7. I have gone through the record and the parties' submissions. As submitted by the Respondent, this court has consistently held that an objection decision must be made within 60 days under **section 51(11)** of the **TPA** regardless of whether the objection was validly lodged. Failure to do so renders the objection deemed allowed by operation of law, and the Commissioner cannot thereafter issue a valid objection decision (see ***Rongai Tiles & Sanitary Wares Limited v Commissioner of Domestic Taxes*** (Tax Appeal E011 of 2020) [2023] KEHC 18546 (KLR), ***Commissioner of Domestic Taxes v Hubei Hongyuan Power Engineering Company Ltd*** [2024] KEHC 9104 (KLR), ***Commissioner of Domestic Taxes v Sketchers Ltd*** [2024] KEHC 5569 (KLR) and ***Equity Group Holdings Ltd v Commissioner of Domestic Taxes*** [2021] KEHC 25 (KLR))

8. In this case, on 23rd June 2021, the Commissioner issued an additional assessment of Kshs. 4,145,295 for the income year 2015.

The Respondent objected to this assessment by way of the Notice dated 26th July 2021 which was received by the Commissioner on 28th July 2021. 60 days expired on 28th September 2021 and the Commissioner did not issue an objection decision meaning the objection was deemed allowed by law. The Commissioner issued another assessment on 30th August 2021 for Kshs. 11,826,080.81 for the income year 2017 which was objected to by the Respondent by way of the Notice dated 27th September 2021 that was received by the Commissioner on 28th September 2021. 60 days expired on 28th November 2021 and the Commissioner issued the Objection Decision on 3rd May 2024 which is over 3 years late and therefore the objection was also deemed allowed by law.

9. As stated, the Commissioner's argument that the 60-day timeline does not apply because the objection was invalidly lodged has been expressly rejected by this court in the aforementioned decisions. The Tribunal's finding that the Objection Decision was time-barred under **section 51(11)** of the **TPA** was therefore legally sound and consistent with binding precedents of this court, which I note, guided its decision. The Commissioner has also contended that its letter dated 27th October 2021 was a valid

invalidation notice under **section 51(4)**, and therefore no objection decision was required. I find that the Tribunal, at para. 77 of its judgment, correctly found that in this letter, the Commissioner expressly stated that it was *“a response under section 51(4) ... and not an objection decision under section 51(9).”* Even if it was an invalidation notice, the Commissioner still had no justification for waiting over 2 years until 3rd May 2024 to issue an objection decision. In any event, **section 51(11)** of the **TPA** does not condition the 60-day timeline on validity because the said provision at the time provided that *“The Commissioner shall make the objection decision within sixty days from the date of receipt of (a) the notice of objection ... failure to which the objection shall be deemed to be allowed.”* The word “shall” is mandatory and does not give the Commissioner any leeway not to issue an objection decision based on an invalidity of the notice of objection.

10. The Commissioner has also argued that the Respondent did not provide “all relevant documents” under **section 51(3)(c)** of the **TPA**, however, the record shows otherwise. I note that the Respondent provided extensive documentation, including a detailed letter dated 16th September 2019 (pgs. 47-50 of the Record of Appeal) with schedules of legacy credits, manual withholding tax

certificates, and supporting evidence. The Respondent also filed timely objections on 26th July 2021 and 27th September 2021 and I agree with the Tribunal's finding at para. 82 of the judgment that the letters dated 7th March 2024 were not notices of objection under **section 51(2)** or **section 51(6) and (7)** and that the valid objections were those filed on 26th July 2021 and 27th September 2021, which were within 30 days of the assessments. In any case, as I have stated, any alleged invalidity of the objections is immaterial to the **section 51(11)** timeline issue.

11. The Commissioner has also submitted that the Tribunal should have overlooked the 60-day timeline as a procedural technicality under **Article 159(2)(d)**, however, Mativo J., (as he was then) in ***Equity Group Holdings Ltd v Commissioner of Domestic Taxes(supra)*** stated that “*Section 51(11) of the TPA is couched in peremptory terms ... A statutory edict is not a procedural technicality. Article 159(2)(d) of the Constitution was not meant to oust express statutory provisions and to open a window for disregard of statutory requirements*”. The Tribunal did not ignore **Article 159(2)(d)**, rather, it correctly recognized that the 60-day timeline is a substantive statutory edict, not a procedural technicality. The delay was not a minor oversight by the

Commissioner but a fundamental failure to comply with a mandatory provision. The substantive justice in this case is that the Respondent had legitimate tax credits that the Commissioner has refused to validate for years. The Commissioner is using a technical argument such as the Respondent using the wrong section in the **TPA** to file its credit claims, to deny the Respondent credits while simultaneously asking the Tribunal and this court to overlook its own substantive violation of the 60-day rule. Irony aside, the law is clear that the Commissioner cannot benefit from **Article 159(2)(d)** when it is the party that violated a clear statutory deadline.

12. It is also my finding that the Commissioner cannot rely on **Articles 201 and 210** of the **Constitution** to excuse its own violation of the law. **Article 210(1)** states *“No tax or licensing fee may be imposed, waived or varied except as provided by legislation.”* The Objection Decision was not provided for by legislation because it was issued after the objection had already been deemed allowed by operation of law. I agree with the Respondent’s submission that the Commissioner was thus attempting to collect tax *contra* statute. I am in further agreement with the Respondent that the rule of law requires that tax collection be done lawfully, not efficiently at the expense of legality. As the

court held in ***Keroche Industries Ltd v Kenya Revenue Authority [2007] KEHC 3680 (KLR)***: *“It does not matter that the respondents say and think they are owed ... what matters is whether the amount is lawfully due and whether the law allows its recovery.”*

13. The Commissioner took over 3 years to issue an objection decision and during that time, the Respondent repeatedly followed up as evidenced by the emails at pgs. 67-69 of the Record of Appeal. The Commissioner’s reason of staff changes and delays were entirely within its control and the Commissioner cannot now blame the Tribunal for enforcing the law. Therefore, **Articles 201 and 210** support the Tribunal’s decision, not the Commissioner’s position. Tax collection must be lawful, efficient, and accountable and the Commissioner’s delay and procedural failures violated these principles. This ground by the Commissioner is meritless.

Conclusion and Disposition

14. I believe I have said enough to find that the present appeal has no merit and the same is dismissed in its entirety but with no order as to costs.

DATED SIGNED AND DELIVERED virtually at NAIROBI this

8th DAY of MAY 2026

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J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF

1. Ms. Almadi holding brief for Mr. Wainaina for the Appellant
2. Ms. Renee Omondi and Mr. Julius Kimulu for the Respondent
3. Amos- Court Assistant

ORIGINAL