



**Commissioner of Domestic Taxes v Songore (Income Tax Appeal E067 of 2023)  
[2025] KEHC 864 (KLR) (Commercial and Tax) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 864 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E067 OF 2023  
RC RUTTO, J  
JANUARY 31, 2025**

**BETWEEN**

**COMMISSIONER OF DOMESTIC TAXES ..... APPELLANT**

**AND**

**JAMES SONGORE ..... RESPONDENT**

*(Being an Appeal from the judgment and decree of the Tax Appeals  
Tribunal at Nairobi delivered on 17th March 2023 in TAT No. 457 of 2021)*

**JUDGMENT**

1. The appellant is the Commissioner of Domestic Taxes appointed under the [Kenya Revenue Authority Act](#) as an agency of the government of Kenya to collect and receive revenues. The respondent is an individual Kenyan citizen operating business in Nairobi and deals in service provision among other businesses.
2. The respondent was flagged for having filed nil returns despite being in active business and having offered services to Cosmocare for the period January 2015 to January 2018. The appellant thus issued a demand letter dated 28/9/2021 for tax in arrears for the sum of Kshs. 8,115,365/= to be immediately paid. On 5/10/2021 the respondent objected to the demand letter.
3. Subsequently, pursuant to section 51(8) of the [Tax Procedures Act](#) the appellant rendered its objection decision vide letter dated 18/12/2021 confirming the assessment issued. The respondent was dissatisfied with this decision and proceeded to file an appeal at the Tax Appeals Tribunal on 31/12/2021. Upon considering the parties arguments, the tribunal issued its decision dated 17/3/2023 in which the appeal was partially allowed.



4. The appellant being aggrieved by part of the decision of the tribunal lodged this instant appeal. In its memorandum of appeal dated 15/5/2023 the appellant seeks that the appeal be allowed, the decision of the Tax Appeals Tribunal be set aside to the extent that it offends the provisions of Section 52(2) of the *Tax Procedures Act*, 2015 and that the decision of the Commissioner demanding taxes from the respondent be upheld and the respondent to bear the costs of this appeal.
5. The appeal is based on the following three grounds to wit; that the tribunal erred in law and fact in partially allowing the appeal in totality; that the tribunal erred in law in partially allowing the appeal contrary to Section 52(2) of the *Tax Procedures Act*, on payment of tax not in dispute, and that the tribunal erred in law and in fact in directing that the appellant compute tax liability on taxable income of Kshs. 1,795,785 and Kshs. 688,930/= for years 2015 and 2016 respectively.
6. The appeal was disposed of by way of submissions.
7. In its submissions dated 5/2/2024, the appellant framed one issue, for determination namely; whether the tribunal erred in disregarding the provisions of Section 52(2) of the *Tax Procedures Act*, (herein the Act) and partially allowing the appeal.
8. It submitted that the respondent failed to follow the provisions of Section 51 of the Act on the process of objection of tax decisions which ought to be thirty days from the date of assessment, and that he also failed to apply for extension of time as provided by the Act. That since the respondent failed to follow the due procedure provided by the Act, the objection decision issued by the appellant on 31/5/2019 was on time. I note that in its submissions, the appellant refers to its decision dated 31/5/2019. However, upon reviewing the the file, no such decision exists. The decision on record is one dated 18/2/2018.
9. That despite admitting the tax demanded for years 2017 & 2018, the respondent filed the appeal before the tribunal contrary to Section 52(2) of the Act. That the provision was mandatory and unambiguous and ought to have been complied with before the appeal was filed.
10. That the respondent failed to comply with either of the two conditions thus ought not to have filed the notice of appeal before the tribunal. The appellant relied on several authorities including *Kaluworks Limited vs Commissioner of Domestic Taxes* [2023] KEHC 3991 (KLR) where it was held that due to the admission, the appellant was bound to pay the taxes before taking any other step in the appeal, and *ITA No. 12 of 2018 Hewlett Packard East Africa Limited vs The Commissioner of Domestic Taxes* [2019] eKLR wherein the appeal lodged before payment of undisputed taxes was dismissed.
11. It was also submitted that statutory procedure had to be adhered to as held in *Kiriinya Mukiira vs Middle East Bank Limited* [2018] eKLR. That the taxes for 2017 and 2018 had to be paid as they were admitted to and it was thus prayed that the appeal before the tribunal ought to have been dismissed.
12. The appellant further submitted that contrary to the tribunal's finding that the respondent's objection was allowed by operation of the law, the objection decision was issued within 60 days as provided for.
13. The respondent similarly filed submissions dated 30/12/2023. He submitted that upon notification from the appellant, he swiftly provided all the relevant documents, held several meetings but the appellant insisted on the tax tribunal as the alternative option to resolve the dispute.
14. The respondent also submitted that he did not object to the assessments for years 2017 and 2018 and that payments had been made. That the outstanding liability was for the years 2015 and 2016 as held by the tribunal. He prayed that the same be settled by a payment plan of 10% down payment within 90 days, and Kshs. 20,000/= monthly installments. It was also submitted that each party ought to bear its own costs.



15. I have considered the submissions as well as the entire record before Court. The appeal raises one major issue, whether the appeal before the tax appeals tribunal was proper.
16. Section 52(2) of the Tax Procedure Act provides as follows: -

“A notice of appeal to the Tribunal relating to an assessment shall be valid if the taxpayer has paid the tax not in dispute or entered into an arrangement with the Commissioner to pay the tax not in dispute under the assessment at the time of lodging the notice.”
17. The appellant argues that the wordings of this section is framed in mandatory terms, leaving the court no discretion but to set aside the tribunal’s judgment. While it is correct that the section is expressed in mandatory terms, this court notes that the provision uses the conjunctive term “or”. As rightly noted by the appellant, this gives the court the flexibility to determine whether the taxpayer has paid the tax not in dispute as the first option or has entered into an arrangement with the commissioner to pay tax not in dispute. Either of these scenarios will render the notice of appeal valid.
18. In *Hewlett Packard East Africa Ltd v Commissioner of Domestic Taxes* [2019] eKLR: -

“In the end it follows that this Court having determined that the Appellant’s appeal was not in compliance with Section 52 (2) of Tax Procedure Act grounds Nos 1, 2 and 3 of this appeal are dismissed. They are dismissed because the appeal before the Tribunal was incompetent in view of Section 52 (2) of the Tax Procedure Act and having been incompetent no appeal can lie on those grounds before this Court.”
19. I note that in the demand notice dated 28/9/2021 the appellant has made a demand for tax liabilities for the years 2015, 2016, 2017, and 2018. In the objection to the demand dated 5/10/2021 and memorandum of appeal dated 27/12/2021, the respondent accepts the tax liabilities for the year 2017 and 2018 and contests the liabilities for the years 2015 and 2016. He further states that he had fully paid the tax liability for the year 2017 which was Kshs. 439,079.93/= as per the appellant’s demand notice dated 28/9/2021 and that he is in the process of paying tax liability for Kshs. 67,102.79/= for the year 2018. This was before the notice of appeal was filed before the tribunal on 13/12/2024. In addition, the respondent alluded to having made a payment proposal to the appellant for the pending tax obligations.
20. I do note that the appellant herein did not once respond to the claim that the tax liability for 2017 was fully paid, and that the liability for the year 2018 was partly paid. The issue of payment thus remained uncontested. I also note that even in his submissions before this Court, the respondent still maintained that the uncontested liabilities had since been settled. Being a factual contest, the same was readily ascertainable and were indeed ascertained by the Tax Appeals Tribunal, satisfactorily.
21. For that reason, this is not a case that falls under the purview of Section 52(2) of The Act as there was an uncontested fact that the payment for the two years that were not in dispute had been made before filing of the notice of appeal before the tribunal.
22. The upshot is that the appeal herein is found to lack merit and is dismissed. Each party to bear its own costs.

Orders accordingly

**RHODA RUTTO**

**JUDGE**



**DELIVERED, DATED AND SIGNED THIS 31<sup>ST</sup> DAY OF JANUARY 2025**

For Appellant:

For Respondent:

Court Assistant:

