



**Mreri v Commissioner of Domestic Taxes (Income Tax Appeal E088 of 2023)
[2025] KEHC 1074 (KLR) (Commercial and Tax) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E088 OF 2023
BM MUSYOKI, J
FEBRUARY 28, 2025**

BETWEEN

DAVID OBONYO MRERI APPELLANT

AND

COMMISSIONER OF DOMESTIC TAXES RESPONDENT

*(Being an appeal from the Judgment of the Tax Appeals
Tribunal at Nairobi delivered on 2nd June 2023)*

JUDGMENT

1. This appeal arises from judgement of the Tax Appeals Tribunal dated the 2nd June 2023 in which the tribunal dismissed appeal by the appellant. The appeal before the tribunal was against the respondent's objection decision dated 25th April 2021.
2. The respondent issued additional assessment of tax against the appellant for income tax and Value Added Tax for the periods between 1-01-2014 and 31-12-2017 for a total sum of Kshs 55,381,527.72 on 15-04-2021 and 2-12-2021. The appellant filed an objection dated 23-12-2021 but on 6th January 2022, the respondent wrote to the appellant invalidating the objection and asking him to file a valid objection with supporting documents. In an email sent of 13th January 2022, the respondent field a fresh objection dated 12th January 2022, in which it forwarded supporting documents. There was no further action on the issue until on 24th February 2022 when the respondent wrote to the appellant reminding him of its notice dated 6th January 2022 following which the appellant forwarded more documents. The respondent issued an objection decision on 25th April 2022 which sparked the appeal before the tribunal.



3. At the tribunal, the appellant argued as he does in this appeal that, the objection decision was issued out of time provided for in Section 51(11) of the *Tax Procedures Act* and in the circumstances and by virtue of said Section, the objection was deemed allowed by operation of the law. The appellant argued that the time started running against the respondent for the purposes of that Section on 13-01-2022 while the respondent took the position that the same started running on 25-02-2022 when it received more documents from the appellant.

In tackling the above issue, the tribunal held as follows;

Based on the foregoing authorities and Section 51(11) of the *TPA* it is clear that time started running in this appeal on 24th February 2022 when the appellant supplied the documents required vide an email dated 24th February 2022 which was received and stamped by the respondent on 25th February 2022. Meaning that the impugned objection decision ought to have been issued on or before the 25th of April 2022. The said objection decision was issued on 25th April 2022. It was therefore issued within the prescribed statutory timelines for which reasons it is valid and lawful.’

4. The memorandum of appeal lists 16 grounds but in his submissions, the appellant has collapsed them and concentrated on the issue of whether the tribunal erred in holding that the objection decision was made within the statutory time as provided in Section 51(11) of the *Tax Procedures Act*. The respondent’s submissions however go on to make arguments on whether the assessment was proper and tax due. However, I find that issue to be an issue of fact which this court has no jurisdiction over pursuant to Section 56(2) of the *Tax Procedures Act* which provides that;

An appeal to the High Court or to the Court of Appeal shall be on a question of law only.’

5. I will therefore deal with the issue of whether or not the objection decision was made within the prescribed period. That will be enough to dispose this appeal.
6. The facts as narrated in the paragraphs above are not disputed. According to the tribunal, the letter by the respondent dated 24-02-2024 was a reminder of the respondent’s notice of invalidity of the objection dated 6th January 2022. The appellant submits that he filed a fresh objection on 13th January 2022 and that is what ought to have been considered as a valid objection as the letter sent on 24th February 2022 did not have any additional documents.
7. On its part, the respondent argues that the notice of objection dated 12th January 2022 was invalid until when it was validated vide the documents provided on 25th February 2022 by provision of documents in support of the objection and that the honourable tribunal was justified to find that the objection decision ought to have been issued on or before 25th April 2022.
8. In my view, the deadlock on this issue can be broken by examining the meaning and purport of the notice and documents sent to the respondent on 13th January 2022. This email was in response to the notice by the respondent dated 6th January 2022. The notice read; ‘Your application is declared invalid as it fails to meet the requirements of Section 51(3) of the *Tax Procedures Act* 2015.’ It goes on to explain the aspects in which the objection fell short of validity as; failure to state precisely the grounds of objection, the amendment required and reason for amendments sought, failure to pay undisputed tax and lack of relevant documents. The status of a document or act that has been declared invalid means that the same is voided and what the respondent was then required to do was to lodge a fresh and valid objection. Actually, the said letter indicates at the 2nd last paragraph that the notice of objection and supporting documents should be provided within seven days from the date of the letter. If the



appellant was not required to file a fresh notice, the letter would simply have asked for supporting documents or information. In that case in my opinion, the letter dated 24-02-2022 purporting to remind the appellant of invalidation of the notice was not necessary and was itself invalid and served no purposes in respect of provisions of Section 51 of the *Tax Procedures Act*. The appellant had not challenged the decision to invalidate its objection and as such the objection dated 23-12-2023 became moot and dead.

9. Then there followed the objection served on 13-01-2023. The respondent did not deny before the tribunal that the notice was filed and served. The tribunal observed that the fresh objection was dated 12th January 2022 and was received on 13th January 2022. In my view, the tribunal should have examined the import of the notice so filed and if it found it to have been a proper notice under Section 51(3) of the *Tax Procedures Act*, then it should have based its analysis of timelines with a focus on that notice.
10. The series of objections dated 12th January 2022 which appear on pages 120 to 157 of the record of appeal were clearly sent within the seven days as directed by the respondent and pursuant to Section 51(4) of the *Tax Procedures Act*. The notice appears to me to have complied with the directions by the respondent in its letter dated 6th January 2022. It is instructive that the respondent never responded or reacted to or acted on this objection neither did it invalidate the same.
11. Going by the provision of Section 51(4) of the *Tax Procedures Act*, the Commissioner should communicate its decision on the validity of an objection within fourteen days of its decision. My interpretation of this Section is that if there is no notice of invalidity of the objection within fourteen days from the date of its decision to that effect, then the same may be deemed to have been valid. Fourteen days in respect of the appellant's objection dated 12th January 2022 lapsed on 27th January 2022 and as at this date, the respondent had not communicated to the appellant about the validity of the objection. In fact, the objection was not even addressed in the proceedings and actions of the respondent thereafter. Instead, the respondent addressed the invalidated objection dated 23rd December 2021.
12. Back to the reminder dated 24-02-2022. This reminder did not make any reference to the objection or validity of documents dated 12th January 2022. To me, either the objection dated 12th January 2022 which was sent to the respondent on 13th January 2022 escaped the attention of the respondent or the respondent realised that it had not acted on the objection and wanted to buy more time by purporting to ask for validation of the objection by its email dated 24-02-2022.
13. The law, specifically Section 51(4A) of the *Tax Procedures Act* provides that where the taxpayer does not provide the information as required by the Commissioner within the specified period, in this case within seven days, the Commissioner may make an objection decision within sixty days from the time the notice of objection was filed. This would have meant that, since the respondent did not take cognizance of the appellant's objection dated 12th January 2022, time would start running from the 6th January 2022 which would lapse on 8th March 2022.
14. The tribunal found as a matter of fact that the appellant filed its valid objection on 13-01-2022 but failed to appreciate that the respondent gave a wide berth to that fact and only made reference to its letter dated 6th January 2022. The act of avoiding discussion on the objection filed on 13th January 2022 was tactical and a calculated move to distract the tribunal from the fact that the respondent acted out of time.
15. It is my finding therefore that the proper objection relevant to the proceedings before the tribunal was the one filed by the appellant on 13th January 2022 and the objection decision by the respondent was



made out of time and by virtue of Section 51(11) of the *Tax Procedures Act*, the objection dated 13th January 2022 was allowed by operation of the law when the time lapsed on 15th March 2022.

16. Having found that the respondent's objection decision dated 25th April 2022 was made out of time, I have no option other than following the law. I am in agreement with the holding in *Eastleigh Mall Limited v Commissioner of Investigations & Enforcement* (Income Tax Appeal E068 of 2020) [2023] KEHC 20000 (KLR) as cited by the appellant where the Hon Justice Mabeya held that;

It is clear from the forgoing that the provisions of section 51(11) of the *Tax Procedures Act* are mandatory. They are not cosmetic. Parliament in its wisdom knew that in matters tax, time is very crucial as those in commerce need to make informed decisions.

If the Commissioner is allowed to exercise his discretion and stay ad-indefinitum before issuing an objection decision, the tax payer would be unable to make crucial decisions and plan his/her business properly. The timelines set are mandatory and not a procedural technicality.'

17. The inevitable conclusion based on the above analysis is that the tribunal erred when it failed to appreciate that the respondent's objection decision dated 25th April 2022 was made out of time provided for in Section 51(11) of the *Tax Procedures Act*.
18. In the circumstances, the judgement of the tribunal dated June 2, 2022 is hereby set aside and substituted for an order allowing the appellant's appeal in the Tax Appeals Tribunal appeal number 595 of 2022. The respondent shall meet the costs of this appeal.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Obura and Mr. Orina holding brief for >e. Seko for the appellant and Mr. Muhoro for the respondent.

