



**Stima DT Savings & Credit Cooperative Society Limited v Commissioner,  
Legal Services and Board Coordination (Income Tax Appeal E212 of 2024)  
[2025] KEHC 1068 (KLR) (Commercial and Tax) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1068 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E212 OF 2024  
BM MUSYOKI, J  
FEBRUARY 28, 2025**

**BETWEEN**

**STIMA DT SAVINGS & CREDIT COOPERATIVE SOCIETY  
LIMITED ..... APPELLANT**

**AND**

**COMMISSIONER, LEGAL SERVICES AND BOARD  
COORDINATION ..... RESPONDENT**

*(Being an appeal against the Judgment of the Tax Appeals Tribunal  
dated 12th July 2024 in its Tax appeal number E158 of 2023)*

**JUDGMENT**

1. The subject of the dispute before the Tax Appeals Tribunal was that the appellant had contested the respondent's objection decision dated 10-03-2023 in which the respondent confirmed its tax assessment on the appellant for a total of Kshs 265,376,762.00 as principal tax liability, Kshs 13,268,838.00 as penalty and Kshs 156,572,290.00 as interest bringing the total to Kshs 435,217,890.00. The assessment was for the years 2017, 2018, 2019 and 2021. This was for excise duty payable for interest on bridging loans, interest on boosting of deposits, interest on salary transfers, interest on Sacco re-joining, cheque book application fee and interest on appraisal.
2. During the pendency of the appeal, parties entered into a consent viz;
3. By Consent of the parties pursuant to Alternative Dispute Resolution (ADR) Agreement dated 29<sup>th</sup> November 2023, this appeal shall be marked as partially settled under the following terms;



- a. That Excise Duty on interest on bridging loan, interest on boosting of deposits, interest deferred on appraisal, and interest in Sacco re-joining fees, amounting to Kshs 356,832,071, comprising principal tax of Kshs 244,261,961, penalties of Kshs 12,213,098, and interest of Kshs 100,357,012 shall be referred back to TAT for hearing and determination.
- 4.
- b. That the principal Excise Duty assessment relating to cheque book application fees amounting to Kshs 86,965.00 has been reviewed to nil.
  - c. That Excise Duty assessment relating to interest on salary amounting to Kshs 21,027,836.30 has been reviewed to Kshs 8,461,918.08, comprising principal tax of Kshs 5,778,954.48, penalties of Kshs 288,947.72, and interest of Kshs 2,394,015.88.
  - d. That the parties are cognisant that the interest may vary upon amendment of the assessments in the iTax system and are agreeable to this variation.
  - e. That the appellant shall pay the aforementioned established principal Excise Duty of Kshs 5,77,954.48 in two installments, the 1<sup>st</sup> one by 20<sup>th</sup> December 2023 and the second one by 20<sup>th</sup> January 2024.
  - f. That the appellant may apply for amnesty on penalty and accrued interest immediately upon payment in full of the principal tax liability as provided for in Section 37E of the [Tax Procedures Act 2015](#).
  - g. That should the appellant fail to pay the principal amount due and/or apply for amnesty of penalty and interest by 30<sup>th</sup> June 2024, the entire amount of penalty and accrued interest shall be due and payable.
  - h. That the respondent is at liberty to enforce the terms of this consent in accordance with the provisions of the [Tax Procedures Act, 2015](#).
  - i. That each party is to bear its costs if any.
5. The record of appeal does not contain the proceedings of the tax appeals tribunal and I cannot ascertain whether the consent was adopted as an order of the court but I note from the parties' submissions that the existence of the consent is not disputed. In its judgement, the tribunal addressed the issue of charging of excise duty on salary transfers and on cheque book application fees which had been settled by the parties through the said consent. I do not need to belabour this point as the respondent has confirmed the consent and has in its submissions supported that part of the appeal.
6. It is therefore my finding that the tribunal erred when it dismissed the appeal in its entirety without making provision for the consent. The effect of the judgment was to uphold the objection decision dated 10-03-2023 which had been by consent effectively partially set aside. The tribunal should have been clear that the part of the appeal which was dismissed was that in respect of interest on bridging loan, interest on boosting of deposits, interest deferred on appraisal and interest on Sacco re-joining fees.
7. On the remaining part of the appeal, the tribunal held in its judgment that the appellant should have known the position of the High Court in [Commissioner of Domestic Taxes vs Stima Cooperative Savings & Credit Society Limited](#) (Tax Appeal E090 of 2021) KEHC 12993 (Commercial and Tax) on the charges for bridging loans, appraisal and boosting deposits as it was a respondent in that appeal. The tribunal acknowledged that the High Court in the said appeal held that these charges were 'obviously



just but fees that is christened ‘interest’ and are not interest strictu sensu. They are not exempt from excise duty.’ The tribunal’s stand was that the facts, the law and the parties in this matter were the same as the said income tax appeal number E090 of 2021 and as such it could not contradict the position of the High Court considering the doctrine of stare decisis.

8. It is my opinion that the Tax Appeals Tribunal cannot be faulted for having held as it did noting that its decision in its appeal number 372 of 2019 on the same issues as in this matter was overturned by the High Court in the aforesaid income tax appeal number E090 of 2021. Holding otherwise would have violated the doctrine of stare decisis which would have been an error of principal on the part of the tribunal.
9. The appellant has asked this court to distinguish the facts in the income tax appeal number E090 of 2021 from the facts in this appeal and find that the same were different. It has also urged this court not to follow the decision in the said appeal and submitted that I should make a contrary decision because the earlier decision is not binding on this court. The appellant has also brought to the attention of this court that there is an appeal number E712 of 2022 pending before the Court of Appeal against the decision of Justice Honourable Justice Alfred Mabeya income tax appeal number E090 of 2021 and it will be absurd if this court follows the said decision only for it to be overturned by the Court of Appeal. In my opinion the crux of this appeal lies on these two issues.
10. I have looked at the facts and issues in this court’s income tax appeal number E090 of 2021 as captured and expounded in the judgment of Honourable Justice A. Mabeya and I form the opinion that they are similar to what is in this appeal. What was in contention in the appeal is the same issue as in this appeal which is, whether the entries indicated as interest on bridging loans, boosting deposits and appraisals in the appellant’s books was in actual sense interest or charges or services offered. The first ground of appeal as reproduced in the judgement was;

‘That the tribunal erred in finding that charges relating to bridging loans, loan appraisal, boosting deposits and deferred on appraisal are not subject to excise duty.’
11. The above ground is no doubt the same as what the appellant has placed before this court. The appellant has urged that if I find the two matters similar, I should not follow or be persuaded by judgement of the Honourable Judge. I have seen the analysis of the Judge in the judgment and I do agree with his finding not because the same is binding on me but because I take the same position taken by the Judge. In particular, I am persuaded by and agreed with the finding at paragraph 31 and 32 of the judgement which state that;

‘31. Despite the use of the term ‘loan’ by the respondent on the subject items, those are basically charges. There is no money that is passed on to the members. These are mere book entries that are made to enable the respondent’s members either borrow more from the respondent or are mere administrative expenses such as appraising the members loans.

32. They are but expenses or charges exerted by the respondent on its members and not interest per se. The respondent is not kept away from its money for a period to justify those charges to qualify to be interest.’
12. In a further attempt to distinguish the two cases, the appellant argues that the periods of review in the two matters are different. That may be so but the subject in both cases was definition and categorisation of the interest and charges as indicated in the appellant’s books. The period of review or the Act applicable at the two periods does not matter as far as I understand the case before me.



13. The appellant argues that following the reasoning of the Judge would pose a possibility of absurdity if its appeal to the Court of Appeal succeeds. I don't think that this is a valid point of consideration. The same can be said of the situation if I allowed this appeal and the appeal at the Court of Appeal is dismissed. What matters for now is my decision and persuasion on the issue at hand. As at now, there is no judgment which is binding on me on the issue.
14. The upshot of the above is that this appeal is allowed to the extent of the above analysis and in the following terms.;
15.
  - a. The respondent's objection decision dated 10-03-2023 as far as it relates to Excise Duty on cheque book application and interest on salary transfer is set aside and adjusted as per consent signed by the parties on 21-12-2023.
  - b. The appeal in respect of Excise Duty on interest on bridging loan, interest on boosting of deposits, interest deferred on appraisal and interest in Sacco re-joining fees is hereby dismissed and the tribunal's judgment on those aspects is upheld.
  - c. Each party shall bear their own costs of this appeal.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. James Tugee for the appellant and Mr. Wainaina holding brief for Mr. Chabala for the respondent.

