



**Commissioner for Domestic Taxes v Kaara (Income Tax Appeal E097 of 2023)
[2025] KEHC 3629 (KLR) (Commercial and Tax) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E097 OF 2023**

H NAMISI, J

MARCH 24, 2025

BETWEEN

COMMISSIONER FOR DOMESTIC TAXES APPELLANT

AND

ANASTACIA WARIARA KAARA RESPONDENT

JUDGMENT

1. The Appellant is a principal officer appointed under Section 13 of the *Kenya Revenue Authority Act*, mandated to administer and enforce all provisions of the written laws as set out in Part 1 and Part 2 of the First Schedule to the Act for purposes of assessing, collecting and accounting for all revenue in accordance with the law.
2. The Respondent is a sole trader who owns a commercial property in Nairobi.
3. The Appellant conducted a compliance check on the Respondent's tax affairs and vide letter dated 12 January 2022, issued a demand for additional assessment of Kshs 11,587,696 and Kshs 3,833,254/=, being income tax and value added tax, respectively. The Respondent object to the said assessment. The Appellant then issued an invalidation Notice dated 15 March 2022.
4. The Respondent lodged an appeal at the Tax Appeals Tribunal which was heard and judgement rendered on 26 May 2023. In its judgement, the Tribunal relied on the provisions of section 51 (1) (2) (4) of the *Tax Procedures Act* with regard to the timelines to be observed in the objection process. The Tribunal noted that the Appellant issued the demand for additional assessment on 12 January 2022, whereupon the Respondent issued its objection on 11 February 2022, within the 30-day statutory timeline. The Appellant's subsequent Invalidation Notice was issued on 15 March 2022. Despite the Appellant's submission that there had been communication between the Appellant and Respondent



in the intervening period, with the Appellant requesting documents from the Respondent to validate her objection, the Tribunal observed that no evidence was adduced to corroborate this assertion.

5. According to the Tribunal, the mandatory terms of section 51 (4) of the [Tax Procedures Act](#) require that the Respondent’s notice of invalidation ought to have been done by 25 February 2022. By issuing the same on 15 March 2022, the Appellant was 18 days outside the stipulated timelines. Consequently, the Tribunal allowed the appeal and set aside the Appellant’s Invalidation Notice of 15 March 2022.
6. Aggrieved by the judgement and order of the Tribunal, the Appellant lodged this appeal on the following grounds:
 - i. The Honourable Tribunal erred in fact and law by failing to appreciate that section 44 of the Finance Act, 2002 which amended Section 51(4) of the [tax Procedures Act](#) came into force on 1 July 2022 whereas the objection was lodged on 22 February 2022 and the Invalidation Notice issued on 15 March 2022;
 - ii. The Honourable Tribunal erred in fact and law by retrospectively applying the provisions of the law under Section 51 (4) as read with section 51 (11) of the [Tax Procedures Act](#), 2015 whereas the Invalidation Notice was issued on 15 March 2022;
 - iii. The Honourable Tribunal erred in fact and law by failing to appreciate that prior to the amendment of section 51 (4) of the [Tax Procedures Act](#), 2015 which requires the Appellant to invalidate the Objection within 14 days, the provision was the word “immediately” as read together with section 51(11)(b) which required the Appellant to issue a decision within 60 days of “any further information the Commissioner may require from the taxpayer”;
 - iv. The Honourable Tribunal erred in fact and law in failing to appreciate that the Invalidation decision issued on 15 March 2022 was within statutory timelines;
 - v. That the Honourable Tribunal erred in law and in fact by failing to consider that the Respondent’s objection did not meet the requirements under section 51 (3) (c) of the [Tax Procedures Act](#), 2015 respectively when arriving at the decision;
 - vi. The Honourable Tribunal erred in fact and law in failing to appreciate that the Respondent’s appeal did not meet the provisions of section 56 of the [Tax Procedures Act](#), 2015 when arriving at its decision;
 - vii. The Honourable Tribunal erred in law and in fact in not making a decision on the merits of the case before it and only opted to rely on a procedural issue, which it also based on misappreciation of the principles of tax law, particularly the provisions of section 51 of the [Tax Procedures Act](#), then and section 44 of the Finance Act, 2022.
7. The appeal was canvassed by way of written submissions. The Respondent did not participate in these proceedings, despite being served.

Analysis and Determination

8. I have keenly read the Record of Appeal, Supplementary Record of Appeal and the submissions on record. The issues for determination are:
 - i. Whether the Tribunal retrospectively applied the provisions of the law under section 51(4) as read with section 51(11) of the [Tax Procedures Act](#), 2015; and



- ii. Whether the decision dated 15 March 2022 was made beyond the statutory period prescribed in section 51(11) of the *Tax Procedures Act* and thus the taxpayer’s objection was deemed allowed by operation of the law.
9. Section 44 of the Finance Act, 2022 came into force on 1 July 2022. The section amended section 51(4) of the *Tax Procedures Act* by deleting the word “immediately” and substituting therefor the words “within a period of fourteen days”. The section reads as follows:

Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.
10. Prior thereto, the section provided as follows:

Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.
11. Section 51 (11) of the *Tax Procedures Act* provides as follows:

The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed.
12. From the foregoing, it is evident that the Tribunal applied the law retrospectively. The Tribunal relied on provisions of the *Tax Procedures Act* which were amended after the dispute arose. According to the law as it was at the time, the Appellant was required to make a decision within 60 days.
13. The appeal succeeds. The judgement of the Tax Appeals Tribunal delivered on 26 May 2023 in Tax Appeal No. 393 of 2022 is set aside in its entirety. The Invalidation Notice dated 15 March 2022 is upheld. The Appellant is awarded costs of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 24 DAY OF MARCH 2025.

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

.Ms. Otieno h/b Ms. Nyakundi..... for the Appellant

N/A for the Respondent

Libertine AchiengCourt Assistant

