



**Commissioner of Domestic Taxes v Koceyo (Income Tax Appeal E084 of 2024)
[2025] KEHC 7636 (KLR) (Commercial and Tax) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7636 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E084 OF 2024**

RC RUTTO, J

MAY 30, 2025

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

TITUS OTIENO KOCEYO RESPONDENT

*(Being an Appeal from the Judgment of the Tax Appeals Tribunal Dated
9th February 2024 in the Tax Appeals Tribunal Number 967 of 2022)*

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 taxpayer running various small-scale business in Nairobi including sole proprietorship Law Firm and real estate commission and agency brokerage.
2. The dispute herein arose from the appellant's assessment of Value Added Tax (VAT) and income tax returns for the period 2018-2020. Prior to this, the respondent herein received a notice from the appellant, on 23rd August 2021, to assess undisclosed business income and undeclared VAT.
3. The respondent replied to the appellant's Notice of Assessment on 30th August 2021 and attached documentation explaining his tax filing. In a letter dated 5th October 2021, the appellant issued a Notice of Assessment to the respondent based on noted variances between sales declared in its VAT and income tax returns for the period 2018-2021 with additional tax due from the respondent assessed at Ksh.44,742,361.
4. The respondent lodged an objection to this figure in an objection letter dated 14th December 2021 which was received by the appellant on 15th December 2021. The appellant issued an objection decision



on 29th August 2022 wherein it ordered the respondent to make immediate payment of the amended assessed amount of Ksh.44,742,361.

5. Dissatisfied with the objection decision, the respondent lodged a Notice of Appeal dated 7th September to the Tax Appeal Tribunal (TAT).
6. In a decision dated 9th February 2024, the TAT framed two issues for determination: whether the respondent's objection decision dated 29th August 2022 was proper in law and whether the appellant's assessments for additional Income tax and VAT of Ksh.44,742,361 was justified.
7. On the first issue, the TAT considered that the bone of contention was when the clock started ticking for both the appellant and respondent as set out in the [Tax Procedures Act](#) 2015 under section 51(11).
8. The TAT considered the appellant's contentions that a valid objection was not filed because the respondent's objection was not supported with requisite documentation.
9. It also considered the appellant's contention that the respondent submitted documents in a piece meal fashion between 9th February and 9th August 2022 and that the valid notice of objection according to the appellant, was accepted on 9th August 2022 when the final documents were submitted and not on 15th December 2021 as urged by the respondent.
10. The Tribunal held that both parties did not provide any evidence of the events that occurred between 15th December 2021 and 29th August 2022 when the appellant issued the objection decision and demanded additional taxes. The Tribunal therefore concluded that the communication between the appellant and respondent was mainly verbal and not in conformity with the provisions of sections 51(3) and 51(11) of the [Tax procedures Act](#).
11. The Tribunal narrowed down the contentious issues to be the procedure of tax assessments, notices of objection and objection decisions as laid down in the [Tax Procedures Act](#) section 51(2) (3) and (4).
12. The Tribunal held that the appellant failed to respond in writing, on receipt of the notice of objection received on 15th December 2021, and validate or invalidate the objection decision within 60 days of lodging the notice of objection being 15th December 2021. Therefore, this meant that the objection filed by the respondent was allowed by operation of the law under Section 51(11) of the Tax Procedure Act.
13. The Tribunal held that having determined that there was no valid objection decision before the Tribunal, it would not delve into the second issue as it had been rendered moot.
14. Consequently, it allowed that appeal, set aside the appellant's objection decision dated 29th August 2022 to income tax and VAT for 2018-2022 assessed at Ksh.44,742,361 and ordered each party to bear its own costs.
15. This decision has precipitated the appeal before me. The appellant filed a Memorandum of Appeal dated 5th April 2024. It sets out three grounds of appeal to wit:
 1. That the Tribunal erred in law and fact by failing to consider the merits of the appeal and focused on technicalities of the timelines for issuing an objection decision.
 2. That the Tribunal erred in law and fact by setting aside the respondent's decision dated 29th August 2022 where it confirmed Income Tax and VAT assessments of Kshs. 44,742,361.00 which taxes are due and payable.



3. That the Tribunal erred in failing to determine whether the respondent's additional assessment was justified and payable in holding that the same was overtaken by events.
16. The appellant seeks orders that this appeal be allowed, that the judgment of the Tax Appeals Tribunal (TAT) dated 9th February 2024 be set aside, that the appellant respondent's decision of 29th August 2022 be upheld in its entirety and prays for costs of this appeal.
17. The appeal was canvassed by way of written submissions. The appellant filed its submissions dated 9th October 2024 while respondent written submissions were dated 23rd October 2024.
18. The appellant submitted that the issues for determination as per the Memorandum of Appeal can be condensed to; 'whether the honourable Tribunal erred in law and fact by allowing the respondent's objection to the appellant's assessments by dint of Section 51(11) of the Tax Procedure Act, 2015.'
19. It is the appellant's submission that based on the provisions of section 51(3) Of the [Tax Procedures Act](#), the objection notice lodged by the respondent on 15th December 2021 was invalid since it was not accompanied by supporting documentation and/or pno supporting documents were attached.
20. It is the appellant's case that that the Commissioner/appellant makes its objection decision within 60 days from the date of receipt of a valid objection, as prescribed under Section 51(8) of the [Tax Procedures Act](#).
21. The appellant avers that the Tribunal erred in upholding the respondent's objection yet it did not meet the requirements of a valid objection as stipulated under Section 51(3) of the [Tax Procedures Act](#).
22. It is the appellant's case that since the respondent's objection was not supported with requisite documentation, then the objection was invalid and the burden under Section 56 (1) of the [Tax Procedures Act](#) remained undischarged. The appellant cites the decisions in Commissioner of Investigation and Enforcement Vs Pearl Industries Limited (2022) eKLR and Commissioner of Income Tax Vs Lerematesho Ltd [1976] eKLR to reinforce its contention.
23. It is submitted that this court should find that the respondent's objection was not validly lodged as it did not meet the threshold of Section 51(3) of the [Tax Procedures Act](#) and proceed to set aside the same.
24. This court was urged to find that the Tribunal erred in failing to make a determination on the taxes assessed and that the Income Tax and VAT amounting to Kshs.44,742,361, were due and payable by the respondent.
25. The respondent relied upon his Statement of Facts his replying affidavit sworn by himself on 16th October 2024 and submissions.
26. On ground one of the memorandum of appeal, the respondent submitted that section 51(11) of the [Tax Procedures Act](#) is couched in peremptory and mandatory terms and any act done outside of the set timelines of 60 days is a nullity ab initio. He relies on the decisions in Republic v Council of Legal Education & another Ex parte Sabiha Kassamia & another [2018] eKLR and Eastleigh Mall Limited v Commissioner of Investigations & Enforcement (2023)KEHC 2000 KLR to buttress his contention.
27. It is submitted that the appellant erred in law and fact by disregarding judicial precedent in [Commissioner of Domestic Taxes v Fortune Container Depot Limited \(Tax Appeal E060 of 2020\)](#) and [Equity Group Holdings Limited v Commissioner of Domestic Taxes \(Civil Appeal E069 & E025 of 2020\)](#) availed to it in purporting to render a decision on an objection which had been allowed after 188 days.



28. On ground 2 of the Memorandum of Appeal, it was submitted that this ground of appeal does not arise from the judgment of the Tribunal since the appeal was determined to have been allowed by operation of the law as opposed to the assessment made by the appellant.
29. In response to the third ground in the Memorandum of Appeal, it is submitted that no error was committed by the Tribunal when it first determine the legal issue raised by the respondent in respect of section 51(11) of the [Tax Procedures Act](#) before delving into the merits of the case.
30. It is the respondent's case that the appellant's written submissions deviate from the grounds of appeal. That it completely fails to submit on the three grounds but instead detours on a new ground of appeal that there was no validly lodged objection to warrant any determination.
31. It was the respondent submission that the issue whether there was a valid objection under section 51(3) of the [Tax Procedures Act](#) is not among the 3 grounds of the Memorandum of Appeal. It is urged that a party is bound by its pleadings and cannot come up with fresh unsupported grounds at the stage of submissions. It was further submitted that this submission was outrightly an afterthought and sharp practice frowned upon by the law.
32. It is urged that at no time did the appellant notify the respondent within 14 days, as provided by section 51(4), that no valid objection had been lodged. It was the respondent's contention that the appellant did not notify the respondent of any unsupported issue until after 188 days when it issued its objection decision neither did it request for any other additional supporting documentation or information within the stipulated 60 days when the objection was pending determination.
33. It is submitted that by disallowing the respondent's objection, the appellant violated the respondent's constitutional right to fair administrative action enshrined in Article 47 of [the Constitution](#).
34. The respondent concludes by urging that failure to render a decision within 60 days as stipulated by section 51(11) of the [Tax Procedures Act](#) is an infringement to the right to legitimate expectation. To buttress this contention reference was made to the decision in *Total Kenya Limited v Kenya Revenue Authority*, Petition 474 of 2019.

Analysis and Determination

35. I have considered the submissions as well as the entire record before me. It is imperative to state from the onset that the appellate jurisdiction of this Court is stipulated by 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".
36. Black's Law Dictionary defines matters of fact and matters of law as: -

"Matter of fact: A matter involving a judicial inquiry into the truth of alleged facts and Matter of law: A matter involving a judicial inquiry into the applicable law."
37. The Supreme Court has binding precedent on what constitutes appeals on matters of law only. In *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others*, Petition 2B of 2014 [2014] eKLR, the Court in paragraph 80 delivered itself as follows:

From the foregoing review of the comparative judicial experience, we would characterize the three elements of the phrase "matters of law" as follows:

 - (a) the technical element: involving the interpretation of a constitutional or statutory provision;



- (b) the practical element: involving the application of *the Constitution* and the law to a set of facts or evidence on record;
- (c) the evidentiary element: involving the evaluation of the conclusions of a trial Court on the basis of the evidence on record.

The court went on to explain at paragraph 81 (c):

“the conclusions arrived at by the trial Judge in an election petition in the High Court concerning membership of the National Assembly, the Senate, or the office of County Governor, where the appellant claims that such conclusions were based on “no evidence”, or that the conclusions were not supported by the established facts or evidence on record, or that the conclusions were “so perverse”, or so illegal, that no reasonable tribunal would arrive at the same; it is not enough for the appellant to contend that the trial Judge would probably have arrived at a different conclusion on the basis of the evidence.

The court went on at paragraph 81A :

81A. It is for the appellate Court to determine whether the petition and memorandum of appeal lodged before it by the appellant conform to the foregoing principles, before admitting the same for hearing and determination.

82. Flowing from these guiding principles, it follows that a petition which requires the appellate Court to re-examine the probative value of the evidence tendered at the trial Court, or invites the Court to calibrate any such evidence, especially calling into question the credibility of witnesses, ought not to be admitted. We believe that these principles strike a balance between the need for an appellate Court to proceed from a position of deference to the trial Judge and the trial record, on the one hand, and the trial Judge’s commitment to the highest standards of knowledge, technical competence, and probity in electoral-dispute adjudication, on the other hand.

- 38. Guided by the foregoing, this court carefully considered the Memorandum of Appeal as framed and finds that the second and third grounds of the Memorandum of Appeal relate primarily to the question of fact and evidence and not questions of law. Through these grounds, the appellant is asking this court to review the evidence presented. This court cannot do so because this constitutes a question of fact. In other words, the appellant requires the court to re-examine the probative value of the evidence tendered at the Tribunal and calibrate this evidence. As the aforestated grounds relate primarily to questions of fact, they do not qualify as grounds that can be determined on appeal. In addition, the appellant has not satisfactorily demonstrated how the conclusion reached by the Tribunal was not supported by established facts or evidence on record. As such, I shall dismiss these grounds in limine.
- 39. In my considered view the sole issue of determination is the question of law raised on the first ground that is whether the Tribunal erred in law by focusing on the technicalities of timelines for issuing an objection decision.
- 40. The appellant does not submit on this issue at all. The appellant starts by submitting that the issues for determination in its Memorandum of Appeal can be condensed to the issue of, whether the honourable Tribunal erred in law and fact by allowing the respondent’s objection to the appellant’s assessments by dint of Section 51(11) of the Tax Procedure Act, 2015.



41. The appellant then raises a new ground altogether by submitting that the respondent did not lodge a valid objection in accord to section 51(3) of the [Tax Procedures Act](#) as he failed to submit all the relevant documents relating to the Objection, which is a prerequisite for an objection to be valid.
42. I understand the appellant to be arguing that it makes its objection decision within 60 days from the date of receipt of a valid objection, as prescribed under Section 51(8) of the [Tax Procedures Act](#). This begs the question what did it render on 29th August 2022? Was it not an objection decision? Why does it want this decision upheld if it made it in the absence of all relevant documents relating to the objection? Does this not mean that the decision of 29th August 2022 is without the confines of the law and therefore invalid? The appellant’s submissions baffle the mind.
43. Be that as it may, I am of the considered view that the appellant is arguing a totally different appeal from what it lodged. This cannot be countenanced by this court because a party is bound by its pleadings.
44. On the said issue of timelines, the respondent urges that section 51(11) of the [Tax Procedures Act](#) is couched in peremptory and mandatory terms and any act done outside of the set timelines of 60 days is a nullity ab initio.
45. Section 51 of the [Tax Procedures Act](#) provides:
51. Objection to tax decision
- (11) 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.
46. Case law abounds on the mandatory nature of section 51 (11) of the [Tax Procedures Act](#). In [Equity Group Holdings Limited v Commissioner of Domestic Taxes \(Civil Appeal E069 & E025 of 2020\)](#) [2021], Mativo J observed at paragraph 60:
- “Section 51 (11) of the TPA is couched in peremptory terms. Having correctly found that the decision was made after the expiry of 60 days, the TAT had no legal basis to proceed as it did and to invoke article 159(2) (d). First, there was no decision at all. The decision had ceased to exist by operation of the law. Second, the provisions of section 51 (11) (b) had kicked in. The Objection had by dint of the said provision been deemed as allowed. Third, the TAT had no discretion to either extend time or to entertain the matter further. Fourth, discretion follows the law and a tribunal cannot purport to exercise discretion in clear breach of the law.”
- Further at paragraph 63
- “... A statutory edict is not procedural technicality. It’s a law which must be complied with. Parliament in its wisdom expressly and in mandatory terms provided the consequences of failing to render a decision within 60 days. The Objection is deemed to be allowed. That being the law, the appellant’s Objection stood allowed as a matter of law the moment the Commissioner of Domestic Taxes failed to render his decision within the 60 days. This being the correct legal position, it is my finding that the 1st appeal succeeds.”
47. In [Total Kenya Limited v Kenya Revenue Authority; Barclays Bank of Kenya Limited, Co-operative Bank of Kenya Limited & Citi Bank N.A. Bank Limited \(Interested Parties\)](#) [2020] KEHC 10305 (KLR), Korir J held at paragraphs 24 and 25:
- “24. Furthermore, it is pertinent to note that according to Section 51(11) of the TPA, where the Commissioner fails to make an objection decision within



sixty days of the notice of objection, the objection shall be allowed. In line with the provision, the Petitioner's objection to the Respondent's demand for the amount of Kshs.72,426,128/= stood allowed upon the lapse of sixty days from the date of receipt of the objection and the Respondent was no longer authorised to pursue the amount from the Petitioner.

25. The fact that the objection was allowed by the law under Section 51(11) of the TPA makes the Respondent's actions in pursuing the impugned excise duty procedurally unfair hence attracting review by the Court under Section 7(2) (c) of the FAAA."

48. In *Vivo Energy Kenya Limited v Commissioner of Customs & Border Control, Kenya Revenue Authority & another* [2020] the Court held at paragraph 31 that :

"The provisions of the TPA are clear that where the Commissioner fails to make a decision on an objection within sixty days, the objection shall be allowed. This means that the objection dated 8th November, 2016 in which the Applicant sought for the revision of the Commissioner's decision to demand the excise duty amounting to Kshs.127,183,364/= was allowed by operation of the law by dint of Section 51(11) of the TPA. Therefore, the 1st Respondent should not have continued to demand the payment of the excise duty through the letters dated 23rd, November, 2016, 3rd, February, 2017, 3rd, October 2019, 24th October 2019, and 7th, November 2019. All those demands amounted to nothing in law."

49. It is evident to me from the foregoing that the Tribunal did not err in its determination in focusing on the timelines for issuing an objection decision. It was well within its bounds and correctly interpreted the law on the requisite timeframe according to the provisions section 51 (11) of the *Tax Procedures Act*. Therefore, this ground fails.

50. The upshot is that the appeal herein is found to lack merit and is dismissed, the decision of the Tribunal dated 9th February 2024 is upheld, and each party shall bear its own costs.

51. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 30TH DAY OF MAY, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Sam Court Assistant

