



Commissioner of Domestic Taxes v Bosky Industries Limited (Income Tax Appeal E049 of 2022) [2025] KEHC 7965 (KLR) (Commercial and Tax) (29 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E049 OF 2022**

AB MWAMUYE, J

MAY 29, 2025

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

BOSKY INDUSTRIES LIMITED RESPONDENT

(Being an Appeal from the judgment of the Tax Appeals Tribunal delivered on 11th March 2022 in TAT Appeal no. 394 of 2021)

JUDGMENT

1. This is an appeal by Commissioner of Domestic Taxes, a principal officer appointed under section 3 of the *Kenya Revenue Authority Act*, Cap 469 of the Laws of Kenya and is mandated under section 5 of the said Act to assess, collect, account for, and administer tax revenue on behalf of the Government of Kenya.
2. The Respondent, Bosky Industries Limited, is a Limited liability Company established under the *Companies Act* No. 17 of 2015, and authorized to carry on various business activities within the Republic of Kenya.
3. Following an investigation carried out by the Appellant on the Respondent's tax affairs for the years 2014 to 2016, the Appellant raised an additional assessment of Value Added Tax (VAT) amounting to Kshs.42,984,336.00. The crux of the dispute was that the Respondent had allegedly claimed input VAT on invoices from suppliers who were suspected to be "missing traders," hence no real economic activity or genuine supply of goods had occurred.
4. The Respondent lodged an objection challenging the said additional assessment, maintaining that it had validly incurred VAT on bona fide purchases and that the necessary supporting documentation



namely invoices, Electronic Tax Register (ETR) receipts, proof of payment, and delivery notes had been provided to the Appellant.

5. The Tax Appeals Tribunal (the Tribunal) heard the parties in Tax Appeals Tribunal Appeal No. 394 of 2021. By its judgment delivered on 11th March 2022, the Tribunal allowed the Respondent's appeal in full, thereby vacating the additional assessment raised by the Appellant.
6. Being dissatisfied with the said judgment, the appellant appealed against the said decision to this court and filed its Memorandum of Appeal dated 9th May 2022 which raises the following grounds of appeal:
 1. That the Tribunal erred in law by failing to appreciate the provisions of Section 59 of the [Tax Procedures Act](#) and Section 43 of the VAT Act regarding the production of additional information and documents.
 2. That the Tribunal erred by shifting the burden of proof to the Appellant contrary to Section 30 of the [Tax Appeals Tribunal Act](#).
 3. That the Tribunal erred in failing to appreciate that, in this case, there was VAT lost and no actual supply, economic activity or commercial transaction which took place distinguishable from the case of Metcash Trading Ltd vs. Commissioner for the South African Revenue Service where there was actual trade in goods.
 4. That the Tribunal erred in failing to appreciate that the gist of the investigation findings was sufficiently communicated to the Respondent and the Tribunal, and it was therefore unnecessary to produce the Investigation Report.
7. The Appellant asks this Honourable Court to allow this appeal, set aside the Tribunal's Judgment dated 11th March 2022 in its entirety and uphold its additional assessment dated 27th May, 2020.
8. In opposition to the appeal, the respondent filed a statement of facts dated 9th February, 2024. The respondent contended that the Tribunal considered all the relevant material placed before it and correctly held that the evidence before it supported the respondent's purchases and sales, and that the respondent was not involved in any fraudulent VAT scheme.
9. It further asserted that it had discharged its burden of proof under the law as it had produced the relevant documentary evidence in support of its claim which the Tribunal appreciated. That on the other hand, the appellant had not provided any evidence to support its allegation of fraud by the respondent.
10. The Appeal was canvassed by way of written submissions and in compliance both parties filed submissions which the court has carefully considered.

The Appellant's Submissions

11. The Appellant filed its written submissions dated 26th February, 2024. The Appellant contends that the Tribunal erred by disregarding the elaborate and permissive nature of Section 59 of the [Tax Procedures Act](#), which empowers the Commissioner to call for any additional information or records to verify the genuineness of tax returns and Section 43 of the VAT Act which equally requires a taxpayer to keep and produce requisite records including invoices, delivery notes, ETR receipts, and stock ledgers. The Appellant submits that it was entitled to demand further documents to ascertain whether the Respondent's input VAT claims arose from genuine economic transactions.



12. In the Appellant’s view, the Respondent merely produced limited documents being invoices, ETR receipts, and certain payment slips but neglected to provide evidence of actual movement of goods such as delivery details, vehicle registrations, stock movement registers, and letters from suppliers. According to the Commissioner, Section 59 of the [Tax Procedures Act](#) authorizes such demands, and non-compliance by a taxpayer permits the Commissioner to confirm an assessment.
13. The Appellant further argues that the Tribunal erred by shifting the burden of proof to the Commissioner, contrary to Section 30 of the [Tax Appeals Tribunal Act](#) and Section 56(1) of the [Tax Procedures Act](#). By law, once the Commissioner issues an assessment, the taxpayer bears the burden of proving that the assessment is excessive or incorrect. The Appellant contends that the Tribunal wrongly concluded at paragraph 81 of its impugned Judgment that “once the Taxpayer adduces evidence that discharges his burden, the burden shifts to the Commissioner who must demolish such evidence.” This, says the Appellant, is contrary to the statutory regime, which places the primary burden on the taxpayer to establish the correctness of its returns and to produce all relevant supporting documentation.
14. The Appellant reiterates that the suppliers in question were part of a “missing trader scheme”: fictitious entities that issue invoices without making any actual supply of goods. It points out that invoices adduced meant to illegally reduce the VAT payments as they were generated to depict a business transaction whereas there was no actual supply/movement of goods or services.
15. According to the Appellant, the Respondent sought to offset its VAT liability using these questionable invoices, thus prompting the additional VAT assessment. The Commissioner argues that under Section 17 of the VAT Act, it may disallow input tax where there is reason to believe the transaction is not genuine, and the Tribunal’s failure to uphold the disallowance ignored the authenticity concerns.
16. The Appellant further asserts that it sufficiently informed the Respondent of the investigation findings via correspondence and Statements of Facts and that a full production of the investigation report itself was unnecessary. The Commissioner emphasizes that no prejudice was occasioned to the Respondent, given that the alleged missing-trader fraud was clearly communicated in correspondences dating back to 17th April 2018.
17. The Appellant prays for the Tribunal’s decision to be set aside and for this Court to uphold the VAT assessment of Kshs.42,984,336.00 contending that the Respondent has not met the requisite burden of proving the additional tax to be incorrect.

Respondent’s Submissions

18. The Respondent, on the other hand, filed its written submissions dated 23rd April, 2024 maintaining that the Tribunal’s decision was sound in law and fact. The Respondent insists that it produced all documents required under Section 17 of the VAT Act and Section 43 thereof being invoices, ETR receipts, bank statements, and delivery notes. The Respondent challenges the Commissioner’s additional demands such as motor vehicle registration documents, goods received register and evidence of sales or utilization contending these documents exceed what the VAT Act prescribes for a valid VAT deduction. It further averred that Ms. Kimeu, the Appellant’s witness confirmed that the said documents requested were not a requirement under the said Act.
19. The Respondent says that the Commissioner’s position is contradictory whereby the same invoices and records were accepted for purposes of determining and vacating a corporation tax assessment, yet inexplicably disallowed for VAT. This, in the Respondent’s view, demonstrates arbitrariness and bad faith.



20. The Respondent argues that it squarely discharged its primary burden by producing prima facie documents to show that taxable supplies occurred. At that point, the burden shifted to the Commissioner to prove the alleged fictitious nature of the invoices and non-existence of the suppliers. The Respondent contends that the Commissioner failed to adduce any concrete evidence, other than unsubstantiated allegations, to prove fraud or sham transactions.
21. The Respondent points out that the Commissioner never disclosed the investigation report allegedly unearthed during the process. According to the Respondent, that failure contravened its legitimate entitlement to information for purposes of defending itself. The Respondent cites the Tribunal's observation that Section 59(1) of the [Tax Procedures Act](#) as read with Section 43 of the VAT Act allows the Appellant to call for documents which documents the Respondent produced but does not absolve the Commissioner of the obligation to prove actual fraud or fictitious transactions.
22. The Respondent further submitted that the Appellant was obligated to share the findings of the investigation report in order to provide details as to why there would be varying positions on VAT and Corporation tax and that during hearing, the Appellant's witness confirmed that no investigation report was available. It placed reliance in the case of [Commissioner of Investigations vs Shatlesh Jagiven Dattani Tax APPAL No. E106 of 2020](#).
23. It is the Respondent's position that no evidence was adduced to particularise and prove the allegations of fraud and that unless the Appellant furnished the Respondent and the Tribunal with investigation report, the allegations remain as such. It relied on the cases of *Samura Engineering Limited & 10 Others v Kenya Revenue Authority* [2012] eKLR and *John Mbogua Getao v Simon Parkoyiet Mokare & 4 Others* [2017] eKLR.
24. Consequently, the Respondent contends the Tribunal rightly found that the Appellant's claims about a missing-trader scheme were unsupported by tangible evidence, and it urges this Court to affirm the Tribunal's Judgment in its entirety.

Analysis And Issues For Determination

25. Having carefully considered the Record of Appeal, Respondent's statement of facts, parties' submissions, and authorities cited, the following broad issues arise for determination:
 - i. Whether the Tribunal erred in failing to appreciate Section 59 of the [Tax Procedures Act](#) and Section 43 of the VAT Act on additional documentation.
 - ii. Whether the Tribunal erred by shifting the burden of proof to the Appellant contrary to Section 30 of the [Tax Appeals Tribunal Act](#).
 - iii. Whether the disallowance of the Respondent's VAT input claims was justified, especially in light of alleged missing-trader fraud.
 - iv. Whether the Tribunal erred by holding that production of the investigation report was necessary and that its absence was fatal to the Appellant's case.

Whether the Tribunal erred in failing to appreciate Section 59 of the [Tax Procedures Act](#) and Section 43 of the VAT Act on additional documentation.

26. Section 59 of the [Tax Procedures Act](#) (TPA) and Section 43 of the Value Added Tax (VAT) Act both speak to the obligation of taxpayers to keep and produce records that can assist the Commissioner in determining the correct tax liability.



27. Section 59(1) of TPA provides that: -

- “(1) For the purposes of obtaining full information in respect of the tax liability of any person or class of persons, or for any other purposes relating to a tax law, the Commissioner or an authorised officer may require any person, by notice in writing, to—
- (a) produce for examination, at such time and place as may be specified in the notice, any documents (including in electronic format) that are in the person’s custody or under the person’s control relating to the tax liability of any person;
 - (b) furnish information relating to the tax liability of any person in the manner and by the time as specified in the notice; or
 - (c) attend, at the time and place specified in the notice, for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to the tax liability of any person.”

28. Further, Section 43 of the VAT Act provides that: -

- “(1) Every registered person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.
- (2) The records to be kept under subsection (1) shall include—
- (a) copies of all tax invoices and simplified tax invoices issued in serial number order;
 - (b) copies of all credit and debit notes issued, in chronological order;
 - (c) purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received, to be filed chronologically either by date of receipt or under each supplier’s name;
 - (d) details of the amounts of tax charged on each supply made or received and in relation to all services to which section 10 applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for a particular purpose;
 - (e) tax account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;
 - (f) copies of stock records kept periodically as the Commissioner may determine;



- (g) details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time; and
 - (h) such other accounts or records as may be specified, in writing, by the Commissioner.
- (3) Every person required under subsection (1) to keep records shall, at all reasonable times, avail the records to an authorised officer for inspection and shall give the officer every facility necessary to inspect the records.
 - (4) For the purposes of this section, the Commissioner may, in accordance with the regulations, require any person to use an electronic tax register, of such type and description as may be prescribed, for the purpose of accessing information regarding any matter or transaction which may affect the tax liability of the person.
 - (5) A person who contravenes any of the provisions of this section commits an offence.”
29. Section 59(1) of the TPA empowers the Commissioner to request documents or additional information. This power serves two primary objectives: ensuring the Commissioner can comprehensively verify or investigate a taxpayer’s affairs, and curtailing tax evasion by requiring supporting records when there are plausible grounds to suspect under-declaration.
 30. Section 43 of the VAT Act obliges a registered person to keep records for at least five years. These include tax invoices, ETR receipts, credit or debit notes, and other relevant documents.
 31. The Appellant argued that the Tribunal failed to appreciate the scope of these provisions, contending that more documents such as supplier letters, vehicle registration logs, and proof of actual goods movement ought to have been demanded from the Respondent. The Tribunal, however, reasoned that while the Commissioner may indeed request a wide range of documentation if fraud or missing-trader risk is suspected, the standard documentation listed under section 17 of the VAT Act being invoices, ETR receipts, proof of payment had, in fact, been produced.
 32. Our laws recognize a minimum threshold of documentation needed to claim input VAT under section 17(3) of the VAT Act. This ordinarily includes an original tax invoice and corresponding ETR receipt. Yet, if the Commissioner suspects fraudulent conduct or fictitious transactions, it can go beyond this minimum. The Commissioner must, however, demonstrate an articulable basis or credible lead to justify deeper scrutiny.
 33. Section 59 of the TPA does not limit what the Commissioner can request as it uses the phrase “require any person ... to produce any documents.” Even so, a request that is overly burdensome or beyond the scope of what a taxpayer would normally retain must be proportionate to the gravity of the suspicion. In essence, the Tribunal must balance the Commissioner’s investigative prerogatives with taxpayers’ practical limitations.
 34. In *Republic v Kenya Revenue Authority; Proto Energy Limited (Exparte)* [2022] KEHC 5 (KLR), the Court stated thus-

“The most significant justification for placing the burden of proof on the tax payer is the practical consideration that the Commissioner cannot sustain the burden because he does



not possess the needed evidence. Under the system of self-reporting tax liability, the taxpayer possesses the evidence relevant to the determination of tax liability. It is simply fair to place the burden of persuasion on the taxpayer, given that he knows the facts relating to his liability, because the commissioner must rely on circumstantial evidence, most of it coming from the taxpayer and the taxpayer's records. The taxpayer must present a minimum amount of information necessary to support his position. This safety valve seems to place the burden of production on the taxpayer without relieving the Commissioner of the overall burden of proof. The tax payers' evidence must meet this minimum threshold.

A presumption of correctness arises from the Commissioner's determination/assessment. The presumption remains until the taxpayer produces competent and relevant evidence to support his/her position. When the taxpayer comes forward with such evidence, the presumption vanishes and the case must be decided upon the evidence presented."

35. The record shows that the Respondent did furnish a substantial set of documents, including but not limited to invoices, ETR receipts, and bank statements. The Appellant sought additional confirmations through letters from suppliers and vehicle registration logs for deliveries citing suspected fraud.
36. The Tribunal found that the Respondent had, in good faith, provided the conventional core documents for VAT claims. In view of the foregoing, this court finds that upon the respondent producing to the Appellant the documents needed, the Respondent discharged its burden of proof on a prima facie basis, thus the burden shifted to the appellant to disqualify the said documents on grounds inter alia of fraud. Given the Commissioner's failure to show a concrete basis that this was insufficient beyond general allegations of missing-trader fraud the Tribunal ruled that sections 59 TPA and 43 VAT Act had indeed been satisfied.
37. In the case of *Kenya Revenue Authority v Man Diesel & Turbo Se, Kenya* [2021] eKLR, the Court in dismissing the Kenya Revenue Authority's appeal underscored that: -

"As I will be stating shortly, a tax payer can only produce documents in his custody and relating to transactions undertaken by him/her."
38. Here, the Tribunal did not bar the Appellant from requesting more documentation as it merely found that the Appellant had not established, on a balance of probabilities, that the Respondent was withholding the requested records or that further records were legally mandatory as it respects the taxpayer's statutory obligations while recognizing that additional requests cannot be arbitrary or purely speculative.
39. This Court finds that the Tribunal correctly appreciated the interplay between section 59 of the *Tax Procedures Act*, section 43 of the VAT Act, and section 17 of the VAT Act. The Tribunal, therefore, did not err in law in its interpretation of these provisions.

Whether the Tribunal Erred by Allegedly Shifting the Burden of Proof to the Appellant

40. Section 30 of the *Tax Appeals Tribunal Act* states that: -

"In a proceeding before the Tribunal, the appellant has the burden of proving—

- (a) where an appeal relates to an assessment, that the assessment is excessive; or



(b) in any other case, that the tax decision should not have been made or should have been made differently.”

41. Section 56(1) of the [Tax Procedures Act](#) stipulates that: “In any proceedings under this Part, the burden shall be on the taxpayer to prove that a tax decision is incorrect.”
42. However, under general evidentiary principles, sections 107-109 of the [Evidence Act](#), Cap 80, on the burden of proof, once a taxpayer has produced prima facie evidence supporting its position, the evidential burden can shift to the Commissioner to prove otherwise especially where fraud or other serious allegations are raised by the Commissioner.
43. The Appellant contended that the Tribunal erroneously placed upon it an obligation to disprove the Respondent’s claims, effectively reversing the taxpayer’s statutory burden under section 30 of the [Tax Appeals Tribunal Act](#). The Appellant maintained that once it provided an assessment coupled with suspicions of missing-trader fraud, the taxpayer’s duty was to dispel these suspicions conclusively.
44. The Respondent asserted that it had already satisfied the threshold set out by law as it adduced invoices, ETR receipts, and bank statements to show commercial reality. As soon as that threshold was met, any further allegation of fraud demanded credible rebuttal evidence from the Appellant.
45. The “burden of proof” is not a static concept in tax litigation. Initially, the taxpayer must challenge an assessment by tendering evidence of legitimate transactions. Once the taxpayer has done so to a minimum level by demonstrating that the goods were paid for and ETR invoices exist, the burden shifts to the Commissioner to substantiate its allegations of fraud or fictitious transactions.
46. In *Hickman Motors Ltd vs Canada* 1977 CanLII 357(SCC) it was stated that: -

“The taxpayer’s initial onus of demolishing the Minister’s exact assumptions is met where the Appellant makes out a prima facie case. Where the Minister’s assumption is demolished by the Appellant, the onus shifts to the Minister to rebut the prima facie case made out by the Appellant and to prove the assumptions.....The law is settled that unchallenged and uncontrolled evidence demolishes the Minister’s assumptions.”
47. The Tribunal found that the Respondent had reached the necessary prima facie standard and that, as a matter of fairness and established evidentiary rules, the Appellant must then prove any alleged wrongdoing. The Tribunal thus did not abandon the statutory burden on the taxpayer, rather, it recognized that, upon the taxpayer meeting the initial onus, the Commissioner’s assertions of fraud triggered a correlative burden on the Commissioner’s side.
48. This Court therefore holds that the Tribunal did not improperly shift the burden of proof. Instead, it followed the orthodox legal approach of requiring the Commissioner to counter the taxpayer’s prima facie evidence with credible evidence of its own particularly where serious charges like fraud or fictitious transactions are raised.

Whether the disallowance of the Respondent’s VAT input claims was justified, especially in light of alleged missing-trader fraud

49. Missing-trader or carousel fraud is a recognized modus operandi in VAT jurisdictions worldwide, wherein fraudulent suppliers “vanish” after issuing invoices but remitting no VAT to the revenue authority. To combat this, revenue authorities typically demand robust proof of actual supply, including movement of goods, legitimate bank payments, and the supplier’s VAT declarations.



50. The Appellant vigorously argues that the suppliers in question were shell entities, with common ownership by a few individuals having no identifiable physical premises. The inference drawn was that goods never actually changed hands, and the ETR invoices were purely “paper transactions.”
51. Conversely, the Respondent argued that it made payment by RTGS for goods whose ETR invoices were recognized in the Commissioner’s own system. Each purchase was accompanied by a valid ETR invoice and matching serial number and the same documentation used for these alleged “fake” suppliers was accepted by the Appellant for Corporation Tax purposes, undermining the argument that these were fictitious transactions.
52. The Tribunal emphasized that it did not see any direct evidence disproving the authenticity of the Respondent’s documents. The Appellant did not produce bank records showing a circular flow of funds returning to the Respondent, or any forensic reports to show that the ETR receipts were forged.
53. The Commissioner, with broad investigative powers under section 59 of the TPA, could have independently confirmed the authenticity of the bank statements through third-party verification with the banks or provided conclusive proof that the alleged suppliers were unregistered or defunct.
54. Allegations of fraud or conspiracy must be proved on a standard higher than the usual balance of probabilities. The standard of proof where fraud is alleged in civil matters has been held to be higher than ordinary standard of balance of probabilities.
55. Similarly in *John Mbogua Gitau vs Simon Parkyiet Mokare & 4 Others* [2017] eKLR it was held that;

“Allegations of fraud whether in a Constitutional Petition or in an ordinary civil suit had to be specifically pleaded and proved. That in a suit anchored on fraud, the acts of fraud must be particularized with precision and accuracy.”
56. The Appellant sought to show that the Respondent was involved in fraudulent evasion of VAT by suggesting that a 3rd party was involved in fraudulent evasion of VAT yet the said Party is not party to these proceedings. Without conclusive evidence such as affidavits from the suppliers denying any transactions, or returns data showing no output VAT declared, the claim of missing-trader fraud remains unsubstantiated.
57. The Appellant alleges fraud and involvement in a missing trader scheme but provided no concrete proof. It is trite law, affirmed in *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, where it was held: -

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts”.
58. In absence of substantiated evidence of fraud, the documentation presented by the Respondent remains prima facie valid. The Tribunal rightly emphasized the Appellant’s duty to verify transactions independently and exhaustively. Its failure to substantiate allegations renders its claims untenable.
59. Further, the Appellant’s acceptance of similar documentation for Corporation Tax purposes contradicts its rejection of the same for VAT, demonstrating inconsistency and undermining its credibility.



60. Upon exhaustive review, the Tribunal’s judgment is legally sound and supported by evidence. Given the documentation provided and the Commissioner’s inability to present concrete contrary proof, the Tribunal did not err in law or fact by concluding that the transactions appeared legitimate. The existence of a missing trader suspicion alone was insufficient without demonstrable evidence linking the Respondent to fraudulent activity.

Whether it was necessary for the Appellant to produce the full investigation report

61. Under the fair administrative action principles embedded in Article 47 of *the Constitution* and the *Fair Administrative Action Act*, any administrative body including the Commissioner of Taxes must give a party sufficient information to enable them to respond effectively to adverse allegations. In revenue matters, the taxpayer’s rights to fair hearing and legitimate expectation require that essential investigative findings be disclosed.
62. The Appellant maintained that it had conveyed the “gist” of the investigation to the Respondent in various letters and statements of facts and that it was neither practical nor legally required to release a confidential or more extensive investigation report in its entirety.
63. The Respondent argued that it could not adequately rebut the claim of fictitious suppliers if it was denied access to the underlying details, especially where the Appellant’s position is largely anchored on an unproduced document. It is the Appellants contestation that the Appellant’s witness disclosed during hearing that there was no investigation report available. Without such disclosure, the Respondent remained hamstrung in showing that the alleged “missing trader” allegations were misplaced.
64. There is recognition, both in our jurisprudence and comparative jurisprudence, that entire investigative files may contain sensitive information. However, the Commissioner is obligated to at least disclose the relevant extracts that justify its assessment. The Commissioner can mask or redact irrelevant sensitive materials while still allowing the taxpayer to see the basis for the additional assessment.
65. By withholding the Investigation Report altogether, the Appellant risked undermining its own case, as the Tribunal was forced to rely on “summaries” without direct verification of alleged fraud.
66. This Court agrees with the Tribunal’s finding that the Appellant’s failure to supply pertinent parts of its Investigation Report or other credible proof substantially weakened its fraud allegations. While full disclosure of all confidential materials may not be mandatory, the taxpayer must be availed the crucial evidence forming the basis of a tax demand. Absent that, the Tribunal was justified in ruling that the Respondent was not properly confronted with the case it had to meet.
67. For the reasons given here before, it is this Court’s finding that the Tribunal did not err in its interpretation and application of the provisions of Sections 56 & 59 of the *Tax Procedures Act*, Section 43 of the VAT Act and Section 30 of the *Tax Appeals Tribunal Act*.
68. In light of the foregoing, this court makes the following orders:
- a. The Appeal is dismissed in its entirety.
 - b. The Judgment of the Tax Appeals Tribunal dated 11th March 2022 is upheld.
 - c. Costs of the appeal are awarded to the Respondent.
- It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF MAY 2025.

BAHATI MWAMUYE

JUDGE

