



**Commissioner of Intelligence, Strategic Operations, Investigations & Enforcement v Jey Oil Africa Limited (Income Tax Appeal E276 of 2024)
[2025] KEHC 9326 (KLR) (Commercial and Tax) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9326 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E276 OF 2024**

F GIKONYO, J

JUNE 30, 2025

BETWEEN

**COMMISSIONER OF INTELLIGENCE, STRATEGIC OPERATIONS,
INVESTIGATIONS & ENFORCEMENT APPELLANT**

AND

JEY OIL AFRICA LIMITED RESPONDENT

JUDGMENT

Notice of Withdrawal of appeal

1. This is an appeal against the judgment dated 12th July 2024 by the Tax Appeals Tribunal (“Tribunal”) in TAT No. E569 of 2023; Jey Oil Africa Limited v Commissioner of Intelligence, Strategic Operations, Investigations & Enforcement. In the impugned judgment, the Tribunal set aside the Commissioner’s objection decision dated 24th July 2023.
2. Aggrieved, the Commissioner instituted this appeal through a memorandum of appeal dated 16th October 2024, on the following grounds:-
 1. That the Honourable Tribunal erred in law and fact by failing to appreciate that the Respondent’s Appeal was invalid as per Section 3 of the *Tax Appeals Tribunal Act* and Section 52 of the *Tax Procedures Act* due to the pleadings and documents availed to the Tribunal pointing to the fact that the Respondent filed and served upon the Appellant a Notice of Withdrawal dated 7th September 2023 that withdrew the Notice of Appeal dated 23rd August 2023.



2. That the Honourable Tribunal erred in law in finding that the Appellant made a blanket dismissal of the evidence adduced on the ground that it was insufficient and failed to consider that the Respondent had not produced all the documents requested by the Appellant.
3. That the Honourable Tribunal misdirected itself on both facts and law by holding that the Appellant was not justified in its confirmation of assessed taxes upon the Appellant.
4. That the Honourable Tribunal erred in law and fact in making a decision without considering the merits of the case before it and only opted to rely on a procedural issue, which was based on miss-appreciation of the principles of tax law, particularly the provisions of Section 51 of the *Tax Procedures Act*.

Background

3. The respondent is a limited liability company incorporated in Kenya and a registered taxpayer. The appellant carried out investigations into the respondent's tax affairs for the period 2016 to 2020. It reviewed the respondent's IT2c filings, VAT filings and other documentation. It also analysed the respondent's four bank accounts held at Equity Bank and confirmed that the respondent had gross deposits for the period under review. The same comparison was also done between net deposits and turnover declared for VAT.
4. The Commissioner compared the sales declared by the respondent to the purchases claimed from them and found that the respondent either omitted or under-declared several sales.
5. The Commissioner also compared dates when the respondent lodged certain customs entries in the Simba System against the dates the company claimed input VAT and found that entries were claimed after six months, contrary to Section 17 (1) and (2) of the VAT Act.
6. The Commissioner served the respondent with its letter of findings on 12th October 2022. The respondent objected through iTax on 20th March 2023, disputing the taxes as assessed. An invalidation notice was issued to the respondent on 27th April 2023.
7. The respondent applied for consideration to lodge a late objection, which was approved by the Commissioner on 23rd May 2023. The respondent was given seven days to provide the relevant information and documents to support the objection.
8. The respondent then lodged a formal objection on 29th May 2023. The Commissioner issued its objection decision vide a letter dated 24th July 2023.
9. Dissatisfied, the respondent filed an Appeal before the Tribunal dated 23rd August 2023.

Directions of the court

10. The appeal was admitted to hearing on 27th March 2025. It was canvassed through written submissions. The appellant filed written submissions dated 3rd December 2024. The respondent did not file submissions despite service evidenced by the affidavit of service sworn by Charles Kamonji on 26th May 2025.

Appellant's submissions

11. The Commissioner submitted that there is no valid appeal before the Tribunal enabling it to exercise its jurisdiction because the respondent filed and served a Notice of Withdrawal of the Notice of Appeal dated 23rd August 2023. It argued that the Tribunal can only seize jurisdiction of a matter once the



same is properly filed as provided for in Section 3 of the [Tax Appeals Tribunal Act](#) and Section 52 of the [Tax Procedures Act](#).

12. The Commissioner asserted that it issued an additional assessment under Section 31 of the [Tax Procedures Act](#), against the respondent to ensure that its returns reflected the true tax position. It argued that upon receipt of the additional assessment, the burden of proof shifted to the respondent to disprove the Commissioner's position, as per Section 56(1) of the [Tax Procedures Act](#).
13. The Commissioner contended that the respondent failed to raise an objection against the assessment as provided for under Section 51 of the [Tax Procedures Act](#). It also contended that the respondent failed to provide the required documents for the objection application as per Section 51(3) of the [Tax Procedures Act](#).
14. The Commissioner relied on the following cases:-
 1. Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR
 2. Fair Logistics Agency Limited v Kenya Revenue Authority [2020] eKLR
 3. Grace Njeri Githua v Commissioner of Investigations & Enforcement (TAT No. 102 of 2018)
 4. Mulherin v Commissioner of Taxation [2013] FCAFC 115
 5. Commissioner of Domestic Services v Galaxy Tools Limited [2021] eKLR
 6. TAT No. 55 of 2018 Boleyn International Limited vs Commissioner of Domestic Taxes
 7. TAT No. 70 of 2017 Afya Xray Centre Limited vs Commissioner of Domestic Taxes
 8. Commissioner Investigations And Enforcement v Sangyug Enterprises (K) Limited (Income Tax Appeal E056 of 2020) [2022] KEHC 59 (KLR)
 9. [Commissioner of Domestic Taxes v Structural International Kenya Ltd \(Income Tax Appeal E089 of 2020\)](#) [2021] KEHC 152 (KLR)
 10. [Commissioner of Investigations and Enforcement v Pearl Industries Limited \(Tax Appeal E086 of 2020\)](#) [2022] KEHC 51 (KLR)
15. The Commissioner urged the court to allow the appeal with costs; to uphold its objection decision dated 24th July 2023 and to set aside the Tribunal's judgment in Tax Appeal No. E569 of 2023.

Analysis and Determination

Scope of jurisdiction

16. The court's mandate in such an appeal is stipulated under Section 56 of the [Tax Procedures Act](#), which provides that:-

" 56. In any proceedings under this Part, the burden shall be on the taxpayer to prove
(1) that a tax decision is incorrect.

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

In an appeal by a taxpayer to the Tribunal, High Court or Court of Appeal in relation to an appealable decision, the taxpayer shall rely on the grounds stated



in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.”

Validity of the appeal

17. The first issue is whether the appeal before the Tribunal was valid. The Commissioner raised the issue of jurisdiction of the Tribunal to consider an appeal which had been withdrawn through a Notice of Withdrawal dated 7th September 2023 of the Notice of Appeal dated 23rd August 2023.
18. The Tribunal remarked as follows at para. 47 of the impugned judgement:-
 - “ 47. The Tribunal gleaned through the documents presented by the parties and did not find any evidence to show that the Appellant filed and served upon the Respondent a Notice of Withdrawal of the Notice of Appeal dated 7th September 2023, as alleged by the Respondent.
 48. Parties having adhered to the requisite procedure and timelines and in the absence of the alleged Notice of Withdrawal of the Notice of Appeal, the Tribunal finds that this Appeal is valid.”
19. I have also gone through the record from which I did not find any evidence of the purported notice of withdrawal of the notice of appeal. Thus, I find no merit in ground 1 of the appeal. It therefore fails.

Burden of proof

20. The second issue is whether the Tribunal erred by failing to consider that the respondent had not produced all the documents requested by the Commissioner.
21. The court’s mandate is limited to questions of law only. However, it is a question of law where the decision or findings of the tribunal were based on no evidence. Thus, the court may examine the issues of fact to ascertain whether they are borne of or based on the evidence and the law. *Oceanfreight (E.A) Limited v Commissioner of Domestic Taxes [2018] eKLR*
22. The Commissioner faulted the Tribunal for finding that it made a blanket dismissal of the evidence adduced on the ground that it was insufficient. It also complained that the Tribunal erred by holding that the Commissioner was not justified in its confirmation of the assessed taxes upon the respondent. It argued that the Tribunal erred by making a decision without considering the merits of the case, relying on a procedural issue and the provisions of Section 51 of the *Tax Procedures Act*.
23. Section 51 of the *Tax Procedures Act* lays out the process of objection to a tax decision. The taxpayer who disputes a tax decision is required to lodge an objection within 30 days of the impugned decision.
24. The Commissioner’s contention that the respondent failed to file an objection is unfounded because the objection dated 20th March 2022 is on the record. This objection was issued after the Commissioner allowed the respondent to put in a late objection.
25. The Commissioner contended that the respondent failed to provide the required documents for the objection application as per Section 51(3) of the *Tax Procedures Act*, which stipulates that: -
 - “ 3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—



- (a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;
- (b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1); and
- (c) all the relevant documents relating to the objection have been submitted.”

26. The objection challenged the Commissioner’s additional assessments issued on 21st December 2022 and 15th November 2019. The respondent indicated that they were unaware of the assessments as they did not receive communication. It indicated that it had been dormant with no operations since November 2018.
27. The respondent stated that it had not received any breakdown of the additional assessments of principal amounts of Kshs. 17,132,080.17 and Kshs. 1,305,460.60. It observed that various inputs claimed in its original VAT return had been disallowed through the additional assessment for May 2018.
28. The respondent attached its original VAT workings and supporting documents indicating a correct input VAT claimed to challenge the Kshs. 1,305,460.60 additional assessment.
29. The respondent indicated that part of additional assessment KRA201915623703, input VAT was claimed on invoice for Firetec International Invoice No. INA1322 was declared with an input vat value of 39,760/- which has since changed to 33,376/- without explanation.
30. It further stated that:-

“ Although we are unable to point out on the breakdown of the additionally assessed amount 17,132,080.17 via additional assessment KRA2022XXXXXX3075, we suspect and also hereby attach our Original VAT workings and copies of the supporting documents for the VAT inputs (highlighted in Green) which were a result of VAT claimed on Import and declared as per the Customs documents attached.

In our Original return Invoice no. 2018-165 Sales to Intex Ltd was declared with an output vat value of 261,424/85 which has since disappeared in the additional assessment above.

Based on the above, we therefore object to the Additional Assessment and request that the additional assessment reversed/nullified immediately.”

31. The respondent’s documents are also on record.
32. In the objection decision, the Commissioner confirmed the principal taxes amounting to Kshs. 288,287,208 being VAT of Kshs. 124,674,306 and Corporation tax of Kshs. 163,612,902. The amounts formed the basis of the appeal before the Tribunal.
33. The Tribunal found that “during the investigation period, the Respondent requested the Appellant for the following documents:
- i. Sales ledger and Purchases ledgers



- ii. Invoices
- iii. Bank Statements
- iv. Fixed Assets Schedule
- v. Payroll Schedule
- vi. Cash Book
- vii. Audited Financial Statements for the period under review

56. The Tribunal further noted that the Appellant provided the underlisted documents to the Respondent, the same were also availed at the Appeal stage:-

- i. Financial statements for year 2016 & 2017
- ii. Bank Statements
- iii. Bank reconciliations analysis
- iv. Summary of sales and sample invoices
- v. Sales & Purchases ledger excerpts.

57. The Respondent on the other hand insisted that the documents availed by the Appellant were not sufficient to warrant adjustments to the assessments.

...

61. With regard to income tax assessments, the Tribunal noted that Appellant provided its bank statements, bank reconciliation, sales invoices and sales ledger excerpts however, there was no evidence to show that the Respondent considered the documents so provided as it did not point out any gaps, variances or inconsistencies, it only went ahead to confirm its assessments asserting that the documents were not sufficient. The Respondent has therefore not persuaded the Tribunal that it exercised its best judgment based on the information availed to it as required under Section 31(i) of the TPA...”

34. I have read the Commissioner’s objection decision dated 24th July 2023. The Commissioner indicated that the respondent did not provide any documentation to support its position on the additional assessments for Corporation tax based on undeclared sales for 2016, 2017 and 2018.

35. The Commissioner also indicated in respect of the additional assessments for VAT for December 2016, December 2017 and December 2018, the respondent had not provided sufficient documents.

36. According to the Commissioner the additional assessments for: -

- 1. VAT for December 2016 was based on variances between declared Turnover for Corporation tax and VAT and omitted sales and partially declared sales.
- 2. VAT for 2017 was based on undeclared income as per banking reconciliations, omitted sales and partially declared sales as per table 4 above and disallowed VAT from F-147s.
- 3. VAT for December 2018 was based on undeclared income established from banking reconciliation, as well as omitted and understated sales.



37. In light of the foregoing, the Tribunal erred in finding that the Commissioner made a blanket dismissal of the evidence adduced on the ground that it was insufficient and failed to consider that the respondent had not produced all the documents requested
38. Section 30 of the [Tax Appeals Tribunal Act](#) and section 56 of the Tax Procedure Act place the burden of proof on the taxpayer to prove that an assessment is excessive or a tax decision is incorrect.
39. Since the Commissioner did consider the documents provided and pointed out gaps as highlighted above, it was the burden of the respondent to prove that the retained assessments were excessive or incorrect.
40. In [Commissioner of Domestic Taxes v Priyguru Company Limited \(Income Tax Appeal E085 of 2020\)](#) [2021] KEHC 132 (KLR) (Commercial and Tax) (15 October 2021) (Judgment), the court observed that:-

“...section 59 of the [Tax Procedures Act](#) and section 43 of the VAT Act, 2013 provide for the keeping and production of documents when required by the tax authorities. These documents must be kept for up to five (5) years. A prudent and keen trader who is genuinely guarding his business and undertaking honest business, will be expected to keep those documents at all times.”

41. Additionally, section 51(3) (c) of the [Tax Procedures Act](#), requires a taxpayer to submit all the relevant documents relating to the objection.
42. The rationale for this obligation on the tax payer was aptly discussed by the court in [Republic v Kenya Revenue Authority; Proto Energy Limited \(Exparte\) \(Judicial Review Application E023 of 2021\)](#) [2022] KEHC 5 (KLR) (24 January 2022) (Judgment) as follows:-

“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.”

43. The Tribunal noted that the burden of proof in tax disputes is not stationary, but shifts among the parties based on the weight of the evidence adduced by either party. This is evidential burden which entails inter alia, onus of production of evidence.
44. Thus, it is only where the taxpayer provides all relevant documents to the objection, that the evidential burden shifts. This was well explained by the court in Republic v Kenya Revenue Authority; Proto Energy Limited (Exparte) [supra], as follows:-

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.”



45. In this case, the basis of the Commissioner's objection decision was that there were no documents supplied. Therefore, the respondent did not provide sufficient documents for the burden of proof to shift to the Commissioner.
46. Consequently, I find that the Tribunal erred by finding that the appellant provided the evidence that the assessment was wrong and that the burden shifted to the Commissioner.
47. Accordingly, I find that the appeal is merited and it is allowed with no orders as to costs. The decision by the Tribunal is set aside; and the appeal before the tribunal is dismissed.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 30TH DAY OF JUNE, 2025

.....

F. GIKONYO M

JUDGE

In the presence of: -

Lemaiyan for KRA

CA Kinyua

