



**Commissioner of Legal Services and Board Coordination v  
Prabhaki Development Limited (Income Tax Appeal E114 of 2024)  
[2025] KEHC 9065 (KLR) (Commercial and Tax) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9065 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E114 OF 2024  
BK NJOROGE, J  
JUNE 26, 2025**

**BETWEEN**

**COMMISSIONER OF LEGAL SERVICES AND BOARD  
COORDINATION ..... APPELLANT**

**AND**

**PRABHAKI DEVELOPMENT LIMITED ..... RESPONDENT**

*(An Appeal from the judgment of the Tax Appeals Tribunal at Nairobi  
delivered on 22nd March, 2024 in Tax Appeal Number 273 of 2023)*

**JUDGMENT**

1. This is an Appeal from the judgment of the Tax Appeals Tribunal at Nairobi delivered on 22nd March, 2024 in Tax Appeal Number 273 of 2023.

**Background Facts**

2. The Appellant carried out an audit into the tax affairs of the Respondent for the periods of 2017 to 2020 and issued them with a pre-assessment notice dated 18<sup>th</sup> October 2022. Consequently, the Respondent objected to the assessments through a Notice of Objection filed on 23<sup>rd</sup> December 2022 on various grounds. The Appellant having considered the explanation and information provided proceeded to review the assessment dropping all the supported issues. It further reviewed the figures where supporting documents were availed. The Appellant thereafter issued the Objection Decision on 17<sup>th</sup> February 2023 which was the subject of the Appeal. The Tribunal made a finding that: The Appellant dislodged its burden of proof under the tax heads of corporation tax for overstated cost and unreconciled VAT.



3. The Appellant has appealed against the part of the above-named judgment on the following grounds: -
- a. The Tribunal erred in law and fact in mixing up issues concerning overstated cost and unreconciled VAT and therefore arriving at findings that were not the basis of the objection decision in issue;
  - b. The Tribunal erred in law and fact in failing to appreciate that Sections 15 and 16 of the [Income Tax Act](#) allow only expenses that are fully supported as having been incurred in the generation of the income to be allowed.
  - c. The Tribunal erred in law and fact in ignoring the explanations provided by the Appellant in its Statement of Fact about the over-claimed cost and hence arriving at an erroneous finding.
  - d. The Tribunal erred in law and fact in failing to appreciate that the documents presented at the Appeal had all been fully considered and the issue was the extra amount above the supported cost which was never supported;
  - e. The Tribunal erred in law and fact in simply assuming that the tax invoices, valuation reports and certificates provided were not considered while the same is what was deducted to arrive at the overstated cost and no extra documents have ever been availed to support the extra cost declared which was what was in issue;
  - f. The Tribunal erred in law and fact without any reconciliations provided to assume that the documents provided fully explained the overstated cost and was not already considered in arriving at the variance of what is unexplained;
  - g. The Tribunal erred in law and fact in disregarding the Appellant's explanation that all the documents attached had already been considered and the issue was the variance after considering what was availed at assessment;
  - h. The Tribunal erred in failing to appreciate that during the objection and Appeal no new documents were availed to warrant the allowance of the overstated cost;
  - i. The Tribunal erred in law and fact in stating the Appellant had required the Respondent to declare the sales while no such request was ever made at any point;
  - j. The Tribunal erred in law and fact in failing to appreciate that the Respondent's reconciliation could not be accepted as they were supported by tax invoices belonging to Prabhaki Investments Limited and not the Respondent: Prabhaki Development Limited;
  - k. The Tribunal erred in law and fact in accepting VAT reconciliations based on understated value as opposed to the reconciliations based on the open market value;
  - l. The Tribunal erred in law and fact in accepting the reconciliations prepared based on under-declared value contrary to section 13 of the [VAT Act](#) which provides that in the case of related persons the taxable value is the open market value of the supply;
  - m. The Tribunal erred in law and fact having already found that the Respondent had not proved the value charged was an open market value to proceed to accept the same values for the reconciliation of VAT.
  - n. The Tribunal erred in law and fact in failing to find that the Respondent could not rely on reconciliations which were based on values that could not be ascertained to be open market values as such the Appellant's reconciliation based on open market value was acceptable.



4. The Appellant prays for the following orders;
  - a. Allows this Appeal and sets aside the part of the decision of the Tax Appeal Tribunal dated 22<sup>nd</sup> March 2024 in relation to overstated cost and unreconciled VAT.
  - b. The Respondent bears the cost of this Appeal.
5. No statement of facts was filed.

### Issues for Determination

6. The Court has considered the Appeal, the Record of Appeal as well as the written submissions and frames the following issue is for determination;
  - a) Whether the Tribunal erred in law in holding that the Respondent discharged its burden of proof in respect of overstated costs and unreconciled VAT under the tax heads of Corporate Tax and VAT.

### Analysis

7. It is trite law that an Appeal to the High Court from the decision of the Tax Appeals Tribunal shall be on a question of law only. The Court is not permitted to substitute the Tribunal's decision with its own based on its own analysis and appreciation of facts, unless the Tribunal's decision cannot be supported by any evidence.
8. It was the Appellant's submission that the Tribunal failed to consider that the Respondent had not provided evidence in support of the variance in the construction costs by its sole supplier, Structural Construction International Limited (hereinafter SCIL). It is this variance that was in question. The Appellant in the pre-assessment had indicated that, given the contract between the Respondent and Structural Construction International Limited being full, it was expected that the income cost incurred would represent the income of SCIL.
9. Section 15 (1) of the *Income Tax Act* provides that:
  15.
    - (1) For the purpose of ascertaining the total income of a person for a year of income there shall, subject to section 16, be deducted all expenditure incurred in that year of income which is expenditure wholly and exclusively incurred by him in the production of that income, and where under section 27 any income of an accounting period ending on some day other than the last day of that year of income is, for the purpose of ascertaining total income for a year of income, taken to be income for a year of income, then the expenditure incurred during that period shall be treated as having been incurred during that year of income.
10. In essence, Section 15(1) of the *Income Tax Act* allows a taxpayer to deduct expenses wholly and exclusively incurred in the production of that income in computing their taxable income.
11. On the other hand, the Respondent contended that it has met its burden of proof under Section 15 of the *Income Tax Act* by providing substantial documentation, including invoices, contracts, and payment records, to substantiate the claimed costs of sales. Further, these expenses were incurred in the generation of revenue and thus represent legitimate business costs. Therefore, it is legally unsound for the Appellant to disallow the claimed costs of sales on the basis of the independent tax compliance status of the suppliers.



12. On this issue the Court supports the Tribunal's position that the Respondent is only liable to provide documents to support its transactions and cannot be expected to compel the supplier to declare its own sales. The Tribunal's analysis of the documents provided showed that the Respondent had indeed attached the tax invoices, valuation reports and certificates issued by the contractor in support of the cost of sales in accordance with Section 15(1) of the *Income Tax Act*
13. Further, the Appellant argued that it had already factored into account the tax invoices, valuation report and certificates issued in support of the contractor. That it was from the same that the variance was established and the Respondent required to avail further documentation.
14. Under paragraph 9 of the 8<sup>th</sup> schedule of the *Income Tax Act*  
Where property is acquired or transferred—
  - (a) otherwise than by way of a bargain made at arms length;
  - (b) by way of a gift in whole or in part;
  - (c) for a consideration that cannot be valued; or
  - (d) as the result of a transaction between persons who are related then, for the purposes of—
    - i. paragraph 7 of this Schedule, the amount of the consideration for the transfer of the property shall be deemed to be equal to the market value of the property at the time of the transfer; and
    - ii. paragraph 8 of this Schedule, the amount of the consideration for the acquisition of the property shall be deemed to be equal to the market value of the property at the time of the acquisition or to the amount of the consideration used in computing stamp duty payable on the transfer by which the property was acquired, whichever is the lesser.
15. The Appellant explained that the variance was due to price adjustment which the Tribunal did not take into account in its finding. The Price adjustment was necessitated by the fact that the sale of the go-downs was between the related party Prabhaki Investments Limited and the Respondent, and the reconciliations are different.
16. In response, the Respondent argued that despite the sales occurring within the same week, the contract negotiation period was not the same. That the negotiation period for the sale to Westlands Trading LTD began years earlier and a reservation offer was made in the year 2016 and this is the reason for the differing prices.
17. The Court notes that the Tribunal found that the said sale agreements were not attached to enable the Tribunal examine whether the two transactions were comparable and further ascertain whether the sales occurred in the same week. The Appellant only provided a copy of the reservation offer for the Westlands Trading Limited showing the agreed instalments. However, proof of payment to show actual performance was not attached. The Tribunal did not set sight on any document relating to the Sale to Prabhaki Investments Limited.
18. However, the Tribunal went on to find that Appellant dislodged its burden of proof under the tax heads of Corporate tax for overstated cost of sales and unreconciled VAT. This was on the basis that once the Appellant provided the sale agreements and bank statements as proof of having sold the godowns at the reported prices, it fell upon the Respondent to provide a basis for adjustment.



19. It is the Court's considered view that the findings of the Tribunal were erroneous in that there was no sufficient evidence to support the acquisition of the property. That the Tribunal made its determination based on the assumption that the Respondent had provided the Appellant with the sale agreements and bank statements as proof of having sold the godowns at the reported prices.
20. The upshot of the foregoing is that the Appeal is upheld to the extent that the Respondent failed to dislodge its burden of proof under the tax head of overstated cost on sales and unreconciled VAT.
21. On costs, the fair order is let each party bear its own costs in this Appeal.

#### **Determination**

22. This Court allows the Appeal and sets aside the part of the decision of the Tax Appeals Tribunal dated 22nd March 2024 in relation to overstated cost on sales and unreconciled VAT.
23. That each party to bear its own costs of this Appeal.
24. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> JUNE, 2025**

**NJOROGE BENJAMIN K.**

**JUDGE**

In the presence of;

Miss Nzia for the Appellant

Mr. Swaka for the Respondent

Mr. Luyai – Court Assistant

