



**Mwaniki v Commissioner of the Domestic Taxes (Appeal E033 of 2024)  
[2025] KEHC 11311 (KLR) (Commercial and Tax) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11311 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
APPEAL E033 OF 2024  
JK NG'ARNG'AR, J  
JULY 30, 2025**

**BETWEEN**

**STANLEY WAMUI MWANIKI ..... APPELLANT**

**AND**

**THE COMMISSIONER OF THE DOMESTIC TAXES ..... RESPONDENT**

*(An Appeal from the judgment of the Tax Appeals Tribunal at Nairobi  
delivered on 26th January 2024 in the Tax Appeal Tribunal No. 13 of 2021)*

**JUDGMENT**

1. The Appellant, Stanley Wamui Mwaniki, being dissatisfied with the judgment of the Tax Appeals Tribunal [hereinafter "the Tribunal"] delivered at Nairobi on 26<sup>th</sup> January 2024 in Tax Appeal Case No. 043 of 2022, appeal to this Court under Section 56[2] of the [Tax Procedures Act](#), 2015.
2. The Appellant challenges the Tribunal's finding which upheld tax assessment issued by the Respondent, including assessments for Corporation Tax and Value Added Tax [VAT], for the years of income 2015 to 2020. The Appellant maintain that the impugned assessments are unlawful, erroneous, and contrary to statute.
3. The central dispute in this matter is whether the Respondent lawfully issued Corporation Tax and VAT assessments against the Appellant, who is alleges to be a natural person, not registered under the [Companies Act](#) and not engaged in business activity requiring VAT registration.
4. The Appellant claims to be a natural person and not a company, partnership, or any other corporate body within the meaning of the [Income Tax Act](#) or [Companies Act](#) 2015.



5. The Appellant avers that on or about 2021, the Respondent issued various tax assessments against the Appellant for the years of income 2015 to 2020, based on alleged undisclosed income and commercial activity, and demanded payment of Corporation Tax, and Value Added Tax [VAT].
6. He claims that the Respondent issued the Appellant with the following Tax assessments:
  - a. Corporation Tax Assessment & Investigations findings dated 15<sup>th</sup> December 2021 for the sum of 205,867,969/=
  - b. Corporate Taxpayer arrears demand dated 205,867,969/= for the sum of Corporate Taxpayer arrears demand dated 24<sup>th</sup> March 2023 The Appellant objected to the assessments on grounds that:
    - i. He was not a corporate person subject to Corporation Tax;
    - ii. There was no statutory basis for the VAT assessments based on the Corporation Tax levied against him. The Tribunal upheld the assessments and dismissed the Appellant's appeal, giving rise to the present appeal.
7. The respondent responded that the appellant is registered in Kenya under his personal PIN A003044946N with Income Tax Resident obligation and whose principal business activities include dealing in transportation of smuggled goods from Tanzania into Kenya. They claim that he is a repeat offender.
8. The Respondent claims that Appellant owns five motor vehicles, which he uses to hire and transport goods. The Vehicles are registered as KCA 206D, KBU 447H, KBT 423E, KCG906Q and KAW 6499P.
9. The Respondent is the Commissioner appointed under and in accordance with Section 13 of the [Kenya Revenue Authority Act](#), and is charged with the responsibility of among others, assessment, collection, accounting and the general administration of tax revenue on behalf of the Government of Kenya.
10. The Respondent aver that they conducted investigations covering business transactions by the Appellant for the period 2015 to 2020 with a view of establishing any violations of tax laws and tax implications thereof. They to have established that the Appellant filed his returns only for 2016 and 2019 and filed Nil returns for the other years. The contend that the investigation revealed that the Appellant had committed the following offences based on their findings;
  - a. Omission of income from returns contrary to Section 97[a] of the [Tax Procedures Act](#) 2015 by omitting income from returns to lower his tax liability.
  - b. Defaulting on an obligation imposed under a tax law contrary to section 97[e] of the [Tax Procedures Act](#), 2015 by deliberately failing to apply for VAT obligation, which he ought reasonably to have applied.
  - c. Failure to apply for registration for VAT obligation contrary to section 34 as read with section 37 of VAT Act, 2013.
11. They claim that on 16<sup>th</sup> July 2020, the Appellant was found in possession of concealed goods in his compound on-board motor vehicle registration no. KBJ 654J which were impounded by the Respondent whose taxes is alleged not have been paid.



12. It is further averred that on 14<sup>th</sup> March 2021, the Appellant's vehicle registration No. KBU 447H was intercepted along Namanga-Athi river road carrying smuggled alcoholic drinks from Tanzania by the Respondent's officers. They state that the alcoholic drinks had been affixed with Tanzanian Revenue Authority excise stamps.
13. They further state that Upon conclusion of the investigation, the Respondent confirmed assessments of Kshs 205, 867,969 as issued vide its objection decision dated 19<sup>th</sup> August 2022 as the Appellant failed to submit records to support his objection.
14. The Appellant filed an appeal against the Respondent's decision before the Tax Appeals Tribunal.
15. That Upon hearing the parties, the Tax Appeals Tribunal, judgment was delivered upholding the Respondent's findings.
16. The Appellant has filed a further appeal before this Court, the Respondent opposes the entire Appeal as contained in the Appellant's Memorandum of Appeal.
17. The Respondent relies on the facts, law and evidence set out in its Statement of Facts, its written submissions filed at the Tax Appeals Tribunal and all the documents filed therein and further states as follows: Determination;
18. The following are the issues arise for determination by this Court;
  - i. Whether the Appellant's objection met the threshold for a valid objection in line with the provisions of the [Tax Procedures Act](#)?
  - ii. Whether the Appellant discharged the burden of proof pursuant to the provisions of Section 56 [1] of the [Tax Procedures Act](#) and 30[b] of the [Tax Appeals Tribunal Act](#) No 40 of 2013?
19. The Respondent issued the Appellant with the Investigations findings [Refer to Page 19 to 22 of the Record of Appeal] to which the Appellant filed an objection on iTax. [Refer to Page 23 to 27 of the Record of Appeal]
20. The Appellant's objection did not state the grounds of objection and was not accompanied by documents as required at Section 51[3] of the [Tax Procedures Act](#).
21. This court notes that self- assessment system relies heavily on the full disclosure and/or good faith of Taxpayers making tax declarations and imposes an obligation on Taxpayers to make correct tax declarations and pay the taxes due promptly.
22. It is notable that Corporation Tax is not applicable to a natural person Section 3[1] of the [Income Tax Act](#) [Cap. 470] provides for the imposition if income tax on income accrued in or derived from Kenya. This court further states that Section 3[2][a] distinguishes between income tax payable by individual under Section 3[2][a][i] and Corporation Tax, which is only applicable to companies and corporate entities under Section 3[2][a][ii]. In its introductory part of its submissions, the Respondent describes the Appellant registered under his personal PIN Number A003044946N as a natural person
23. In *Commissioner of Domestic Taxes v Menengai Oil Refineries Limited* [2021 eKLR, the High Court emphasized the necessity for tax assessments to strictly adhere statutory provisions and to be supported by cogent evidence.
24. In *Republic v Kenya Revenue Authority ex parte Bata Shoe Company [K] Ltd* [2014] eKLR, the Court held that tax obligations must be clearly provided for in law, and tax authorities cannot impose obligations by implication or inference.



25. This court understands that a taxpayer is obligated under the law to keep record of all the business transactions for purposes of tax accountability. Section 54A [1] of the [Income Tax Act](#), Cap 470, states as follows: -

A person carrying on a business shall keep records of all receipts and expenses, goods purchased and sold and accounts, books, deeds, contracts and vouchers which in the opinion of the Commissioner, are adequate for the purpose of computing tax.

26. Similarly, Section 43 [1] of the [Value Added Tax Act](#) provides as follows: -

a. 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.

27. The section stated above elicits the specific records to be kept under section 43 [2]. Such records include tax invoices, credit and debit notes, purchase invoices, custom entries, receipts for customs duty tax among other documents and the essence of that the record is to be used during the computation of taxes subject to the confirmation of its legitimacy by the taxing authority.

28. It should be recognized that the Taxpayer has a duty to keep their records for a period of 5 years in accordance with the provisions of Section 23 of the [Tax Procedures Act](#), 2015 which states that:

a. A person shall-

[a] maintain any document required under a tax law, in either of the official languages

[b] maintain any document required under a tax law so as to enable the person's tax liability to be readily ascertained and

[c] subject to subsection [3] retain the document for a period of five years from the end of the reporting period to which it relates or such shorter period as may be specified in a tax law.

29. Section 93 of the [Tax Procedures Act](#), makes it an offence for a person who fails to keep, retain or maintain a document that may be required to be kept, retained or maintained in accordance with a tax law without reasonable excuse during a reporting period.

30. A taxpayer has a duty to submit records to the Commissioner under Section 58 of the [Tax Procedures Act](#), 2015.

Section 58 provides that:

a. Notwithstanding anything to the contrary in any written law, an authorised officer may inquire into the affairs of a person under any tax law and shall at all times have full and free access to all lands, buildings, places to inspect all goods, equipment's, devices and records whether in the custody or control of a public officer or of a body corporate or any other person and may make extracts from or copies of those records.

b. An officer acting under subsection [1] may require the owner or employee or a representative of the owner of the business to give him all assistance and to answer all questions relating to the inquiry.

31. Section 59 of the [Tax Procedures Act](#), 2015 requires the Taxpayer to produce records pertaining to tax investigations. It provides that:



- i. 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 authorized officer may require any person, by notice in writing to-
  - ii. 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 nay person.
  - iii. Furnish information relating to the tax liability of nay person in the manner and by the time as specified in the notice or
  - iv. 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.
32. The Respondent did not demonstrate by way of evidence that it complied with Section 51 [3] of the *Tax Procedures Act*. The Appellant's objection at pages 23 to 27 on the Record of Appeal does not meet threshold of a valid objection.

Section 51[3] provides:

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 section33[1]; and
- [c] all the relevant documents relating to the objection have been submitted.

33. In the case of Nairobi High Court Judicial Review Application No. 599 of 2017, Republic v Kenya Revenue Authority, ex parte M-Kopa Kenya Limited; the learned judge stated as follows as regards a validly lodged objection: -

“In my view since there is no format for making an objection, what is required is the substance rather than the form. What the law frowns at is an objection that is framed in such an ambiguous manner as not to be certain whether the taxpayer is seeking further particulars or indulgence to enable it pay the taxes demanded.”

34. As per the provisions of Section 51 of the *Tax Procedures Act* 2015 a notice of objection must meet the following requirements;
- a. It must be in writing.
  - b. It must be lodged with the Commissioner within thirty days of the Taxpayer being notified of the tax decision.
  - c. It must state the grounds of objection;
  - d. It must state the amendments required to be made to correct the decision.
  - e. It must state the reasons for the amendment and
  - f. The taxpayer has to provide all the relevant documents relating to the objection.



35. The Appellant's objection did not meet the above requirements. The Tribunal correctly found that it is a statutory obligation by a taxpayer to keep proper records, which enable the Commissioner to assess taxes due. The Tribunal held that;

“A thorough perusal of the appeal reveals that the Appellant did not submit any supporting documentation to show that the assessment by the Respondent was wrong. It merely filed an objection with no grounds adduced, no explanation on the assessment”

36. The Tribunal correctly stated that inescapable consequence is that the burden of proof did not shift and the confirmation of assessments dated 19<sup>th</sup> August 2024 is valid in law as no evidence has been adduced to defeat its basis.

37. I note that it is by clear revelation of the Appellants provision of partial documentary evidence that was availed, which included iTax records and bank records. The Respondent reviewed the Appellant's filed returns including his expected income as revealed by his credit income from his bank account No. 0020100021393 held at Equity Bank Limited and the investigations revealed a great variance between income declared in the tax returns and actual income earned from business.

38. In *Sheria Sacco Society Limited v Commissioner of Domestic Taxes* [2019] eKLR, the learned judge of the superior court found that the Appellant did not discharge this burden. It was observed that

“The Respondent in addition to the information on the Appellant's website referred to the Appellant's manual; which governed its day to day activities. Under the subheading “FOSA” it provided that group accounts can be opened on terms that “at least one member of the group” is a member of the Appellant. Further that FOSA services are extended to a group of between ten [10] to twenty [20] people who are registered with the Ministry of Culture and Social Services. ...that in my view was damning evidence which the SACCO needed to rebut. The SACCO failed to produce before the Tribunal evidence that no FOSA services were extended to non- members as provided in the Policy and Procedure Manual. All the Sacco needed to do was to produce evidence of those who had accessed FOSA's services and thereby prove that those who accessed those services were members of the SACCO. The SACCO failed to do so.”

39. In the instant case, the Appellant has not to date provided all information and documents to rebut the Respondents position as required by law.

40. This court finds that the Appellant has failed in its mandate of discharging their burden of proof as provided under Section 30 of the Tax Appeals Tribunals Act. Conclusion;

41. The following orders do issue; -

- a. That the appeal lacks merit.
- b. That the judgment of the Tax Appeals Tribunal is hereby upheld.
- c. Each party to bear their own costs.

42. 30 days stay of execution is granted. Leave to appeal is granted.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**



Judgement delivered in the presence of Ngaira for the Appellant, Mwongera for the Respondent and Peter/Siele [Court Assistants]

