



Commissioner Legal Services & Board Coordination v Ruiru Feeds Limited (Income Tax Appeal E001 of 2024) [2025] KEHC 12002 (KLR) (Commercial and Tax) (14 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E001 OF 2024**

BK NJOROGE, J

AUGUST 14, 2025

BETWEEN

**COMMISSIONER LEGAL SERVICES & BOARD
COORDINATION APPELLANT**

AND

RUIRU FEEDS LIMITED RESPONDENT

JUDGMENT

1. This Appeal arises from the Judgement of the Tax Appeals Tribunal delivered at Nairobi on 10th November, 2023. This is in respect to the Tax Appeals Tribunal Tax Appeal No. 765 of 2022.

Background Facts

2. On 20th January 2022, the Respondent filed a Notice of Objection challenging the Appellant's additional tax assessment issued on 20th March 2020. The Appellant, through an Objection Decision dated 23rd June 2022, upheld the additional assessment and acknowledged receiving various forms of communication and documentation from the Respondent, including written correspondence, meetings, and email exchanges.
3. However, the Appellant also noted that certain specifically requested documents were not provided by the Respondent. Based on these findings, the Appellant confirmed the additional tax assessments totaling Kshs.8,496,455.00. This led to the filing of an Appeal before the Tax Appeals Tribunal, which rendered a decision on 10th November 2023. In that decision it stated that the Appellant was not justified in disallowing the input VAT and confirming the assessment in light of the documents presented by the Respondent.



4. The Appellant was dissatisfied with the Ruling of the Honourable Tribunal delivered on the 10th day of November 2023 in TAT No. 765 of 2022. It Appeals against the whole decision and the consequential Orders on the grounds: -
 - a. The Tribunal erred in law and fact by failing to take note of the fact that the Respondent made reference to information provided to it by the Appellant.
 - b. The Tribunal erred in law and fact by failing to take note of Section 59 of the [Tax Procedures Act](#) that states that the onus is on the Appellant to produce records for the purposes of obtaining full information in respect of the Appellant's tax liability.
 - c. The Tribunal erred in finding that the Respondent had provided all the required information and documentation requested by the Appellant.
 - d. The Tribunal erred in finding that the Appellant's Objection Decision confirmed that the Respondent provided all the documents required.
 - e. The Tribunal erred in finding that the Respondent provided the documents as required under Section 17 (3) of the Value Added Tax (VAT) Act.
 - f. The Tribunal erred in law and fact in ignoring some of the material facts placed before it without due regard to the balance of the scales of justice.
 - g. The Tribunal erred in fact and in law by finding that the Appellant had met its burden of proof.
5. The Appellant prayed for orders that;
 - a. The Judgement of the Tribunal made on the 10th day of November 2023 and the consequential orders be set aside.
 - b. The appeal filed herein be allowed.
 - c. The Appellant's Objection Decision issued on 23rd June 2022 be upheld.
 - d. The costs of this Appeal be awarded to the Appellant by this Court.
6. In response, the Respondent filed the Statement of Facts dated 19th April 2024. It contended that it discharged its burden in that it supplied the documents to support the deduction of input VAT as required under Section 17 (3) of the VAT Act. Further, if there was any specific information that was sought and was never availed as alleged by the Appellant, it was up to the Appellant to demonstrate the same to the Tribunal. Thus, the Appeal should be dismissed.
7. Each party filed their respective submissions, which the Court has carefully considered alongside the Appeal, the Record of Appeal, and the Statement of Facts. The single issue framed for determination is;
 - a. Whether the Respondent provided all the information to the Appellant, as required by law.

Analysis

8. An Appeal to this Court from the decision of the Tax Appeals Tribunal is provided for by section 32 of the [Tax Appeals Tribunal Act](#) which states as follows;
 32. Appeals to the High Court on decisions of the Tribunal
 - (1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to



the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.

- (1A) A party that has appealed against the decision of the Tribunal in subsection (1) shall within two days of lodging a notice of appeal, serve a copy of the notice on the other party.
- (2) The High Court shall hear appeals made under this section in accordance with rules set out by the Chief Justice.

Whether the Respondent provided all the information to the Appellant, as required by law.

9. The Appellant submitted that it continued to engage the Respondent even after the Respondent validated its Objection on 25th April 2022. That the Respondent failed to provide documents in support of its case as per its email of 27th May 2022.
10. Further, it was only after the Respondent failed to provide the required information that the Respondent proceeded to issue its Objection Decision dated 23rd June 2022. Thus, rejecting the Respondent's objection for VAT for the period February 2018 to May 2018, since the Respondent failed to reconcile its accounts.
11. In contrast, it was the Respondent's submission that it discharged its burden under the law. This was by supplying the documents to support the deduction of input VAT as required under Section 17 (3) of the VAT Act, 2013.
12. The Appellant argued that its request for the Respondent to provide information and/or documents to disprove the Appellant's allegation as of the date of the Objection findings, therefore meant that the burden of proof shifted to the Respondent who failed to provide the required information and/or documents.
13. Section 59 (1) of the [Tax Procedures Act](#), provides as follows: -
 - For the purpose of obtaining full information in respect of the income of a person or class of persons, the Commissioner may, by notice in writing, require, in the case of the income of a person, that person or any other person, and in the case of a class of persons, any person –
 - a. to produce for examination by the Commissioner at the time and place specified in the notice, any accounts, books of account, and other documents which the Commissioner may consider necessary; and the Commissioner may inspect such accounts, books of accounts or other documents and may take copies of any entries therein.
14. The Court notes that the Tribunal in its judgment at paragraphs 68 and 69 pointed out that it did not cite the Respondent's letter notifying the Appellant of its late objection and requesting for grounds for validation as is required under Section 51(2) of the [Tax Procedures Act](#), 2015. The date of the notice had not been provided by the Respondent. It therefore remained unclear as to when the same could have been done.
15. It was the Appellant's assertion that the burden of proof rests with the Respondent who failed to provide the necessary information/ documents to reconcile the earlier information that it had provided in its returns that was found to have discrepancies. Further, that the Tribunal did not take into consideration all the facts presented before it when coming up with its judgement in this matter and the same should be set aside.



16. In the case of Trust Bank Limited vs Paramount Universal Bank Limited & 2 others (2009) eKLR the Court held that;

“...It is trite where a party fails to call evidence in support of its case that party fails to substantiate its pleadings.”
17. The Tribunal rightly and duly noted that the notice for acceptance indicated to have been issued on 25th April 2022 as well as the letter for request for further documents/information had not been placed on record for the Tribunal’s perusal.
18. As has been said time and again, the burden of proof in tax matters is not stationary but is like a pendulum swinging between the Taxpayer and Taxman at different points. (Commissioner of Domestic Taxes V Trical and Hard Limited (Tax Appeal E146 of 2020), [2022] KEHC 9927 (KLR)).
19. The Court agrees with the Tribunal that it is not enough for the Appellant to allege that it requested for further documents, without any evidence to demonstrate that it formally requested for the said documents.
20. In light of the above, the Court agrees with the Tribunal’s opinion that the documents placed before it conformed with the law (Section 17 (3) of the VAT Act) and the same were provided to the Appellant. That the Appellant ought to have interrogated and examined the same and thereafter asked for additional documentation.
21. Therefore, the Court is equally of the considered opinion that the Appellant was not justified in disallowing the input VAT and confirming the assessment in light of the documents presented by the Appellant.
22. The Tribunal’s decision is hereby upheld and the Appeal is dismissed.
23. As to costs the fair order is let each party bear its own costs.

Determination

24. The Appeal is dismissed in its entirety as lacking in merits.
25. Let each party bear its own costs of the Appeal.
26. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 14TH DAY OF AUGUST 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Sadia Salo holding brief for Mr. Chabala for the Appellant.

N/A for the Respondent.

Susan Nzioka - Court Assistant.

