



Commissioner of Domestic Taxes v Acer Petroleum Limited (Income Tax Appeal E013 of 2025) [2025] KEHC 11501 (KLR) (Commercial and Tax) (1 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E013 OF 2025**

PJO OTIENO, J

AUGUST 1, 2025

BETWEEN

COMMISSIONER OF DOMESTIC TAXES APPELLANT

AND

ACER PETROLEUM LIMITED RESPONDENT

(An appeal against the judgment of the Tax Appeals Tribunal delivered on 21st November 2024 in TAT Appeal No. E736 of 2023) between Acer Petroleum Limited- Versus-Commissioner of Domestic Taxes)

JUDGMENT

1. The Respondent herein is a limited liability company incorporated in Kenya, engaged in the import, export, and wholesale of petroleum products. The genesis of the dispute follows an audit conducted by the Commissioner to ascertain the Respondent's tax compliance. Following this audit, the Commissioner, on 5th June 2023, issued an additional assessment for taxes in the total sum of Kshs. 276,774,423, inclusive of penalties and interest. The breakdown of the assessment was: Corporation Tax - Kshs. 252,337,068; WHT - Kshs. 2,664,584; and, VAT - Kshs. 21,742,771.
2. The Respondent objected to the additional assessment on 5th July 2023 on which objection the Commissioner issued an objection decision on 14th September 2023, confirming the additional assessment and revised the figure to Kshs. 280,278,486.
3. The respondent was dissatisfied with the objection decision and filed an appeal to the Tax Appeals Tribunal. The core of the dispute before the Tribunal, and now before this Court, revolves around the timeliness of the Commissioner's objection decision and, contingently, the merits of the underlying tax assessments.



4. The Tax Appeals Tribunal heard both parties and delivered its judgment on 21st November 2024 in favour of the Respondent. The Tribunal held that the Commissioner’s objection decision, issued on 14th September 2023, was statutorily out of time, rendered more than 60 days after Appellant’s initial objection on 5th July 2023, by virtue of Section 51(11) of the [Tax Procedures Act](#).
5. The Commissioner also felt dissatisfied and aggrieved with the Tribunal’s judgment, filed a Notice of Appeal on 20th December 2024 and subsequently a Memorandum of Appeal on 20th January 2025. The grounds raised in the Memorandum of Appeal are that:
 - i. The Tribunal erred in fact and in law by finding that the Commissioner’s decision dated 14th September 2023 is statutorily out of time.
 - ii. The Tribunal erred in fact and in law by raising suo moto that the Appellant’s decision is statutory barred as against Section 51(11) of the [Tax Procedures Act](#).
 - iii. The Tribunal erred in law and fact by not considering issues of Section 51(3) of the [Tax Procedures Act](#) and the time the Taxpayer submitted its valid objection.
6. The Appellant thus seeks orders that the Appeal herein be allowed, the Tribunal’s judgment and consequential orders be set aside, the objection decision dated 14th September 2023 be upheld, and costs be awarded to the Appellant.
7. In response to the Appeal, the Respondent filed its Statement of Facts dated 17th June 2025 and opposed the appeal on both substance and procedural defects.
8. On procedural incompetence, the Respondent contends that the Appeal herein is incompetent for failure to comply with mandatory rules on filing appeals. Specifically, the Respondent points to Rule 5 of the [Tax Appeals Tribunal \(Appeals to the High Court\) Rules](#), which mandates the timely filing of accompanying documents with the Memorandum of Appeal.
9. On substantive merit, and without prejudice to the procedural incompetence argument, the Respondent argues that the Tribunal’s judgment is legally sound and should be upheld. The Respondent supports the Tribunal’s finding that the objection decision was deemed allowed by operation of law, asserting the 60-day period is mandatory and lapsed on 3rd September 2023. The Respondent further argues the Tribunal was within its right and jurisdiction to address the statutory timing issue suo moto.
10. The Respondent also raises substantive issues regarding the original assessments, arguing they violated statutory time limits (assessments older than 5 years) and that it discharged its burden of proof. The Respondent prays for the appeal to be struck out or dismissed with costs. In the alternative, should the Court find the objection decision was rendered within time, the Respondent prays for the matter to be remitted back to the Tribunal for determination of the substantive grounds of appeal not addressed.
11. The Appeal was canvassed by way of written submissions by both parties. On perusal, the Court notes that the Appellant’s submissions primarily revolve around the interpretation and application of Section 51(11) of the [Tax Procedures Act](#), particularly as amended by the Finance Act 2022. The Appellant contends that the Respondent’s initial objection on 5th July 2023 was invalid because no documents were attached. They argue that a valid objection was only received on 19th July 2023, after the Respondent submitted the requested documents. This interpretation relies on Section 51(3) of the [TPA](#), which specifies conditions for a validly lodged objection, including the submission of all the relevant documents.



12. The appellant also cites Section 51(4) *TPA*, which allows the Commissioner to notify a taxpayer of an invalid objection and request information and asserts that based on the receipt of a valid objection on 19th July 2023, the Appellant calculates that the 60-day period under Section 51(11) *TPA* lapsed on 17th September 2023. Since their objection decision was issued on 14th September 2023, it is maintained that it was within the statutory timeline being on the 57th day.
13. The Appellant argues that the Tribunal erred by raising suo moto the issue of the objection decision being statutorily barred, claiming the Respondent did not raise this issue in their appeal to the Tribunal. The Appellant asserts that the Tribunal applied the wrong version of Section 51(11) *TPA*, specifically the 2021-2022 version, instead of the current version amended by the Finance Act 2022, which introduced the requirement for a valid notice of objection. The Appellant prays that the Court upholds their objection decision dated 14th September 2023 and awards costs.
14. On the other hand, the Respondent's primary argument in its submissions in opposition to the appeal is that the instant appeal is defective and incompetent for failing to comply with mandatory filing rules. It contends that while the Notice of Appeal was filed in time being 20th December 2024, the Memorandum of Appeal filed on 20th January 2025 lacked the mandatory accompanying documents required by Rule 5 of the *Tax Appeals Tribunal (Appeals to the High Court) Rules*. These documents were only filed on 4th April 2025, making the appeal filed out of time of over 4 months after TAT judgment without leave of court.
15. The Respondent supports the Tribunal's finding that the Commissioner's objection decision was statutorily out of time. They argue that the 60-day period under Section 51(11) *TPA* commenced on 5th July 2023, when they lodged their initial objection. The decision on 14th September 2023 was therefore beyond the 60 days, which lapsed on 3rd September 2023. The Respondent asserts that the Tribunal was within its jurisdiction to address the timeliness of the objection decision, even if suo moto, as it goes to the legality and jurisdiction of the tax decision.
16. On the merit and substance, the Respondent reiterates its argument before the Tribunal that the original assessments violated statutory time limits, particularly for periods older than five years prior to 2018. The Respondent submits that it discharged its burden of proof under Section 56(1) *TPA* by providing extensive, competent, and relevant evidence during the audit and objection process, which shifted the burden to the Commissioner to prove the assessments were correct, a burden the Commissioner failed to discharge. The Respondent prays that the appeal be struck out or dismissed with costs. In the alternative, if the Court finds the objection decision was timely, the matter should be remitted to the Tribunal for determination of the substantive issues not addressed.

Issues for Determination

17. Based on the pleadings and submissions by both parties, the court identifies the following issues for its determination.
 - i. Whether this Appeal is Procedurally Competent?
 - ii. Whether the Tax Appeals Tribunal erred in finding the Appellant's objection decision statutorily out of time under Section 51(11) of the *Tax Procedures Act*?
 - iii. Whether the Tax Appeals Tribunal erred in raising suo moto the issue of the objection decision being statutorily time barred?



The Competent of this appeal.

18. The procedure for lodging appeals from the Tax Appeals Tribunal to the High Court is strictly governed by statute and rules. Section 53 of the [Tax Procedures Act](#) provides that a party dissatisfied with a Tribunal decision may appeal to the High Court within thirty days of being notified of the decision, or within such further period as the High Court may allow, in accordance with the provisions of the [Tax Appeals Tribunal Act](#), 2013. Similarly, Section 32(1) of the [Tax Appeals Tribunal Act](#) reiterates this 30-day period and the High Court's power to extend time. The law equally requires service of a copy of the notice of appeal on the other party.
19. The [Tax Appeals Tribunal \(Appeals to the High Court\) Rules](#) further sets out the detailed requirements. Rule 3 mandates that the appellant shall, within 30 days after the service of a notice of appeal, file a memorandum of appeal and serve a copy on the respondent. Rule 4 provides a narrow window for the court to extend time, when satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant.
20. Rule 5 (a) to (c) then prescribes the form of the memorandum of appeal, while Rule 5 (d) and (e) stipulates the documents that must accompany the memorandum of appeal. While the respondent contends that the provisions are not mere suggestions but mandatory requirements for an appeal to be competently lodge, the court takes the view and has the learning that Rules of procedure are handmaids of justice intended to facilitate its ends, never its masters to dictate and hamstring its spirit and purpose to be substantive and note merely procedural.
21. In this matter, the Appellant filed its Notice of Appeal on 20th December 2024, within the stipulated 30-day period. The Memorandum of Appeal was subsequently filed on 20th January 2025, clearly within the 30 days of the service of the Notice of Appeal, but without any of the mandatory accompanying documents, including the decision of the Tribunal. Those documents were only filed on 4th April 2025.
22. It is the Respondent's case that an appeal can only be deemed to have been competently filed when all the documents required by Rule 5 of the [Tax Appeals Tribunal \(Appeals to the High Court\) Rules](#) are filed. To it, the failure means the appeal was effectively filed on 4th April 2025, over 4 months after the TAT judgment, and over 3 months after the Notice of Appeal was filed. It is thus its case that the appeal is incompetent and a candidate for being defeated by striking out.
23. While strict compliance with statutory timelines and procedural rules in tax matters and litigation generally is paramount for smooth and efficient delivery of justice, many a times stringent and mechanical application of the rules miss the threshold for attainment of substantive justice. That is the rationale for the Courts' consistently emphasis that Article 159 of the [Constitution](#) encourages substantive justice over procedural technicalities. The court finds that in so long as the documents necessary for hearing the appeal were filed and made available before the matter came up for hearing, no prejudice was occasioned to the respondent nor the administration of justice in general. Without demonstrated prejudice, it would work contrary to the demands of substantial justice that the appeal be terminated before being subjected to merit test. The court finds no merit in that objection and prefers to hear the merit of the matter without undue regard of technicalities.



Did the Tax Appeals Tribunal err in finding that the Appellant’s objection decision was statutorily out of time under Section 51(11) of the Tax Procedures Act.

24. Section 51(4A) and (11) command the Commissioner makes the objection decision within sixty days from the date of receipt of a valid notice of objection and adds that failure to so act, the objection shall be deemed to have been allowed. The Tax Procedures Act also defines what constitutes a validly lodged notice of objection under Section 51(3). A notice of objection is treated as validly lodged if; it states precisely the grounds of objection, the amendments required, and the reasons for the amendments; 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 avails all the relevant documents relating to the objection have been submitted.
25. Furthermore, Section 51(4) TPA provides a mechanism for the Commissioner to deal with invalid objections and provides that where the Commissioner determines that a notice of objection has not been validly lodged, the Commissioner shall, within fourteen days, notify the taxpayer in writing and request the submission of specified information within seven days after the date of the notice.
26. In the present case, the Appellant lodged its initial objection on 5th July 2023. The Commissioner then notified it on 7th July 2023 that the objection was invalid due to missing documents and requested submission by 11th July 2023. The Appellant subsequently submitted the requested documents on 19th July 2023, and the Commissioner issued the objection decision on 14th September 2023.
27. The Appellant’s position is that the 60-day period commenced on 19th July 2023, being the date of receipt of a valid objection. From this date, the decision on 14th September 2023 falls within the 60-day window specifically, 57 days. Conversely, the Respondent’s position, which the Tribunal adopted, is that the 60-day period commenced on 5th July 2023, the date of the initial objection. Under this calculation, the decision on 14th September 2023 being 71 days later was out of time, as the period lapsed on 3rd September 2023.
28. To the Court, the 2022 amendment to Section 51(11) TPA must be carefully considered for what its plain words convey. The inclusion of the word valid suspends the time from running until an invalid objection is validated. When that undoubted position is applied to the facts of this case, the court finds that the objection was validated on the 19th July hence that is the commencement date for computation of the 60 days period. Accordingly, the Commissioner’s decision dated 14th September 2023 fell within the statutory 60-day window. Therefore, the Tribunal erred in law by finding the objection decision statutorily out of time.
29. This determination is enough to dispose of the appeal. However, the court takes the view that it ought to comment on the last issue for the sake of the law and the just and fair determination of legal disputes by the tribunal.

Did the Tax Appeals Tribunal err in raising suo moto the issue of the objection decision being statutorily barred.

30. The Tax Appeals Tribunal is established by statute and empowered to hear and determine appeals by taxpayers aggrieved by the Commissioner’s decisions. Section 18 of the Tax Appeals Tribunal Act grants the Tribunal broad powers, stating that it may make such orders as may be necessary for the ends of justice, including affirming, varying, or setting aside tax decisions, or remitting matters back



to the Commissioner with directions. This statutory provision vests the Tribunal with significant adjudicatory discretion.

31. Statutory timelines are an important cog in the realization and furtherance of the constitutional principle that justice shall not be delayed but administered expeditiously and in a proportionate manner. In fact, the question whether a matter is filed in time or not goes to the jurisdiction of the tribunal. It is a matter that must be handled at the earliest opportunity and it needs not be moved but is properly entitled to raise it suo moto provided it gives to the parties the right to be heard on the issue.
32. It is a well-established principle of law that courts and tribunals have an inherent duty to ascertain their jurisdiction and to ensure that proceedings before them are legally sound. Issues of competence of the proceedings and jurisdiction of the court can be raised at any time, and indeed, a court or tribunal may raise them suo moto if they become apparent from the record. The 60-day timeline in Section 51(11) *TPA* is a mandatory provision and self-executing whose non-compliance would render the objection decision invalid, directly affecting the Commissioner's power to assess. The Tribunal had the undoubtable right and a duty to ensure that the decision challenged before it was legally compliant and not void. The Court therefore finds that the Tribunal did not err in raising the matter suo moto. This determination is however inconsequential because the court it has determined that the consequent outcome of that inquiry was erroneous.
33. The foregoing holding that the defeat of the appeal was erroneous points to the Court's the need for that appeal to be heard afresh before the tribunal. The appeal is thus allowed and the court determines that the appropriate order is that the matter is remitted back to the tribunal for it to be heard on the merits by a panel other than that which dealt with it before.
34. The appellant is awarded the costs of the appeal to be borne by the respondent.
35. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 1ST DAY OF AUGUST, 2025.

PATRICK J O OTIENO

JUDGE

