



**Bildin Company Limited v Kenya Revenue Authority (Income Tax Appeal E116 of 2023)  
[2024] KEHC 6304 (KLR) (Commercial and Tax) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6304 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
INCOME TAX APPEAL E116 OF 2023**

**A. ONG'INJO, J**

**MAY 30, 2024**

**BETWEEN**

**BILDIN COMPANY LIMITED ..... APPELLANT**

**AND**

**KENYA REVENUE AUTHORITY ..... RESPONDENT**

*((Being an appeal from the judgment of the Tax Appeals Tribunal  
Nairobi delivered on 14<sup>th</sup> day of July 2023 in TAT No. 317 of 2022))*

**JUDGMENT**

1. The Appellant lodged the appeal herein vide Memorandum of Appeal dated 31<sup>st</sup> July 2023 on the following grounds: -
  1. The learned members of the tribunal erred in law and fact in disregarding the supporting documentation provided by the Appellant in opposition to the confirmed assessment by the Respondent.
  2. The learned members of the Tribunal erred in law and fact in failing to find that the Respondent wrongly failed to deduct allowable expenses incurred in generating income by the Appellant.
  3. The learned members of the tribunal erred in law and fact by failing to find that the Respondent ought to have sought clarification and/or more information in respect of the illegible or incomplete supporting documentation provided by the Appellant.
  4. The learned members of the tribunal erred in law and fact in failing to find that the Respondent's basis approximating the Appellant's tax liability was grossly erroneous, manifestly wrong and without basis.



5. The learned members of the tribunal erred in law and fact in failing to find that the Respondent's failure to consider the Appellant's supporting documents and representations infringed on its rights to fair administrative action as anchored at Article 47 of *the Constitution* of Kenya, 2010.
  6. The learned members of the tribunal erred in law and fact in failing to find that the objection decision by the Respondent dated 21<sup>st</sup> February 2022 was rendered more than 60 days from the date of the Appellant's objection which timeline is couched in mandatory terms, it is not a procedural technicality and consequently and as per the law the said objection is deemed to be allowed.
  7. The learned members of the tribunal erred in law and fact in failing to find that the Respondent's tax demand is unlawful, unmerited and not based on the cogent facts and the law.
2. The Appellant proposed to ask the court for orders that: -
- a. The Appeal herein be allowed and the judgment delivered by the Tribunal on 14<sup>th</sup> July 2023 be set aside
  - b. The objection decision issued by the Respondent on 21<sup>st</sup> February 2022 be set aside
  - c. The costs of the appeal and the proceedings before the Tribunal be awarded to the Appellant.
3. The Appellant had objected to the Respondent's assessment of income tax of Kshs. 420,549,464/- on account of undeclared sales for the year 2016-2019 made up of corporation tax, penalties and interests.
  4. The Tribunal found that the Appellant had the duty under Section 56(1) of the *Tax Procedures Act* and Section 30 of the Tax Appeals Tribunal 2013 to produce documentary evidence to assist the Respondent in assessing income tax liability.
  5. The Tribunal also established that the Appellant had not kept records of its business transactions as is required by Section 23(1) of the *Tax Procedures Act* and Section 54(a) of the *Income Tax Act*.
  6. The Tribunal therefore found that the Respondent relied on the information in its custody to make the assessments of the Appellant's export data and that the position taken by the Respondent was consistent with Section 24 (2) of the *Tax Procedures Act*.
  7. On the basis of that finding the Appellant's appeal was dismissed and the objection decision issued on 21<sup>st</sup> February 2022 was upheld.
  8. This appeal was canvassed by way of written submissions. The Appellant's submissions are dated 8<sup>th</sup> February 2024 whereas the Respondent's submissions are dated 29<sup>th</sup> February 2024.
  9. While highlighting the Appellant's submissions, Mr. Githinji Advocate argued that the objection decision was rendered outside the mandatory 60 days' timeline as required by Section 51(11) of the *Tax Procedures Act*. He submitted that at no time within the 60 days did the Respondent write and inform the Appellant that the objection complete or improperly lodged. That there was also no evidence to show that the Respondent requested for information from the Appellant within the 60 days.
  10. The Appellant argued that their objection was deemed to have been allowed by dint of law and that timelines had been overtaken by events.
  11. The Appellants further contended that the Respondent's assessment is unreasonable, illogical, excessive, and oppressive.



12. It is also submitted that the Appellants' rights under Article 47 were Violated by the Respondent as their supporting documentation was not considered in arriving at the assessment.
13. Mr. Said Advocate for the Respondent on the other hand submitted that Section 32 of the *Finance Act* of 2019 introduced Section 51 (11) (b) which provided that the Commissioner shall make objection decision within 60 days of receipt of any further information the Commissioner will require from the taxpayer.
14. He argued that the Commissioner had 60 days from 14<sup>th</sup> July 2021 when the Appellant filed its objection. However, the last information that was provided by the Appellant was by a letter dated 16<sup>th</sup> February 2022 and therefore the Commissioner's 60 days started running from 16<sup>th</sup> February 2022. That the Commissioner's objection decision was made 5 days after receipt of the last set of documents from the Appellant. That the objection decision was therefore issued within the timelines as provided for under Section 32 of the Finance Act 2019.
15. The Respondent's Advocate also argued that the Appellants had admitted that they were not keeping formal books or records as required by Section 23(1) of the *Tax Procedures Act* and did not therefore prove and claim expenses incurred. The Respondent relied on the Statement of Fact and the Submissions and prayed that the judgment of the Tribunal be upheld and the appeal be dismissed with costs.

### **Analysis and Determination**

16. Having considered the Record of Appeal, the statement of facts, the submissions and authorities relied upon by the parties herein, the mandate of the court is to consider issues of law only as provided for under Section 56 of the *Tax Procedures Act*.
17. Section 56 (2) and (3) of the *Tax Procedures Act* provide: -
  - (2) An appeal to the High Court or to the Court of Appeal shall be on a question of law only.
  - (3) 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 only on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.
18. When the Tribunal considered the Appellant's appeal, the issue that fell for determination was whether the tax assessments issued by the Respondent based on the bank deposit analysis was correct. Members of the Tribunal established that the Appellant failed to provide material information for the Respondent to determine the appropriate taxes payable on its part and resorted to alternative information for taxation. On that account the appeal was dismissed.
19. From the Appellant's grounds of appeal, it would appear that the Appellant seeks to appeal to this court on issues of fact and law and on issues that did not arise during trial in the Tribunal. However, the major issue of law that arises for determination herein is whether the objection decision by the Respondent was rendered outside the mandatory 60-day timeline as required by Section 51(11) of the *Tax Procedures Act*, 2015.
20. Section 32 of the Finance Act No. 23 of 2019 provides: -

Section 51 of the *Tax Procedures Act*, 2015 is amended by deleting subsection (11) and substituting therefor the following new subsection: -

  - (11) The Commissioner shall make the objection decision within sixty days from the date of receipt of: -



- a. the notice of objection; or
  - b. any further information the Commissioner may require from the taxpayer, failure to which the objection shall be deemed to be allowed.
21. The issue as to whether the objection decision was rendered within timelines was never in dispute in the tribunal and was therefore never canvassed.
  22. It is not in dispute, however, that the Respondent issued a Tax Assessment Notice on 15<sup>th</sup> June 2021 and the Appellant objected to the same on 14<sup>th</sup> July 2021. There is also no dispute that the last information that the Respondent received from the Appellant was via a letter dated 16<sup>th</sup> February 2022. Following the Appellant's supply of the last document on 16<sup>th</sup> February 2022 the Respondent issued its objection decision on 21<sup>st</sup> February 2022 within a span of 5 days after receipt of the last documents from the Appellants.
  23. It is therefore apparent that the Respondent complied with the provisions of Section 51 (11) (b) of the Tax Procedures Act by making the objection decision within the mandatory period of 60 days of receipt of the last documents from the tax payer, the Appellant herein.
  24. The issue that the Respondent's assessment was unreasonable, illogical, excessive and oppressive is an issue of fact that would require this court to analyse records kept by the Appellant as per Section 54A of the Income Tax Act and the Tribunal found that the parties agreed that the Appellant had no formal books and did not produce documents to support its objection. The Tribunal also found that under Section 30 of the Tax Appeal Tribunal Act, 2013 that the Appellant had the burden of proving that the assessment was excessive and it did not do so for want of records of its business transactions. This being a matter of fact, this court cannot adjudicate upon it.
  25. The Appellant's appeal therefore lacks merit and the same is dismissed with cost to the Respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS  
30<sup>TH</sup> DAY OF MAY 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

In the presence of: -

Esther - Court Assistant

Mr. Kithinji Advocate for the Appellant

Ms. Chelangat Advocate H/B for Mr. Ibrahim Said Advocate for the Respondent

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

Mr. Kithinji: We pray for 30 days stay of execution

Ms. Chelangat: They can be granted 14 days

Orders: Stay of execution for 14 days

