



**Odhimoya Company Limited v Commissioner of Domestic Taxes (Tax Appeal E619 of 2024) [2025] KETAT 1 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KETAT 1 (KLR)

**REPUBLIC OF KENYA  
IN THE TAX APPEAL TRIBUNAL  
TAX APPEAL E619 OF 2024**

**RM MUTUMA, CHAIR, M MAKAU, T VIKIRU,  
D.K NGALA & JEPHTHAH NJAGI, MEMBERS**

**JANUARY 17, 2025**

**BETWEEN**

**ODHIMOYA COMPANY LIMITED ..... APPLICANT**

**AND**

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

**RULING**

1. The Applicant/Appellant moved the Tribunal vide the Notice of Motion application dated 5<sup>th</sup> June 2024 that is supported by an Affidavit sworn on 5<sup>th</sup> June 2024 by Julius Okatch Omolo, a director of the Appellant/Applicant, seeking for the following Orders, that;
  - a. The Applicant be granted leave to file its Memorandum of Appeal and Statement of Facts out of time.
  - b. The demand notice for tax in arrears dated 27<sup>th</sup> February 2024 be and is hereby lifted, pending the hearing and determination of the Application/Appeal.
  - c. The Memorandum of Appeal and Statement of Facts annexed hereto be and is hereby deemed as duly filed and served.
  - d. The Respondent be at liberty to file its response if it so wishes.
  - e. The cost of this application be costs in the cause.
2. The application is premised on the grounds set out on the face of the application and deponed in its affidavit, in a summary that: -



- i. The Applicant objected to the Respondent's additional assessments dated 14<sup>th</sup> and 22<sup>nd</sup> December 2022, but did not receive the Objection Decision dated 23<sup>rd</sup> March 2023 contrary to Section 51 of the *Tax Procedures Act*.
  - ii. The Respondent issued a demand notice for tax in arrears dated 24<sup>th</sup> February 2024, thereby paralyzing its business.
  - iii. The Respondent acted contrary to the ethos espoused in Article 47 of *the Constitution* of Kenya by failing and/or refusing to accord the Appellant a fair hearing and proceeding to arbitrarily issue the demand notice.
  - iv. The Applicant has an arguable Appeal with a high probability of success, it will therefore be highly prejudicial to the Applicant if leave is not granted to enable the Applicant to argue the Appeal.
  - v. The Applicant shall suffer irreversible damage to the business operations if this application is not allowed.
  - vi. The Respondent shall suffer no prejudice if the application is allowed.
3. The Respondent upon being served with the instant application filed grounds of opposition dated 17<sup>th</sup> July 2024 and filed on 18<sup>th</sup> July 2024, which response raised the following grounds, that;
- i. The application by the Applicant offends the mandatory provisions of Rule 4 of the *Tax Appeals Tribunal Act* on extension of filing a Notice of Appeal and an Appeal under Section 13(4) as read with subsections (1) and (2) of the Act.
  - ii. The application fails to disclose the sufficient grounds with which to move the Tribunal in exercise of its discretion in favour of the Applicant.

#### **Parties Submissions**

4. The Appellant/Applicant having been granted time to file its written submissions on 18<sup>th</sup> July 2024, failed to do so, thus its application shall be considered based on the grounds set out on the face of the application as well as the amended notice of motion and the affidavit in support thereof.
5. The Respondent in its written submissions dated 17<sup>th</sup> July 2024 and filed on 18<sup>th</sup> July 2024, raised one issues for determination namely;

#### **Whether the Applicant merits extension of time to file an Appeal out of time?**

6. It submitted that extension of time to file an Appeal out time is conditional on demonstrable reasonable grounds as provided for under the provisions of Section 13 (3) and (4) of the *Tax Appeals Tribunal Act* as well as Rule 10 (2) of the Tax Appeals Tribunal (Procedure) Rules 2015. The Respondent relied on the decision of Nicholas Kiptoo Arap Korir Salat vs. Independent electoral and Boundaries Commission & 7 Others [2014] eKLR.
7. It submitted that there was delay in the bringing of this application for over thirteen (13) months after the issuance of the Objection Decision.
8. The Respondent submitted that it lodged the impugned decision on the Appellant's iTax platform informing it of the decision on 5<sup>th</sup> June 2024.



9. It submitted that the Applicant has in no way or fashion advanced sufficient or reasonable grounds for the delay on its part in filing either a Notice of Appeal or the substantive Appeal within the statutory timelines. Neither does the Applicant's evidence rebut the Respondent's evidence of effective service.
10. The Respondent relied and cited the case of *Chairman, Kenya National Union of Teachers & Another vs. Henry Inyangala & 2 Others* [2018] eKLR.

### **Analysis and Findings**

11. The Tribunal is enjoined to determine the Applicant's application for leave to extend time for the filing of the Appeal out of time.
12. The Applicant was issued with an assessment for VAT and Income Tax, in response thereof it filed its objections challenging the assessments on 18<sup>th</sup> and 22<sup>nd</sup> December 2022, which process culminated with the issuance of the Objection Decision dated on 23<sup>rd</sup> March 2023.
13. The Applicant's/Appellant's position is that it was not issued and/or served with the Objection Decision, thus the delay in the bringing of this application.
14. The Tribunal's jurisdiction to entrain applications of this nature is anchored on Sections 13 (3) and (4) of the *Tax Appeals Tribunal Act*.
15. As relates the grounds upon which a party seeking leave to lodge an appeal out of time, Section 13 (4) of the *Tax Appeals Tribunal Act* prescribes three grounds as follows;
  - “(4) An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from filing the notice of appeal or submitting the documents within the specified period.”
16. Furthermore, Rule 10 (3) of the Tax Appeals Tribunal (Procedure) Rules, 2015, provides;
  - “(3) The Tribunal may grant the extension of time if it is satisfied that the applicant was unable to submit the documents in time for the following reasons-
    - (a) absence from Kenya;
    - (b) sickness; or
    - (c) any other reasonable cause.”
17. The Applicant hypothesized its challenges to the failure in bringing its Appeal within the timelines prescribed in law, as that the Applicant did not receive the Objection Decision to necessitate its action.
18. Whereas the Respondent submitted that the Applicant had not provided any grounds as to the delay in the bringing of the instant application, the Tribunal has observed that the Applicant provided the reason for failure to lodge the Appeal within the statutory timelines.
19. To the view of the Tribunal, the ground advanced by the Applicant can only be classified under the provisions of Section 13 (4) as read together with Rule 10 (3) (c) of the Tax Appeals Tribunal (Procedure) Rules, 2015, under “any other reasonable grounds”.
20. In testing the reasonability of the Applicant's ground relied upon, the Tribunal must evaluate if the same passes the of law. It was not clear as to when the Applicant came into to the knowledge of



the existence of the Objection Decision dated 23<sup>rd</sup> March 2023 by the Respondent, however it was submitted by the Respondent that it notified the Applicant of the Objection Decision on the 5<sup>th</sup> June 2024 by uploading it to the Applicant's iTax portal.

21. Moreover, the Applicant submitted that it was issued with the demand notices dated 27<sup>th</sup> February 2024, without prior communication or notice of the Objection Decision, this has not been rebutted by the Respondent.
22. The Tribunal noted that the Appellant filed the instant application dated 5<sup>th</sup> June 2024 and filed on 7<sup>th</sup> June 2024, thus is persuaded that the Applicant received communication of the Objection Decision on 5<sup>th</sup> June 2024.
23. It is noteworthy that the powers of the Tribunal are discretionary in dealing with matter of this nature and it draws guidance from the High Court case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi*, Civil Application Nai 251 of 1997 where the judge held that:

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes into account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted.”
24. The Tribunal therefore finds that the ground advanced by the Applicant/Appellant for delay are reasonable, the delay was not inordinate and the delay has been explained to the satisfaction of the Tribunal, which is minded to exercise its discretion in favour of the Applicant/Appellant.
25. Consequently, the Applicant's application is merited and therefore succeeds.

### **Disposition**

26. Based on the foregoing analysis, the Tribunal finds that the application is merited and accordingly proceeds to make the following Orders. that: -
  - a. Leave to appeal out of time be and is hereby granted.
  - b. The Notice of Appeal, Memorandum of Appeal, Statement of Facts together with the appeal documents attached thereto, all dated 5<sup>th</sup> June 2024 and filed on 7<sup>th</sup> June 2024 be and are hereby deemed as properly filed and served.
  - c. The Respondent is at liberty to respond to the Appeal by filing its Statement of Facts within thirty (30) days of the date hereof.
  - d. No orders as to costs.
27. It is so ordered.

**SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY JANUARY 2025**

**ROBERT M. MUTUMA - CHAIRMAN**

**MUTISO MAKAU - MEMBER**

**DR. TIMOTHY B. VIKIRU - MEMBER**

**DELILAH K. NGALA - MEMBER**



**JEPHTHAH NJAGI - MEMBER**

