

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL AT NAIROBI
TAX APPEAL NUMBER 1529 OF 2022

JARIKA COUNTY LODGE LIMITED APPELLANT

-VERSUS-

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

JUDGMENT

BACKGROUND

1. The Appellant is a registered taxpayer and undertakes the business of a hotel.
2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act, Cap 469 of the laws of Kenya. Under Section 5 (1) of the Act, the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all tax revenue. Further, under Section 5(2) of the Act with respect to the performance of its functions under subsection (1), the Authority is mandated to administer and enforce all provisions of the written laws as set out in Parts 1 & 2 of the First Schedule to the Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws.
3. The Respondent's inquiry into the Appellant's tax affairs showed that for the tax periods January 2021 to May 2022, the Appellant despite earning taxable income declared nil income for the purposes of its Value Added Tax (VAT). Consequently, the Respondent on 15th June 2022 notified the Appellant to

file its correct tax returns as required by law and provide the requested documents.

4. Despite requesting and being granted more time, the Respondent alleged that the Appellant failed to correct its tax returns. Subsequently, the Respondent, based on the information available and partial records availed by the Appellant, issued the Appellant with a tax assessment of KShs 2,880,000.00 on 24th June 2022.
5. On being duly served, the Respondent alleged that the Appellant did not object to the assessment within thirty days but lodged a late objection on 10th September 2022. The Respondent considered the Appellant's late objection with the accompanying documents and issued an objection decision on 7th November 2022 by disallowing the objection and confirming the assessment together with the penalties and interest.
6. Aggrieved by the Respondent's Decision, the Appellant filed its notice of appeal dated 2nd December 2022 on even date.

THE APPEAL

7. The Appellant being aggrieved by the objection decision lodged its Memorandum of Appeal dated 15th day of December 2022 and filed on 16th December 2022 on grounds that;
 - (i) That the Respondent erred in fact and in law by charging Value Added Tax (VAT) on non-existent income contrary to Section 5 of the Value Added Tax Act; and

- (ii) That the Respondent confirmed the assessments without due regard to all records/documents, explanations and information provided, thereby failing to appreciate all issues presented and raised by the Appellant before confirming the assessment.

THE APPELLANT'S CASE

8. The Appellant set down its case in its Statement of Facts dated 15th December 2022 and filed on 16th December 2022.
9. The Appellant's case is that the Respondent conducted a compliance review of the Appellant's VAT declarations and noted that the Appellant had been filing NIL VAT returns for the period January 2021 to May 2022. Then the Respondent issued estimated VAT additional assessments on 24th June 2022. The additional assessments were issued for the period January 2021 to May 2022 resulting in a total principal tax liability of Kshs. 2,880,000.00
10. The Appellant objected to the said assessments on 10th September 2022 wherein the grounds of the objection were that the Appellant was not in operation and therefore had no income.
11. The Appellant stated that it engaged the Respondent on diverse dates regarding the matter including availing all the requested supporting records. The Appellant argued that in utter disregard to its workings, explanations and submitted records, the Respondent dismissed the objection vide objection decision dated 7th November, 2022.

12. The Appellant affirmed that the Respondent erred in fact and in law by charging Value Added Tax (VAT) on non-existent income contrary to Section 5 of the Value Added Tax Act.
13. It was the Appellant's case that the act by the Respondent to confirm the assessment without due regard to all records/documents, explanations and information provided is unfair, irrational, malicious, capricious and against the principles of fair administrative action as contained in Article 47 of the Kenya Constitution, 2010 (hereinafter 'the Constitution').

Appellant's Prayer

14. The Appellant prayed that the Tribunal would:
 - (i) To allow the Appeal as prayed in the Memorandum of Appeal.
 - (ii) To annul the additional assessments but uphold the Appellant's notice of objection
 - (iii) Award costs of this Appeal to the Appellant.

THE RESPONDENT'S CASE

15. The Respondent's case was based on its Statement of Facts dated 13th January 2023 and filed on 17th January 2023 together with written submissions dated and filed on 28th July 2023.
16. The Respondent averred that it conducted a compliance review of the Appellant's VAT declarations for the period January 2021 to May 2022 on the Appellant's iTax system. The Respondent noted that although the Appellant was engaged on active business that generates income, the

Appellant filed Nil VAT returns. The Respondent alleged that the Appellant was notified on the same on 15th June 2022 and granted 7 days to file correct tax.

17. To ascertain its findings, the Respondent requested the Appellant to provide documents for review by the Respondent to ascertain the exact taxes that were due and payable.
18. According to the Respondent, the Appellant failed to honour the Respondent's request for documents forcing the Respondent to issue assessments amounting to Kshs. 2,880,000.00 for the period under review vide assessments dated 24th June 2022.
19. Dissatisfied with the assessment, the Appellant lodged late objection on iTax on 10th September 2022 against the Respondent's tax assessment.
20. The Respondent vide email dated 18th October 2022 requested the Appellant to provide the following documents in support of the objection.
 - (i) Certified bank statement for the period June 2020 to June 2022;
 - (ii) Certified pay bill/till statements December 2020 to June 2022;
 - (iii) Point of sale system generated reports December 2020 to June 2022;
and
 - (iv) Any other document to proof that the Appellant did not earn income in the period.
21. According to the Respondent, the Appellant provided bank statements only. The Respondent reviewed the Appellant's objection alongside the documents in support of the objection and issued objection decision vide a letter dated 7th November, 2022 confirming the assessment, interest and penalty amounting to Kshs. 3,331,200.00.

22. The Respondent reiterated its position as stated in the objection decision communicated to the Appellant and responded to the Memorandum of Appeal and Statement of Facts as hereunder.
23. The Respondent averred that a review of the bank statements provided by the Appellant showed that the Appellant received some income but failed to declare the said income and VAT. Further, the Appellant claimed some input VAT on some payments it made to its service providers yet it filed Nil returns when it came to filing VAT returns.
24. The Respondent relied on Section 31 of the Tax Procedures Act No. 29 of 2015 (hereinafter 'TPA') which grants the Respondent the mandate to issue amended assessment based on the information available. It provides as follows:

“(1) Subject to this section, the Commissioner may amend an assessment (referred to in this section as the “original assessment”) by making alterations or additions, from the available information and to the best of the Commissioner's judgement, to the original assessment of a taxpayer for a reporting period to ensure that—

(a) in the case of a deficit carried forward under the Income Tax Act (Cap. 470), the taxpayer is assessed in respect of the correct amount of the deficit carried forward for the reporting period;

(b) In the case of an excess amount of input tax under the Value Added Tax Act, 2013 (No. 35 of 2013), the taxpayer is assessed in respect of the correct amount of the excess input tax carried forward for the reporting period; or

(c) In any other case, the taxpayer is liable for the correct amount of tax payable in respect of the reporting period to which the original assessment relates.”

25. Further, in regards to production of documents, the Respondent relied upon Section 59(1) of the TPA which states that:

“For the purposes of obtaining full information...the Commissioner or an authorised officer may require any person, by notice in writing, to –

(a) 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.

(b) Furnish information relating to the tax liability of any person in the manner and by the time as specified in the notice.”

26. According to the Respondent, the Appellant was requested to furnish the Respondent with documents in support of its objection application. The Respondent averred that upon perusal of the documents provided, the Respondent noted that as per the bank statement, in the month of January 2021, the Appellant received bank credits of Ksh. 587,757.00 and Ksh. 432,220.00 being cheque deposit from Hetstone Insurance Bank.

27. The Respondent argued that the Appellant, through its Tax Agent simply explained the payment but did not provide any document to support the assertion hence the explanation was rejected.

28. Further, the Respondent averred that the directives by the Government to combat Covid-19 pandemic did not support the Appellant's ground of objection. The directive directed that businesses should be closed at 19:30 hours and that during the operational hours, social distance should be

maintained. As such, contrary to the Appellant's averments, no evidence has been provided on how Covid 19 pandemic stopped the company's operations.

29. The Respondent averred that the bank statement provided by the Appellant had immaterial bank credits during the period. However, it was noted that there were till numbers; Jarika County Lodge till number 980597 and J Accommodation till number 6506085 which were not provided by the Appellant for review despite the Respondent requesting for the same.
30. The Respondent maintained that failure by the Appellant to provide the till numbers, prevented the Respondent from ascertaining the actual position of the Appellant's income, hence disapproving the fact that the business had stopped operations.
31. The Respondent argued that the analysis of the documents provided and particularly the court case provided by the Appellant indicate that the company was operational during the period under review but operated by George Muigai Njihia alone after kicking out the other shareholders, Lucy Wairimu Njihia and Paul Ndungu Njihia. This was supported by the fact that George Muigai Njihia changed the company's till number from Jarika County Lodge till number 980597 to J accommodation till number 6506085. This information was however not provided during the objection review and has equally not been availed before this Tribunal.
32. Further, Respondent noted that the court made a ruling on 4th October 2021, referring the case to arbitration in line with the company's Article of Association as all the shareholders, Lucy Wairimu Njihia, Paul Ndungu Njihia and George Muigai Njihia run and manage the company. According to the

Respondent, there is no evidence of appeal to the ruling provided as outlined in the Appellant's grounds of objection.

33. The Respondent also averred that contrary to the Appellant's allegation, the Appellant was given an opportunity to present its case by way of documentary evidence which it squandered prior to its objection decision. In addition, the Respondent stated that it reviewed all the documents and information availed during the review process to arrive at the conclusion it did.
34. The Respondent maintained that the burden of proof is on the Appellant to produce the evidence challenging the Respondent's decision to confirm the default assessments. Particularly, Section 56(1) of the TPA provides as follows:

"The burden shall be on the taxpayer to prove that a tax decision is wrong/incorrect."
35. It was the Respondent's position that the Value Added Tax No. 35 of 2013 (hereinafter 'VAT') was legally and procedurally charged and the assessment legally and procedurally issued and that the Appellant's objection was duly considered and objection decision made as per the law.
36. The Respondent maintained that the Appellant has not provided any additional evidence to show that the Respondent's confirmed assessment was wrong and therefore the Appeal herein is devoid of any merits.
37. The Respondent also argued that the assessments and subsequent objection decision resulting to the dispute herein were in accordance with the law.

38. The Respondent identified three issues for determination which it analysed as hereunder.

(i) Whether the Appellant's Appeal is competent

39. On this issue, the Respondent submitted that the Appellant's Appeal was incompetent and ought to be struck out. This was because the Appellant did not sign its pleadings contrary to the strict requirements of Rules 4(1)(a) and 5(1) of the Tax Appeals Tribunals (Procedure) Rules, 2015.

40. The Respondent relied on the case of *George Kirihi Ringera v Board of Trustee Diocese of Meru Iruma Parish & 2 others [2020] eKLR* wherein the High Court held as follows regarding unsigned pleadings:-

“In Regina Kavenya Mutuku & 3 Others vs. United Insurance Company Limited Nairobi (Milimani) HCCC No. 1994 of 2000 [2002] 1KLR 250 Ringera, J (as he then was) held that: “An unsigned pleading has no validity in law as it is the signature of the appropriate person on the pleading which authenticates the same and an unauthenticated document is not a pleading of anybody. It is a nullity.”

41. Due to the foregoing, the Respondent argued that the Memorandum of Appeal dated 15th December 2022 and the Statement of Facts of even date have no validity in law and ought to be struck out as they are a nullity and incompetent. The Respondent argued that this is not a procedural technicality but a violation of express statutory provisions and thus cannot be cured under Article 159(2)(d) of the Constitution of Kenya 2010, (hereinafter ‘the Constitution’).

(ii) Whether the Respondent Erred by Raising the VAT Assessment.

42. Notwithstanding the above, the Respondent in arguing that it did not err in raising assessment relied on the following grounds:

(a) The Appellant made incorrect declarations in its tax returns

43. The Respondent submitted that despite earning income in the tax periods January 2021 to May 2022, the Appellant filed nil tax returns declaring that it did not earn any income in the period under review. From the documents submitted by the Appellant, the Respondent noted that the Appellant has been in business and has been earning income.

44. The Respondent submitted that it established from the deposits in the bank account statements that the Appellant earned income. The Respondent submitted that the Appellant through admits at Page 10 of its Statement of Facts that there was a credit of Kshs. 432,220 from Robinson Investment Limited.

45. Similarly, The Respondent submitted that the Court documents the Appellant provided shows that George Muigai Njihia operated the premises after kicking out other shareholders Lucy Waitimu Njihia and Paul Ndungu Njihia. Further, the Respondent argued that it was on court record that George Njihia changed the Appellant's till number from Jarika County Lodge till No 980597 to his personal number namely J accommodation till No. 6506085 for the purposes of carrying on business.

46. To establish that the Appellant was truly in business, the Respondent urged this Tribunal, to kindly refer to the High Court ruling in **Lucy Wairimu Njihia v Jarika County Lodge Limited & another [2021] eKLR** where the Court observed as follows:

“35..The 2nd respondent took over the running of the company forcefully and he has not refuted this and his basic reason being that he had been locked out of the company by the shareholders who were enjoying the fruits thereof as well as those of the other company known as Care Guest House limited.

36. It was his contention that he has been running the company well after the said take over and he has not incurred any loss, failed to settle any claim especially the creditors or any other statutory liabilities.”

47. Further, the Respondent argued that a review of the Appellant’s tax returns showed that the Appellant claimed some input VAT on some payments it made to its service providers yet it declared Nil income when it came to filing VAT returns.
48. Due to the foregoing, the Respondent argued that its undisputable that the Appellant was in business and it earned income. Therefore, the Appellant was required by law to declare income in its bank account and explain if there was any that was not revenue in nature. This was not done.
49. When faced with a similar situation, the Respondent referred to Court of Appeal decision in **Pili Management Consultants Ltd v Commissioner of Income Tax Kenya Revenue Authority [201 0] eKLR** where the Court had the following to say:-

“... Pili, as we have seen, made a nil return of income for the year 2004. It alleged it was not trading for that year and therefore, could not have earned any income upon which tax could have been levied. But we know now, and the Commissioner came to know in May 2006 that around 8th December 2004 Pili had a large amount of money in its accounts with the

Bank. It may well be that Pili did not trade in the year 2004 and the money in its bank account did not come from trading. It may be that the money did not accrue in and was not derived from Kenya. But the money was in a bank account in Kenya and it was in the account of Pili. Prima facie, it was Pili's money. Instead of declaring a nil return, why would Pili not declare the presence of that money and then explain to the commissioner why tax was not payable on the money.”

50. The Respondent therefore, submitted that it was incumbent upon the Appellant to declare its income and explain the money in its account. In attempting to explain the money in the bank accounts, the Appellant tried to argue that the input claims related to security services it received and payment it received related to a long outstanding debt. However, no supporting documents were provided to support these allegations. Therefore, the explanations given have no probative value.

51. Due to the forgoing, the Respondent submitted that the Appellant made incorrect statements and the Respondent was justified in raising the tax assessment to ensure that the Appellant was charged to the correct income.

(b) There were justifiable reasons to amend the Appellant's tax returns

52. The Respondent relied on Section 24(2) of the TPA to argue that the Respondent was not bound by the Appellant's self-assessment returns. Consequently, the Respondent upon noticing the glaring inconsistencies between the Appellant's VAT returns and the bank account statements amended the same as per Section 31 of the TPA. The amendments were in the form of additional assessment as confirmed through the objection decision.

53. The Respondent submitted that amendment of tax returns was governed by Section 31 of the Tax Procedures Act, 2015. It provides as follows:

“31. Amendment of assessments

(1) Subject to this section, the Commissioner may amend an assessment (referred to in this section as the “original assessment”) by making alterations or additions, from the available information and to the best of the Commissioner’s judgement, to the original assessment of a taxpayer for a reporting period to ensure that—

(a) ...

(b) In the case of an excess amount of input tax under the Value Added Tax Act, 2013 (No. 35 of 2013), the taxpayer is assessed in respect of the correct amount of the excess input tax carried forward for the reporting period; or

(c) in any other case, the taxpayer is liable for the correct amount of tax payable in respect of the reporting period to which the original assessment relates.” [Emphasis added].

54. The Respondent also submitted that the Appellant made incorrect statements in its VAT tax returns by declaring that the Appellant earned no income for the period reviewed by the Respondent. It was therefore necessary for the Respondent to amend the Appellant’s tax returns upon noticing the following glaring facts:

(a) The Appellant had a credit of KShs. 432,220.00 from Hetstone Insurance Bank;

(b) The Appellant claimed input of Kshs. 12,800.00 in its VAT tax returns;

- (c) The Appellant had business till numbers - Jarika County Lodge till No 980597 and J accommodation till No. 6506085 for the purposes of operating a business, which despite several requests, the Appellant failed to avail them to the Respondent; and
- (d) The Court documents established that indeed the Appellant was in business for the period reviewed by the Respondent.

55. Considering all the above issues, the Respondent argued that only one determination can be made; the Appellant was in business but failed to declare its income for the purposes of VAT. Therefore, the Respondent was within the precincts of Section 31 of the Tax Procedures Act, 2015 in amending the Appellant's tax returns to ensure that the Appellant was liable for the correct amount of tax payable in respect of the reporting period January 2021 to May 2022.

(iii) Whether the Appellant has discharged the Burden Proof.

56. According to the Respondent's submissions, in tax disputes, it need not be overstressed but either, it need not be forgotten that the burden of proof is always on the taxpayer. The Respondent relied on the case of *Commissioner of Domestic Services v Galaxy Tools Limited [2021] eKLR*, wherein the High Court at paragraph 29 of the Judgment had the following to say on the taxpayer's burden of proof:

"29. ... The South African case of Metcash Trading Limited -vs- Commissioner for the South African Revenue Service and Another Case CCT 3/2000 emphasized the basis of the burden of proof upon the tax payer.

The court held as follows:

"But the burden of proving the Commissioner wrong then rests on the vendor under section 37. Because VAT is inherently a system of self-

assessment based on a vendor's own records, it is obvious that the incidence of this onus can have a decisive effect on the outcome of an objection or appeal. Unlike income tax, where assessments can elicit genuine differences of opinion about accounting practice, legal interpretations or the like, in the case of a VAT assessment there must invariably have been an adverse credibility finding by the Commissioner and by like token such a finding would usually have entailed a rejection of the truth of the vendor's records, returns and averments relating thereto. Consequently, the discharge of the onus is a most formidable hurdle facing a VAT vendor who is aggrieved by an assessment unless the Commissioner's precipitating credibility finding can be shown to be wrong, the consequential assessment must stand.”

57. In view of the above and Section 56(1) of the TPA, Section 30 of the Tax Appeals Tribunal Act, No. 40 of 2013 (hereinafter 'TAT') and Section 62 of the Value Added Tax Act No. 35 of 2013 (hereinafter 'VAT Act'), the Respondent submitted that the Appellant had a burden to demonstrate that income it earned were not chargeable to VAT.
58. According to the Respondent, the Appellant had attempted to argue that the input claims related to security services it received during the pendency of the dispute in court and the payment it received in its bank account related to a long outstanding debt. The Respondent argued that these allegations were not accompanied by any form of documentation or even witness statement by any of the Appellant's trading partners.
59. Therefore, it was the Respondent's case that the Appellant's explanations were mere statements at best and thus no probative value can be attached to them in the absence of corroborating evidence. The Respondent further averred that it requested the Appellant to provide several documents to

demonstrate that it was not in business, but the Appellant only managed to produce the bank account statements.

60. The Respondent maintained that the Appellant declined to provide the till numbers which would have helped the Respondent ascertain the veracity of the Appellant's allegations that it was never in business. The Court documents provided by the Appellant does not prove that it was never in business but actually confirms that it was indeed in business under the stewardship of George Muigai Njihia.
61. In the premises, the Respondent averred that it was justified to confirm the amended assessments. The Respondent stated that the Respondent's assessment enjoy the presumption of correctness and this can only be vacated by the Appellant providing evidence to the contrary or discharging the burden of proof imposed by law which according to the Respondent, the Appellant had completely failed to discharge in this Appeal. The Respondent relied on the case of **Kenya Revenue Authority v Man Diesel & Turbo Se, Kenya [2021] eKLR Nairobi High Court Income Tax Appeal No. E125 of 2020**, wherein, while upholding the above position, the High Court held as follows at paragraph 32 of the Judgment:

“32. The shifting of the burden of proof in tax disputes flows from the presumption of correctness which attaches to the Commissioner's assessments or determinations of deficiency. “ The commissioner's determinations of tax deficiencies are presumptively correct. Although the presumption created by the above provisions is not evidence in itself, the presumption remains until the taxpayer produces competent and relevant evidence to support his position. If the

taxpayer comes forward with such evidence, the presumption vanishes and the case must be decided upon the evidence presented, with the burden of proof on the taxpayer.” [Emphasis added]

62. The Respondent further submitted that the Appellant earned income which were subject to VAT as provided under Section 5 of the VAT Act, 2013. The findings in the objection decision demonstrates that the Respondent considered all the documentations provided by the Appellant.
63. In the foregoing, the Respondent stated that the Appellant had not discharged its burden of proof and thus the Respondent’s assessments as confirmed in the objection decision of 7th November 2022 enjoys the presumption correctness under Section 50 of the TPA.

Respondent’s Prayer

64. The Respondent, therefore made the following prayers to the Tribunal:
- (i) The Appeal be dismissed;
 - (ii) It do uphold the Respondent’s assessment and decision dated 7th November, 2022; and
 - (iii) Award the Respondent the costs of the Appeal.

ISSUES FOR DETERMINATION

65. The Tribunal having considered the parties pleadings, documents and submissions, puts forth the following three issues for determination:
- (a) **Whether the Appellant’s Pleadings complied with Rules 4(1) (a) and 5(1) of the Tax Appeals Tribunals (Procedure) Rules, 2015.**
 - (b) **Whether the Respondent charged Value Added Tax (VAT) on non-existent income contrary to section 5 of the Value Added Tax Act; and**

- (c) Whether the Respondent confirmed the assessments without due regard to all records/documents and explanations and information provided.

ANALYSIS AND FINDINGS

66. It is to these issues that the Tribunal will in turn analyse as hereunder: -

- (a) Whether the Appellant's Pleadings complied with Rules 4(1) (a) and 5(1) of the Tax Appeals Tribunals (Procedure) Rules, 2015.

67. The Tribunal notes the Respondent's submissions that the Appeal is incompetent and ought to be struck out. This is because the Appellant did not sign its pleadings contrary to the strict requirements of Rules 4(1) (a) and 5(1) of the Tax Appeals Tribunals (Procedure) Rules, 2015. The Respondent argued that the Memorandum of Appeal dated 15th December 2022 and the Statement of Facts of even date have no validity in law and ought to be struck out as they are a nullity and incompetent. The Respondent argued that this is not a procedural technicality but a violation of express statutory provisions and thus cannot be cured under Article 159(2) (d) of the Constitution.

68. Regulation 4 of the Tax Appeals Tribunal (Procedure) Rules, 2015 provides as follows:

"4. Memorandum of appeal

(1) A memorandum of appeal referred in rule 3(2) shall—

(a) be signed by the appellant;

(b) set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative:

(c)..."

69. Similarly, Regulation 5 (1) of the Tax Appeals Tribunal (Procedure) Rules, 2015 provides as follows:

“5. Statement of facts of appellant

(1) Statement of fact signed by the appellant shall set out precisely all the facts on which the appeal is based and shall refer specifically to documentary evidence or other evidence which it is proposed to adduce at the hearing of the appeal.”

70. The Rules employ the use of the word, ‘shall’ meaning that the requirement to sign pleadings is mandatory and not discretionary.

71. In *Samson Jumba & 3 others v Hellen Jendeka Ndagadwa & 2 others [2021] eKLR* the High Court at paragraphs 22 and 25 stated as follows with regards to unsigned plaint:

“22. The last thing. I note from the trial record in the civil matter, Vihiga PMCCC No. 182 of 2016, that the plaint was not signed by the advocate who drew it. It was, therefore, not authenticated. It was incompetent ab initio, and no trial should have been conducted in the first place. Order 2 rule 16 of the Civil Procedure Rules provides:

“Every pleading shall be signed by an advocate, or recognized agent (as defined by Order 9, rule 2), or by the party if he sues or defends in person.”

“25. A pleading that is unsigned is incompetent, and a suit founded on it cannot possibly stand. It is a curable defect, however, which must be corrected before judgment, but is fatal if not corrected. As plaint in this matter was not signed, the suit was incompetent ab initio. The trial court ought not have conducted a trial founded on it.

The proceedings founded on that pleading were themselves incompetent.”

72. In *Phoebe Wangui vs. James Kamore Njomo [2012] eKLR* (Odunga J as was then) had the following to say about unsigned pleadings:

“It is clear that the position in Kenya as regards unsigned pleadings is the same whether in the High Court or in the Court of Appeal. Consequently, such pleadings are rendered incompetent and are for striking out. It is therefore clear that the fate of the amended plaint filed herein on 25th October 2011 is sealed and the Court has no option but to strike out the same. I accordingly accede to the Motion dated 8th February 2012 and strike out the said amended plaint with costs to the defendant.”

73. In *Stephen Raphael Garama vs. Robert Baya Mramba & 9 others [2012] eKLR* (Meoli J as was then), the court said the following about pleadings that are not signed:

“2...Order 2 rule 16 of the Civil Procedure Rules provides that: -

“Every pleading shall be signed by an advocate, or recognized agent...or by the party if he sues or defends in person.”

3. Although the plaintiff did file his Further Amended Defence to the Counterclaim on 20th March, 2011, I think it is necessary for the Defendants’ pleadings to be regularized before judgment can be pronounced on the dispute. While this may cause some delay, the court is wary of proceeding on the basis of what may well be an incompetent counterclaim.”

74. Finally, the Court of Appeal in *Vipin Maganlal Shah & another v Investment & Mortgages Bank Limited & 2 others [2001] eKLR* expressed itself as follows concerning unsigned pleadings:-

“In Samaki Industries (Nairobi) Ltd v Samaki Industries (K) Ltd, Civil Appeal No 203 of 1995 (Unreported), there a suspended advocate filed an appeal on behalf of a party signing the memorandum of appeal and the other relevant documents. This Court had no difficulty in holding, indeed it was conceded, that the appeal having been filed by an unqualified advocate on behalf of an appellant was incurably defective and was struck out. The Court did not call upon the appellant to come and sign the memorandum of appeal and thus validate it.”

...In Kenya, we have already cited the Samaki case, supra. There is of course the object the legislator had in mind in requiring that a plaint be signed either by counsel or the party suing. The object must clearly be to make the party suing or filing any other pleading take ownership and responsibility for the contents of the plaint or pleading or as was said in the Great Australian Gold Mining Co case, supra, to be: "a voucher that the case is not a mere fiction."

If a plaint is not signed either by the plaintiff in person or his recognized agent or his advocate, what is the use of requiring that it contains an averment by the plaintiff that there is no other suit pending and so on" If the plaint is not signed as required by order VI rule 14, these other requirements clearly become meaningless. Whatever may be the position in India or even in England, the position in Kenya seems to us to be that a party who files an unsigned plaint runs a very grave risk of having that plaint struck out

as not complying with the law. In this appeal, we shall go no further than that because as we said earlier, we must deal with the issue of whether or not there was on record a copy of the signed plaint when the summons to strike out was lodged in the superior court. It is to that question that we must turn.”

75. All these case laws point in one direction, unsigned pleadings are incompetent and are void *ab initio*.
76. The Tribunal has perused the Appellant’s pleadings and confirms, the Memorandum of Appeal and Statement of Facts are not signed.
77. Unfortunately, the Appellant cannot find refuge in Article 159(2) (d) of the Constitution because the said Article is not a license to infringe express provisions of the law. Signing pleadings is mandatory. It authenticates the pleadings.
78. A document is not valid until it is signed. Signature indicates that the person signing is ready to be legally bound by the signed document. Needless to stated that unsigned document cannot be enforced.
79. The Tribunal finds that the Appellant’s pleadings are incompetent as they did not comply with Rules 4(1) (a) and 5(1) of the Tax Appeals Tribunals (Procedure) Rules, 2015. Consequently, the Tribunal finds and holds that the Appellant’s pleading are incompetent and are available for striking out.
80. The Tribunal having established that the Appellant’s pleadings are incompetent, analysis of the remaining issues is nugatory.

FINAL DECISION

81. The upshot to the foregoing is that the Tribunal finds and holds that the Appeal is available for striking out and consequently makes the following Orders:-

- (a) The Appeal be and is hereby struck out;
- (b) Each party to bear its own costs.

82. It is so ordered.

DATED and DELIVERED at NAIROBI this 5th Day of April, 2024

**CHRISTINE A. MUGA
CHAIRPERSON**

**BONIFACE K. TERER
MEMBER**

**DELILAH K NGALA
MEMBER**

**GEORGE KASHINDI
MEMBER**

**SPENCER S. OLOLCHIKE
MEMBER**