

**REPUBLIC OF KENYA  
IN THE TAX APPEALS TRIBUNAL  
APPEAL NO. E312 OF 2023**

**JEYRUIZ LIMITED..... APPELLANT**

**VERSUS**

**COMMISSIONER OF LEGAL SERVICES**

**AND BOARD COORDINATION.....RESPONDENT**

**JUDGMENT**

**BACKGROUND**

1. The Appellant is a limited liability company incorporated in Kenya under the Companies Act. Its principal activity is dealing with electrical spare parts.
2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act, Cap 469 of the Kenya laws. Under Section 5 (1) of the Act, KRA is an agency of the Government for the collection and receipt of all revenue. For the performance of its function under Subsection (1), the Authority is mandated under Section 5(2) of the Act to administer and enforce all provisions of the written laws as set out in Parts I and II of the First Schedule to the KRA Act to assess, collect, and account for all revenues under those laws.
3. On 17<sup>th</sup> May 2022, the Respondent issued an additional VAT assessment of Kshs. 185,754 for the period from 1<sup>st</sup> December 2021 to 31<sup>st</sup> December 2021.
4. Consequently, the Respondent issued an objection decision on 1<sup>st</sup> August 2022.
5. Dissatisfied with the Respondent's objection decision, the Appellant filed this Appeal

## **THE APPEAL**

6. The grounds of the Appeal are outlined in the Memorandum of Appeal filed on 24<sup>th</sup> April 2023 and are as summarized hereunder:
  - a) That the decision arrived at did not prove the additional sales assessed in that month of December 2021.
  - b) That the variance between the VAT analysis and Income tax analysis was a result of VAT amount which can be approved by the bank statement.

## **APPELLANT'S CASE**

7. The Appellant's case was premised on its Statement of Facts filed on 24<sup>th</sup> April 2023.
8. The Appellant averred that the decision arrived at did not prove the additional sales assessed in that month of December 2021.
9. The Appellant stated that the variance between the VAT analysis and income tax analysis was a result of VAT amount which can be proved by the bank statement.

## **Appellant's Prayers**

10. The Appellant prayed for:-
  - c) That this Appeal be allowed, and the matter be reverted to the Respondent for further review.
  - d) That freezing of its bank account be uplifted.

## **RESPONDENT'S CASE**

11. In response to the Appeal the Respondent presented its:
  - a) Statement of Facts dated and filed on 27<sup>th</sup> April 2023.

b) Written submissions dated 17<sup>th</sup> December 2023 and filed on 18<sup>th</sup> December 2023.

12. The Respondent, in response to the grounds contained in the Memorandum of Appeal, averred that the Appellant while objecting to the assessments indicated that it did not understand the basis of the assessment. That vide email dated 21<sup>st</sup> July 2022, the Appellant was provided with workings and explanations for the basis of the assessments. That nonetheless, the Appellant failed and or refused to respond to the email.
13. The Respondent averred that the decision to arrive at the VAT assessment was justified and had basis in law as required under the Tax Procedures Act (TPA) and should be upheld by this Tribunal.
14. The Respondent relied on the provisions of Section 31(1) of the TPA which provides that: -

*“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 an Appellant for a reporting period..”*
15. The Respondent submitted that it is at liberty to make assessments based on information available to it in accordance with Section 24(2) of the TPA.
16. That the Appellant was requested to provide bank statements for the year 2021. However, the Appellant was reticent, notwithstanding the fact that the information contained in the above documents, would have ascertained the correct tax to be assessed. The Respondent relied on Section 59(1) of the TPA which requires the Appellant to provide records to enable the Respondent to determine its tax liability. The Respondent was subsequently compelled to

reject the Appellant's objection application because of the failure of the Appellant to avail its records.

17. The Respondent asserted that the Appellant thus lodged an invalid objection as the objection was not supported by all relevant documents contrary to Section 51(3)(c) of the TPA which provides that: -

*“(3) A notice of objection shall be treated as validly lodged by an Appellant under subsection (2) if-*

*(a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments; and*

*(b) in relation to an objection to an assessment, the Appellant has paid the entire amount of tax due under the assessment that is not in dispute.”*

18. The Respondent stated that as evidenced in the Appellant's objection, the Appellant did not disprove the Respondent's assessments by either illustrating that the computation was incorrect. As such, the objection was accordingly invalidated.
19. The Respondent submitted pursuant to Section 56 of the TPA and Section 30 of the Tax Appeals Tribunal (TAT) Act, the burden of proof lies on the Appellant to demonstrate that it had discharged its tax liability. The Respondent also stated that this burden was never discharged as no documentary evidence was availed to the Respondent for the year 2020 to enable it to render a meritorious decision in the circumstances.
20. The Respondent submitted that this Appeal contravenes Section 13(1), 13(2)(b) and 13(3) of the TAT Act.
21. The Respondent submitted that Section 13 (1) of the TAT Act requires an Appellant to submit a Notice of Appeal 30 days after the decision of the

Respondent. The Respondent issued its decision on 1<sup>st</sup> August 2022 and the Appellant failed and or neglected to file the Notice of Appeal in time.

22. The Respondent further submitted that the Appellant failed to submit and or annex a copy of the Statement of Facts as obligated by the provisions of Section 13(2)(b) of the TAT Act.
23. The Respondent averred that the Appellant equally failed to seek leave to file its Appeal out of time contrary to Section 13(3) of the TAT Act.

### **Respondent's prayers**

24. The Respondent prayed that the Tribunal:
  - a) Upholds the Respondent's decision as proper and in conformity with the provisions of the law.
  - b) Dismisses the Appeal with costs to the Respondent as the same is devoid of merit.

### **ISSUES FOR DETERMINATION**

25. The Tribunal has carefully studied the parties' pleadings and submissions and is of the respectful view that the single issue that call for its determination is as hereunder:

*Whether there is a competent appeal on record.*

### **ANALYSIS AND FINDINGS**

26. Having identified the issue that falls for its determination the Tribunal analyzed it as hereunder.
27. The Respondent objected to the Appeal arguing that the Appeal is incompetent for non-compliance with Section 13 (1) of the Tax Appeals

Tribunal (TAT) Act. The Respondent submitted that the Appellant failed or neglected to file the Notice of Appeal as provided by this provision.

28. For a Notice of Appeal to be deemed as competently lodged, the same ought to be made and/or lodged in writing or electronically within the prescribed timelines as set out under Section 13(1) of the TAT Act, which provides that: -

*“(1) A notice of appeal to the Tribunal shall-*

*(a) be in writing or through electronic means.*

*(b) be submitted to the Tribunal within thirty days upon receipt of the decision of the Commissioner.”*

29. Section 13 (3) of the TAT Act, provides the remedy to any party who wishes to lodge an Appeal out of time, being that any such intended Appellant may seek leave of the Tribunal in writing seeking an extension of time and leave to file an Appeal out of time. The provision reads: -

*“The Tribunal may, upon application in writing, extend the time for filing the notice of appeal and for submitting the documents referred to in subsection (2).”*

30. The Tribunal observed that the Appellant ought to have filed its Notice of Appeal within thirty days of the Respondent’s objection decision, which would have been before 1<sup>st</sup> September 2023.

31. Gleaning through the documents submitted by the Appellant, the Tribunal noted that there is no Notice of Appeal on record. The Tribunal further notes that the Appellant failed to apply for leave to file its Appeal out of time as required in Section 13 (3) of the TAT Act which provides: -

*“(3) The Tribunal may, upon application in writing or through electronic means, extend the time for filing the notice of appeal and for submitting the documents referred to in subsection (2).”*

32. The Tribunal is of the considered view that the timelines for appealing the Commissioner's decisions are clearly set in the law, and all taxpayers are liable to comply with the timelines, save for when unavoidable circumstances prevent a taxpayer from fulfilling its obligations as envisioned in Section 13 (4) of the TAT Act which states: -

*“(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.”*

33. The Tribunal buttresses the importance of adherence to timelines by referring to **Eastleigh Mall Limited v Commissioner of Investigations & Enforcement (Income Tax Appeal E068 of 2020) [2023] KEHC 20000 (KLR)** where the court held as thus: -

*“... Parliament in its wisdom knew that in matters tax, time is very crucial as those in commerce need to make informed decisions. If the Commissioner is allowed to exercise his discretion and stay ad-indefinitum before issuing an objection decision, the tax payer would be unable to make crucial decisions and plan his/her business properly. The timelines set are mandatory and not a procedural technicality.”*

34. The Tribunal is further guided by the case of **W.E.C. Lines Ltd vs. The Commissioner of Domestic Taxes [TAT Case No. 247 of 2020]** where it was held at paragraph 70 while reiterating the holding in **Krystalline Salt Ltd vs KRA [2019] eKLR** that: -

*“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such*

*special procedures. The relevant procedure here is the process of opposing an assessment by the Commissioner.”*

35. Based on the foregoing, the Tribunal finds that without a valid notice of appeal there is no valid appeal before it. This matter is therefore incompetent and untenable in law and the Tribunal does not have the jurisdiction to determine the matters in the Appeal.

## **FINAL DECISION**

36. The upshot of the foregoing is that the Appeal is incompetent and the Tribunal accordingly proceeds to make the following Orders: -

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

37. Orders accordingly.

**DATED and DELIVERED at NAIROBI this 5<sup>th</sup> day of April, 2024**

**GRACE MUKUHA  
CHAIRPERSON**

**DR. WALTER J. ONGETI  
MEMBER**

**JEPHTHAH NJAGI  
MEMBER**

**GLORIA A. OGAGA  
MEMBER**

**DR. ERICK KOMOLO  
MEMBER**