REPUBLIC OF KENYA

IN THE TAX APPEALS TRIBUNAL

TAX APPEAL NO. E366 OF 2023

DAVID NGARI NDIRITU T/A ABERDARE SOLUTIONS.....APPELLANT

-VERSUS-

COMMISSIONER INVESTIGATIONS AND ENFORCEMENT.....RESPONDENT

JUDGMENT

BACKGROUND

1. The Appellant is a sole proprietor and a registered taxpayer, trading in the name and style of Aberdare Solutions, which deals in the trade of charcoal and scrap metals in Kenya.
2. The Respondent is a principal officer appointed under and in accordance with Section 13 of the Kenya Revenue Authority Act, and the Authority is charged with the responsibility of among others, assessment, collection, accounting and the general administration of tax revenue on behalf of the Government of Kenya.
3. The Respondent issued notice of assessment, dated 10th June 2019, for a sum of Kshs. 93,883,591.00 for the years of income 2014 to 2018 in reference to VAT.
4. The Respondent thereafter sent a notice of assessment dated 11th May 2020 to the Appellant detailing that the Appellant had under-declared sales in his self-assessment returns for the years of income 2014 to 2017. This was for an amount of Kshs. 111,523,260.00, inclusive of penalties and interest.
5. By a letter dated 1st November, 2022, the Appellant applied for extension of time to file a notice of objection to the Respondent's two notices of assessment.

6. The Appellant lodged a notice of objection dated 1st November ,2022 raising grounds of objection to the VAT and Income tax assessments.
7. On 30th January 2023 the Respondent approved the application for the extension of time to lodge an objection.
8. Consequently, on 8th June, 2023 the Respondent issued an Objection decision confirming its assessments of principal tax together with penalties and interest amounting to Kshs. 205,406,851.00.
9. The Appellant being dissatisfied with the Respondent's decision filed a Notice of Appeal on 6th July, 2023.

THE APPEAL

10. The Appeal is premised on the following grounds as stated in the Memorandum of Appeal dated 20th July, 2023:
    i. That the Respondent erred and misdirected itself in fact and in law in rejecting the Appellant's notice of objection to the VAT and income tax additional assessments issued for the period 2014 to 2017.
    ii. That the Respondent erred and misdirected itself in fact and in law in solely relying on the tax returns filed by third parties to conclude that the Appellant had failed to declare its sales.
    iii. That the Respondent erred and misdirected itself in fact and law in failing to conduct a proper review of the documents and explanations provided by the Appellant, thereby arriving at the erroneous conclusion that the Appellant failed to declare its sales.
    iv. That the Respondent erred and misdirected itself in fact and law in finding that the Appellant was a beneficiary of the missing trader scheme from two suppliers without having any basis for its conclusion and in utter disregard of the fact that the suppliers are duly registered for VAT, have physical offices and contacts and

one of the suppliers duly filed its VAT returns relating to sales made to the Appellant.

v. That the Respondent erred and misdirected itself in fact and law in disallowing input VAT claims made by the Appellant despite having satisfied the requirements under Section 17 of the VAT Act for purposes of claiming the input VAT legally due to it.

vi. That the Respondent erred and misdirected itself in fact and law in disregarding the tax invoices with ETR receipts attached, which sufficiently prove that the Appellant made purchases and is entitled to claim input VAT.

vii. That the Respondent erred and misdirected itself in fact and law in issuing an income tax assessment on the basis of purported underdeclared sales whereas the Appellant clearly demonstrated that it declared all its sales during the period under review.

viii. That the Respondent erred and misdirected itself in fact and law in finding that the Appellant dealt with missing traders whereas there is no evidence supporting such claims and that the Appellant had no control of the suppliers' declarations.

APPELLANT'S CASE

11. The Appellant's case is premised on the following documents:
    i. The Appellant's Statement of Facts filed on 20th July, 2023 together with the documents attached thereto.
    ii. The Appellant's written submissions dated 9th April, 2024, and filed on 11th April, 2024.
12. That Aberdare Solutions did not make any sales and did not issue any invoices for the months of March, July and October 2016 and May 2017, and did not report any sales in its iTax returns for those months, but the Respondent, in its tax assessments, erroneously indicated that there were sales for those months.

13. That Aberdare Solutions does not have control of its customers' and suppliers' declarations in their returns filed with KRA. That all the sales for the period 2014 to 2017 were declared in VAT returns and the declared VAT duly paid. That all the invoices issued during the period under review were supplied to KRA.
14. That Aberdare Solutions was not a beneficiary of the missing trader scheme. That both Bozco Enterprises and Davron Petroleum are registered for VAT and their email addresses and physical offices clearly indicated on their invoices. That further, the purchases from these two suppliers were supported by tax invoices with ETR receipts and duly qualified for deduction as input VAT under Section 17 of the VAT Act. That the tax invoices issued by the two traders were provided.
15. That the income tax assessment was erroneous as it arose from the VAT assessments, which were clearly issued in error as Aberdare Solutions duly declared all the sales made within the period under review.
16. That in any event, in issuing an income tax assessment, the income tax liability ought to have considered industry practice and usage and in accordance with Sections 15 and 16 of the Income Tax Act, expenses wholly and exclusively incurred in the generation of income ought to have been deducted in determining the gains or profits that would be subjected to tax.
17. That the Respondent's decision is erroneous because the Respondent relied on input VAT claims filed by third parties. That Aberdare Solutions did not have any control whatsoever over the returns filed by these third parties or the accuracy of the information contained therein.
18. That the decision is also wrong because Aberdare Solutions met its obligations by duly declaring and remitting VAT on the sales made during the period under review, and the Respondent referred to invoices that were not issued by Aberdare Solutions and did not form part of the sales made during that period.

19. That it is clear that most of the invoices referred to by the Respondent were not issued by Aberdare Solutions. That in particular, the invoices purportedly issued to ISL Kenya Limited are serialized differently from the invoices issued by Aberdare Solutions. That for example, the invoices allegedly issued to ISL Kenya Limited in June 2016 are numbered "1,2,3,4..." whereas at that time, the invoices issued by Aberdare Solutions were numbered "1745, 1746, 1747, 1748..."
20. That further, several invoices referred to by the Respondent were duly declared and VAT remitted, for example invoices no. 1731, 1732, 1735, 1736, 1738 etc. That the Respondent cannot purport to claim VAT on sales that were already declared and VAT paid on them.
21. That it is therefore clear that the Respondent totally disregarded the documents provided at the objection stage and proceeded to issue its Objection decision solely based on purchasers' input VAT claims which Aberdare Solutions does not have control over and is not privy to.
22. That further, the Respondent's decision to disallow input VAT claims is misguided and unjustified because the Respondent's allegation that Bozco Enterprises and Davron Petroleum were established to be involved in the missing trader scheme is unsupported and without basis.
23. That both Bozco Enterprises and Davron Petroleum are VAT registered and were allocated PIN numbers by the Respondent, which were used in the normal course of business.
24. The Appellant contended that the standard requirement under Section 17 of the VAT Act when making an input VAT claim relating to purchases made is a tax invoice issued by the supplier. That Aberdare Solutions provided the tax invoices issued to it by the two suppliers with ETR receipts attached, clearly showing their KRA PINs.

25. That in this case, the Respondent did not question the veracity of the invoices provided at the objection stage. That it is important to note that the invoices clearly show the physical addresses and contacts of the two suppliers.
26. That Bozco Enterprises and Davron Petroleum cannot therefore be considered to be missing traders. That in fact, Davron Petroleum Limited, is owned by the proprietor of Aberdare Solutions and that he is its Managing Director. That this is clear from the invoices provided that Davron Petroleum Limited duly declared the sales made to Aberdare Solutions and remitted output VAT.
27. That the Respondent's income tax assessment is based on the sales allegedly undeclared by Aberdare Solutions during the period under review. That in view of the explanations provided above, it is clear that the correct income was declared.
28. That in any event and without prejudice to the foregoing, Aberdare Solutions sources merchandise from suppliers and sells it locally to customers. That the cost for purchasing its merchandise from suppliers is wholly and exclusively incurred in the generation of business income. That the Respondent's computation of income tax payable did not take into account the expenses incurred in the generation of income.
29. That it is therefore clear that the Respondent's Objection decision as well as the assessments are erroneous and without any legal basis.
30. That the sequence of events that took place after the letter of 30th January, 2023 vide which the Respondent approved the application for the extension of time to lodge an objection was as follows:
    i. The Appellant followed up on the objection review and requested for engagement with the Respondent, who then invited the Appellant for a meeting on 30th March, 2023. Subsequently, the Appellant sent a letter dated 31st March, 2023 to the Respondent.
    ii. Notably, this was 60 days after the Respondent allowed the Appellant's application for extension of time to lodge the objection. Computing it

together with the 7 days granted after 30th January 2023, it would be 53 days after the objection was deemed to have been lodged.

iii. In the Objection decision, the Respondent has indicated that the engagement was for purposes of validating the objection in line with Section 51(3) of the Tax Procedures Act. That it is important to note that there was no request for validation of the objection under Section 51(4) at any point. It can therefore be presumed that at this point, time was running for purposes of issuance of an objection decision.

iv. Subsequently, the Respondent requested for further documents, which the Appellant availed on 15th May, 2023

v. The Respondent then purported to issue the Objection decision on 8th June, 2023

31. The Appellant referred the Tribunal to the following provisions of the Tax Procedures Act:

Section 51(6)

"A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection."

Section 51(7)

"The Commissioner shall consider and may allow an application under subsection (6) if —…"

Section 51(7A)

"The Commissioner shall notify the taxpayer of the decision made under subsection

(7) within fourteen days after receipt of the application."

Section 51(4)

"Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of

fourteen days notify the taxpayer in writing that the objection has not been validly lodged."

Section 51(11)

"The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed."

32. That it is clear from the above provisions and the sequence of events that there were several procedural lapses by the Respondent as follows:

i. The Appellant lodged the application for extension of time to lodge an objection dated 1st November, 2022 on 3rd November, 2022. Under Section 51(7A) of the Tax Procedures Act, the Respondent ought to have notified the Appellant of its decision within 7 days. It was not until 30th January, 2023, 88 days later, that the Respondent notified the Appellant of its decision.

ii. The Respondent, having allowed the Appellant to lodge the objection, gave him 7 days to file the objection, which was already in its possession together with the relevant supporting documents. This would effectively mean that the objection review period commenced on 6th February 2023.

iii. In the event that the Respondent considered the notice of objection not to have been validly lodged, then by virtue of Section 51(4) of the Tax Procedures Act, the Respondent ought to have notified the Appellant that the notice of objection was not validly lodged within 14 days. The Respondent did not do so.

iv. Consequently, the notice of objection was deemed to have been validly lodged and time started to run from 6th February 2023. Section 51(11) gives the Respondent a generous period of 60 days to make an Objection decision, failure to which the notice of objection shall be deemed to have

been allowed. Notably, the Respondent issued the Objection decision on 8th June, 2023, 122 days from the date when it considered the notice of objection to have been lodged.

v. Even if the Objection is considered to have been lodged on 31st March 2023 following the meeting with the Respondent, it took 69 days from that date for the Respondent to issue its Objection decision.

33. The Appellant implored the Tribunal to consider the following decisions that are instructive on the issue of adherence to statutory timelines, and to find that the Appellant's notice of objection was deemed to have been allowed by operation of the law:

i. **Eastleigh Mall Limited v Commissioner of Investigations & Enforcement (Income Tax Appeal E068 of 2020) [2023] KEHC 20000 (KLR)** where the Court stated as follows:

"18.It is clear from the forgoing that the provisions of section 51(11) of the Tax Procedures Act are mandatory. They are not cosmetic. 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-infinitum 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."

ii. **Kayser Investments Limited v Commissioner of Domestic Taxes (Income Tax Appeal No. E112 of 2021)** where the Honourable Justice Alfred Mabeya stated the following:

"25. To this Court's mind, it was not open to the respondent to extend the time within which he was to advise the appellant of the validity or otherwise of its objection. Having failed to determine that fact and

communicate to the appellant of that fact within the timelines provided for in the law, Section 51(4) of the Act, he was bound to consider and issue his objection decision by 11/1/2020.

26.It should be noted that the appellant did not respond to the respondent's communication of 18/12/2019 as it was not bound to. The respondent still realised its mistake and prompted the appellant again on 8/1/2020, two days before the expiry of the 60 day period.

27.In this Court's view, the respondent having failed to notify the appellant of the alleged invalidity of the objection within 14 days, he is deemed to have considered it to be valid and was bound to render his objection decision within 60 days of 11/11/2019. It does not matter that the appellant heeded to the illegal call of having to submit documents after the 11/1/2019. Two wrongs do not make a right."

34. That with respect to the allegation that the Appellant was a beneficiary of the missing trader scheme, the Appellant relied on the following decisions:

i. **Shailesh Jagjiven Dattani v Commissioner of Domestic Taxes (TAT No. 141 of 2018)** where the Tribunal noted that the right to claim input VAT is an integral part of the VAT scheme and may not be limited, unless there is a missing trader somewhere in the value chain, and the trader had knowledge of the fraudulent actions in the value chain.

ii. **Shreeji Enterprises (K) Limited v Commissioner of Investigations and Enforcement (Tax Appeals No. 58 and 186 of 2019)** where the Tribunal stated as follows:

"52. The Respondent herein did not discharge the above requirement of the Evidence Act. Furthermore, the standard of proof of fraud is distinctly higher than the normal civil standard of balance of probability and the Respondent has not attained or satisfied that standard. In the premise

therefore, we find that the Respondent has not only failed to prove its case, but also accused the Appellant of fraud without showing the nexus to the offence allegedly committed by the missing trader."

35. That the Respondent has failed to establish that the Appellant was a beneficiary of a missing trader scheme. That the Respondent simply made a serious allegation of fraud but did not go further to adduce any evidence at all to prove that there were indeed fraudulent transactions.
36. That the Appellant was clearly engaged in business with legitimate enterprises that were duly registered for VAT. That in fact, Davron Petroleum Ltd is his company, which duly declared its sales during the period in question and filed its returns as required under the VAT Act.
37. That it follows that the Respondent did not have any valid reason for disallowing the Appellant's input VAT claims and as such, the VAT assessments arising therefrom should not be allowed to stand.

Appellant's Prayers

38. The Appellant prayed for orders that:
    i. That the Appeal be and is hereby allowed.
    ii. That the Respondent's Objection decision dated 8th June,, 2023 as well as the VAT additional assessment dated 10th June 2019 and the Income tax assessment dated 11th May, 2020 be and are hereby set aside.
    iii. That the costs of the Appeal be awarded to the Appellant.

RESPONDENT'S CASE

39. The Respondent's case is premised on its Statement of Facts dated 17th August, 2023 together with the documents attached thereto.

40. That the Appellant and Respondent engaged in various meetings and shared correspondences between themselves including emails attaching documents on 15th May, 2023. That consequently, on 8th June, 2023 the Respondent issued an Objection decision confirming its assessments of principal tax together with penalties and interest amounting to Kshs. 205,406,851.00.
41. That Section 17(1) of the VAT Act 2013 states as follows;

    "17(1) Subject to the provisions of this section, and the regulations, an input tax on taxable supply to, or importation made, by a registered person, may at the end of a tax period in which the supply or importation occurred, be deducted from the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies made by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies."
42. That having not met the requirements of the above the Appellant failed to prove his position with the documents provided thereby leading the Respondent to confirm the assessments issued.
43. That the Appellant has not demonstrated how he met the requirements of the above Section in the Appeal herein.
44. The Respondent averred that Section 56 (1) of the Tax Procedures Act stipulates that the burden shall be on the taxpayer to prove that a tax decision is incorrect.
45. That the Commissioner requested the taxpayer to provide supporting documentation when the Appellant rejected the assessments. That the Respondent reviewed the documents provided and the evidence was deemed to be insufficient to make any changes. That the Respondent further advised the Appellant to provide a notice of objection, which would enable the Respondent to review the objection.
46. That the Respondent was carefully guided by all relevant laws and followed due procedure. That the Appellant was given adequate opportunity to defend its position but failed to do so.

47. The Respondent relied on the case of **Digital Box Ltd V Commissioner Investigations and Enforcement (TAT Act 115 of 2017)** and that it employed the best judgment in determining the taxes due as provided by Section 29 of the Tax Procedures Act, 2015.
48. That the Respondent reviewed purchases and inputs claimed in VAT3 returns that revealed that the Appellant claimed input VAT from Bosco Enterprises (A002593007L). That this trader (Bosco Enterprises) had already been established to be involved in the VAT scheme of selling invoices for purposes of reducing VAT payable and that it did not supply any goods. That the Appellant also claimed purchases and input VAT from Davron Petroleum Ltd in the year 2015 and there was no proof that he purchased charcoal from the said suppliers, hence input VAT of Kshs. 6,533,367.00. That the Respondent is therefore of the view that the claim of purchases and input VAT was not valid.
49. That the Appellant had not provided sufficient evidence such as agreements, invoices, proof of payment or delivery notes to satisfy the Respondent to make the adjustments. The Respondent averred that without the specific evidence there was no basis in law to vary its assessments.
50. That the Appellant did not avail any evidence of the above hence failing to discharge the burden of proof as required by law.
51. That in **Mulherin vs Commissioner of Taxation [2013]FCAFC 115** the Federal Court of Australia held that in tax disputes, the taxpayer must satisfy the burden of proof to successfully challenge income tax assessments. That the onus is on the taxpayer in proving that the assessment was excessive by adducing positive evidence which demonstrates the taxable income on which tax ought to have been levied.
52. That the Appellant objected to the Respondent's assertion that he was a beneficiary of the missing trader scheme. That the Appellant explained that the missing traders are regarded as those traders who issued invoices and cannot be traced. That in support of this claim the Appellant provided invoices for the two entities in question

and the Respondent established that he claimed input VAT from two entities (Bosco Enterprises & Davron Petroleum) which were established to be involved in the missing trader scheme for selling invoices. That the Respondent is of the view that the onus was on the Appellant to prove that;

i. The goods were actually bought and there is evidence of payment
ii. The goods were delivered

53. That the Respondent relied on Section 59(1) of the Tax Procedures Act which provides that;

"For the purposes of obtaining full information in respect of the tax liability of any person or class of persons, or for any other purposes relating to a tax law, 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 of any person;

(b)furnish information relating to the tax liability of any person in the manner and by the time as specified in the notice; or

(c) attend, at the time and place specified in the notice, for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to the tax liability of any person."

54. The Respondent averred that it requested for specific documents but the Appellant could not avail them. That Section 23(1) provides that;

"A person shall-

(a) maintain any document required under a tax law, in either of the official languages;

(b) maintain any document required under a tax law so as to enable the person's tax liability to be readily ascertained; and (c) subject to subsection (3), retain the

document for a period of five years from the end of the reporting period to which it relates or such shorter period as may be specified in a tax law."

Respondent's Prayers

55. The Respondent prayed that this Tribunal:

    i. Upholds the objection decision as proper in law and in conformity with the provisions of the law.

    ii. That this Appeal be dismissed with costs to the Respondent as the same is devoid any merit.

ISSUES FOR DETERMINATION

56. The Tribunal carefully considered the pleadings and documentation filed by both parties and is of the view that the issues for its determination are:

    i. *Whether the Respondent's objection decision was within the statutory timelines*

    ii. *Whether the Respondent's assessments were justified.*

ANALYSIS AND FINDINGS

57. The Tribunal having established the issues for its determination, proceeded to analyse each of them as hereunder.

    i. *Whether the Respondent's objection decision was within the statutory timelines*

58. The Appellant averred that the Respondent's objection decision was out of time while the Respondent contended that it was within the statutory timelines.

59. The Tribunal reviewed the parties' documents and established the following chronology of events:

i. The Respondent issued assessments on 10th June, 2019 and 11th May, 2020.
ii. The Appellant applied for extension of time to lodge late objections on 1st November, 2022.
iii. The Respondent approved the Appellant's application on 30th January, 2023.
iv. The Respondent issued an email inviting the Appellant for a meeting to finalise the objection review exercise on 30th March, 2023.
v. The Appellant responded vide an email dated 31st March, 2023.
vi. The Appellant sent an email attaching various documents on 15th May, 2023.
vii. The Respondent issued its objection decision on 8th June, 2023.

60. The Tribunal referred itself to the provisions of the Tax Procedures Act that were in force during the objection and objection decision period and noted that Section 51(11) of the TPA, as amended by the 2022 Finance Act, provided as follows:

"The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed."

61. Before the amendment of Section 51(11) as stated above, the repealed Section 51(11) provided as follows:

"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."

62. From a plain reading of Section 51(11) of the TPA at the time of the objection and objection decision, it is clear that the Respondent was obligated to make an objection decision, strictly, within 60 days of the lodgment of a valid notice of objection by a

taxpayer. Additionally, the 2022 Finance Act repealed the provision of Section 51(11) that gave the Commissioner the leeway to make an objection decision after receipt of further information from a taxpayer.

63. In regard to the instant case, the taxpayer lodged its objection on 1st November, 2022 on the same date when it applied for extension of time to lodge a late objection. The Commissioner approved the late objection application on 30th January, 2023 and by its own admission in its Statement of Facts, considered the Appellant's objection,

64. The Tribunal is therefore of the considered view that the Appellant's objection was validated by the Respondent on 30th January, 2023 and this is when the 60 day timeline under Section 51(11) started counting.

65. In line with the provisions of Section 51(11) at the time of objection, 60 days from 30th January, 2023 fell on 31st March, 2023. Based on this timeline, it is apparent that the Respondent's objection decision was issued late contrary to the provisions of Section 51(11).

66. The law is very clear on the necessity and strict adherence to legal timelines in processing legal procedures and on this the Tribunal takes into consideration the holding in the case of **TAT 127 of 2020, BIC East Africa Ltd vs. Commissioner of Customs & Border Control**, where the Tribunal held that;

> *"Additionally, the Tribunal finds the Respondent's late response to the review application to be in gross violation of Section 229 (5) of the EACCMA 2004 which stipulates that the where the Respondent had not communicated his or her decision within the specified time of 30 days, the review application shall be deemed to have been allowed by the Respondent. To contextualize this, as of 7th June 2019 the Appellant's review application was deemed allowed meaning that it had not tax liability in the eyes of the law. It also meant that the Appellant was well within its right to apply for a refund of the taxes paid earlier under protest.*

Our resolve in this regard is further cemented in light of the fact that Section 229 (4) & (5) of the EACCMA are cushioned in mandatory terms, hence the Respondent was not allowed to extend the same timelines. (See Associated Battery Manufacturers Limited versus Respondent of Customs Services (TAT Appeal No 1 of 2015)."

67. A similar holding, with regard to the issue of observing timelines, was made in the case of **Nicholas Kiptoo Arap Korir Salat vs. IEBC & 6 Others [2013] eKLR**, where the Court held;-

"This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned."

68. As a result of the foregoing, the Tribunal found that the Respondent's objection decision was issued beyond the statutory timelines contrary to Section 51(11) of the TPA.

ii. Whether the Respondent's assessments were justified.

69. Having determined that the Respondent's objection decision was not issued within the statutory timelines, the Tribunal did not delve into this issue as it was rendered moot.

FINAL DECISION

70. The upshot of the foregoing analysis is that the Appeal is merited and the Tribunal accordingly proceeds to make the following Orders: -
    a) The Appeal be and is hereby allowed.
    b) The Respondent's Objection decision dated 8th June, 2023 be and is hereby set aside.
    c) Each Party to bear its own costs.
71. It is so ordered.

DATED and DELIVERED at NAIROBI this 28th day of June, 2024

ERIC NYONGESA WAFULA
CHAIRMAN

CYNTHIA B. MAYAKA
MEMBER

DR. RODNEY O. OLUOCH
MEMBER

TIMOTHY B. VIKIRU
MEMBER

ABRAHAM K. KIPROTICH
MEMBER