

REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
APPEAL NO.540 OF 2019

CHARLES KIPROP MAIYO.....APPELLANT

-VERSUS-

COMMISSIONER OF DOMESTIC TAXES.....RESPONDENT

JUDGEMENT

A. INTRODUCTION

1. The Appellant is a male adult and a registered taxpayer domiciled in Kericho County.
2. The Respondent is a principal officer appointed under the Kenya Revenue Authority Act, Cap 469 of the laws of Kenya. Under Section 5(1), the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all revenues. Further, under Section 5 (2) 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 Part 1 & 11 of the First Schedule of the Act for the purpose of assessing, collecting and accounting for all revenues in accordance with those laws.

B. BACKGROUND

3. The genesis of the matter emanates from the Respondent conducting an investigation on the Appellant was a non-filer of MRI returns and Rental income. The Respondent wrote and invited the Appellant to appear in the office to provide the actual status on 24th Jan 2019.
4. The Respondent on 15th April 2019 issued an assessment. In response the Appellant on 17th April 2019 visited the Respondent office and was advised if he had an issue with the assessment the law allows him to object within stipulated timelines.

5. The Appellant on 17th April 2019 objected to the additional assessments. In response the Respondent issued a demand for the Appellant to pay the taxes that were due vide a letter dated 21st May 2019.
6. The Appellant objected to the said demand vide a letter dated 28th May 2019. In Respondent reviewed the objection and issued an objection decision letter dated 12th July 2019 demanding payment of taxes due and payable. Being dissatisfied with the objection decision issued by the Respondent, the Appellant filed the Appeal herein.

C. APPEAL

7. The Appellant appeals to the Tribunal against the decision issued by the Respondent vide a Memorandum of Appeal dated 6th December 2019. The grounds of appeal are as follows;
 - a. That the Commissioner erred in law and in fact in issuing additional assessment to Mr. Charles Kiprop Maiyo on taxes that had already declared through Tulo Holdings Limited.
 - b. That the Commissioner erred in law and in fact by construing that the land titles under the Appellant's name which were subsequently transferred to Tulo Holdings Limited under director account and that Tulo Holding constructed and manages property and paying statutory deductions for its employees signifies rental income earned. Note that land title does not earn rental income but property therein.
 - c. That the Commissioner erred in law and in failing to recognize and appreciate that m/s Tulo Holdings Limited and Mr. Charles Kiprop Maiyo are different and distinct entities.
 - d. That the Commissioner erred in law and in fact by submitting self-assessment MRI returns the back office on behalf of Mr. Allan Sawe the son of Dr. Fredrick Sawe who is the Co. director of Tulo Holdings limited.

- e. That the Commissioner erred in law and in fact by summing MRI return of Kshs 495,000.00 per Month on behalf of Kr. Allan Sawe based on the fact that there were several electricity meters registered under his name. Note that meters under one's name does not convey ownership of property.
 - f. That the Commissioner erred in law and in fact by demanding 18,853,766.00 from Tulo Holdings Limited and Kshs.20,079,636.00 from Tulo general construction Limited a sister company where the Appellant is also a director.
 - g. That the Commissioner erred in law and in fact by failing to allow expenditure wholly incurred in generating rental income as provided by Section 15(2) of the ITA while arriving at the tax demands from Tulo Holdings and Tulo general.
 - h. That the Commissioner erred in law and in fact in failing to consider income tax returns filed under Tulo Holdings Limited where the Appellant is a director.
 - i. That the Commissioner erred in law and in fact in totality by demanding MRI tax of Kshs 339,300.00. These amounts equates to a monthly rental income of Kshs. 1,131,000.00 multiply by 12 months in an accounting year totals Kshs 13,572,000.00. The amount is more than 10 Million annually and therefore contravenes the provision of Section 6A of the ITA on residential income tax.
 - j. That the Commissioner erred in law in disregarding the evidence tendered by the Appellant when he raised his objection.
 - k. That the Commissioner erred in law and in fact in applying wrong principles of law on arriving at the decision.
8. The Appellant made the following prayers;
- a. That the ruling made by the Commissioner on 25th September 2019 be set aside.
 - b. Costs of the Appeal provided.

D. RESPONSE TO THE APPEAL

9. The Respondent responded to the grounds of Appeal through a statement of fact 23rd December 2019, as follows;
 - a. The Respondent states that Tulo Holdings LTD declared Ksh 30/ and 1/ business income in IT2C of 2016 and 2017 respectively. There is thus no rental income declared under Tulo Holdings.
 - b. The Respondent avers that there was no MRI Returns submitted for Mr. Allan Sawe, Pin A001276997L. The Appellant has not submitted any evidence to this extent.
 - c. The Respondent states that the taxable income was lifted from projected income as given by SIRM, which did not include any expenditure as this could only be given by the Appellant.
 - d. The Respondent states that the taxes were based on the projection given by SIRM and in the absence of a reply to the Respondents letter by the Appellant, the assumption is that the taxes were not excessive, erroneous and thus in accordance with the law.
 - e. The Respondent avers that the Appellant did not provide the requisite documents thus the Appellant's allegations were not adequately supported.
 - f. The Respondent states that the burden is on the Appellant to furnish the Respondent with documents in their custody that support their position as provided in the Tax Procedures Act.
 - g. The Respondent states that the Notice of Appeal was filed out of time and further the Memorandum of Appeal and statement of fact has been filed out of time.
 - h. The Respondent further states that, Section 29 of the Tax Procedures Act gives the Respondent powers to issue default assessments where the taxpayer fails to submit a tax return for a reporting period.
10. The Respondent prays that;
 - a. The Appeal be dismissed with costs.

14. The Tax Appeals Tribunal Act in turn at Section 13 (1) (b) & (3) stipulates as follows;

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

(a)

(b) Be submitted to the Tribunal within thirty days upon receipt of the decision of the Commissioner

(3) 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).”

15. It is the Commissioners contention on this regard that the Appeal herein is fatally defective and must therefore fail for failing to align itself with the statutory timelines of filing a notice of appeal. The above Sections of the law as relied upon by the Commissioner in his preliminary objection espouse that an aggrieved tax payer must lodge a notice of appeal with the Tribunal within 30 days of receipt of the objection decision.
16. Section 13 (3) the Tax Appeals Tribunal Act, 2013 anticipated situations where a tax payer may not be able to compile with the 30 days’ timeline of file a notice of appeal. In such a situation, the tax payer is enjoined to make an application for extension of time by explaining what occasioned the delay.
17. In the Appeal before us, the Respondent rendered an objection decision on 12th July 2019. The Appellant aggrieved by the decision filed a notice of appeal with the Tribunal on 24th October 2019. This, we note is a delay of over 3 months which the Appellant has failed to account for by offering explanation. The Appellant did not file an application for extension of time in lodge the Appeal.
18. Basically, the appeal herein was filed in blatant disregard for the procedural timelines that govern the resolution of tax dispute at the Tribunal. We have been unequivocal, time and again, the statutory timeline in tax statutes are at all times of the essence given the monetary and economic implications for both the state and tax payer alike. In the instant case, the Appellant herein simply sat on his

- b. The Honorable Tribunal finds that the Appellant's Appeal is invalid and dismisses it for being filed contrary to Section 52 of the Tax Procedures Act, 2015, Section 13 (1) and (2) of the Tax Appeals Tribunal Act and Rule 3 (1) (b) of the Tax Appeals Tribunal (procedure) Rules, 2015.
- c. The Respondent's decision be upheld by this Honorable Tribunal.
- d. The Respondent's humbly prays that this Tribunal confirms the assessment.

E. ISSUES FOR DETERMINATION

11. Having carefully reviewed the parties' documents in support of and against the Appeal, we find that only a single issue presents itself of determination by the Honorable Tribunal, namely;
 - a. *Whether the Appeal herein is properly before the Tribunal*

F. ANALYSIS

12. The Respondent herein filed a preliminary objection together with its Statements of Facts on 23rd December 2019. The said preliminary objection challenges the Appeal herein for violating the provisions of Section 51 (1) of the Tax Procedures Act, 2015 as read together with Section 13 (1) (b) & (3) of the Tax Appeals Tribunal Act 2013. We deem it fit, to in the first instance, dispense with the question whether the Respondent's preliminary objection raises issues of merit that could otherwise dispose of the appeal herein altogether.
13. Accordingly, we shall first reproduce the relevant laws as relied upon by the Respondent in his preliminary objection. Section 52 (1) of the Tax Procedures Act provides thus;

"A person who is dissatisfied with an appealable decision may appeal the decision to the Tribunal in accordance with the provisions of the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013)."

laurels and filed a notice of appeal over three months after the objection decision was rendered.

19. Moreover, the Appellant did not see the need to seek an extension of time before instituting the Appeal herein. We are therefore in agreement with the Respondent that Appeal herein is fatally defective considering that the Appellant did not to seek to cure its lateness by filing an application for enlargement of time.

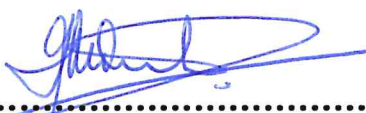
G. CONCLUSION

20. In line with the foregoing analysis we find that the Appeal lacks merit. Accordingly, the Tribunal makes the following Orders;
- i) The Appeal be and is hereby dismissed.
 - ii) The Respondent's objection decision dated 12th July 2019 be and is hereby upheld in its entirety.
 - iii) Each party to bear its own costs.

21. It is so ordered.

DATED and DELIVERED at NAIROBI this 4th day of June, 2021.


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MAHAT SOMANE
CHAIRPERSON


.....
WILFRED GICHUKI
MEMBER


.....
JOHN KINYUA WANGARI
MEMBER


.....
ROSE WAMBUI NAMU
MEMBER


.....
TIMOTHY CHESIRE
MEMBER

