JUDGMENT

BACKGROUND

1. The Appellant is a limited liability company incorporated under the Companies Act (Cap 486) Laws of Kenya. Its principal activity is civil works and general contractors.

2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act, Cap 469 of the Laws of Kenya for purposes of collection and accounting of Government Revenue and related purposes.

3. The Respondent carried out a review of the Appellant’s tax affairs and subsequently raised default assessment on 13th September 2018.

4. The Respondent vide a letter dated 18th March 2019 sought to recover a debt of Kshs. 40,203,933.00 consisting of VAT of Kshs. 30,605,539.00 and income tax of Kshs. 9,598,394.00.

5. The Appellant objected vide a letter dated 1st April 2019. The Respondent communicated its Objection Decision to the Appellant vide a letter dated
26th May 2019, confirming an assessment of Kshs. 23,508,700.00 for VAT and Kshs 4,842,047.00 for Income Tax.

6. Being aggrieved with the Respondent’s Objection Decision, the Appellant issued a Notice of Appeal on 15th July 2019 and filed the Appeal on 9th August 2019.

THE APPEAL

7. The Appeal is premised on the following grounds as stated in the Memorandum of Appeal filed before the Tribunal on 9th August 2019:

i. The Respondent erred in law and in fact in failing to consider and determine all the issues raised by the Appellant in its Objection.

ii. The Respondent also erred in law and in fact in submitting self-assessment returns on behalf of the Appellant contrary to the provisions of Section 45 of the VAT Act, 2013.

iii. The Respondent erred in law and in fact in failing to appreciate that the assessment of VAT at a figure of Kshs. 23,508,700.00 for the period between 2015 and 2018 was invalid.

iv. The Respondent erred in law and in fact in failing to factor in the input VAT when arriving at the figure of Kshs. 23,508,700.00.

v. The Respondent erred in law and in fact in failing to find that the Appellant was denied the opportunity to raise an objection in respect of the iTax.
vi. The Respondent erred in law and in fact in failing to consider the evidence and submissions of the Appellant and thus arriving at an erroneous finding.

THE APPELLANT’S CASE

8. The Appellant’s case is premised on the hereunder filed documents and proceedings before the Tribunal: -
   a) The Appellant’s Statement of Facts dated 8th August, 2019 and filed on the 9th August, 2019 together with the documents attached thereto.
   b) The Appellant’s written submissions dated 18th September, 2020 and filed on the same date.

9. The Appellant stated that it was registered on 22nd January 2004 and its principal customer during the period under tax assessments was Kenya Ports Authority.

10. The Appellant submitted that it had no access to the company email, iTax password to file returns and postal services during the period under assessments. The Appellant added that its company PIN was suspended by the Respondent and was reactivated in 2019.

11. The Appellant reiterated that the iTax first time log in date was 28th March 2019 when the Respondent changed the registered email on itax to enable the Appellant to access tax services. The Appellant further stated that it was not aware of the KRA assessments and have not received any correspondence from the Authority prior to 2019.
12. The Appellant averred that from September 2015 to June 2018, the Respondent filed VAT returns for the Appellant by considering on sales and ignoring purchases contrary to Section 45 of the Value Added Tax Act of 2013. To demonstrate this argument, the Appellant provided tabulations in the table below.

<table>
<thead>
<tr>
<th>Month</th>
<th>Output VAT Shs</th>
<th>Withholding VAT Shs</th>
<th>KRA VAT Payable Shs</th>
<th>Input VAT Shs</th>
<th>Company VAT Payable Shs</th>
</tr>
</thead>
<tbody>
<tr>
<td>September-2015</td>
<td>74,389</td>
<td>27,896</td>
<td>46,493</td>
<td>37,567</td>
<td>8,927</td>
</tr>
<tr>
<td>October-2015</td>
<td>1,311,333</td>
<td>491,750</td>
<td>819,583</td>
<td>662,223</td>
<td>157,360</td>
</tr>
<tr>
<td>November-2015</td>
<td>1,576,995</td>
<td>591,373</td>
<td>985,622</td>
<td>796,382</td>
<td>189,239</td>
</tr>
<tr>
<td>December-2015</td>
<td>445,403</td>
<td>167,026</td>
<td>278,377</td>
<td>224,928</td>
<td>53,448</td>
</tr>
<tr>
<td>March-2016</td>
<td>1,542,083</td>
<td>578,281</td>
<td>963,802</td>
<td>778,752</td>
<td>185,050</td>
</tr>
<tr>
<td>April-2016</td>
<td>51,581</td>
<td>19,343</td>
<td>32,238</td>
<td>26,049</td>
<td>6,190</td>
</tr>
<tr>
<td>May-2016</td>
<td>5,951,787</td>
<td>2,231,920</td>
<td>3,719,867</td>
<td>3,005,652</td>
<td>714,214</td>
</tr>
<tr>
<td>June-2016</td>
<td>2,911,616</td>
<td>1,091,856</td>
<td>1,819,760</td>
<td>1,471,366</td>
<td>349,394</td>
</tr>
<tr>
<td>June-2017</td>
<td>2,088,160</td>
<td>783,060</td>
<td>1,343,417</td>
<td>1,085,481</td>
<td>257,936</td>
</tr>
<tr>
<td>August-2017</td>
<td>2,149,467</td>
<td>806,050</td>
<td>1,343,417</td>
<td>1,085,481</td>
<td>257,936</td>
</tr>
<tr>
<td>December-2017</td>
<td>3,361,312</td>
<td>1,260,492</td>
<td>2,100,820</td>
<td>1,697,463</td>
<td>403,357</td>
</tr>
<tr>
<td>February-2018</td>
<td>3,065,672</td>
<td>1,149,627</td>
<td>1,916,045</td>
<td>1,563,493</td>
<td>352,552</td>
</tr>
<tr>
<td>March-2018</td>
<td>2,684,875</td>
<td>1,006,828</td>
<td>1,578,828</td>
<td>1,369,286</td>
<td>308,761</td>
</tr>
<tr>
<td>May-2018</td>
<td>5,199,635</td>
<td>1,949,863</td>
<td>3,249,772</td>
<td>2,651,814</td>
<td>597,958</td>
</tr>
<tr>
<td>June-2018</td>
<td>5,199,635</td>
<td>1,949,863</td>
<td>3,249,772</td>
<td>2,651,814</td>
<td>597,958</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>37,613,941</strong></td>
<td><strong>14,105,228</strong></td>
<td><strong>23,508,700</strong></td>
<td><strong>19,075,789</strong></td>
<td><strong>4,432,927</strong></td>
</tr>
</tbody>
</table>

13. According to the Appellant, the Respondent calculated total VAT payable of Kshs 23,508,700.00 which was derived from total output VAT less total withholding VAT. The Appellant stated that the Respondent failed to consider input VAT on purchases in determining the total VAT payable for the period from September 2015 to June 2018.
14. The Appellant submitted that the total input VAT for the period under assessment was Kshs 19,075,789.00 while the correct VAT payable was Kshs 4,432,927.00 and **not** Kshs. 23,508,700.00. The Appellant attached its own VAT analysis for 2015, 2016, 2017 and 2018 to demonstrate what it averred was the correct position.

15. The Appellant contended that the returns in its iTax ledger in respect of the period between September 2015 and June 2018 (subject period) were submitted by the Respondent contrary to the express provisions of Section 45 of the VAT Act, 2013. The Appellant cited Section 45(1) which provides as follows:

> "For purposes of this Act, a registered person who has submitted a return shall be treated as having made an assessment of the amount of tax payable for the tax period to which the return relates, being the amount set out in the return."

16. The Appellant averred that in view of the above provision it was erroneous for the Respondent to purport to file returns on behalf of the Appellant for the subject period.

17. The Appellant submitted that the Respondent may only make an assessment where returns have not been filed, but not submit returns on behalf of a tax payer. The Appellant stated that it was guided by Section 45(2) which provides that:

> "If a registered person fails to-(a) submit a return; (b) keep proper books of accounts, records or documents; or (c) apply for registration as a registered person, as required under this act, the Commissioner may, based on such evidence as may be available, make an assessment of the tax

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JUDGMENT: TAT. NO. 379 OF 2019 – TRANSMAR LIMITED vs COMMISSIONER DOMESTIC TAXES
payable (including interest and any penalty where applicable) by the registered person”

18. The Appellant contended that the Respondent’s tax demand was based on returns submitted by the Respondent and was thus not a proper and/or valid assessment of VAT as contemplated under Section 45(2) of the VAT Act, 2013.

19. The Appellant averred that it was not served with a valid or proper VAT Notice of Assessment or notified of any assessment contrary to Section 45(4) of the VAT Act, 2013. The Appellant cited the Section which provides that:

“The Commissioner shall cause a notice of the assessment under subsection (2) to be served on the person assessed, and the notice shall state the amount of tax payable and shall inform the person assessed of his rights under this Act”

20. To support its case, the Appellant relied on the case of Geothermal Development Company Limited v Attorney General & 3 Others [2013] EKLR where the court held that:

“I find that the Tax Demand letter of 20th June 2011 sent to the company fell short of the requirements of a proper notice in as far as it did failed to disclose its nature and the implication and consequences of non-compliance as well as notifying the taxpayer of the avenues of appeal or review available to it. A notice of the nature issued to enforce collection of taxes must clearly state to be such a notice, state the amount claimed, state the legal provision under which it is made and draw the taxpayers attention to the consequences of failure to comply with the law and the opportunity provided by the law to contest the finding. Such a notice
would give the opportunity to any Kenyan to know the case against it and utilize the legal provisions to contest the decision. The right to fair administrative action and the right to access of justice now enshrined in our Constitution demand nothing less.”

21. The Appellant submitted that it was not given the opportunity to object to a proper or valid assessment and hence the Respondent cannot purport to collect VAT where no Notice and/or proper Notice of Assessment in respect of the VAT was issued by the Respondent.

22. The Appellant contended that the Respondent failed to consider input VAT on purchases in determining the total VAT payable for the period between September 2015 to June, 2018. The Appellant relied on Section 17(1) of the VAT Act 2015 which provides as follows:

“17. Credit for input tax against output tax
(1) Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.”

23. The Appellant submitted that its principal activities are indicated to be building and construction. The Appellant added that under the VAT Act, the assessment of tax is done on specific services the rate of which is provided depending on the nature of the service.

24. The Appellant contended that in this case the Respondent submitted returns on its behalf then calculated the total VAT payable of Kshs. 23,508,700 which was derived from total output VAT less withholding
VAT but failed to consider Input VAT on purchases in determining the total VAT payable by the Appellant for the subject period.

25. The Appellant averred that it is appalling that the Respondent argues that the input VAT deduction is time barred by virtue of Section 17(2) of the VAT Act, 2013.

26. The Appellant submitted that the Respondent has admitted to having suspended the Appellant’s PIN hence the Appellant could not file its returns. The Appellant stated that the Respondent must therefore not be allowed to deny the Appellant the benefit of having its input tax deducted in respect of the assessment period when its PIN had been suspended without notice.

27. The Appellant submitted that the assessment done by the Respondent was arbitrary and/or erroneous as it failed to take into account input tax which was a relevant consideration.

28. The Appellant contended that its company PIN had been suspended by the Respondent which has been admitted by the Respondent. The Appellant insisted that the Respondent therefore failed to consider that the Appellant could not therefore in the circumstances file its returns.

29. In conclusion, the Appellant averred that the Respondent therefore failed to consider and determine all the issues raised by the Appellant, its evidence and submissions in regard to the objection.

Appellant’s Prayers

30. The Appellant prayed that the Tribunal finds that;
i. The Appeal be allowed as prayed.

ii. The Objection decision made by the Respondent be set aside and the figure of Kshs 23,508,700.00 be substituted with a figure of Kshs. 4,432,924.00.

RESPONDENT’S CASE

31. The Respondent’s case is premised on the hereunder filed documents and proceedings before the Tribunal: -

   a) The Respondent’s Statement of Facts dated and filed on the 27th September 2019 together with the documents attached thereto.

   b) The Respondent’s submissions dated and filed on 18th January 2021.

32. The Respondent stated that it carried out a review of the Appellant’s tax affairs and subsequently an assessment on income tax and VAT was done for years of income 2015 to 2018 following under declaration of tax return filings despite the Appellant having chargeable income as per the information gained by the Respondent.

33. According to the Respondent its investigations revealed that the Withholding VAT certificates had no corresponding sales declared over the period of the months covered.

34. The Respondent asserted that the Appellant had Withholding certificates for VAT and failed to file their VAT returns which is contrary to the provisions of Section 24(1) and (2) of the Tax Procedures Act. As a result, a default assessment was raised and after reviewing grounds of objection
as per the provisions of section 17(2) of the VAT Act, 2013 which provides that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred, thus inputs relating to the periods under Appeal are beyond 6 months thus time barred.

35. The Respondent stated that it raised default assessment on 13th September 2018 as per Section 29 of the Tax Procedures Act.

36. The Respondent stated that it would like the Tribunal to address the following issues:
   i. Whether the Appellant was unable to file returns because they could not access the company email, iTax password or postal services during the period under review.
   ii. Whether their PIN was suspended by KRA.
   iii. Whether it had been notified of KRA assessments.
   iv. Whether the Respondent had failed to consider purchases while computing the VAT amount payable.

37. The Respondent asserted that it is the Appellants duty to initiate change of email address and passwords if they are unable to access their iTax. The Respondent further stated that the iTax platform provides the Appellant or indeed any taxpayer the ability to update or change their profile. The Respondent added that it had noted that the Appellant had logged in on iTax on 28th March 2019 and changed their email address.

38. The Respondent stated that indeed the Appellant’s PIN was suspended following a directive to suspend PIN numbers for taxpayers who had filed Nil returns.
39. Regarding the Appellants assertion that it was not notified of the assessment, the Respondent asserted that the assessments were issued and sent to the taxpayer’s email address which was registered in iTax.

40. The Respondent further responded to the Appellants contention that it had failed to consider purchases while computing the VAT amount payable. In response, the Respondent stated that the sales were based on withholding VAT certificates which the Taxpayer failed to declare the corresponding turnover.

41. According to the Respondent, the Appellant’s claim of the total input VAT for the period under assessment was Kshs 19,075,789.00, which it avers that the taxpayer had no legal right to claim the input since Section 17(2) of the VAT Act 2013 had barred inputs claimed beyond six months. The Respondent cited the said Section which states in part, ...Section 17(2)…..“(2) If, at the time when a deduction for input tax would otherwise be allowable ….Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.”

42. The Respondent submitted that given the obvious high handed manner in which the Appellant conducted themselves the Respondent was left with no choice but to invoke Section 29 of the Tax Procedures Act, which gives the Respondent the power to issue a default assessment. The Respondent cited the Section which states in part:

“(1) Where a taxpayer has failed to submit a tax return for a reporting period in accordance with the provisions of a tax law, the Commissioner may, based on such information as may be available and to the best of his or her judgement, make an assessment”
43. The Respondent asserted that Section 59 of the Tax Procedures Act is categorical that the Respondent may require a taxpayer to produce records relating to a tax liability of the taxpayer. The Respondent added that the Appellant had been given opportunity to explain why they failed to declare their tax returns.

44. The Respondent averred that the Appellant failed to reconcile or provide satisfactory explanations and supporting documents, thereby leaving the Respondent no choice but to demand their taxes.

45. The Respondent submitted that there is case law that backs the action of the Respondent, especially where a taxpayer fails to provide all the necessary documentation demanded by the Respondent, a default assessment can be issued. The Respondent cited the case in Tumaini Distributors Company (k) Limited vs The Commissioner of Domestic Taxes, where the Tribunal held that:

"Since the Company did not provide all documents, the Commissioner was correct in reaching the assessment based on the material available.”

It further held that the Company’s conduct of providing different set of books amounted to an offence under Section 96 of the Tax Procedures Act, 2015 ("TPA"). The Tribunal reached the conclusion that the Company had failed to discharge its burden under section 56(1) of the TPA to show that the tax decision was wrong”

46. The Respondent submitted that the Appellants own admission is that they were unable to access their email, iTax password and postal services. During the said period of assessment that is from January 2015 to June 2018 for VAT purposes and the years 2015 and 2016 for income tax
purposes. The Respondent insisted that this assertion is incredulous and the Appellant is requiring this Tribunal to suspend their logic and common senses to be able to accommodate this assertion.

47. The Respondent explained that VAT is declared monthly, the law puts onus on the Appellant to ensure that they comply with their tax obligation and failure to access their iTax, email or postal services is not good enough reason.

48. The Respondent invited the Tribunal to be persuaded by the High Court matter in MISC Application No. 251 of 2014 (J.R) In the matter judicial review orders of Centrioni 7 Prohibition by Interactive Gaming and Lotteries Limited, In the Martter of demand notices of assessment of Value Added Tax, Income Tax and Withholding Tax Between Republic and Kenya Revenue Authority Ex parte Interactive Gaming & Lotteries Limited which addressed this very issue of serving a taxpayer with an assessment where a taxpayer had failed to file their returns. The Court held that:

"It was submitted that taking into account the well laid down judicial principle that Judicial review is concerned with the decision making process and not the merits of the decision and further that the Applicant having the right to object to the said decision and further that the Applicant having the right to object to the said decision, which procedure the Applicant has failed to take up and/or ignored, this court is in the circumstances obliged not to look at the merits of the Respondents decision to issue notices to demand taxes from the Applicant as that is the duty of another forum. It was asserted that the determination of HCC 115 of 2011, served to determine the Applicant as the lottery owners and therefore entitled to Kshs 139 million. This sum of money constituted income and had outstanding tax obligations hence the Respondent's action. Since at the
time the assessments were issued, the Applicant had not filed its returns, it was contended that the Respondent acted within the law in issuing the said assessments. It was submitted that in exercising its discretion, the Respondent was neither based its decision on an error of law nor acted in bad faith, but relied on the strict interpretation of Section 73 of the Income Tax Act in raising the assessments."

49. The Respondent submitted that Section 17(1) of the VAT Act 2013 is categorical that a taxpayer, in this case the Appellant is only allowed to claim input VAT only to the extent that the supply or importation acquired was used to make a taxable supply.

50. The Respondent prays that this Tribunal considers the case and finds that;

   i. The Appellant’s Appeal is invalid and dismiss it for being filed contrary to Section 51 of the Tax Procedure Act, 2015.

   ii. That Tribunal upholds the Respondent’s decision to charge tax amounting to Kshs. 23,508,700.00.

   iii. The Tribunal dismisses the Appeal with costs to the Respondent.

ISSUES FOR DETERMINATION

51. Having carefully studied the parties’ pleadings and all the documents attached to the Appeal and after hearing the submissions, the Tribunal was of the view that the issues for determination could be summarized as follows:

   i. Whether the Respondent’s was justified to invoke Section 29 of the Tax Procedures Act in the tax assessment of the Appellant.

   ii. Whether the Appellant can claim the input VAT for the period September 2015 to June 2018
ANALYSIS

1. **Whether the Respondent’s was justified to invoke Section 29 of the Tax Procedures Act in the tax assessment of the Appellant**

52. It was the Respondent’s case that the Appellant failed to reconcile or provide satisfactory explanations and supporting documents.

53. The Respondent asserted that given the obvious high handed manner in which the Appellant conducted itself the Respondent was left with no choice but to invoke Section 29 of the Tax Procedures Act, which gives the Respondent the power to issue a default assessment.

54. The Respondent explained that Section 59 of the Tax Procedures Act is categorical that the Respondent may require a taxpayer to produce records relating to a tax liability of the taxpayer. The Respondent added that the Appellant had been given opportunity to explain why they failed to declare their tax returns, leaving it with no choice but to demand for the taxes.

55. On its part, the Appellant had stated that it had no access to the company email, iTax password to file returns and postal services during the period under assessments. The Appellant added that its Company PIN was suspended by the Respondent and was reactivated in 2019.

56. The Appellant further argued that it was not aware of the KRA assessments and had not received any correspondence from the Authority prior to 2019.

57. The Tribunal noted that the dispute mainly originated from the Appellant not having declared withholding VAT arising from its transactions. The Appellant’s explanation was that it couldn’t access its own email, the itax
password to file returns as well as its own postal service. It was the Tribunal's view that all these issues as raised by the Appellant were its responsibility at the point of registration as provided for by Section 8 of the Tax Procedures Act.

58. Section 8 of the Tax Procedures Act provides as follows regarding registration;

"8(1) A person who—
(a) has accrued a tax liability or who expects to accrue a tax liability under the Income Tax Act or the Value Added Tax Act, 2013;
(b) expects to manufacture or import excisable goods; or
(c) expects to supply excisable services; shall apply to the Commissioner to be registered.

(2) An application for registration under subsection (1) shall be—
(a) made in the prescribed form;
(b) accompanied by documents that the Commissioner may require, including documents of identity; and
(c) made within thirty days of the applicant becoming liable for that tax.

(3) Where a person liable for a tax under a tax law is required or has the option to register under that tax law, that person shall comply with the provisions of that tax law and this Act regarding registration.

(4) The Commissioner shall register a person who has applied for registration if the Commissioner is satisfied that the person is liable for tax under a tax law."

59. From the above provisions it is clear that the details used for registration were provided by the Appellant itself and therefore it cannot turn back and blame it on the Respondent. As contended by the Respondent, it is the Appellant's duty to initiate change of email address and passwords if it is unable to access its iTax. The platform also according to the Respondent provides the Appellant the ability to update or change their profile. The Respondent had submitted that it had sent the assessment to the Appellant's email as registered in its iTax details.
60. The Tribunal further noted the Appellant’s averment to the effect that its Company PIN had been suspended by the Respondent and was reactivated in 2019. However, the Appellant placed nothing before the Tribunal to confirm when it was suspended and any efforts it made to remedy the same in the period prior to the date of assessment.

61. Section 29 of the TPA provides as follows:

“29 (1) Where a taxpayer has failed to submit a tax return for a reporting period in accordance with the provisions of a tax law, the Commissioner may, based on such information as may be available and to the best of his or her judgement, make an assessment (referred to as a "default assessment") .......
(2) The Commissioner shall notify in writing a taxpayer assessed under subsection (1) of the assessment and the Commissioner shall specify—
(a) the amount assessed as tax or the amount of a deficit or excess of input tax carried forward, as the case may be;
(b) the amount assessed as late submission penalty and any late payment penalty payable in respect of the tax, deficit or excess input tax assessed; No. 29 of 2015 Tax Procedures [Rev. 2018] 24
(c) the amount of any late payment interest payable in respect of the tax assessed; (d) the reporting period to which the assessment relates;
(e) the due date for payment of the tax, penalty, and interest being a date that is not less than 30 days from the date of service of the notice; and
(f) the manner of objecting to the assessment.”

62. Going by the foregoing statutory provisions, the Tribunal finds that the Respondent did not err by invoking Section 29 of the TPA to assess the Appellant.

ii. **Whether the Appellant can claim the input VAT for the period September 2015 to June 2018**

63. The Appellant avers that from September 2015 to June 2018, the Respondent filed VAT returns for the Appellant by considering the sales
and ignoring purchases contrary to Section 45 of the Value Added Tax Act of 2013.

64. On its part the Respondent submitted that its investigations revealed that the Appellant had Withholding Certificates for VAT but failed to file its VAT returns which was contrary to the provisions of Section 24(1) and (2) of the Tax Procedures Act. As a result, it raised default assessment after reviewing grounds of objection as per the provisions of Section 17(2) of the VAT Act, 2013 which provides that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred, thus inputs relating to the periods under Appeal are beyond 6 months thus time barred.

65. The relevant law relating to this issue is Section 17(2) of the VAT Act which provides as follows:

“17(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation. Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.” (emphasis ours)

66. From the submissions the Tribunal observed that the Appellant did not declare the withholding VAT for the period September 2015 to June 2018. Further, after the Respondent issued the assessment 13th September 2018, the Appellant objected to the assessment on 1st April 2019 which is more than six months from the last date of the VAT assessment period.

67. Going by the provision of the law cited above which are mandatory provisions, the Tribunal finds that the Appellant cannot claim the input VAT for the period September 2015 to June 2018.
FINAL DECISION

68. The Tribunal having considered the relevant statutory provisions and submissions by both parties was of respectful view that the Appeal is not merited. It therefore makes the following Orders:
   i. The Appeal is hereby dismissed
   ii. That the Objection Decision dated 26th May 2019 confirming the Assessment for Value Added Tax (VAT) in the sum of Kshs. 23,508,700.00 and Income Tax of Kshs. 4,842,047.00 is hereby upheld.
   iii. Each Party to bear its own costs.

69. It is so ordered.

DATED and DELIVERED at NAIROBI this 30th day of July, 2021.

ERIC K. WAFULA
CHAIRMAN

CATHERINE N. MUTAVA
MEMBER

ABRAHAM K. KIPROTICH
MEMBER

GABRIEL M. KITENGA
MEMBER