



KRA'S BANKING ANALYSIS METHOD AND BEST-JUDGEMENT PRINCIPLE UNDER SECTION 31 OF THE TAX PROCEDURES ACT.

Case Analysis: Virginia Wangari Ng'ang'a v Commissioner of Legal Services & Board Coordination (Tax Appeal E029 of 2025) [2026] KETAT

Introduction

The landscape of tax administration in Kenya has undergone a paradigm shift since the enactment of the Tax Procedures Act of 2015. This legislative framework was designed to harmonize procedural rules across various tax heads, including Income Tax, Value Added Tax (VAT) and Excise Duty, thereby enhancing the efficiency of the Kenya Revenue Authority (KRA) in revenue mobilization.

Central to this modernization is the increasing reliance by the Commissioner on third-party data to verify the accuracy of taxpayer self-assessments. In particular, the banking analysis method has emerged as a formidable investigative tool, allowing the KRA to reconcile the turnover declared in returns with the actual financial inflows reflected in a taxpayer's bank statements.

The case of **Virginia Wangari Ng'ang'a v Commissioner of Legal Services and Board Coordination (Tax Appeal E029 of 2025) [2026] KETAT** serves as an essential study of the legal and practical ramifications of this methodology.

It highlights the tension between the taxpayer's duty to maintain records and the Commissioner's broad discretionary powers to issue best judgment assessments when those records are found wanting.

Facts of the Case

The Appellant, Virginia Wangari Nganga, is a natural person and a registered taxpayer in Kenya, operating as a sole proprietor in the hotel and hospitality sector in Naivasha town. For the period between 2018 and 2022, she consistently filed nil income tax returns, thereby declaring that she earned no taxable income and conducted no taxable business activities.

Following a data-matching exercise conducted by KRA's intelligence and enforcement wing, the KRA obtained the Taxpayer's bank statements from Equity Bank. The banking analysis revealed substantial cash deposits totaling KES 52,682,227.00 during the period under review. When these deposits were compared against the nil returns filed, the Commissioner concluded that the amounts represented undeclared business turnover from sales.

Consequently, KRA issued additional assessments for Income Tax and Value Added Tax amounting to KES 6,548,075.00. She lodged an objection against the assessments, and upon the KRA's confirmation of the tax liability, she appealed to the Tax Appeals Tribunal.

Issues for Determination

1. Whether the KRA complied with the statutory requirement under Section 51(4) of the TPA.
2. Whether the KRA erred in treating all bank deposits as taxable income.

Analysis of the Case

The analysis of the case leading to the decision is as follows:

The taxpayer's defense relied heavily on legal technicalities and assertions of fair administrative principles rather than documentary evidence. She argued that the KRA's method of treating every deposit as income was a violation of her rights.

The Tribunal found this argument to be fundamentally flawed under Kenyan tax law. The Tribunal observed that the banking analysis method is a recognized and valid tool for determining taxes *ex-post facto* when a taxpayer fails to maintain proper books of account. Further, the Tribunal held that the presence of KES 52 million in her bank account, when viewed against the filing of nil returns, constituted a material and unexplained inconsistency. This inconsistency justified the KRA's resort to a best-judgment assessment.

No documentary evidence was produced to demonstrate that the figures adopted by the KRA were erroneous. She did not provide reconciliations to establish the correct turnover, schedules to support the computation of input and output tax, or any material showing that the KRA misinterpreted, inflated, or misallocated the information relied upon in making the assessment.

On this basis, and pursuant to Section 56 of the TPA, the Tribunal found that she failed to discharge the statutory burden of proving that the KRA's decision was incorrect. In the absence of credible and contrary evidence, the KRA's assessment remained presumptively correct and capable of being upheld.

In the absence of a cogent, documentary-backed explanation as to why the KES 52 million should not be subjected to tax, the Tribunal held that the KRA was justified in treating the entire sum as taxable turnover. The KRA's best-judgment assessment was therefore upheld, having been grounded in the objective reality of the bank statements, records created and controlled by the taxpayer herself through the deposits made.

Tribunal's Final Decision

The Tax Appeals Tribunal dismissed the appeal and upheld the KRA's assessment in its entirety.

Recommendations

Flowing from the above the following we highly pursue of these pathways for taxpayers:

- a) Assume taxability; taxpayers must operate on the assumption that every credit in their bank account will be treated as taxable income unless they can prove otherwise.
- b) Maintain an audit trail; it is incumbent upon the taxpayer to keep contemporaneous records, including loan agreements, shareholder resolutions and inter-account transfer schedules.
- c) Separate personal and business finances; using a single bank account for personal gifts and business sales is a recipe for tax disaster, as it complicates the ability to discharge the burden of proof.
- d) Avoid nil filing for active accounts; filing nil returns while banking millions is a high-risk strategy that invites investigation.

Conclusion

The case of **Virginia Wangari Nganga vs. Commissioner of Legal Services and Board Coordination (029 of 2025)** is a landmark not because it established new law, but because it reaffirmed the harsh reality of the existing statutory framework. The banking analysis method is a lawful exercise of the Commissioner's best judgment powers under Section 31 of the Tax Procedures Act. The burden of proof remains an insurmountable wall for taxpayers who choose to operate without proper documentation. To navigate this landscape, taxpayers and their advisors must adopt a proactive stance on compliance. The only recourse is a robust, contemporaneous documentary trail that can transform a taxable deposit back into a non-income receipt through the weight of evidence.

How we Can Assist

Our team of experienced tax consultants and legal experts provides comprehensive tax advisory services to help you achieve and maintain full compliance with applicable tax laws. We review and advise on tax filings, audits, and assessments, and offer strategic guidance to mitigate tax risks before they escalate.

We also represent and assist clients in tax dispute resolution, including engagements with the KRA and proceedings before the Tax Appeals Tribunal. Let us help you stay compliant, manage your tax obligations effectively, and keep your business running smoothly. For any queries regarding the foregoing, please contact the contributors at taxteam@cmadvocates.com.

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