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TAX DISPUTES IN KENYA: WHEN PROCEDURE DETERMINES THE OUTCOME

Strict statutory clocks can defeat a meritorious claim- or conclusively determine an objection in the taxpayer's favour

28th July 2026

EXECUTIVE SUMMARY

A taxpayer may be substantively right and still lose a tax dispute because an appeal was lodged late, the objection was invalid, or a mandatory document was omitted. Recent Tax Appeals Tribunal decisions confirm that statutory timelines are not administrative targets:

The converse is equally important. The Commissioner is also bound by strict time limits. Under section 51(11) of the Tax Procedures Act, 2015 (TPA), failure to issue an objection decision within sixty (60) days after receipt of a valid notice of objection results in the objection being deemed allowed by operation of law.

> **Core message:** Tax-dispute management is a governance, systems and enterprise-risk function. In tax controversies, the calendar is part of the law.

KEY TAKEAWAYS

a) An objection to a tax decision must ordinarily be lodged within thirty (30) days of notification and must satisfy the validity requirements in section 51(3) of the TPA.

b) A notice of appeal must be submitted to the Tribunal within thirty (30) days after receipt of the Commissioner's decision. Customs disputes may be governed by a different statutory period; the applicable tax law must always be checked.

c) Section 13(2) of the Tax Appeals Tribunal Act requires the appeal bundle to include the memorandum of appeal, statement of facts, the tax decision appealed against, and supporting documents.

d) Article 159(2)(d) of the Constitution does not ordinarily cure non-compliance with a mandatory statutory deadline.

e) Where a valid objection has been lodged and no objection decision is made within the statutory

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sixty (60) days, the objection is deemed allowed by operation of the law.

1. THE PROCEDURAL ARCHITECTURE

A Kenyan tax dispute ordinarily moves through a sequence of legally significant events: notification of the tax assessment; lodgment and validation of the objection; requests for documents or clarification; delivery of the objection decision; and, where necessary, a Tribunal appeal and further appeals on questions of law.

Under Section 51(2) of the TPA, the taxpayer ordinarily has thirty days after notification of the tax decision to lodge an objection. For the objection to be valid under section 51(3), it must state precise grounds, specify the amendments sought and the reasons for them, include all relevant documents, and address the undisputed tax in the manner required by law.

Section 13(1)(b) of the Tax Appeals Tribunal Act ordinarily requires a notice of appeal to be submitted within thirty days after receipt of the Commissioner's decision. Section 13(2) separately requires a complete appeal record. A timely but incomplete filing may therefore remain exposed.

2. WHAT THE VERIFIED DECISIONS ESTABLISH

(a) Atta Kenya: the applicable clock must first be identified correctly

In ***Atta Kenya Limited Vs Commissioner of Customs and Border Control (Tax Appeal E1229 of 2024) [2026] KETAT 14 (KLR)***, the Tribunal considered an appeal from a customs review decision. Although the Commissioner argued that the appeal was sixteen days late by applying a thirty-day period, the Tribunal held that section 230(2) of the East African Community Customs Management Act prescribed forty-five days. The appeal, filed on the forty-sixth day, was therefore late by one day.

The Tribunal nevertheless struck out the appeal. It held that compliance with a statutory timeline is a matter of substantive law and could not be excused through Article 159(2)(d). The case is a warning against assuming that all tax appeals run on the same clock—and against treating even a one-day delay as harmless.

(b) Terrazzo Enterprises: eight months late and no leave

In ***Terrazzo Enterprises Limited Vs Commissioner of Investigations & Enforcement (Tax Appeal E283 of 2025) [2026] KETAT 21 (KLR)***, the confirmation of assessment was issued on 3 July 2024, but the appeal documents were filed on 21 March 2025—more than eight months later. The taxpayer had neither sought nor obtained leave to appeal out of time.

The Tribunal raised competence on its own motion, held that the delay went to jurisdiction, and struck out the appeal without considering the substantive assessment dispute. The decision illustrates that silence by KRA does not validate an incompetent appeal.

(c) Acer Petroleum: a late objection decision is fatal

In ***Acer Petroleum Limited Vs Commissioner of Domestic Taxes (Tax Appeal E736 of 2023) [2024] KETAT 1672 (KLR)***, KRA received the objection on 5 July 2023 and issued its objection decision on 14 September 2023. The Tribunal held that section 51(11) is mandatory and that the objection decision was issued outside sixty days. The objection was therefore deemed allowed by operation of law and the assessments and objection decision were set aside.

The case confirms that the Tribunal may address statutory time-bar issues even where they arise as a threshold question. It also reinforces the importance of preserving proof of the objection's validity, receipt date and full chronology.

3. ARTICLE 159 IS NOT A SUBSTITUTE FOR COMPLIANCE

Article 159(2)(d) requires justice to be administered without undue regard to procedural technicalities. Kenyan courts and tribunals, however, distinguish a curable defect of form from non-compliance with a statutory condition governing time or jurisdiction.

The verified reasoning in Atta Kenya and Terrazzo Enterprises reflects the settled position that a statutory deadline is not merely a procedural technicality. A taxpayer who is out of time must promptly invoke the statutory power to extend time, provide a complete chronology, explain the whole period of delay, adduce supporting evidence, and show good cause. Article 159 cannot be used as a free-standing enlargement of time.

4. THE COMMISSIONER'S SIXTY-DAY CLOCK

Section 51(11) of the TPA requires the Commissioner to make an objection decision within sixty days from receipt of a valid notice of objection, failing which the objection is deemed allowed. The consequence arises by statute; it is not dependent on the Commissioner choosing to concede the objection.

The taxpayer must nevertheless be able to prove the statutory foundation for that consequence: a valid objection, the date and mode of receipt, the documents lodged, the treatment of any validation issue or further-information request, and the date on which the operative period expired.

Practical consequence: On expiry of the statutory period, the taxpayer should immediately issue a formal deemed-allowance notice, demand correction of the assessment and ledger, oppose enforcement, and preserve the right to seek appropriate relief before the Tribunal or court if KRA does not give effect to the statute.

5. THE TAX DISPUTE CONTROL CALENDAR

Trigger	General period	Minimum control
Receipt of assessment	Day 0	Record exact date, time, channel and recipient; preserve the original notice.
Notice of objection	Within 30 days	Set a shorter internal deadline; obtain legal and factual sign-off.
Validity requirements	At filing	Use a section 51(3) checklist; address undisputed tax and attach indexed evidence.
Objection decision	Within 60 days of valid objection	Calculate independently; do not rely on KRA's calendar.
Notice of appeal—domestic tax	Within 30 days of receipt	File early; confirm the correct statute and evidence of service.
Appeal documents	14 days after filing the Notice of Appeal	Confirm memorandum, statement of facts, impugned decision and supporting documents.
High Court appeal	Ordinarily 30 days	Obtain immediate advice on the question of law, record and stay strategy.

6. WHY FINANCE TEAMS REMAIN EXPOSED

Few finance teams have the internal capacity to continuously track statutory amendments, Tribunal and court decisions, KRA public notices, evolving filing channels and the evidence needed to prove service and compliance and then convert those developments into daily operational controls.

This is not a question of willpower or intelligence. It is a structural governance challenge. Responsibility is often dispersed among finance personnel, tax agents, accountants, external counsel and senior management. Without one controlled record and one accountable owner, a material assessment can remain in an inbox until the legal clock has expired.

HOW WE CAN ASSIST

a) tax health checks and procedural-risk audits;
b) review of assessments, audit findings and enforcement notices;
c) preparation and validation of notices of objection;

d) statutory timeline monitoring and deemed-allowance strategy;
e) Tax Appeals Tribunal proceedings and extension-of-time applications;
f) High Court and Court of Appeal tax litigation;
g) customs, excise and international tax disputes,
h) alternative dispute resolution; and
i) board-level tax-governance frameworks, protocols and compliance calendars.

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