

**REPUBLIC OF KENYA**  
**IN THE TAX APPEALS TRIBUNAL**  
**APPEAL NO. 593 OF 2020**

**KIFARU ENTERPRISES LIMITED..... APPELLANT**

**-VERSUS-**

**COMMISSIONER OF CUSTOMS & BORDER CONTROL..... RESPONDENT**

**JUDGMENT**

**A. BACKGROUND**

1. The Appellant is a limited liability company duly incorporated in Kenya and is in the Business of supply of hardware and Building Materials.
2. The Respondent is a principal officer appointed under Section 13(1) of the Kenya Revenue Authority Act, Cap 469 of the Laws of Kenya and is responsible for the administration and enforcement of various Customs revenue laws.

**B. FACTS**

3. The Appellant imported angle, shapes and sections of iron of non-alloy steel (U.I.H.L) or T section of a height not more than 100mm on 17<sup>th</sup> February, 2018 and 24<sup>th</sup> April, 2018 which were cleared at 0%

duty through import entry numbers 2018 MSA 6814908 and 2018 ICD 21503.

4. The Respondent conducted a post clearance Audit of the Appellants importations for the period July 2017 to May 2018 and subsequently issued a demand of Kshs. 5,667,920.00
5. The Appellant objected to the Respondent's demand notice and maintained that the applicable duty is 0% and not 25% as demanded by the Respondent.
6. The Respondent issued an objection decision vide its letter dated 11<sup>th</sup> July, 2018 to the Appellant, and pointed out the Appellant's limited application of the East African Community Gazette Notice Vol. AT 1- No. 8 dated 30<sup>th</sup> June 2017, (the Gazette Notice) and advised the Appellant to settle the demanded taxes.
7. The Appellant being dissatisfied with the Respondent's objection decision instituted the appeal herein seeking prayers that the Tribunal sets aside the additional assessments.
8. In order to mitigate against suffering additional charges on the imported goods, the Appellant made full payment via 10 monthly instalments.
9. The Appellant wrote to the Respondent on 3<sup>rd</sup> July, 2018 with subsequent reminders on 25<sup>th</sup> November, 2019 and 22<sup>nd</sup> January, 2020 asking for a review decision in the assessment of the import taxes paid, on the grounds that the Respondent misinterpreted the East African Community Gazette Notice Vol. AT 1- No. 8 dated 30<sup>th</sup> June 2017.

10. On the 12<sup>th</sup> of February 2020, the Respondent wrote to the Appellant affirming its previous decision.

### **C. THE APPEAL**

11. Aggrieved by the decision of the Respondent, the Appellant filed its appeal and proffered the following grounds in summary: -
- i. That the Respondent erred in law and fact by misapprehending the provisions of the East Africa Community Gazette Notice of 30<sup>th</sup> of June, 2017.
  - ii. That the Respondent erred in Law and in Fact by applying the duty rate of 25% or USD 250/MT whichever is higher as opposed to the correct duty rate of 0% as was provided in the Gazette Notice.
  - iii. The Respondent erred in Fact and in Law by failing to include a statement of findings on the material facts and the reasons for its objection decision in accordance with Section 51(10) of the Tax Procedures Act.
12. The Appellant made the following prayers; -
- a) A declaration that the applicable duty rate at the point of entry of the imported goods by the Appellant as per the East African Community Gazette Notice part 2 of the Split of HS Codes was 0%;
  - b) A declaration that the Demand Notice dated 19<sup>th</sup> June 2018 is null and void;
  - c) The objection decision dated 11<sup>th</sup> July, 2018 be declared null and void and be vacated in its entirety;

- d) The Respondent be compelled to refund the taxes that were erroneously paid by the Appellant as provided in Section 144(1) (b) of the EACCMA;
  - e) The Appeal be allowed with costs to the Appellant; and
  - f) Any other remedies that the Honourable Tribunal deems just and reasonable.
13. The Respondent responded to the Appeal vide a Statement of Facts dated 13<sup>th</sup> January 2021 and filed on even date. The Respondent argued *inter alia* as follows: -
14. That it is mandated to carry out post clearance audit in order to check the level of compliance with tax law and regulations. Therefore, its actions are within the law.
15. That contrary to the assertion that the Appellant proceeded on the assumption that the duty payable is zero, the Respondent avers that the Gazette Notice is very clear and there cannot be a legitimate expectation which is in contradiction to the law.
16. That the Appellant's grounds of appeal are not sufficient. From the facts of the case, the Appellant did not provide any evidence contrary to the basis of the Respondent's decision.
17. The Respondent prays that this Honorable Tribunal:
- (i) Upholds the Respondent's decision to charge 25% duty as per the Gazette Notice.
  - (ii) That the demand notice dated 11<sup>th</sup> June 2018 is proper in law.

- (iii) That the Appellant is not entitled to any refund from the Respondent.
- (iv) That this Appeal be dismissed with costs to the Respondent as the same is devoid of any merit.

#### **D. THE APPELLANT'S CASE**

- 18. The Appellant in its Statement of Facts and Memorandum of Appeal both dated 14<sup>th</sup> December, 2020 and filed on 15<sup>th</sup> December, 2020, argued as follows: -
- 19. That the Proper Officer relied on the wrong section when computing the taxes payable and being aggrieved by this decision, the Appellant applied for a review and a refund of the taxes that had been paid erroneously but the same was disallowed.
- 20. That the Respondent's actions caused immense financial loss to the Appellant since the same was received several months later and the Appellant had not factored in the taxes before selling the imported items. The Appellant pleads that it sold the goods at a cheaper price on the assumption that the goods were zero rated.
- 21. The Appellant relies on the case of **Cape Brandy Syndicate -vs- Inland Revenue Commissioners (1921)1 KB 6** which principally stated that tax laws are to be strictly construed and in the event of ambiguity, must be resolved in favour of the tax payer.
- 22. The Appellant argues that enforcing the decision of the Respondent would be unfair and in contravention of Article 47 of the Constitution of Kenya, 2010 on fair administrative actions.

23. The Appellant states that the Respondent erroneously applied section 49 of the Gazette Notice instead of Section 8 of the Gazette Notice.
24. The Appellant's assertion is based on the description of the goods and the rate in force at the time of arrival of the goods. The Appellant holds that the rate in force at the point of entry was 0% and not 25% and thus, the Respondent erred in law in enforcing payments of duty on goods that were actually zero rated.

#### **E. THE RESPONDENT'S CASE**

25. The Respondent responded to the Appeal vide a Statement of Facts dated 13<sup>th</sup> January 2021 and filed on even date followed by its written submissions dated 4<sup>th</sup> May, 2021.
26. The Respondent stated categorically that the decision to arrive at the impugned assessment was justified and had its basis in law since the East Africa Community Gazette Notice No. 8 dated 30<sup>th</sup> June 2017 allowed Kenya to stay the application of EAC CET rate and apply a duty rate of 25% or USD 250/MT, whichever is higher, instead of 0% for one year effective 1<sup>st</sup> July 2017 for section of height not more than 100mm.
27. The Respondent argued that it is the Appellant who chose to read the Gazette Notice selectively instead of adopting a wholistic approach in reading and interpreting the provisions contained therein. The Respondent averred that Legal Notice No EAC/69/2017 had two parts. The First part provided for the general provisions with the rates to be applied.

28. The Respondent contends that the Appellant relied on the second part of the same Legal Notice and failed to recognise that the part simply split the codes and placed a rate of 0% on all items.
29. The Respondent further submitted that there is no dispute as to what was imported and whether it is captured in the East African Gazette Notice dated 30<sup>th</sup> June 2017. The main point of departure according to the Respondent, is the rate of duty applicable to the imported goods.
30. The Respondent pointed out that by dint of Sections 3 and 4 of the EACCMA, the Council may from time to time amend the provisions of the Common External Tariff (CET) for the proper administration of Customs.
31. The Respondent contended that on 30<sup>th</sup> June, 2017, the East African Community Council of Ministers through the East African Gazette Notice No 8 allowed Kenya to stay application of the EAC CET zero percent rate and apply a duty rate of 25% or USD 250/MT, whichever is higher, for one year effective 1<sup>st</sup> July 2017.
32. The Respondent submitted that in adherence to the Gazette Notice, it assessed the Appellant using the 25% duty rate provided for in the Notice. The Respondent concluded the first limb of its argument by stating that it relied on the correct and clear law in issuing its assessment and its decision should therefore be upheld by the Honourable Tribunal.
33. The Respondent submitted that the Appellant's allegations that the review application was not responded to are baseless and lack backing of the law.



34. The Respondent maintained that the Appellant appeared to have mixed up the provisions of Section 144 of EACCMA and Section 229 of EACCMA. Section 144 of EACCMA dealing with refund of duty paid in error in respect of goods which have been damaged or pillaged during the voyage or damaged or destroyed while subject to Customs control, while Section 229 of EACCMA deals with appeals for application for review.
35. The Respondent submitted that this is the same mix up that the Appellant made while filing its Appeal by citing the provisions of the Tax Procedures Act whereby, it alleged in paragraph 5 of its Memorandum of Appeal, that the Respondent's objection decision was contrary to Section 51 (10) of the Tax Procedures Act.
36. The Respondent submitted that it adhered to the provisions of EACCMA and it explained to the Appellant the reasons why their application for review was not allowed.

#### **F. ISSUES FOR DETERMINATION**

37. According to the Appellant, the issues for determination are: -
- a. Whether the Respondent relied on the proper code/classification when reassessing the taxes?
  - b. Whether the Respondent's initial actions through the TRADEX SIMBA System created a Legitimate Expectation?
  - c. Whether the Appellant's claim for a refund/review stands allowed as per the provisions of the East African Community Customs Management Act, 2004 Act?
  - d. Whether there are any tax refunds payable to the Appellant?
  - e. Whether the Appellant is deserving of the orders sought?
38. The Respondent on the other hand, has identified the following as the issues for determination: -



- i. Whether the Respondent misinterpreted the East Africa Community Gazette Notice of 30<sup>th</sup> of June, 2017 in applying the duty rate of 25% or USD 250/MT as opposed to the 0% rate.
  - ii. Whether the Respondent's objection decision dated 11<sup>th</sup> July, 2018 contravened the provisions of Section 51(10) of the Tax Procedures Act.
39. Having carefully considered the arguments, pleadings and all material placed before it by both parties, the Tribunal finds that the dispute revolves around the interpretation of the Gazette Notice which determines the applicable rate of Duty. Other peripheral issues such as refund of duty paid will depend on the answer to this issue. Consequently, the Tribunal has framed the following issues for determination: -
  - I. **Whether the Respondent's objection decision dated 11<sup>th</sup> July, 2018 contravened the provisions of Section 51(10) of the Tax Procedures Act.**
  - II. **Whether the Respondent misinterpreted the East Africa Community Gazette Notice of 30<sup>th</sup> June, 2017 in applying the duty rate of 25% or USD 250/MT as opposed to the 0% rate.**
  - III. **Whether the Respondent's initial actions through the TRADEX SIMBA System created a Legitimate Expectation on the part of the Appellant.**

## **G. ANALYSIS AND FINDINGS**

**I. Whether the Respondent's objection decision dated 11<sup>th</sup> July, 2018 contravened the provisions of Section 51(10) of the Tax Procedures Act.**

40. One of the Appellant's grounds of appeal is that the Respondent erred in fact and in law by failing to include a statement of findings on the material facts and the reasons for its objection decision in accordance with Section 51(10) of the Tax Procedures Act.

41. For this reason, the Appellant prays that the objection decision dated 11<sup>th</sup> July, 2018 be declared null and void and be vacated in its entirety.

42. The Respondent on the other hand, argues that the Tax Procedures Act does not apply to this dispute since the same is under the East Africa Community Customs Management Act which provides for the management and administration of customs and for related matters.

43. Specifically, part XX of the East Africa Community Customs Management Act makes provision for Appeals. Section 229(4) states that: -

*“(4) The Commissioner shall within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require the person lodging the application, communicate his or her decision in writing to the person lodging the Application stating the reasons for the decision”.*

44. It is therefore the Respondent's contention that the decision on the review was in compliance with the provisions of the law. The Appellant's application dated 22<sup>nd</sup> January 2020 was responded to in writing vide letter dated 12<sup>th</sup> February 2020 and the reasons for decline of the review was clearly stated as required by law.

45. The Tribunal notes that the Respondent in its response to this issue is basing its argument on its letter dated 12<sup>th</sup> February, 2020 in which it declined to review its decision following an application by the Appellant, whereas the Appellant is basing its argument on the Respondent's letter dated 11<sup>th</sup> July, 2018.
46. The Tribunal has had an opportunity to peruse the letter of 11<sup>th</sup> July 2018 and finds that the Respondent at paragraphs 2 and 3 thereof states as follows: -

*“As highlighted in the East African Community Gazette Notice No. 8 (copy attached) dated 30<sup>th</sup> June 2017 allowed Kenya to stay application of the EAC CET rate and apply a duty rate of 25% or USD 250 per MT whichever is higher instead of 0% for one year effective 1<sup>st</sup> July 2017 for sections of a height not more than 100mm.*

*Kindly note that the Sections you imported during the period when the Gazette Notice was in force were of a height not more than 100mm and therefore attract duty at the rate of 25% or USD 250 per MT whichever is higher. The extra taxes computed on this premise are payable to the Commissioner of Customs and Border Control in accordance with section 135 of the East Africa Community Customs and Management Act 2004.”*

47. The above paragraphs clearly give the reasons for the Respondent's action/ decision. The Tribunal therefore disagrees with the Appellant's contention that the Respondent erred in fact and in law by failing to include a statement of findings on the material facts and the reasons for its objection decision.
48. On the issue of whether the Appellant ought to have based its argument on the EACCMA and not the TPA, the Tribunal will not

delve into the issue as the point has been rendered moot on the basis of the above finding. Nevertheless, it is worth pointing out that the provisions of the EACCMA and the TPA mirror each other on this matter.

**II. Whether the Respondent misinterpreted the East Africa Community Gazette Notice of 30th of June, 2017 in applying the duty rate of 25% or USD 250/MT as opposed to the 0% rate.**

49. The Appellant avers that the import duty as per the Gazette Notice dated 30<sup>th</sup> of June, 2017 on page 8 Split of HS Code 7216-31-00 to provide for tariff line for U Section of a height of not more than 100mm was rated at 0%.
50. The Appellant opines that the Proper Officer relied on the wrong section when computing the taxes payable and being aggrieved by this decision, the Appellant applied for a review and a refund of the taxes that had been paid erroneously, but the same was disallowed.
51. The Appellant relies on the case of **Cape Brandy Syndicate -vs- Inland Revenue Commissioners (1921)1 KB 6** which principally stated that tax laws are to be strictly construed and in the event of ambiguity, must be resolved in favour of the tax payer.
52. The Appellant states that the Respondent erroneously applied section 49 of the Gazette Notice instead of Section 8.
53. The Appellant's assertion is based on the description of the goods and the rate in force at the time of arrival of the goods. The Appellant holds that the rate in force at the point of entry was 0% and not 25% and thus, the Respondent erred in law in enforcing payments of duty on goods that were in reality zero rated.

54. The Respondent on its part maintains that the decision to arrive at the assessment was justified and had its basis in law since the East Africa Community Gazette Notice No. 8 dated 30<sup>th</sup> June 2017 allowed Kenya to stay the Application of EAC CAT rate and apply a duty rate of 25% or USD 250/MT, whichever is higher, instead of 0% for one year effective 1<sup>st</sup> July 2017 for section of height not more than 100mm.
55. The Respondent points out that it is the Appellant who chose to read the Gazette Notice selectively instead of adopting a wholistic approach in reading and interpreting the provisions contained therein. The Respondent avers that Legal Notice No EAC/69/2017 had two parts. The First part provided for the general provisions with the rates to be applied.
56. The Respondent avers that item 49 therein provided for the HS code 7216.31.10 among other codes. The decision contained therein stated that: -

***“Kenya to stay application of the EAC CET rate and apply a duty rate of 25% or USD 250/MT whichever is higher instead of 0% for one year.”***

As such and from these provisions, the Commissioner having relied on this item and levied the taxes due based on the same was justified in doing so.

57. The Appellant on the other hand relied on the second part of the same Legal Notice which was clearly titled **Split of HS Codes**. Item S/N 2 provides for the split of 7216.31.00 to provide two new HS codes that is 7216.31.10 for height of not more than 100mm and 7216.31.90 for others.

58. The Respondent avers that by applying this part, the Appellant failed to recognise that the part simply split the codes and placed a rate of 0% on all items. However, the same item 7216.31.10 had been exempted by Item 49 and would continue to attract a duty rate of 25% or USD 250/MT whichever was higher for one year.
59. The Tribunal notes that there is no contention on the description of goods and neither is there any contention on the provisions of the Gazette Notice. What is in issue is whether the Respondent applied the provision of Gazette Notice No. 8 of 30<sup>th</sup> June, 2017 wrongly. The Respondent submits that it carried out post clearance audit pursuant to section 235 and 236 of the EACCMA, 2004. The purpose of these audits is to verify the accuracy of the declarations in the entries of imported goods.
60. It is worthy of note that the Kenyan tax regime is based on self-declaration and thus the Respondent carries out such audits to confirm what was declared by the importer. Section 236 provides that: -

***“The Commissioner shall have the powers to—***  
***(a) verify the accuracy of the entry of goods or documents through examination of books, records, computer stored information, business systems and all relevant customs documents, commercial documents and other data related to the goods;***  
***(b) question any person involved directly or indirectly in the business, or any person in the possession of documents and data relevant to the goods or entry;***

*(c) inspect the premises of the owner of the goods or any other place of the person directly or indirectly involved in the operations; and*  
*(d) examine the goods where possible for the goods to be produced.”*

61. The Tribunal therefore finds that the Respondent acted within its mandate in carrying out a reassessment pursuant to Section 235 and 236 and issued the demand notices pursuant to section 135 of the EACCM Act, 2004.
62. The Appellant submits that Section 135 of the EACCM Act 2004 as invoked by the Respondent was improper and inapplicable. Section 135 of that Act provides that: -

*“(1) Where any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case may be, were liable.*

*(2) Where a demand is made for any amount pursuant to subsection (1), the amount shall be deemed to be due from the person liable to pay it on the date on which the demand note is served upon him or her, and if payment is not made within thirty days of the date of such service, or such further period as the Commissioner may allow, a further duty of a sum equal*



*to five percent of the amount demanded shall be due and payable by that person by way of a penalty and a subsequent penalty of two percent for each month in which he or she defaults.*

*(3) The proper officer shall not make any demand after five years from the date of the short levy or erroneous refund, as the case may be, unless the short levy or erroneous refund had been caused by fraud on the part of the person who should have paid the amount short levied or to whom the refund was erroneously made, as the case may be.”*

63. On the one hand, it is the Appellant’s position that the Respondent relied on the wrong Section of the law when assessing the payable taxes as the imported goods were zero rated at the point of entry and the same is mirrored in the split of HS Codes wherein the duty payable for the items imported by the Appellant was marked at 0%. The Appellant relied on Part 2 of the Gazette Notice which provided that the goods were zero rated at the point of entry.
64. The main issue of contention is on the application and not the interpretation of the provision of the Gazette Notice. So, in the application of these sections, the Tribunal will seek to determine the intention of the statute. While analysing how to determine the intention of a statute, the Court of Appeal in **County Government of Nyeri & Anor. Vs. Cecilia Wangechi Ndungu [2015]** held that: -

*“Interpretation of any document ultimately involves identifying the intention of Parliament, the drafter, or the parties. That intention must be determined by reference to the precise words used, their particular documentary and factual context, and, where identifiable, their aim and purpose.”*

65. The Tribunal is of the opinion that, the provisions of the Gazette Notice, at page 8, were that the general HS Code for the items would be as stated and the rate would be as stated in that section, however, Kenya specifically stayed that provision for zero rate and the goods would attract duty as stated in section 49.
66. Section 120 of the EACCM Act, 2004 gives a clear and express rate of duty. It provides that; -

***“subject to subsection (3) and section 94, import duty shall be paid at the rate in force at the time when the goods liable to such duty are entered.”***

67. The Appellant ought to have taken note of the date of commencement of the Gazette Notice as well as the date of the entry of the goods into the Country.
68. The Tribunal finds that, the provisions of the Gazette Notice were express and straightforward. Clearly, as already stated hereinbefore, Kenya was granted a stay of one year with effect from 1<sup>st</sup> July, 2017. The Respondent was therefore justified in applying the duty rate of 25 or USD 250/MT, whichever is higher, for one year effective 1<sup>st</sup> July 2017.

**III. Whether the Respondent’s initial actions through the TRADEX SIMBA System created a Legitimate Expectation on the part of the Appellant.**

69. The Appellant argues that enforcing the decision of the Respondent would be unfair and in contravention of Article 47 of the Constitution of Kenya, 2010 on fair administrative actions.

70. The Appellant contends that the import duty as per the Gazette Notice dated the 30<sup>th</sup> of June, 2017 on page 8 Split of HS Code 7216.31.00 to provide for tariff line for U Section of a height of not more than 100mm was rated at 0%. The same was also rated at 0% in the Tradex Simba System.
71. The Appellant drew the Tribunal's attention to the fact that the imports were made months after the Gazette Notice dated 1<sup>st</sup> July 2017 came into force. One would assume that such prolonged period of time would have allowed for the effecting of the supposed new duty rates. At the time of entry, the import duty rate for the said items was also rated at 0% in the Tradex Simba System.
72. However, according to the Respondent, contrary to the assertion that the Appellant proceeded on the assumption that the duty payable is zero, the Gazette Notice is very clear and there cannot be legitimate expectation which is in contradicts the law.
73. The Appellant claims that the Respondent created a legitimate expectation by clearing the goods under a zero rate.
74. The Respondent on the other hand, argues that legitimate expectation if any, is not absolute as the body giving legitimate expectation can cancel the expectations by giving overriding reasons in public interest.
75. Collection of taxes, as the Respondent is mandated to do. is always done in public interest as it is through the funds generated that the Government runs its projects, which of course are of public interest.

76. In resulting from the legitimate expectation created by an authority, it is only reasonable that the authority communicates its intention. The East African Gazette Notice No 8 of 2017 communicated the intention to apply 25% duty on specified products.
77. The communication of the intention to vacate from using the zero rate to 25% duty rate on the specified products therefore quashed the legitimate expectation that the said products would be taxed at zero rate upon importation.
78. The Respondent submits that there can be no express legitimate expectation against the express provision of the law. The court in Republic Versus Commissioner of Domestic Taxes ex-parte Sony Holdings Limited (2019) eKLR in discussing legitimate expectation quoted, *H. W. R. Wade & C. F. Forsyth* who stated that: -

*"It is not enough that an expectation should exist; it must in addition be legitimate... **First**, for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfil the expectation... **Second**, clear statutory words, of course, override an expectation howsoever founded... **Third**, the notification of a relevant change of policy destroys any expectation founded upon the earlier policy...." (Emphasis added)*

*"An expectation, whose fulfilment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation. It is inherent in many of the decisions, and express in several, that the expectation must be within the powers of the decision-maker before any question of protection arises. There are good reasons why this should be so: an official cannot be allowed in effect to rewrite Acts of Parliament by making promises of unlawful conduct or adopting an unlawful practice."*

79. In making its decision on this point, the Tribunal is further guided by its decision in the case of **Engineering Supplies 2001 Ltd Vs Commissioner of Domestic Taxes Tax Appeal No. 126 of 2017(2020) eKLR**, where the Tribunal stated at paragraphs 34 and 35 that: -

*“... the current tax regime, including import system in Kenya is based on self-declaration to facilitate the ease of doing business and the post audit clearance done by the Respondent is to ensure that the said self-declaration is accurate.*

*In the circumstances thereof, the Tribunal finds that /there was no legitimate expectation created by the Respondent to the Appellant with regard to the tariff classification of the said goods as legitimate expectation cannot override the express provisions of statute.”*

80. The Tribunal is of the view that, the provisions of the Gazette Notice were express and straightforward. Having found that the Gazette Notice provided that the Appellant should pay taxes at the rate of 25% or USD 250/MT, whichever is higher and not at zero rate as pleaded by the Appellant, the Tribunal holds that the Appellant is liable to pay the taxes as demanded and there was no legitimate expectation created by the Respondent on the Appellant.

## **H. FINAL DECISION**

81. The upshot of the above findings is that the Appeal has no merit and the Tribunal accordingly makes the following Orders: -

- i. The Appeal be and is hereby dismissed.
- ii. The Respondent's demand of Kshs. 5,667,920.00 vide its letter dated 11<sup>th</sup> July, 2018 be and is hereby upheld.
- iii. Each party to bear its costs.

82. It is so ordered.

**DATED and DELIVERED at NAIROBI this 18<sup>th</sup> day of June, 2021.**



.....  
**PATRICK LUTTA**  
**CHAIRPERSON**



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**HELEN BILA**  
**MEMBER**



.....  
**MWAI MBUTHIA**  
**MEMBER**



.....  
**ELISHAH NJERU**  
**MEMBER**



.....  
**HABON FARAH**  
**MEMBER**

