REPUBLIC OF KENYA

IN THE TRIBUNAL OF KENYA AT NAIROBI COUNTY

COURT NAME: TAX APPEALS TRIBUNAL

CASE NUMBER: TATC/E872/2025

JUBILEE LIFE INSURANCE COMPANY LIMITED VS THE COMMISSIONER OF CUSTOMS AND BORDER CONTROL

JUDGMENT

BEFORE HON. EUNICE NJERI NGANGA, HON. BONIFACE KIBIY TERER, HON. SANKALE SPENCER OLOLCHIKE AND HON. BILLY GRAHAM OKUMU MIJUNGU

BACKGROUND

1. The Appellant is a limited liability company duly incorporated in Kenya under the Companies Act, Chapter 486, Laws of Kenya and a registered taxpayer and whose principal activity is to provide various long-term insurance services to the general public, including personal and group life insurance, pension administration, and long-term investments.

2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act, CAP 469 of Kenya's Laws. Under Section 5 (1) of the Act, the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all tax revenue. Further, under Section 5(2) of the Act 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 and 2 of the First Schedule to the Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws.

3. The Appellant was selected for compliance check for the period between April 2017 and April 2025. On 26th April 2017, the Respondent issued the Appellant with a notice of demand pursuant to the provisions of Section 109 of EACCMA which demanded payment of Kshs 825,405 which was related to a customs security bond number GCB 11288/11.

4. The notice of demand was premised on the claim that the goods in question had not exited the country and as a result remained unaccounted for under Regulation 104(13) of East African Community Customs Management Act, 2004 (EACCMA). The Respondent and Appellant corresponded via numerous letters and emails and on 3rd June 2025, the Respondent then issued the Appellant with a demand amounting to Kshs. 186,339,123 relating to uncancelled alien bonds.

5. The Appellant applied for a review of the demand notice under Section 229 of EACCMA on 16th June 2025. Vide a letter dated 23rd June 2025, the Respondent responded to the Appellant's request for review and advised it that section 229 of EACCMA does not apply.

6. Dissatisfied with the Respondent's decision, the Appellant filed a Notice of Appeal dated 1st August 2025 and filed on 14th August 2025.

THE APPEAL

7. The Appellant lodged its Memorandum of appeal dated and filed on 14th August 2025 raising the following grounds:

   a. That the Respondent was fundamentally misguided in law and in fact by stating in its Review Decision that Section 229 of the EACCMA is not applicable in the present dispute, when in fact the said provision allows the Appellant to apply for a review of the decision made by the Respondent and which affects the Appellant directly.

   b. That it was not open in law for the Respondent to reject the Appellant's Review Application dated 16th June 2025 (the "Review Application") by basing such rejection on a legally unsound averment that it had been engaging the Appellant prior to the Review Application, contrary to its mandatory duty under Section 229 of EACCMA.

   c. That the Respondent erred in law and in fact by issuing its Review Decision and demanding taxes without stating why the Appellant was liable for the demanded taxes. The Respondent's Review Decision was therefore issued contrary to Section 229(4) of EACCMA which envisages the Respondent's duty to give reasons.

   d. It was not open in law for the Respondent to decline considering and evaluating the plethora of evidence submitted by the Appellant in its Review Application and which proved that the Appellant was not liable for the taxes being demanded. The Respondent's arbitral failure to consider the Review Application and make Decision on merit was an affront and grave violations to the principles of fair hearing and fair administrative actions.

e. That the Respondent erred in law and in fact by demanding taxes from the Appellant contrary to Section 109 of EACCMA. The taxes being demanded by the Respondent were alleged tax liabilities for third parties (principals) who were neither insured by the Appellant nor were its clients during the period the security was allegedly issued.

f. That the Respondent erred in law and in fact by purporting to enforce an alleged contractual obligation between the Appellant and the principals whose existence was perfectly proved by the Appellant to be void. Such enforcement attempt is therefore a violation of Section 109 of EACCMA, unlawfully, capricious and unfair collection of taxes where there is no tax due.

THE APPELLANT’S CASE

8. In support of its appeal, the Appellant relied on its Statement of facts dated and filed on 14th August 2025 and its written submissions dated 30th June 2026 and filed on even date. It also filed supplementary statement of facts on 26th September 2025 and further statement of facts dated 2nd March 2026 and filed on 6th March 2026.

9. According to the Appellant, the dispute arises from a series of correspondences exchanged between the Appellant and the Respondent between April 2017 and April 2025 to settle and liquidate alleged outstanding Alien Bonds totalling an amount of Kshs. 186,339,123.21 and the Appellant objected to the same by an Application for Review dated 16th June 2025 together with requisite documentation in support thereof.

10. On 26th April 2017, the Respondent issued a letter to the Appellant pursuant to the provisions of Section 109 of the EACCMA, demanding payment of Kshs 825,405 related to Alien Bond number GCB 11288/11. This demand was premised on the claim that the goods in question had not exited the country and, as a result, remained unaccounted for under Regulation 104(13) of the EACCMA.

11. The Appellant responded to the above-mentioned letter by a letter dated 5th May 2017 wherein it notified the Respondent that M/s Corporate Business Forms CDF Limited, who was allegedly insured as the principal in the said Bond, was not and had not been its client at any particular time. In the circumstances, there was no way the Appellant could have issued the said Bond to a principal who was not its client. The Appellant, also pointed out that it requested for the copy of the said bond so that it

could conduct further investigation. Subsequently, by a letter dated 25th August 2017, the Respondent shared copies of the bonds in its custody for confirmation by the Appellant.

12. After a comprehensive review of the availed copies of the 18 Alien Bonds, by a letter dated 25th August 2017, the Appellant issued a response to the Respondent wherein it stated that the said Alien Bonds did not originate from it; that the signatures and seals appended thereon were not genuine; and that the signatures did not correspond with those of any persons authorized to ap prove the Customs Security Bonds by the Appellant. Further to this clarification, by a letter dated 18th December 2017, the Appellant, having received another request for confirmation of the Alien Bonds, advised the Respondent that the same did not originate from it.

13. By an email dated 20th December 2017, the Respondent requested the Appellant to confirm the Alien Bonds and other bonds related to Aga Khan Development and AAA Growers Limited. In its response, through a letter dated 21st December 2017, the Appellant confirmed that it was in the process of resolving bonds relating to the Aga Khan Development and AAA Growers Limited, which had been already cancelled after reconciliation. The Appellant was further categorical that it was not privy to the outstanding amount of Kshs 181,111,287.21 relating to Alien Bonds; a fact that had previously been brought to the Respondent's attention as referenced herein above.

14. On 29th May 2018, the Appellant sent a follow-up letter addressed to the Respondent and copied to the Directorate of Criminal Investigations (DCI) and Insurance Regulatory Authority for reporting and investigation purposes. In this letter, the Appellant reiterated that it bore no liability in respect of the Alien Bonds which had formed the basis of the dispute.

15. The Respondent through its letters dated 8th June 2018 continued to inq uire about some of the Alien Bonds. The Appellant, in a repetitive bid to address the concerns related to the Alien Bonds responded by its letter dated 5th July 2018. In its response, the Appellant stated that the Alien Bonds inquired about did not originate from its systems or operations.

16. Thereafter, the Appellant received a request dated 4th July 2018 from DCI to avail some of the Alien Bonds which it was investigating as a case of forgery contrary to Section 345 of the Penal Code, Cap 63 of the Laws of Kenya. In response to the above request, by letter dated 23rd July 2018,

the Appellant confirmed to DCI that the Alien Bonds did not originate from it and provided various communication with the Respondent in support of this averment. The Appellant therefore, recommended to DCI that this was a serious issue that needed further investigation. The Appellant pointed out that as of the date of filing this Appeal, DCI had not given its finding on the same.

17. According to the Appellant, the Respondent went silent for almost 2 years and in the year 2020, as if the Appellant had not explained itself sufficiently, the Respondent again vide its letter dated 14th February 2020 inquired in the same fashion about some of the Alien Bonds. In response thereto, the Appellant, by its letter dated 19th February 2020 reiterated that the Alien Bonds were unknown to it and that the matter relating to issuance of the said Alien Bonds was under active investigation by the DCI.

18. On 3rd August 2020, the Appellant received another request from the Respondent requesting information relating to one of the Alien Bonds, and once again the Appellant by its letter dated 11th August 2020 reiterated that the said Alien Bond did not originate from the Appellant. It further advised that the issue was under investigation by the DCI and the Insurance Regulatory Authority. The Appellant further requested the Respondent to conduct its own investigation in relation to the origin of the Alien Bonds.

19. In the year 2021, the Appellant pointed out that the Respondent through its letter dated 21st October 2021 demanded settlement of one of the Alien Bonds to the sum of Kshs 795,546 issued to Natalya Holding Co. Limited. In response, the Appellant reiterated that the said Alien Bond was not issued by it and that the matter was under investigations with DCI and the Insurance Regulatory Authority. Furthermore, the Appellant, in its letter dated 22nd October 2021 requested the Respondent to investigate the origin of this Alien Bond.

20. On 4th November 2021, the Respondent demanded for settlement of the sum of Kshs 174,546 due from one of the Alien Bonds purportedly issued by the Appellant to the principal debtor by the name Air World Handlers Limited. In a letter dated 5th November 2021, in response to the Respondent's letter, the Appellant reiterated that the said Alien Bond indicated in the table below did not originate from the Appellant and that the matter was still under investigation.

21. By an email dated 5th April 2024, the Respondent demanded settlement of Kshs 21,197,039 in respect of 38 Customs Security Bonds issued to the

Appellant's clients. The Appellant stated that unlike the Alien Bonds, the Appellant, after thorough scrutiny, confirmed that these 38 bonds had indeed been issued by the Appellant and did not form part of the Alien Bonds in question in this case.

22. In response to the Respondent's email of 5th April 2024, M/s Jubilee Allianz General Insurance (K) Limited issued a letter dated 18th April 2024, wherein it notified the Respondent that the 38 Customs Security Bonds were issued by the Appellant and that upon thorough internal review of the said Bonds, it was found that all of the said 38 Bonds had been cancelled. In support of this finding, the Appellant stated that it provided the cancellation letters of the said 38 Customs Security Bonds which indicated that the demanded amount of Kshs 21,197,039 was erroneous. Upon such proof the matter concerning those 38 Customs Security Bonds was resolved and has never been an issue in this long-standing dispute.

23. According to the Appellant, the Respondent issued an Agency Notice dated 24th October 2024 to the Appellant's bankers demanding the payment of the sum of Kshs 213,363,290. The Appellant pointed out that the Agency Notices did not specify why the said amount was being demanded and for which liability the demanded amount related to. Upon receipt of the Agency Notices from the Appellant's Bankers, the Appellant by its email dated 29th October 2024 contacted M/s Jubilee Allianz General Insurance (K) Limited who thereafter, contacted the Respondent in a bid to resolve this dispute amicably.

24. The Respondent subsequently lifted the Agency Notices through its letters dated 29th October 2024 and 4th November 2024. The Appellant pointed out that it was alarmed with the issuance of the Agency Notices that did not relate to any specific tax liability and therefore, initiated the process to resolve the other pending issues of the Alien Bonds which were yet to be resolved. The Appellant thus sent an email dated 5th February 2025 wherein it requested for copies of all the Alien Bonds and any other outstanding bond for its furt her internal review.

25. The Respondent through an email dated 7th February 2025 responded to the Appellant's email of 5th February 2025 by providing a schedule consisting of 282 Customs Security Bonds which were allegedly not cancelled and were due for payment. The same was to be scrutinized and confirmed by the Appellan t. The Appellant noted that instead of sharing the copy of the said bonds, the Respondent only shared the schedule containing

details of the said bonds.

26. Upon thorough scrutiny and verification of the schedule listing details of the 282 Customs Security Bonds, the Appellant, by its email dated 9th April 2025 , notified the Respondent that majority of the bonds did not originate from the Appellant and were part of the Alien Bonds that had been earlier disputed. In particular, the Appellant established that only 12 out of the 282 bonds may have been issued by itself, while the remaining 270 comprised the very Alien Bonds it had persistently refuted and further noted that the said bonds were under investigation by the DCI.

27. By an email dated 17th April 2025, the Appellant requested the Respondent to provide copies of the 282 Bonds listed in the schedule. The Respondent through Ms. Kellen's email of 17th April 2025 requested the relevant officers of the Respondent in charge of Customs Bonds Debt Collection to provide the Appellant with the copies of the said requested bonds. The Appellant noted that through the Respondent's email dated 17th April 2025, the Respondent threatened to commence enforcement mechanisms if all the outstanding issues related to Alien Bonds and any other outstanding bonds were not resolved within 7 days from the date of the email being the 17th April 2025. In its continued efforts to resolve the issue, the Appellant, by a letter dated 28th April 2025 requested the Officer in Charge of the Insurance Fraud Unit to hasten the investigation on the case of forgery regarding the said Alien Bonds as previously communicated.

28. Subsequently, the Appellant consulted its Advocates - M/s Oraro & Company Advocates and instructed them to take up the matter and begin with responding to the Respondent's email of 17th April 2025, which threatened premature enforcement of any outstanding liability related to Customs Security Bonds.

29. The Appellant, through its Advocates issued a letter dated 14th May 2025 in response to the Respondent's email of 17th April 2025. In the said letter dated 14th May 2025, the Appellant addressed the issues related to the 282 Customs Security Bonds and denied liability related to the 270 Alien Bonds and provided justifications for such denial and then addressed the 12 remaining bonds out of which 8 were already cancelled and thus did not attract any liability. In the same letter, the Appellant cited the previous correspondence and requested the Respondent to consider its explanations and bring the

longstanding dispute to an end.

30. The Appellant further stated that it confirmed from the Sealed Documents Register for the period 1st October 2009 to 12th July 2021 that none of the Alien Bonds had been entered in the said register and were therefore, unknown. The Appellant asserted that this was also supported by the list of clients for the period ending the year 2011 which confirms that none of the principals in the Alien Bonds were the Appellant's clients.

31. In response to the Appellant's advocates, the Appellant contended that the Respondent, in its letter dated 22nd May 2025 declined to engage with the Advocates citing the lack of formal notification confirming their appointment. The issue of representation was then clarified by the Appellant through a letter dated 28th May 2025.

32. After going through the Appellant's letter dated 14th May 2025, the Respondent narrowed down the dispute to only one issue which related to the alleged outstanding amount on the Alien Bonds. It therefore issued a letter date d 3rd June 2025 demanding the payment of Kshs. 186,339,123 related to all the Alien Bonds within seven (7) days.

33. The Appellant being dissatisfied and affected by the decision and due to the fact that it was irregularly given (7) seven days to react to such decision, it requested for extension of time to Respond to the Decision which it was granted. The Appellant then reached out to the purported principals which the Respondent alleged the Appellant had insured. In doing so, it drafted letters requesting clarifications on how the Alien Bonds were allegedly insured and issued and further demanded that failure to provide such information within seven days would be a confirmation that the said principals were not insured by the Appellant and where not its clients.

34. In dispatching the said letters, the Appellant stated that it was unable to trace the said principals and only managed to dispatch the said letters to two principals. Despite such dispatch, the said principals have never responded to the letters which is further proof that they were neither insured by the Appellant nor were they clients of the Appellant.

35. The Appellant also stated that it inquired from its former authorized signatories being Mr. Patrick Turnbo, who was the former Chief Executive Officer, and Mr. Amin Datoo, a former director

who were at the time responsible for executing Customs Security Bonds and as earlier stated, both reconfirmed and provided their affidavits swearing that the Alien Bonds did not originate from the Appellant and were not issued by the Appellant.

36. The Appellant on 16th June 2025 applied for review of the Decision dated 3rd June 2025 as provided for under Section 229 of EACCMA. In the Application for review of the Decision, the Appellant stated that it requested the Respondent to review its Decision on several grounds among them being that the Respondent erred in fact and in law in seeking to enforce the Alien Bonds whose liability did not rest with the Appellant.

37. The Respondent subsequently issued its Review Decision through its letter dated 23rd June 2025. The Appellant averred that in the said Review Decision, the Respondent refused to consider the issues and grounds raised in the Appellant's Application for Review dated 16th June 2025. Instead, it stated that Section 229 of the EACCMA was inapplicable as the Respondent had been engaging the Appellant over the matter; and that the Appellant had seven (7) days from the date of its letter, within which to liquidate the security bonds by paying the taxes which the Appellant had allegedly guaranteed, failing to which, the Respondent would proceed with further enforcement action. Aggrieved by the Review Decision, the Appellant, pursuant to Sections 230 and 231of EACCMA, lodged this Appeal.

38. The Appellant reiterated that the Alien Bonds in dispute did not originate from it. The Appellant sought to provide the relevant investigative correspondence and the Directorate of Criminal Investigation Forensic Examiner's Report referenced as DCI/ORG/8/3/1/49/2026 (the "DCI Investigation Report"), which were not available to the Appellant at the time of lodging the Appeal and the subsequent pleadings before the Tribunal as the investigations were yet to be completed.

39. The Appellant stated that it received a letter dated 4th July 2018 from the Directorate of Criminal Investigations (DCI), requesting the Appellant to avail certain Alien Bonds which were the subject of investigations for alleged forgery contrary to Section 345 of the Penal code, Cap 63 of the Laws of Kenya. In response thereto, the Appellant, by its letter dated 23rd July 2018, notified DCI that the Alien Bonds did not originate from the Appellant.

The Appellant also stated that it furnished the DCI with copies of correspondence exchanged with the Respondent in support of this averment.

40. The Appellant asserted that in the course of its continued investigations, DCI addressed two letters dated 29th September 2025 and 30th September 2025 to the Respondent . The Appellant pointed out that in the said correspondence, DCI expressly indicated that the genesis of its investigations stemmed from a report made by the Respondent on 13th June 2018 through the Insurance Regulatory Authority vide the letter referenced as KRA/C&BCIBONDS/04/2019.

41. In addition, the Appellant contended that in the letter dated 29th September 2025 required the Respondent to avail copies of individual taxpayer profiles and details relating to various agencies as listed in the said letter. Subsequently, in its letter dated 30th September 2025, the DCI further requested the Respondent to furnish copies of the original Alien Bonds bearing official seals to facilitate their forensic examination.

42. The Appellant averred that upon conclusion of its investigations, the DCI prepared the DCI Investigation Report. The Appellant asserted that the DCI Investigation Report contains a detailed forensic analysis of the impugned Alien Bonds submitted by the Respondent and compared the signatures, handwriting and seals appearing thereon against the known specimen samples of the relevant individuals, including the signatures of Mr. Amin Datoo, Mr. Patrick Tumbo and Kabir Hyderauy.

43. The Appellant averred that the findings of the DCI Investigation Report unequivocally conclude that the signatures attributed to Mr. Amin Datoo, Mr. Patrick Tumbo and Kabir Hyderauy on the impugned bonds were not authored by the said individuals. In particular, under the section titled ‘Examinations and Findings, the Appellant pointed out that the DCI made the following determinations:

(a) At paragraph 1, upon comparison of the questioned signatures appearing on the impugned Alien Bonds against the known specimen signatures of Mr. Amin Datoo, there is fundamental divergences in pen movement, pen pressure patters, loop formation, baseline alignment, pen lifts, curve smoothness, character spacing, structural sizing and design, writing speed, and the formation of initial, medial and terminal strokes. On the basis of these material inconsistencies, it is then concluded that the questioned signatures were not authored by Mr. Amin Datoo.

(b) At paragraph 2, upon comparison of the questioned signatures attributed to Mr. Patrick Tumbo with his known specimen signatures, there is significant divergences in pen movement, pen lifts, structural size and design, connecting strokes, slant, baseline alignment, overall comparative resemblance, and the formation of initial and terminal strokes. It is then concluded that the questioned signatures were not executed by Mr. Patrick Tumbo.

(c) At paragraph 8, upon comparison of the questioned signatures attributed to Mr. Kabir Hyderauy with his known specimen signatures and handwriting, there is significant divergences in pen movement, pen lifts, structural size and design, and terminal strokes. It is then concluded that the questioned signatures were not executed by Mr. Kabir Hyderauy.

(d) In addition to the examination of the signatures and handwritings, it is also well affirmed under paragraph 3 that upon the review of Exhibits, the seals on the exhibits were impressed using instruments materially different from the Appellant's genuine seal.

44. The Appellant averred that in light of the foregoing findings from DCI Investigation Report, the Appellant reiterated its consistent position that the impugned Alien Bonds did not originate from, nor were they issued or authorised by the Appellant.

45. The Appellant submitted that the decision issued by the Respondent dated 23rd June 2025 was a Review Decision and therefore, an appealable decision.

46. It submitted that this Honourable Tribunal ought to set aside the Review Decision dated 23rd June 2025 on the basis that the Appellant discharged its burden of proof in demonstrating that it bears no liability for the alleged taxes.

47. It also submitted that under Section 109 of the EACCMA, taxes may not, lawfully be demanded where no liability attaches to the Appellant.

48. In support of the appeal, the Appellant relied on the following case laws:

i. Republic v Commissioner of Customs services Ex Parte Tetra Pak Limited [2012] eKLR;

ii. **Republic v Commissioner of Customs Services Ex-Parte Unilever Kenya Limited (20121 KEHC 5669 (eKLR);**

iii. **Kapa Oil Refineries Limited v Commissioner of Customs an d Border Control (2023);**

iv. **W.E.C. Lines Ltd v the Commissioner of Domestic Taxes [TAT No. 247 of 2020];**

v. **Krysta/line Salt Limited v Kenya Revenue Authority [20191 eKLR;**

vi. **Local Productions Kenya Ltd v Commissioner of Domestic T axes TAT No.50 of 2017;**

vii. **Ndiranqu tla Ndiranqu Hardware v Commissioner of Domestic Taxes {20231 KEHC 19357;**

viii. **Githima Limited v. Commissioner of Domestic Taxes TAT Appeal No. 162 of 2021;**

ix. **Skytrade Global Enterprises Limited v Commissioner of Domestic Taxes (Tribunal Appeal E104 of 2024) (2025] KETAT 54 (KLR) (24 January 2025) (Judgment);**

x. **Republic v Kenya Revenue Authority: Proto Energy Limited;**

xi. **Kenya Revenue Authority v Maluki Kitili Mwendwa [2021] eKLR; and**

xii. **Agricultural Finance Corporation v Lengetia Limited & Jack Mwangi [1985] KECA 58 (KLR).**

49. Based on the forgoing, the Appellant therefore urged this Honourable Tribunal to allow the Appeal in its entirety and grant the reliefs sought in the Memorandum of Appeal dated 14th August 2025, in the interests of justice, fairness, and fidelity to the rule of law.

Appellant's prayers

50. The Appellant prayed for the following reliefs:

(a) The Appeal be allowed;

(b) The Honourable Tribunal be pleased to entirely set aside, the Review Decision dated 23rd June 2025;

(c) The Honourable Tribunal be pleased to find that the Appellant does not bear the tax liabilities demanded by the Respondent;

(d) Cost of this Appeal be provided for; and

(e) Honourable Tribunal to issue any other alternative relief it deems fit.

THE RESPONDENT'S CASE

51. In Response to the appeal, the Respondent relied on its Statement of facts dated 15th August 2025 and filed on 15th September 2025 and its written submissions dated 20th July 2026 and filed on even date.

52. The Respondent's averred that the dispute arose from a series of correspondences exchanged between the Appellant and Respondent between April 2017 and April 2025 seeking to settle and liquidate outstanding customs security bonds amounting to Kshs 186,339,123.21.

53. The Respondent presented a summary of the findings and basis of the demand as follows:

i. Vide a letter dated 26th April 2017, the Respondent wrote to the Appellant pursuant to the provisions of Section 109 of the EACCMA, demanding payment of Kshs 825,405 related to Alien Bond number GCB 11288/1.

ii. The notice of demand was premised on the claim that the goods in question had not exited the country thus remained unaccounted for under Regulation 104(13) of the EACCMA.

iii. On 5th May 2017, the Appellant responded to the letter and requested the Respondent to furnish it with a copy of the bond so as to conduct investigations. The Respondent complied with the Appellant's request and vide a letter dated 25th August 2017 which shared copies of the bonds to the Appellant for their verification.

iv. The Appellant on 25th August 2017 informed the Respondent that the alien bonds did not originate from it therefore, they were not genuine. Further, on 18th December 2017, the Appellant reached out to the Respondent and confirmed that alien bonds from 2 companies being Jordan Freighters Ltd and Corporate Business forms CDF Limited emanated from it therefore they were to be considered as genuine bonds between the Appellant and the 2 companies.

v. Vide an email dated 20th December 2017, the Appellant wrote to the Respondent and distanced itself from alien bonds between themselves and Aga Khan Development and AAA Growers Limited. The Appellant indicated that the said bonds had been cancelled after reconciliation.

vi. The parties continued to correspond numerously and on 7th February 2025, the Respondent provided the Appellant with a schedule of 282 customs security bonds that had not been cancelled hence due for payment. According to the Respondent, the Appellant alleged that the bonds had been cancelled however, proof of the cancellation was not provided. Subsequently, on 3rd June 2025, the Respondent issued a notice of demand amounting to Kshs 186,339,123.

vii. The Respondent pointed out that on 16th June 2025, the Appellant sought a review of the Respondent's letter dated 3rd June 2025.

viii. Vide a letter dated 23rd June 2025, the Respondent responded to the Appellant's letter seeking a review and advised the Appellant that Section 229 of EACCMA did not apply and further granted the Appellant 7 days to liquidate the security bonds.

54. The Respondent stated that the decision that the Appellant seeks to appeal against does not amount to a review decision as alluded to by the Appellant. It stated that the letter dated 23rd June 2025 is a mere correspondence which advises the Appellant of the inapplicability of Section 229 of EACCMA and further grants it 7 days to liquidate the security customs bonds.

55. The Respondent averred that no decision was issued and that the letter dated 23rd June 2025 has neither been titled or typified as a review decision but merely a letter communicating to the Appellant what already exists by operation of law.

56. The Respondent further stated that the Appellant has adamantly failed to provide proof that the customs security was cancelled at all despite several requests by the Respondent. Therefore, it argued that the Appellant has failed to discharge its burden of proof as per the provisions of the law.

57. It averred that that all actions were taken in accordance with the provisions of the Tax Procedures Act, 2015 and that the Appellant was granted an opportunity to respond to the findings and object to the demand in line with due process.

58. The Respondent maintained that the notice of demand issued was properly founded in fact and law, and that the same was fair, reasonable, and made in accordance with statutory provisions.

59. The Respondent submitted that that the Tribunal does not have jurisdiction to hear and determine the appeal on the basis that the

Appeal is incompetent and fatally defective as the Appellant failed to comply with the mandatory provisions of Section 13(2) of the Tax Appeals Tribunal Act Cap 469A(TATA) on ground that the Appellant failed to attach a copy of the review decision which decision is the substratum that the Appeal seeks to challenge.

60. The Respondent submitted that the letter dated 23rd June 2025 is a mere correspondence which advises the Appellant of the inapplicability of Section 229 of EACCMA and further grants them 7 days to liquidate the security customs bonds. It maintained that no decision was issued and that letter dated 23rd June 2025.

61. The Respondent submitted that a review decision is a crucial document and without it, the entire Appeal fails. It relied on the case of **Miguna Miguna v Lufthansa Group operating as Lufthansa German Airlines & 6 others; Kenya Nation Commission on Human Rights & another (Interested Parties) [2021] eKLR**, where the High Court held that the court could not grant orders sought without evidence being adduced and as such the matter before it was merely speculative.

62. The Respondent further submitted that it was justified to enforce upon the Appellant the expired bonds it relied on Section 106 of EACCMA to submit that the Respondent is empowered to require transporters to give sureties for the protection of Customs revenue.

63. The Respondent posited that the Appellant entered into various security bonds with the Transporters, consequently, leading the Appellant to give the surety to the Respondent in the form of bonds pursuant to Section 107 (1a) of EACCMA. It therefore submitted that the Appellant having guaranteed various importers, it was incumbent on the Appellant to ensure the importers complied with all the conditions in the bond and have themselves freed and discharged from the bond obligations.

64. It submitted that the onus of proving that the Appellant is not liable to the full amount of the Bond rests on the Appellant. It relied on the case of **Corporate Insurance Co. Ltd v Nyali Beach Hotel [1995-1998] 1 EA 7 at 16 and 17** where **Pall, JA**

> *"The risk taken is generally known to the surety and the circumstances generally point to the view that as between the creditor and surety it was contemplated and intended that the surety should take upon himself to ascertain exactly what risk he was taking upon himself. Ordinary contracts of guarantee are not amongst those requiring uberima fides on the part of the Creditor towards the surety by the creditor of the facts known to him affecting the risk undertaken by the surety will not vitiate the*

contract."

65. The Respondent cited the case of **Kenindia Assurance Company Limited v First National Finance Bank Limited Civil Appeal No. 328 of 2002** wherein the Court held inter alia:

> *''the performance bond in the instant case is in the nature of a covenant by the appellant to pay upon the happening of a particular event. It is a form of security guaranteeing payment by a third party and in such cases the most important factor to consider before liability can attach is whether there has been default. Once default is established and that there has been a formal demand the other conditions are of a secondary nature and may not be used to defeat the security Performance bonds fulfil a most important role in international trade…''*

66. Further, it relied on Section 109 (1) of EACCMA which states,

> *"109. (1) Where the conditions of any bond have not been complied with the Commissioner may by notice in writing require the person who has given security under it to pay to him or her the amount of the security within fourteen days of the notice; and on failure to comply with the notice, the Commissioner may enforce payment of the security as though it were duty due and unpaid."*

67. The Respondent also relied on Section 109 (2) of EACCMA to submit that it provides that nothing shall discharge the Appellant from its obligation to pay the duties subject to the security bonds where the bonds have not been discharged. It therefore submitted that contrary to the Appellant's position, there is no law that discharges a surety from its obligations with respect to expired bonds and the taxes due are payable.

Respondent's prayers

68. The Respondent prayed that this Honourable Tribunal be pleased to;

   a. Dismiss the Appeal in its entirety;

   b. Uphold the notice of demand and;

   c. Orders the Appellant to pay the costs of the Appeal.

ISSUES FOR DETERMINATION

69. The Tribunal having carefully evaluated the pleadings and submissions of the parties has identified two issues for determination:

   a. Whether the Tribunal has jurisdiction to determine the appeal;

b. Whether the Respondent was justified in demanding liquidation of alien security bonds.

ANALYSIS AND FINDINGS

70. Having identified the issues for determination, the Tribunal proceeds to analyse the same as hereunder;

a. Whether the Tribunal has jurisdiction to determine the appeal

71. The Respondent's case was that the decision dated 23rd June 2025 which the Appellant seeks to appeal against does not amount to a review decision. It stated that the letter dated 23rd June 2025 is a mere correspondence which advises the Appellant of the inapplicability of Section 229 of EACCMA and further grants the Appellant 7 days to liquidate the security customs bonds. Therefore, the Respondent submitted that the Tribunal lacks jurisdiction to determine this appeal.

72. On the other hand, the Appellant argued that the letter dated 23rd June 2025 was a review decision, and an appealable decision because the Respondent threatened to take enforcement measures against the Appellant upon failure to liquidate the bonds.

73. In **Samwel Kamau & Another v Kenya Commercial Bank & Others [Application No. 2 of 2011] 92012 KESC (KLR)** the Supreme Court emphasised that a court's jurisdiction flows from either the Constitution or legislation or both.

74. The Tribunal notes that the dispute giving rise to the present Appeal concerns the enforcement of customs security bonds under the East African Community Customs Management Act, 2004 (EACCMA). The Respondent's demand dated 3rd June 2025 was issued in relation to security bonds amounting to Kshs. 186,339,123 and the Appellant, being dissatisfied with that demand, lodged an application for review dated 16th June 2025 pursuant to Section 229 of EACCMA.

75. The procedure applicable to a person aggrieved by a decision or omission of the Commissioner on a customs matter is therefore principally governed by EACCMA. Section 229 establishes the statutory mechanism for review of decisions and omissions arising under the customs regime. Consequently, the question whether the Appellant properly invoked the review and appellate jurisdiction of the Tribunal must be determined within this statutory framework.

76. The Respondent relied on provisions of the Tax Procedures Act in contending that the impugned letter did not constitute an appealable decision. The Tribunal does not find that approach persuasive. The

subject matter before it is the enforcement of customs security bonds under EACCMA and the review procedure specifically provided under Section 229 thereof. The character and legal effect of the Respondent's communication must therefore be determined from EACCMA and from the substance of the communication itself rather than from the nomenclature employed by the Respondent.

77. The central question is therefore whether the Respondent's letter dated 23rd June 2025 constituted a decision made in response to the Appellant's application for review dated 16th June 2025 within the contemplation of Section 229 of EACCMA.

78. Section 229(1) of EACCMA provides as follows:

"A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission."

79. The effect of Section 229(1) is that a person directly affected by a decision or omission of the Commissioner concerning a customs matter is entitled to invoke the statutory review procedure. What is material before the Tribunal is therefore the existence of a decision or omission having legal consequences for the affected person, and not merely the title given to the document through which that decision is communicated.

80. In the present Appeal, it is not disputed that on 3rd June 2025 the Respondent demanded from the Appellant the sum of Kshs. 186,339,123 in respect of the impugned security bonds. That demand affected the Appellant directly and constituted a decision capable of review under Section 229(1) of EACCMA. The Appellant thereafter lodged its application for review on 16th June 2025, well within the thirty-day statutory period.

81. Upon receipt of that application, the Respondent became subject to Section 229(4) of EACCMA which provides that:

"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 from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision."

82. The statutory duty imposed by Section 229(4) of EACCMA is therefore to consider the application for review and communicate the Commissioner's decision in writing, accompanied by reasons. The legal character of such communication is determined by its substance and effect and does not depend upon whether it is expressly headed "Review Decision".

83. The Tribunal has examined the circumstances surrounding the Respondent's letter dated 23rd June 2025 and finds that the letter was issued specifically in response to the Appellant's application for review dated 16th June 2025. In that letter, the Respondent communicated its position that Section 229 of EACCMA was inapplicable, maintained the demand against the Appellant and required the Appellant to liquidate the impugned security bonds within (7)seven days, failing which enforcement action would follow.

84. It is the Tribunal's considered view, that this communication was neither preliminary nor merely informational. It communicated the Respondent's definitive position upon the Appellant's challenge to the demand and preserved the liability sought to be enforced against the Appellant and therefore produced direct legal consequences for the Appellant.

85. The Tribunal therefore rejects the Respondent's argument that the letter of 23rd June 2025 was merely correspondence. The substance of the letter demonstrates that the Respondent considered the Appellant's request, declined to entertain it under Section 229 of EACCMA, maintained its demand and threatened enforcement. These features are wholly inconsistent with the contention that no decision was made.

86. The Tribunal further observes that the Respondent cannot defeat the statutory right of review merely by asserting in its response that Section 229 of EACCMA does not apply. Where an application invoking Section 229 of EACCMA has been made in respect of a customs decision and the Commissioner responds by maintaining that decision, the legal character of the response is determined objectively by what the Commissioner has decided and communicated and not by the Commissioner's description of the document.

87. It is also the Tribunal's view that if, as the Respondent contends, its letter of 23rd June 2025 was not a decision under Section 229(4) of EACCMA, then no review decision was communicated in response to the Appellant's application of 16th June 2025 within the statutory period.

88. Section 229(5) of EACCMA provides that:

"Where the Commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application."

89. It follows that the Respondent's contention produces either of two consequences, neither of which assists its case. Either the letter dated 23rd June 2025 was the decision contemplated under Section 229(4) of EACCMA, in which event it was capable of appeal; or, if it was not such a

decision as the Respondent contends, the application for review would fall to be treated in accordance with Section 229(5) of EACCMA upon expiry of the statutory period without a review decision.

90. For the foregoing reasons, the Tribunal finds that the Respondent's letter dated 23rd June 2025 constituted its decision upon the Appellant's application for review dated 16th June 2025 within the meaning of Section 229 of EACCMA. The Tribunal consequently finds that it has jurisdiction to hear and determine the present Appeal.

b. Whether the Respondent was justified in demanding liquidation of alien security bonds.

91. The Respondent's substantive case is that it was entitled under Sections 107 and 109 of EACCMA to require the Appellant to liquidate the sums secured under the impugned Alien Bonds. The Appellant, on the other hand, maintained that it neither issued nor authorised the Alien Bonds and that the instruments upon which the Respondent seeks to impose liability did not originate from it.

92. Section 107(3) of EACCMA provides as follows:

"All bonds required to be given under this Act shall be so framed that the person giving the bond, and any surety thereto, is bound to the Commissioner for the due performance of the conditions of that bond; and any such bond may, unless sooner discharged by the due performance of the conditions thereof, be discharged by the Commissioner on the expiration of three years from the date thereof, but without prejudice to the right of the Commissioner to require fresh security."

93. The Respondent also relied upon Section 109(1) of EACCMA which provides:

"Where the conditions of any bond have not been complied with the Commissioner may by notice in writing require the person who has given security under it to pay to him or her the amount of the security within fourteen days of the notice; and on failure to comply with the notice, the Commissioner may enforce payment of the security as though it were duty due and unpaid."

94. Section 109 OF EACMMA permits the Commissioner to enforce the bond against **"the person who has given security under it."** Liability under that provision therefore presupposes that the person against whom enforcement is sought is in fact the person who executed, authorised or otherwise gave the security relied upon by the Commissioner. The existence of an instrument bearing a person's name cannot, without more, create liability where that person demonstrates that the instrument was neither executed nor authorised by it.

95. Accordingly, before the question whether the conditions of the Alien Bonds were fulfilled or whether the bonds had been discharged could become determinative, there first has to be a sufficient evidential basis connecting the Appellant to the creation or issuance of the bonds. Where execution itself is disputed, the antecedent question is whether the security sought to be enforced was given by the Appellant at all.

96. The Tribunal has considered the evidence placed before it on this question and observes that from as early as 2017, the Appellant consistently informed the Respondent that the impugned Alien Bonds did not originate from it. The Appellant maintained that position over the subsequent correspondence and referred the matter for investigation. The Appellant further relied upon its internal records, including its Sealed Documents Register and client records, in support of its contention that the disputed instruments were not issued through its systems or operations.

97. The Appellant also produced affidavits from persons who had been authorised to execute customs security bonds on its behalf, including Mr. Patrick Tumbo and Mr. Amin Datoo, denying that the disputed instruments had been executed or authorised by them. That evidence was material because the signatures appearing on the Alien Bonds were attributed to persons through whom the Appellant would ordinarily have acted in executing such instruments.

98. Of particular significance is the forensic evidence subsequently obtained from the Directorate of Criminal Investigations (DCI). The DCI Investigation Report compared the questioned signatures and seals appearing on the impugned alien bonds against known specimen signatures, handwriting and the Appellant's genuine seal. The report concluded, inter alia, that the questioned signatures attributed to Mr. Amin Datoo, Mr. Patrick Tumbo and Mr. Kabir Hyderauy were not authored by those persons and that the seals appearing on the questioned documents had been impressed using instruments materially different from the Appellant's genuine seal.

99. The Tribunal considers this evidence to be competent, relevant and directly probative of the central factual issue, namely whether the Appellant issued or authorised the Alien Bonds. The Appellant was not required, for purposes of this Appeal, to prove who forged the documents or to establish criminal culpability against any particular person. The issue before the Tribunal is not whether a criminal offence of forgery has been proved beyond reasonable doubt, but whether, on the evidence before it, the impugned bonds can lawfully be attributed to the Appellant for purposes of enforcement under Section 109 of EACCMA.

100. The Tribunal is persuaded that the evidence adduced by the Appellant established on a prima facie basis, that the impugned instruments did not originate from it. At that stage the evidential burden shifted to the Respondent to place before the Tribunal material capable of demonstrating that, notwithstanding the Appellant's documentary, testimonial and forensic evidence, the disputed security had in fact been executed or authorised by the Appellant.

101. The principle that the evidential burden may shift once a taxpayer or affected party produces competent and relevant evidence was recognised in **Commissioner of Domestic Taxes v Trical and Hard Limited (Tax Appeal E146 of 2020) [2022] KEHC 9927 (KLR)**, where the Court observed that the presumption attaching to the Commissioner's determination subsists until competent and relevant evidence is produced to rebut it. Once such evidence is produced, the dispute must be determined upon the evidence presented.

102. Similarly, in **Commissioner of Domestic Taxes v Bosky Industries Limited (Income Tax Appeal E049 of 2022) [2025] KEHC 7965 (KLR)**, the Court recognised that under the general principles contained in Sections 107 to 109 of the Evidence Act, once prima facie evidence supporting a party's position has been produced, the evidential burden may shift to the Commissioner to demonstrate otherwise.

103. In the present Appeal, the Respondent did not place before the Tribunal any forensic or other cogent evidence displacing the findings contained in the DCI investigation report neither did it demonstrate that the signatures or seals appearing on the impugned instruments were genuine or had otherwise been authorised by the Appellant. Its position remained substantially that the bonds had not been discharged or cancelled and were therefore enforceable.

104. This argument in the Tribunal's view assumes the very fact which is in dispute. The question whether a bond remains undischarged under Sections 107 and 109 can only arise against a person shown to have given the security in the first place. The absence of evidence of cancellation cannot convert an instrument which was not executed or authorised by the Appellant into a binding security given by the Appellant.

105. The Tribunal has also considered the Respondent's reliance on authorities concerning the obligations of a surety and the enforceability of performance bonds. Those principles proceed upon the existence of a valid guarantee or bond binding the surety. They do not dispense with the anterior requirement that the party against whom enforcement is sought must first be shown to have executed or authorised the security. Consequently, authorities concerning liability following default under a

valid bond do not answer the Appellant's contention that it never issued the impugned bonds.

106. The Tribunal further notes the Respondent's assertion that certain bonds concerning Jordan Freighters Limited and Corporate Business Forms CDF Limited had previously been acknowledged as genuine, this assertion does not, without identification and proof connecting those particular instruments to the Kshs. 186,339,123 presently demanded, establish the Appellant's liability for all the Alien Bonds now in dispute. Liability under Section 109 must attach to the particular security sought to be enforced and cannot be inferred generally from the existence of other security bonds which the Appellant may at some point have validly issued.

107. Indeed, the evidence demonstrates that the Appellant distinguished between bonds which it accepted as having originated from it and those which it disputed. In relation to other customs security bonds, the Appellant acknowledged issuance and addressed their cancellation status that distinction lends weight to its contention that its denial concerning the Alien Bonds was not a general attempt to avoid liability for all outstanding customs securities, but a specific challenge to the authenticity and origin of the instruments forming the subject of the present demand.

108. The Tribunal therefore finds that the Appellant discharged its evidential burden by producing competent and relevant evidence demonstrating that the impugned Alien Bonds were neither executed nor authorised by it. The evidential burden thereafter shifted to the Respondent, which it did not rebut or otherwise establish that the Appellant was the person who had given the security within the meaning of Section 109(1) of EACCMA.

109. In those circumstances, the statutory foundation upon which the Respondent sought to enforce the impugned Alien Bonds against the Appellant was not established. The Respondent cannot enforce payment under Section 109 against a person who, on the evidence before the Tribunal, has not been shown to have given or authorised the security in question.

110. The Tribunal accordingly finds and holds that the Respondent was not justified in demanding that the Appellant liquidate the impugned alien security bonds.

FINAL DECISION

111. The upshot to the foregoing is that the Appeal is meritorious and the Tribunal accordingly proceeds to make the following orders: -

a. The Appeal be and is hereby allowed;

b. The Review Decision dated 23rd June 2025 be and is hereby set aside;

c. Each party to bear its own cost.

112. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF SEPTEMBER, 2026

SIGNED BY:

HON. EUNICE NJERI NGANGA
HON. BONIFACE KIBIY TERER
HON. SANKALE SPENCER OLOLCHIKE
HON. BILLY GRAHAM OKUMU MIJUNGU

THE JUDICIARY OF KENYA.
TAX APPEALS TRIBUNAL
TRIBUNAL
DATE: 2026-09-15 14:10:24+03