SEPTEMBER 2026

ORARO & COMPANY
ADVOCATES
An Affiliate Member of AB & DAVID AFRICA

LEGAL ALERT

Not My Bond, Not My Burden: Tribunal Shields an Insurer from KES 186 Million Customs Bonds Demand

Not My Bond, Not My Burden: Tribunal Shields an Insurer from KES 186 Million Customs Bonds Demand

Introduction

For years, a troubling pattern has plagued the insurance industry. Importers and taxpayers are found holding customs security bonds allegedly issued by an insurer, and when the underlying obligations go unpaid, Customs turns around and demands payment from the insurer even where the insurer never issued, signed, or authorised the bond in question. Such bonds, bearing an insurer's name and seal, have increasingly become the launchpad for multi-million-shilling demands, leaving insurers exposed for instruments they had no hand in creating.

The Tax Appeals Tribunal (the "Tribunal"), in its recent decision in TATC/E872/2025: Jubilee Life Insurance Company Limited vs. the Commissioner of Customs & Border Control, wherein we represented the insurer, offers timely and much-needed relief on this exact problem, confirming that an insurer cannot be compelled as a surety to pay for bonds it never issued, and further clarifying what is considered an appealable "Review Decision" under the East African Community Customs Management Act ("EACCMA").

The Dispute

Between 2017 and 2025, the Commissioner pursued the insurer for KES 186,339,123 over bonds it claimed had been issued by the insurer as surety for various importers. The insurer denied the allegation, and, in its denial, produced its Sealed Documents Register and client records showing the alleged importers/taxpayers were never its clients. The insurer also provided sworn affidavits from former authorised signatories disowning the signatures attributed to them. The matter was also reported to the DCI, which, upon conducting forensic investigations, confirmed that the signatures on the disputed bonds were not authored by the insurer's officials and that the seals affixed materially differed from the insurer's genuine seal, in effect, confirming the bonds were not issued by the insurer.

Despite this, the Commissioner maintained the demand, rejected the insurer's comprehensive review application on the tenuous argument that section 229 of EACCMA "did not apply," and gave the insurer seven days to pay or face enforcement. The insurer therefore had no option but to appeal the Review Decision to the Tax Appeals Tribunal as provided under section 229 of EACCMA.

Determination

The Tribunal settled two central questions.

a) Jurisdiction

On jurisdiction, the Commissioner argued its rejection letter was mere "correspondence," not an appealable Review Decision and therefore the Tribunal had no jurisdiction to consider the appeal at all. The Tribunal disagreed with the Commissioner and held that a Review Decision is defined by its substance and effect, not the label the Commissioner gives it. Where the Commissioner considers a review application, maintains the demand, and threatens enforcement, that is a Review Decision under section 229(4) of EACCMA notwithstanding whatever the Commissioner decides to call it. The Tribunal also noted that the Commissioner could not have it both ways: if the letter genuinely was not a decision, then by section 229(5) of EACCMA, the review would be deemed allowed by default for want of a timely response.

Not My Bond, Not My Burden: Tribunal Shields an Insurer from KES 186 Million Customs Bonds Demand

b) Burden of Proof and Liability

The Tribunal held that section 109 of EACCMA only allows the Commissioner to enforce a bond against "the person who has given security under it". A bond merely bearing an insurer's name is not enough. There must be a real evidential link between the insurer and the instrument. The insurer's documentary, testimonial, and forensic evidence established a prima facie case that it never issued the bonds, shifting the evidential burden to the Commissioner. The Commissioner failed to discharge this burden, offering no rebuttal to the DCI findings and relying instead on the bare assertion that the bonds were "undischarged". The Tribunal rejected this as a circular argument and held that a bond cannot be undischarged by a party that never gave it. The Tribunal further clarified that liability cannot be inferred generally from other bonds an insurer may have validly issued elsewhere. Each disputed bond must stand or fall on its own evidence. The appeal was therefore allowed, the Review Decision set aside, and each party left to bear its own costs.

Significance of the Judgment

This decision is a significant shield for insurers against the menace of customs bonds alleged to have been issued but which in fact were not, in fact, issued by the named insurers. Two principles now stand clear:

a) The burden-shifting test is affirmed: the An insurer disowning a disputed bond must produce cogent, competent evidence including, but not limited to, internal registers, client records, signatory affidavits, and forensic verification where possible to show it did not issue the alleged instruments. Once that threshold is met, the burden shifts to the Commissioner to prove the bond was genuinely given by the insurer. A bare claim that a bond is "outstanding" or "uncancelled" will no longer cut it.

b) Substance beats form: The Commissioner cannot defeat a taxpayer's statutory right of appeal by simply declining to call a decision a "Review Decision", or by asserting a review provision "does not apply". As the Tribunal plainly puts it, one cannot judge a decision by its cover, its true character lies in what it says, its effect, and the circumstances preceding its issuance, not in how it is titled.

For insurers, the practical takeaway is just as important. In addition to seeking sound legal advice, disciplined internal documentation is not paperwork for its own sake. It is the difference between a multi-million-shilling liability and a complete, evidence-backed defence.

DISCLAIMER

This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the authors Renee Omondi, Partner (renee@oraro.co.ke) and William Ochieng, Associate (william@oraro.co.ke) – or your usual contact at our firm for legal guidance.

Not My Bond, Not My Burden: Tribunal Shields an Insurer from KES 186 Million Customs Bonds Demand

Renee Omondi

Partner

William Ochieng

Associate

ORARO & COMPANY
ADVOCATES
An Affiliate Member of AB & DAVID AFRICA

ACK Garden Annex, 6th Floor, 1st Ngong Avenue
P. O. Box 51236-00200, Nairobi, Kenya.
T: +254 709 250 000
E: legal@oraro.co.ke
www.oraro.co.ke