



REPUBLIC OF KENYA



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**Monarch Insurance Company Limited v Commissioner of Customs & Border
Control (Commercial Appeal E038 of 2024) [2025] KEHC 12729 (KLR)
(Commercial and Tax) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E038 OF 2024
JK NG'ARNG'AR, J
SEPTEMBER 18, 2025**

BETWEEN

MONARCH INSURANCE COMPANY LIMITED APPELLANT

AND

COMMISSIONER OF CUSTOMS & BORDER CONTROL RESPONDENT

*(Being an Appeal from the judgment of the Tax Appeals Tribunal
delivered on 9th August 2024 in Nairobi Tax Appeals No. E876 of 2023)*

JUDGMENT

1. The Respondent herein, Commissioner of Customs & Border Control conducted an audit on its Simba system and during reconciliation process noted that a taxpayer/importer Alicia Freighters Limited (Alicia) had an outstanding unaccounted security bond amounting to Kshs. 27,185,329.00. The Respondent vide a letter dated 27th July 2023 issued a demand notice to account for the outstanding unaccounted security bond amounting to Kshs. 27,185,329.00 within 14 days.
2. The appellant, Monarch Insurance Company Limited responded vide a letter dated 2nd October 2023 requesting additional information to enable it address the demand and the Respondent provided the information. The Respondent made a review vide a letter dated 4th October 2023 on account that the amount of time (14 days) granted by the Respondent was not sufficient to address the demand. The appellant granted the appellant additional 7 days to revert and the appellant being aggrieved by the Respondent's decision filed an appeal dated 14th December 2023.
3. The Tax Appeal's Tribunal delivered its judgment on 9th August 2024. The Tribunal dismissed the appeal and upheld the Respondent's demand dated 18th September 2023.



4. Being dissatisfied by the judgment, the appellant preferred an appeal before this Court by way of a Memorandum of appeal dated 4th October 2024 setting out the following grounds;
- i. That the Tribunal erred and misdirected itself by holding that the Appellant had not discharged its statutory burden of proof by failing to provide explanations and documentary evidence to demonstrate that the Respondent's demand of outstanding custom security bonds was excessive and incorrect.
 - ii. That the learned members of the Tribunal fell into grave error and misdirected themselves in law by requiring the Appellant to produce evidence of cancellation of CB8 Customs Transit Security Bonds in relation to years 2011 to 2013, which requirement was onerous and in violation of the Appellant's right to adequately required to keep such records.
 - iii. That the Tribunal erred in not considering the policy behind the legal requirement to cancel the CB8 Custom Transit Bonds within 1 to 3 years. The policy being to ensure there is no dumping. And in allowing an unlimited amount of time within which the regulator can enforce such cancellations flies in the face of this policy objective.
 - iv. That by requiring the Appellant to produce evidence of cancellation of CB8 Customs Transit Security Bonds after the lapse of the statutory five (5) years during which the Appellant was required to keep such records, the learned members of the Tribunal effectively breached the Appellant's right to fair administrative action and to a fair hearing guaranteed under Articles 47 and 50 (1) of *the Constitution* of Kenya.
 - v. That the learned members of the Tribunal erred and misdirected themselves by sanctioning the enforcement and payment of CB8 Customs Transit Security Bonds which the Commissioner was required to discharge after the expiration of three (3) years from the date they were issued pursuant to Section 107(3) of EACCMA.
 - vi. That the learned members of the Tribunal erred and misdirected themselves in law by failing to properly consider the provisions of Section 107(3) of EACCMA alongside the principle that there cannot be any estoppel against the law, by finding and holding that the Appellant failed to show how it discharged the conditions bestowed upon it when it entered into the contracts with its various principals.
 - vii. That the learned members of the Tribunal erred and misdirected themselves in law by ignoring the principle that when tax legislation is ambiguous, in this case, the provisions of Section 107 (3) and 108 (1) of the EACCMA, the ambiguity ought to be interpreted in favour of the taxpayer.
 - viii. That the learned members of the Tribunal erred and misdirected themselves in law by sanctioning the enforcement and payment of CB8 Customs Transit Security Bonds which laboured under the handicap of limitation of action pursuant to Section (4) (1) of the *Limitation of Actions Act* CAP 22 Laws of Kenya.
 - ix. That the Tribunal erred in law in affirming a Review Decision where the Commissioner had failed to first demand and/ or pursue the Principal Debtors for the outstanding import duties before purporting to demand due performance for expired CB8 Customs Transit Security Bonds.



- x. That the Tribunal misdirected itself by failing to find that the Commissioner's demand for outstanding CB8 Customs Transit Security Bonds was unjust and in breach of the Appellant's legitimate expectation.
5. The Appellant prays this Honourable Court grants the following orders That:
 - a. This Appeal be and is hereby allowed.
 - b. The Judgment of the Tax Appeals Tribunal dated 9th August 2024 be and is hereby set aside.
 - c. The Respondent's decision under review dated 17th October 2023 be set aside.
 - d. The Respondent, by himself or through any of his agents, employees or officers, be barred and/or estopped from demanding or taking any further steps towards enforcing the demand embodied in the letter dated 17th October 2023 ostensibly issued under the provisions of Section 109 of the East African Community Customs Management Act.
 - e. The costs of Appeal herein and the Appeal before the Tax Appeals Tribunal.
 6. In response to the Memorandum of appeal, the Respondent filed a statement of facts dated 10th February 2025. In summary the Respondent states that the Taxpayer Alicia failed to respond to the notice prompting the Respondent to issue a reminder vide a letter dated 29th August 2023. The Taxpayer did not revert to the reminder leaving the Respondent to invoke Section 109 (1) of the East Africa Community Customs and Management Act (EACMMA) 2004 to demand the duty from the Appellant who was the guarantor of Alicia vide letter dated 18th September 2023.
 7. The appellant sought for additional information and the Respondent vide a letter dated 3rd October 2023 provided the information requested by the appellant. Vide a letter dated 4th October 2023 the appellant made an application for review on grounds that the 14 days was not sufficient to address the demand. The Respondent vide a letter dated 17th October 2023 granted the appellant additional 7 days to revert to the demand issued. The Respondent's letter dated 17th October 2023 was not decision contemplated under Section 229 of EACMMA since the Appellant's letter dated 4th October 2023 was simply contesting the amount of time granted by the Respondent.
 8. The Respondent instead of responding to the demand proceeded to the Tax Appeals Tribunal.
 9. This appeal was canvassed by way of written submissions. The Appellant's submissions are dated 28th April 2025 whereas the Respondent's submissions are dated 9th May 2025. I will proceed to consider the rival submissions in my analysis and determination.

Appellant's submissions

10. The Tribunal was questioned by the Appellant regarding its failure to provide evidence to support its assertion that the Respondent's demand for outstanding custom security bonds was excessive and incorrect. The Appellant argued that the Tribunal fell into serious error in requiring the Appellant to produce evidence of the cancellation of Custom Bonds executed between it and the principal in the years 2011 and 2013, more than ten years before the Respondent issued the demands. The Appellant argued that this requirement was onerous and violated the Appellant's right to adequately defend itself after the lapse of the statutory seven years during which the Appellant was required to keep such records.
11. The Tribunal failed to appreciate the factual background in the case and failed to consider pertinent matters which, if considered, would have arrived at a different and lawful conclusion. The Appellant



should have considered the custom security bonds that the Commissioner demanded performance related to bonds issued over a decade ago, as in customs law pursuant to Section 235 of the EACCMA, the Appellant was only required to maintain records in respect of those bonds for five years. The Appellant was an insurance company under Section 55 of the *Insurance Act*, and under Section 107(3) of the EACCMA, the person giving the bond or any surety is bound to the Commissioner for the due performance of the conditions of the bonds to the satisfaction of the Commissioner.

12. The Appellant argued that the Respondent's Simba Systems implied that the conditions of the bonds have not been fulfilled or cancelled by the surety. However, the Appellant's Simba System should conform to the law. The Appellant argued that the terms of the custom security bonds were binding contractual terms, and the parties expressly agreed only to be bound by those terms.
13. The Appellant also failed to consider the validity period of the Custom Security Bonds sought to be enforced by the Respondent, which expired on the dates appearing on the face of the Security Bonds. The Tribunal also failed to consider Section 120 of the *Evidence Act*, which provides for general estoppel. The Appellant was also unable to argue that the bond still subsists after its expiry and seeking to enforce the securities beyond the periods stipulated therein. In conclusion, the Appellant's failure to provide evidence and explain its obligations to the Respondent led to a legal dispute.

Respondent's submissions

14. The Tax Appeals Tribunal was tasked with determining if the Tribunal erred in dismissing the Appellant's Appeal for being devoid of merit. The Respondent conducted an audit on their Simba system and discovered that Alicia Freighters Limited had an outstanding unaccounted security bond of Ksh. 27,185,329. The Respondent issued a demand letter to Alicia to account for the bond within 14 days, but Alicia failed to respond, prompting a reminder. The Respondent invoked Section 109(1) of the East Africa Community Customs and Management Act (EACMMA) 2004 to demand the duty from the Appellant, who was the guarantor of Alicia.
15. The Appellant reverted to the Respondent, who provided the requested information. The Appellant applied for review, arguing that the 14-day time granted was insufficient. The Respondent granted the Appellant an additional 7 days to revert. The Appellant filed the Appeal at the Tax Appeals Tribunal.
16. The Tax Appeal Tribunal dismissed an appeal for being devoid of merit, citing the principle that the second appellate court is restricted to dealing with matters of law only and not inviting the court to review evidence. The appellant challenged the amount of time the Respondent gave the Appellant to respond to the demand letter, which was the only issue with respect to the challenged decision.
17. The Respondent submitted that its letter dated 17th October 2023 did not amount to a review decision but a response to the Appellant's letter dated 4th October 2023, contesting the amount of time they were granted to respond to the demand. Other issues outside the scope of the decision being challenged were equally considered and dismissed for failure to discharge the burden of proof by providing the required documentation.
18. The Respondent submits that the 14 days they gave the Appellant to liquidate the amount demanded is provided for as such in the statute and there was nothing irregular in their demand. Section 109 (1) of EACCMA states that when 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 them the amount of the security within fourteen days of the notice.
19. The Respondent submits that since the Appellant's letter dated 4th October 2023 was contesting the Commissioner's decision to decline the request for a further 30 days to respond to the demand, there



was nothing to review save for the timelines. They argue that their hands were tied since they had already granted the 14 days provided within the law.

20. The Respondent submits that their letter dated 17th October 2023 was not decision contemplated under Section 229 of EACCMA since the Appellant's letter dated 4th October 2023 was simply contesting the amount of time granted by the Respondent. There was nothing unreasonable, unfair, or unjust in demanding for accountability of outstanding bond within 14 days since the Appellant's letter dated 4th October 2023 was simply contesting the amount of time granted by the Respondent.

Analysis and determination

21. I have considered the Record of appeal, the statement of facts, the rival submissions together with the authorities relied upon. I find the following issue distilling for determination in this appeal;
- i. Whether the Tribunal erred in holding that the Appellant had not discharged its burden of proof?
 - ii. Whether the enforcement of the bonds were issued contrary to Section 107 (3) of the EACCMA and the *Limitation of Actions Act*?
 - iii. Whether the Respondent's demand for payment without first pursuing the principal Debtors is justified.
22. On the first issue, Section 30 of the *Tax Appeals Tribunal Act* places the burden on the taxpayer to prove that a tax decision is incorrect. In its findings the Tribunal held that the Appellant failed to demonstrate by documentary evidence that the bonds in question had been cancelled or discharged. The Appellant contends that it was unreasonable to require such records more than a decade after execution when Section 235 of EACCMA requires a taxpayer to keep records for only five years.
23. The said Section provides thus;
- 235.
- (1) The proper officer may, within five years of the date of importation, exportation or transfer or manufacture of any goods, require the owner of the goods or any person who is in possession of any documents relating to the goods–
 - a. to produce all books, records and documents relating in any way to the goods; and
 - b. to answer any question in relation to the goods; and
 - c. to make declaration with respect to the weight, number, measure, strength, value, cost, selling price, origin, destination or place of transshipment of the goods, as the proper officer may deem fit.
24. In my considered view, the appellant's argument is merited as the statutory duty to retain records is expressly limited. Further, once the statutory period lapses, the taxpayer cannot reasonably be compelled to produce documentation. To hold otherwise would expose taxpayers to perpetual liability contrary to the principle of certainty in taxation. Having said so, this Court agrees with the appellant that the Tribunal erred in failing to appreciate this statutory safeguard.



25. On the second issue, Section 107 (3) of the East African Community Customs Management Act (EACCMA) provides as follows;

“(3) 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.”

26. The interpretation I gather from the above provision is that the bond unless discharged by due performance of the conditions, it will be discharged by the Commissioner on the expiration of three years. The appellant was entitled to expect enforcement of the C8B bonds within a reasonable time frame. In my considered view, failure by the Respondent to enforce the bonds within the statutory period was unreasonable.

27. Again, Section 4 (1) of the *Limitation of Actions Act* bars cause of actions founded on contract after six years. The said Section stipulates that;

4.

(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued—

- a. actions founded on contract;
- b. actions to enforce a recognizance;
- c. actions to enforce an award;
- d. actions to recover a sum recoverable by virtue of a written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture;
- e. actions, including actions claiming equitable relief, for which no other period of limitation is provided by this Act or by any other written law.

28. Section 109 of the EACCMCA provides that;

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.
2. Nothing in this section shall, unless the Commissioner otherwise allows, discharge the person who has given security under section 108 from the obligations entered into by him or her under this Act or under any other law.

29. From the pleadings, the customs bonds were executed in the years 2011 and 2013 and the Respondent initiated enforcement in 2023 beyond the statutory period under the law. There is no evidence on record that the Respondent sought for extension to enforce the bonds beyond the statutory period. It is trite law that statutory limitation periods are cast on stone and cannot be circumvented on public interest. The Respondent’s claim was time barred not capable of being enforced.



30. The conclusion this court draws from the said provisions is that Section 109(1) of EACCMA does not override the temporal limits under Section 107(3) which limits the time to three years.
31. In regards to the last issue, the Appellant has argued that the Respondent should first have pursued Alicia Freighters Limited before calling upon the surety. Section 108 of the EACCMA provides as follows:
1. Without prejudice to any rights of a surety to any bond given under this Act against the person for whom he or she is surety, a surety shall, for all the purposes of any bond, be deemed to be the principal debtor and accordingly the surety shall not be discharged, nor his or her liability affected, by the giving of time for payment, or by the omission to enforce the bond for any breach of any conditions thereof, or by any act or omission which would not have discharged the bond if he or she had been the principal debtor.
32. From the cited provision the law allows the Respondent to pursue the surety directly without having to pursue the principal debtor first. The law recognizes the surety as the principal debtor. I find no fault in pursuing the surety in the circumstances.
33. Based on the foregoing, the appellant's appeal is merited and this Court proceeds to issue the following orders;
- a. The Appeal is hereby allowed.
 - b. The Judgment of the Tax Appeals Tribunal dated 9th August 2024 in Nairobi Tax Appeal No. E876 of 2023 is hereby set aside.
 - c. The Respondent's demand contained in the letter dated 17th October 2023 is hereby quashed.
 - d. Each party will bear its own costs of the appeal.

It is so ordered.

JUDGEMENT DELIVERED, DATED AND SIGNED VIRTUALLY THIS 18TH DAY OF SEPTEMBER, 2025.

..... ..

HON JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Susan (Court Assistants)

Nyapera for the Appellant

Mandela for the Respondent

