**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. CIVIL APPLICATION NO. 59 OF 2013**

**IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF: THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT 2004**

**AND**

**IN THE MATTER OF: AN APPLICATION BHY KRISH COMMODITIES LIMITED FOR LEVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW AGAINST THE DECISION BY THE KENYA REVENUE AUTHORITY DEMANDIGN KSHS. 26,215,578.00 ON ACCOUNT OF DUTY ALLEGEDLY UNDERPAID AND ISSUING AND AGENCY NOTICE THEREFORE**

**BETWEEN**

**KRISH COMMODITIES LTD…….. APPLICANT**

**VERSUS**

**KENYA REVENUE AUTHORITY…….…RESPONDENT**

**JUDGMENT**

1. The sole issue for determination in this Application is whether the demand by the Respondent for the sum of Kshs. 26,215,528/= or any other amounts on account of duty allegedly uncollected due to the application of a lower duty rate was awrongful and unlawful action, and whether therefore orders of certiorari and prohibition should issue, to quash the demand notice, and prohibit the Respondent from making any such demands on account of alleged underpayment of duty/taxes in respect of the various importation of consignments of rice made by the Applicant which were cleared by the Respondent under Entry Nos. 2008 MSA 1524652, 2008 MSA 1624728, 2009 MSA 1583016, 2009 MSA 1050489, 2009 MSA 1717824 and 2009 MSA 1718645.

2. The Applicant contends that the Respondent on 2nd October, 2009, unlawfully and without any basis or justification whatsoever detained and withheld the ex parte Applicants' ten (10) containers of goods on account of Kshs. 26,215,578/= despite having passed the Entries and having received the duty and VAT amounts payable, and that any discussion to resolve the matter failed.

3. The Applicant therefore claims that its constitutional right to fair administrative action as guaranteed

under Article 47 of the Constitution has been and continued to be infringed by the Respondent.

4. The Applicant also claims that the conduct is not only **ultra vires**, but that it is an abuse of power as well as wrongful and unlawful, and that the action has caused the Applicant irreparable loss and damage, the detained goods being of a perishable nature and would be useless if they were not released to the Applicant.

5. The Applicant claims further that the Respondent has acted unfairly, unlawfully and maliciously and its conduct would cause the Applicant grave damage, and concludes that the only remedy available is to quash the decision by order of certiorari.

**The Application**

6. The Notice of Motion seeking the orders of certiorari and prohibition is dated 28th October, 2013 and was filed on 29th October, 2013. It is supported by the grounds on the face of it, the Affidavit Verifying the Facts of **Mital Shah** sworn on 9th October, 2013 and filed in support of the Chamber Summons for leave to commence judicial review proceedings of orders of certiorari and prohibition dated and filed on 8th October, 2013.

7. The Notice of Motion is also supported by the written submissions of counsel for the Applicant dated 3rd July, 2015 and filed on 6th July, 2015 and the authorities cited and annexed thereto, and the further authorities of –

1. KENYA REVENUE AUTHORITY ex parte UNNIVERSAL CORPORATION (JR APPL. NO. 460 OF 2013)

2. IMMANUEL MASINDE OKUTOYI & OTHERS VS. THE NATIONAL POLICE SERVICE COMMISSION & ANOTHER [2014]eKLR

3. ERICSSON KENYA LIMITED VS. ATTORNEY- GENERAL & 3 OTHERS [2014]eKLR

8. The application was however opposed by the Respondent through **firstly**, the Replying Affidavit of Franklin Onjala Ombaka an Assistant Commissioner within the Respondent's Post Clearance Audit Unit. The Respondent also relied upon the List of Authorities dated and filed on 6th May, 2015, the written submissions dated and filed on 30th April, 2016, the Respondent's further written submissions dated 16th May, 2016 and filed on 17th May, 2016. In brief the Respondent's case is that it acted within the provisions of the law, and that the orders of certiorari and prohibition sought by the ex parte Applicant do not lie.

**The Applicant's Case**

9. The ex parte case is that as an importer of rice, it paid all the importation taxes (customs and VAT) upon the calculations and demand under the Respondent's automatic clearance procedures then known as **Tradex Simba System** which is acknowledged as a full-proof system operated without any external interference once the importer identifies the tariff number for the goods imported and the ex parte Applicant paid all the taxes identified under the system.

10. The ex parte Applicant consequently contends that having paid all the taxes due for the imports made in the years 2008 and 2009, it was unlawful and wrongful for the Respondent to demand nearly four years later in 2012, to demand an alleged shortfall of Kshs. 26,215,578/= and the further colossal of Kshs. 355,551,090/= on account of duty and VAT allegedly underpaid for the very same consignments.

11. The ex parte Applicant therefore contends that the Respondent failed to accord it any hearing and refused, neglected and/or failed to respond to the queries raised by the ex parte Applicant through correspondence by their Advocates.

12. While acknowledging the Respondent's statutory mandate to collect taxes, and it is in the public interest that it does so, the ex parte Applicant contends that in the exercise of its administrative mandate, the Respondent must act and conduct itself fairly and pursuant to the national values and principles of governance, including **inter alia** good governance, integrity, transparency and accountability enshrined in Articles 10, and 47 of the Constitution of Kenya 2010. Counsel relied on the decision of Majanja J in **TATA CHEMICALS MAGADI LIMITED vs. THE COMMISSIONER OF DOMESTIC TAXES (LARGE TAXPAYERS, [2014]eKLR** in which the court quashed by order of certiorari, the decision of the Respondent purporting to set-off the sum of Kshs. 235 million from the Petitioner's VAT refunds for being a violation of the Petitioner's right under Article 47 of the Constitution. It directed the Respondent to process and pay out part of the Applicant's VAT refund outstanding. The court said –

> **"The purpose of Article 47 is to uplift the standards of administrative action by providing constitutional standards (see DRY ASSOCIATES LIMITED vs. CAPITAL MARKETS AUTHORITY & ANOTHER [2011] eKLR). The national values and principles of good governance articulated in Article 10 among them good governance, integrity, transparency and accountability must be infused in administrative actions."**

13. The case of **REPUBLIC vs. KENYA REVENUE AUTHORITY, ex parte LAB INTERNATONAL KENYA LIMITED [2011]eKLR**, where Ojwang J as he then was, now Judge of the Supreme Court, another case of refunds, the learned Judge said –

> **"In practical terms, the government has a public duty to effect charge to any unprogressive arrangements, such as those that may characterize the operational linkage of Respondent to the slothful structures, capable of responding to the overriding demands of the Constitution; and in this regard, ordinary statutory arrangements cannot qualify the constitutional provisions. On this account the Respondent has no justification for failing to make VAT refunds timeously."**

14. A similar decision was rendered in **KENYA DATA NETWORKS LIMITED vs. KENYA REVENUE AUTHORITY** (Petition No. 87 of2012) with regard to the need for efficiency in processing VAT refunds where Mumbi J said –

> **"The Respondent had a duty to act…timeously while recognizing that it is mandated by statute to collect taxes, and while appreciating the pivotal role that collection of taxes plays in a country's economic development and provision of services for citizens, KRA must also be always cognizant of the possible ramifications of its actions or omissions in dealing with taxpayers, and the impact or investments, revenue collection and the general welfare of the county. While there is no statutory period within which KRA ought to make good tax refund claim, it cannot have any basis for failing to process tax refund claims several months, and in some cases, several years after they were made. It is no answer to the Petitioner's claims for tax refund for the Respondent to demand in turn that the Petitioner pays arrears of tax."**

15. The Respondent's counsel also referred to the decisions of the court in **REPUBLIC vs. COMMISSIONER FOR HIGHER EDUCATON, ex parte Peter Soita Shitanda [2013]eKLR**, and **KEROCHE INDUSTRIES LIMITED vs. KENYA REVENUE AUTHORITY & 5 OTHERS [2007]eKLR 240** as well as the case of **PASTOLI vs. KABALE DISTRICT LOCAL GOVERNMENT COUNCIL [2008]2EA 300.**

16. Counsel for the Applicants also questioned the applicability of the East African Customs Management Act 2004 because according to counsel, that Act has not been ratified by Kenya, and that the applicable registration is the Customs and Excise Act, [Cap 472,Laws of Kenya], which counsel submitted provides for the management and administration of the customs, for the assessment, charge and collection of customs and excise duties, and matters relating thereto, and connected therewith, and subsists and is good law.

17. Counsel submitted that under Tariff Code 100 6400 applicable to broken rice contained in the First

Schedule to the Act, the applicable rate of duty is specified as Kshs. 20 per kg or 35%, and it is the ex parte Applicant's submissions that this rate has not been amended in law and continues to subsist as the lawfully collectable duty on importation of rice hence, counsel submitted, the specification of the rate as the import duty payable on the integrated Tariff Management Tradex Simba System used by the Respondent.

18. Finally counsel submitted that the conduct of the Respondent is questionable, particularly in light of the correspondence exchanged in so far as fair administrative action and its legitimate expectations are concerned.

19. Counsel submitted that by reason of the Respondent's belated demand – almost four years after clearance of the imported cargo for which an alleged underpayment of duty is being claimed, the ex parte applicant stands to suffer immense loss and irreparable damage as the additional cost on the goods (which would ordinarily be factored into the cost of goods so as to determine the selling price), will remain irrecoverable.

20. In the circumstances, the ex parte Applicant's counsel submitted by denying the Applicant the right to be heard on the proposed levy of additional duty, allegedly underpaid, and not considering the substantial and irrevocable loss the ex parte Applicant stood to suffer as a result of the four year delay, the Respondent not only acted irrationally but also in excess and abuse of its powers by seeking to recover monies not due by enforcing collection through the detention and/or seizure of goods/accounts. The ex parte Applicant's counsel therefore urged the court to allow the Application with costs to the ex parte Applicant.

21. Finally counsel for the ex parte Applicant urged that the orders made herein shall **mutatis mutandis** apply to –

(1) Miscellaneous Application No. 11 of 2013

Republic vs. K.R.A. ex parte Mshaale Commodities Limited;

(2) Miscellaneous Application No. 12 of 2013

Republic vs. K.R.A. ex parte Hussaba Trading Company Limited;

(3) Miscellaneous Application No. 13 of 2013

Republic vs. K.R.A. ex parte Bandari Commodities Limited.

**The Respondent's Case**

22. As earlier stated, the Respondent's case is found and set out **firstly** in the Replying Affidavit of Franklin Onjala Ombaka sworn on 6th December, 2013 and filed on the same day, **secondly**, the submissions of counsel for the Respondent dated 30th April, 2013 and filed on 9th May, 2013, and **thirdly**, the List of Authorities dated 6th may, 2013 and filed on 9th May, 2013.

23. The substance of the Respondent's case is that it has power under the East African Community Customs Management Act 2004, and in particular Section 135, 144, 235(3) and 236 thereof to demand for payment of short levied tax or in this case, customs duty and VAT for imports. The ex parte Applicant rejects this argument and submitted that the East African Community and Customs Management Act is not part of Kenya Law on the ground that it had not been ratified by Kenya and that the applicable law is the Customs and Excise Act, [Cap 474, Laws of Kenya]. The first issue therefore is to determine whether or not the East African Community Customs Management Act 2004 (EACMA), is law in Kenya, and thereafter determine whether the ex parte Applicant is entitled to the orders of certiorari and prohibition sought in the motion, the subject of this Ruling.

**Of whether the East African Community Customs Management Act is part of Kenya Law**

24. The other way of asking that question is what is the place of laws of the East African Community in Kenya? I think this question was adequately answered in the Respondent's counsel's further submissions dated 16th May, 2016, and filed on 17th May, 2016. I have perused those submissions most carefully as well as the provisions of the Treaty Establishing the East African Community, and I am of the considered view that the East African Community Customs Management Act, (hereafter referred to as EACMA), is valid law in Kenya, and its provisions are therefore enforceable by the courts of Kenya. These are my reasons for that conclusion and holding.

25. EACCMA derives its force of law from the provisions of Section 8 of the Treaty for the Establishment of the East African Community, 2000, (Act No. 2 of 2000). Section 8 of that Act provides as follows –

> **"8(1)The provisions of any Act of the Community shall, from the date of publication of that Act in the Gazette, have the force of law in Kenya.**
>
> **(2) An Act of the Community shall come into operation on the date of publication in the Gazette or, (if it provided in that Act that or some or all provisions shall come into operation on some other date (whether before or after the date of publication) those provisions shall come into operation on that other date."**

26. I agree with the submissions of counsel for the Respondent that having been duly published in the East African Gazette Notice No. 1 of 4th January, 2005, the EACCMA came into force on 14th January, 2005, the date of publication in the Gazette in terms of Section 8(1) of the Treaty for the Establishment of the East African Community.

27. I also find and hold that the EACCMA, 2004 was immediately implemented in Kenya by virtue of the Finance Act 2005 (Act No. 6 of 2005) which introduced various amendments to the Customs and Excise Act, [Cap 472, Laws of Kenya), and the Value Added Tax [Cap 476, Laws of Kenya] by deleting references to the Customs and Excise Act, and substituting in lieu thereof therefore the "EACCMA".

28. Likewise, by virtue of the Finance Act, 2007, the First Schedule to the Kenya Revenue Authority Act [Cap 469, Laws of Kenya], the EACCMA, and the Annexes to the Protocol on the Establishment of the East African Community Customs Union (EACCU) as part of the Acts which are administered by KRA.

29. In addition Section 253 of EACCMA provides -

> **"S.253. This Act shall take precedence over the Partner States laws with respect to any matter to which its provisions relate."**

30. It is thus not only clear that the laws of the East African Community become operational upon the publication but also take precedence over any Partner States' law with regard to any matter it relates to. This view was confirmed by the decision of the court in **CRYWAN ENTERPRISES LIMITED vs. KENYA REVENUE AUTHORITY [2015]eKLR** where the court observed –

> **"…I would like to point out that the provisions of the Customs and Excise Act (Chapter 472 of the Laws of Kenya) do not apply to or take precedence over matters dealt with by EACMA since it came into force in January, 2005 by virtue of Section 253 of EACMA."**

31. The inevitable conclusion must therefore be that the Customs and Excise Act [Cap 472, Laws of Kenya] has no role, and cannot be relied upon in these proceedings.

32. This, thus leave us, with the gravamen of this matter, and that is, what was the applicable common external tariff (CET) upon the importation of rice into Kenya from countries outside the East African Community? The answer to this question is critical to the ultimate question whether the Respondent was

legally entitled to demand from the ex parte Applicant, payment of the shortfall in taxes for the importation of rice from Vietnam or other country other than Pakistan, or whether the Respondent abused its power under the EACCMA by demanding such underpaid duty nearly five years after the importation of the commodity. A chronology of the various Legal Notices will show that the common external tariff for imports of rice into the East African Community was 75%, but that in respect of Kenya, that rate was stayed for two year periods from 2005 to 2009 in respect of imports of rice from Pakistan into Kenya for which the external tariff would be 35%.

33. Though the ex parte Applicant submitted strongly that there was ambiguity in the law allegedly because there was a lacuna in the provision regulating the importation of rice into the country, there is however proof that there was no such lacuna. These are the reasons.

34. **Firstly**, Article 12(3) and 39(l)(c) of the Protocol on the Establishment of the East African Community Customs Union enables the Council Ministers to review various provisions of the East African Common External Tariff (EAC CET), and any legal notice thereunder.

35. **Secondly**, under Legal Notice No. 1 of 2005, (Common External Tariff – CET), item 14, the Council of Minister reviewed the common external tariff, and decided that it would remain the same except for Kenya.

> **"Kenya shall stay the application of the Common External Tariff rate on Pakistan rice for a period of twenty four months, after which the decision would be reviewed."**

36. **Thirdly**, in Legal Notice No. EAC/10/2007, in Item 9, (Rice imported from Pakistan into Kenya under Heading 10.06, the Legal Notice states –

> **"Kenya stay application of CET and as of 75%, or US $200 per MT whichever is the higher and apply import duty rate of 35% on rice imported from Pakistan for two years."**

37. **Fourth**, in the year 2009 Legal Notice No. EAC/10/2007 was reviewed under Legal Notice No. EAC/8/2009, under Item 3. It's Code 1006.10 (Rice imported from Pakistan into Kenya), the Legal Notice provided –

> **"Kenya to stay application of import duty rate in the EAC CET apply import duty rate of 35% on rice imported into Kenya from Pakistan for two years."**

38. **Fifth**, in July 2010, Legal Notice No. EAC/8/2009 was reviewed by Legal Notice No. EAC/11/2010, and this provided that Tanzania, Uganda and Burundi would stay application of import duty, on rice, on the EAC CET but that Kenya would import a rate of 35% on rice imported into Kenya, in respect of Code Nos: Its Code (Item 2) –

> 1006.1000
>
> 1006.2000
>
> 1006.3000
>
> 1006.4000
>
> Item 2 - **Extended the stay application for import duty rate in the EAC CET and apply import duty rate of 35% on rice imported into Kenya for one year.**

39. The ex parte Applicant contends that in years 2007 and 2008, it imported various consignments of Indian Sun Brand and Vietnamese Long Grain White Rice which was cleared for importation by the Respondent, KRA, under Entry Nos. MSA 1524652, 2008 MSA 1524728, 2009 MSA 1583019, 2009 MSA 1050489, 2009 MSA 1718724 and 2009 MSA 1718645.

40. The ex parte Applicant contends that having paid the duty for the above importations it was wrongful, ultra vires and abuse of office for the Respondent to demand a sum of Kshs. 26,215,528/= in 2013, some nearly four years later alleging that it was a shortfall from the duty due under the relevant tariff codes. The Respondent on its part says that it is in law entitled to demand for the shortfall as the law permits to do so, and urges the court to dismiss the application with costs. The ultimate question therefore is whether the action of the Respondent in demanding payment of the shortfall was lawful.

**Determination**

41. This, and the related applications Nos. 11, 12 and 15 of 2013 are all about judicial review, the review of the decisions of the Respondent to demand additional duty from this Applicant in the related applications. It is not an appeal against those decisions nor is it about the merits of those decisions. As the courts have consistently held –

> **"Judicial review is concerned with the decision-making process, not with the merits of the decision itself. The court would concern itself with such issues as to whether the decision-makers had jurisdiction, whether the person affected by the decision were heard before it was made, and whether in making the decision, the decision-maker took into account relevant matters or did not take into account relevant matters. The court should not act as the Court of Appeal over the decision-maker which would involve going into the merits of the decision itself or whether there was sufficient evidence to support the decision. (See the Municipal Council of Mombasa vs. Republic & Umoja Consultant Limited (Civil Appeal No. 85 of 2001)."**

42. Similar sentiments were expressed in the English case of **CHIEF CONSTABLE OF NORTH WALES vs. EVANS [1982] 1WLR 1155** –

> **"… the court will not use, however, on judicial review application act as a "court of appeal" from the body concerned, nor will the court interfere in any way with the exercise of any power or discretion which has been conferred on that body unless it has been exercised in a way which is not within the body's jurisdiction, or the decision is Wednesbury unreasonable. The function of the court is to see that lawful authority is not abused by unfair treatment. If the court were itself to do the task entrusted to the authority by the law, the court would under the guise of preventing abuse of power be guilty of usurping power."**

42. As always in these matters, the starting point is the law. What does the law say, what power, that is to say, jurisdiction, does the law confer on the body or authority concerned? On this case the body or authority concerned is the Respondent herein. The law is the East African Community Customs Management Act 2004, and the Protocol on the Establishment of the East African Community Customs Union.

43. **Firstly**, Section 15(1) of the EACCMA empowers the proper officer (of the Respondent) where any duty has been short-levied or erroneously refunded, to demand from the person who should have paid the amount short-levied or the person to whom the refund was erroneously made to pay the amount so short-levied or erroneously refunded, and such amount may be recovered as duty. The amounts demanded are to be paid within thirty days of demand. In default they incur a penalty of five per cent, on the amount demanded, and a further two percent penalty for each month in which default in payment is not made.

44. No demand for short-levied duty or refund for erroneously refunded duty shall be made after five years.

45. The answer to the first question as to whether the Respondent **acted ultra vires** or had no jurisdiction, is in the negative. The Respondent acted ultra vires or had jurisdiction to do so.

46. The answer to the question whether it was reasonable to do so nearly four years after the clearance of the imported commodities through customs, the answer is yes, so long as the Respondent is within the

statutory period of five years, it cannot be accused of unreasonableness in the **Wednesbury** sense unreasonableness.

47. Lastly, the ex parte Applicant sought to rely upon the decision of the court in **PZ Cussons East Africa Limited vs. Kenya Revenue Authority** (High Court at Nairobi Petition No. 309 of 2012) in which the court allowed with costs, the Petition by PZ Cussons Limited and quashed by order of certiorari, the assessment by the Respondent and its decision to make demand to the Petition ("PZ Cusson") to pay taxes in excess of Kshs. 319,775,171/= being corporation tax, and Kshs. 61,609,442/= being Excise Duty allegedly due from it.

48. That case is however clearly distinguishable from the present case. **Firstly**, the assessment in the PZ Cussons was based upon missing entries from the company's export sales record, but appeared in the company's automated **Simba System**. The company PZ Cussons demonstrated that the entries were made by agents unknown to the company, and that PZ Cussons themselves wrote to the Respondent alerting it of the suspected theft. Unlike the present case, the ex parte Applicant own entries showed that it imported the consignments the subject of the suit levied taxes.

49. **Secondly**, "PZ Cussons" was denied information regarding the basis on which KRA based its tax assessment. In the present case the Respondent explained to the ex parte Applicant, the basis of the short levied taxes. In its letter dated 4th November, 2011, the Respondent stated –

> **"A desk audit conducted by the Defendant in accordance with Section 235 and 236 of the East African Community Customs Management Act has revealed that you applied wrong import duty rates as per attached schedule relating to rice importations. Please note that only rice from Pakistan was to be charged with duty rate at 35% as follows…. Rice from the rest of the world was to be imported at a duty rate of 75% or US$ 200 per MT which is higher as per the East African Community Customs External Tariff."**

50. This means that the ex parte Applicant was duly notified or informed of the reason for the demand for the short-levied tax or duty, and was not denied the right to be heard, and cannot be heard to say that their natural rights were violated in terms of Article 47 of the Constitution of Kenya 2010.

51. **Thirdly**, the "PZ Cussons" decision is distinguishable because that company maintained it had no control over what gets into *"Simba System"* because it only engaged two agents, but the disputed entries had been fraudulently entered by clearing agents the company had no knowledge of, unlike in the current and related cases. The entries had been made and entered by the ex parte Applicants' legitimate clearing agents who were authorized by the ex parte Applicant to act and acted for them.

52. **Fourth**, in the PZ Cussons case, the Respondent was aware that the missing entries were attributable to agents who were not the duly authorized agents of that company, but rather, were acting for the company's customers, and yet the Respondent wanted to penalize the company for acts done by persons who were not the company's agents. This was certainly contrary to the provisions of Article 47 of the Constitution, and in particular against the principle of fairness.

53. In the case at hand and the related cases, the ex parte Applicant admits to importing the consignments of rice into the country. The consignments in question were from India and Vietnam, and were liable to the 75% rate of duty and not 35% in respect of rice imported from Pakistan. It was clear to me that the demand by the Respondent for the short-levied duty is within its power under Sections 135 (to demand levied duty), Section 235 (the power to refuse an owner to take delivery, export goods or transfer of any other goods) and 236 (the power to inspect and verify goods), etc.

54. Finally, counsel for the ex parte Applicant made a passionate plea that the system of inspection and audit of imports over a period of four years is punitive, and to irreparable loss and damage to the ex parte Applicant's and related cases. I was wondering about this myself, for if goods are imported at a certain costs, they would be sold at a certain price, plus profit, and owner of such goods would indeed be put to loss and most probably irrecoverable damage. The answer to this dilemma was put to rest by the decision

in **FIRST NATIONAL BANK SA LIMITED t/a WESBANK vs. COMMISSIONER FOR SOUTH AFRICA REVENUE SERVICES & ANOTHER CCT 19/01 [2002]**, adopted in **Crywan Enterprises Limited vs. Kenya Revenue Authority** (supra) the Customs Act was –

> **"Premised on a system of self-accounting and that the Commission therefore verifies compliance through routine examination and inspection and through action precipitated by suspected evasion."**

55. I have looked at the various entries for importation of the commodity in question and they are clear that the rice imports were from India and Vietnam which unlike the import of rice from Pakistan were subject to a higher rate of duty at 75% or US$ 200 per MT. The law is also clear, that the Respondent was well within its mandate to inspect and audit the import documents in terms of Section 235 and 236 of EACCMA, and demand short-levied tax in terms of Section 135 of EACCMA.

56. For all those reasons, I find the ex parte Applicant's contentions to the contrary have no merit at all, and the application herein is dismissed with costs.

57. As stated, that Ruling shall **mutatis Mutandis** apply to –

(1) Miscellaneous Application No. 11 of 2013, Republic vs. KRA ex parte Mshaale Commodities Limited;

(2) Miscellaneous Application No. 12 of 2013 Republic vs. KRA, ex parte Hussaba Trading Company Limited;

(3) Miscellaneous Application No. 13 of 2013, Republic vs. KRA ex parte Bandari Commodities Limited.

58. There shall be orders accordingly.

**Dated, Signed and Delivered at Mombasa this 6th day of December, 2016.**

**M. J. ANYARA EMUKULE, MBS**

**JUDGE**

In the presence of:

Miss Mutune holding brief for Mr. Khagram for Applicant

Mr. Ochieng holding brief Miss Sanga for Respondent

Mr. Kaunda Court Assistant