



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR MISC APPLICATION NO. 248 OF 2013

IN THE MATTER OF: THE KENYA REVENUE AUTHORITY ACT

AND

IN THE MATTER OF: EAST AFRICAN COMMUNITY CUSTOM

MANAGEMENT ACT

AND

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY

FOR ORDERS OF JUDICIAL REVIEW IN

THE NATURE OF CERTIORARI

PROHIBITION AND MANDAMUS

BETWEEN

REPUBLICAPPLICANT

VERSUS

KENYA REVENUE AUTHORITY

COMMISSIONER OF CUSTOM SERVICESRESPONDENTS

EUROPA HEALTHCARE LIMITED.....EX-PARTE APPLICANT

JUDGEMENT

1. By a Notice of Motion dated 29th July, 2013, the *ex parte* applicant herein, **Europa Healthcare Limited**, seeks the following orders:
 - a. **An order of CERTIORARI to remove into this honourable court and quash the decision of the Respondents communicated to the Applicant by e-mail on 24th April 2013 in response to the applicant’s letter of application for review dated 29th November 2012 in accordance with the provisions of Section 229(1) giving reasons for the application under Section 229(2) of the EACCMA.**

- b. An order of PROHIBITION to issue to prohibit the respondents from re-classifying the medicament *Recartix Forte* under heading 21.06 of the World Customs Organization Harmonized Systems.
- c. An order of MANDAMUS to issue to compel the respondents to correctly classify the medicament *Recartix Forte* under heading 30.04 of the World Customs Organization Harmonized Systems.
- d. An order of PROHIBITION to issue to restrain and prohibit the Respondents from collecting or recovering by way of distress or distraint, issuing agency notice of any other means on the medicament *Recartix Forte* products imported against import entry number 2010 JKA1094800 and any future imports of the said medicament.
- e. The leave so granted do operate as a stay of the decisions of Respondents, to demand tax on the re-classification of the goods and issuance or enforcement of distress, distraint or any agency notices based on the said entries or any other importation of the medicament *Recartix Forte*.
- f. Costs of and incidental to the application be provided for.
- g. Such further and other reliefs that the Honourable Court may deem just and expedient to grant.

Ex Parte Applicant's Case

2. The said application was supported by an affidavit sworn by **Preeta Subramanian**, one of the directors of the Applicant.
3. According to the deponent, the Applicant is a registered tax payer under PIN No. P051111598w and during the past fifteen taxable years the applicant on the basis of self assessment has been filing its annual Corporate Tax, Withholding Tax and returns for its operations and has over the period filed its monthly Imports Duty and Value Added Tax returns as require using the relevant prescribed forms.
4. It was deposed that after the importation of the medicament *Recartix Forte* products the officers of the Respondent drew samples from the medicament *Recartix Forte* products vide C400 No. 2010JKA1094800 and that these goods were classified under tariff 30.04 of the East African Community Common External Tariff in the entry. However, the Respondents alleged that the tariff classification by the Applicant was wrong and as a consequence changed the tariff applied and imposed a new one and purported to "uncover" unpaid Import Duty and VAT.
5. The Respondents then purported to refer the disputed classification to personnel within its departments to make a ruling on the said dispute and samples were drawn for laboratory analysis to confirm whether the goods were medicaments under tariff 3004 90 00 or food supplements of tariff 2106 90 90. It was averred that the Respondent did conduct the necessary tests on the samples drawn but did not serve the Appellant with the results of the analyses of the samples which was allegedly issued vide a letter referenced HC/VAL/TARI/1 and dated 25th February, 2011. The deponent deposed that the alleged letter was never served on the Appellant for which reason the Appellant could not have known the results of the analyses and could not appeal against the findings which the Appellant was not aware of.
6. According to the deponent, a demand notice referenced HC/VAL/TARI/1 dated 20th September 2011 was given to the Applicant more than six (6) months from the date of the alleged letter HC/VAL/TARI/1 of 25th February 2011 when the results were claimed to have been given despite the trite law and good corporate practice that any demand should be made immediately after results are known and the facts communicated to the tax payer. The Respondent then suspended the password of the Clearing and Forwarding Agent of the Applicant in December 2012 for failing to pay taxes on the demand notice dated 20th September 2011. In order for the Agent to get back the password from the Respondent, it was deposed the Respondent (sic) through its Agent paid the taxes demanded in the sum of Kshs. 1,963,655.00 against Form 147 No. 2012 NBI 262494 dated 5th December 2012 on the 6th December 2012.
7. The Applicant, in addition applied for the review of the decision in accordance with the provisions

- of Section 229(1) of the EACCMA giving reasons for the application as required under Section 229(2) of the said Act vide a letter dated 21st December 2012 and served on 24th December 2012. According to the Applicant, the decision of the Respondent to remove the medicament **Recartix Forte** imported by the Applicant from the Applicant's declared classification to their classification 30.04 known as medicaments is contrary to the provisions of the World Customs Organization Harmonized Systems General Interpretative Rule 1. The said medicament is registered with the Pharmacy and Poisons Board as a therapeutic medicine and not a food supplement as alleged by the respondents and according to the deponent, the said Board is the competent authority under the law to determine whether a particular compound is a medicament or a food supplement. To him, the said medicament **Recartix Forte** as imported is not a food supplement as alleged by the Respondent but a drug for sale to patients of Osteoarthritis for usage as prescribed by Registered medical Practitioners being a prescription only drug.
8. The deponent reiterated that the respondent has not communicated her decision in the said application for review outside the provisions of Section 229(4) of the EACCMA so the application for review was deemed to have been accepted as provided for under Section 229(5) of the said Act hence the Act taxes demanded under are not payable.
 9. The deponent averred that the respondent has classified a similar medicament imported by a competitor Galaxy Pharmaceuticals Limited, a medicament known as **Cartyl Forte**, and in the process exposing the Applicant to unfair competition in the market place in that the Applicant is paying a different rate of tax whilst the competitor does not and thereby obtaining an unfair advantage on pricing of the competing medicaments. That action on the part of the Respondent, it is contended is discriminatory and unfair to the Applicant hence the Respondents should not be allowed to renege on their own decisions and as such result in legal uncertainty, and discriminative actions which are contrary to the Constitution of Kenya. It was further deposed that the Respondents have at every little opportunity made turnaround but with extreme and grave consequences to the Applicant.
 10. The Applicant's case is that based on the Applicant's legitimate expectations and based on the premise that it had no pending tax obligations or issues and definitely not of the magnitude of the Respondents' decisions, the Applicant has materially and significantly altered its financial representations and entered into binding contracts including loan agreements hence the Applicant stands to suffer irreparable loss, grave harm and prejudice and will be unable to meet its financial obligations if the Respondents are allowed to recover and to collect the tax assessments claimed or to effect and enforce any threatened action hence the orders sought herein.

Respondent's Case

11. On behalf of the Respondent a replying affidavit was filed sworn by **Anne Legei**, a Senior Revenue Officer in the Customs Services Department of the Respondent on 27th September, 2013.
12. According to the deponent, the Respondent is a statutory body established under the **Kenya Revenue Authority Act** (Cap. 469 of the Laws of Kenya) as the central agent of the government for the collection and assessment of all Government revenue and in the exercise of its mandate the Respondent is under Section 5(2)(a)(i) of the Act empowered to enforce and administer all provisions of written laws set out in Part 1 of the first schedule to the Act, among them the **East African Community Customs Management Act** 2005 and Regulations, 2006. Further, the Commissioner of Customs Services is appointed pursuant to Section 5 of the **East African Community Customs Management Act** 2005 and is responsible for the management of customs matters within the Kenya Revenue Authority.
13. According to her on or about November 2010, the Applicant Company imported vide entry no 2010JKIA1094800 **Recartix Forte** tablets 3X10T declared under Tariff classification H.S. Code 300490 00 00 for medicaments and samples were drawn at the point of entry of the consignment and forwarded to the Respondent's Laboratory for analysis on 27th January 2011 which analysis was based on information provided by the Applicant Company established that the **Recartix Forte** tablets, "was a preparation of minerals and vitamins recommended for the treatment of osteoarthritis, joint pains and sport injury. According to her, Heading 21.06 includes the

- classification of preparations, often referred to as food supplements that contain vitamins and sometimes minute quantities of iron compounds. These preparations are often put up in packaging with indications that they maintain general health or well being. Heading 30.14, on the other hand covers preparations put up in measured doses or in forms or packaging for retail sale and it excludes food supplements containing vitamins or mineral salt which are put up for the purpose of maintaining health or well being. Based on the above information, **Recartix Forte** tablets are considered to be a food supplement containing vitamins and mineral salts, classified in HS Code 2106.90.90". Thereafter the tariff ruling that **Recartix Forte** tablets should be classified under H.S. CODE 2106.90.90 and not 30.04 was communicated to the Applicant vide a letter dated 25th February 2011 and the applicant company did not apply for a review of the tariff ruling.
14. According to the deponent, the HS Code is a Harmonized Commodity Description and Coding System generally referred to as "Harmonized System" or simple "HS" and is a multipurpose international product nomenclature developed by the World Customs Organization (WCO). One of the key purposes of the HS Code is that is extensively used by Governments for purposes of determining taxes and duties applicable to goods and commodities and comprises of over 5000 commodity groups. The implication of the tariff ruling was that under H.S. Code 30.04 under which the Applicant entered the **Recartix Forte** tablets, the same would be classified as medicaments and would thus be duty exempt. However, under the new tariff ruling 2106.90.90, the **Recartix Forte** tablets would be subject to a duty rate of 25 percent of the product value.
 15. It was deposed that the respondent's officer vide a letter of 8th August 2011, sent a demand note to the applicant company based on the tariff ruling for Kshs. 2,575,796.00 which was arrived at as follows being Kshs. 1,963,655.00 – taxes applicable to the importation of the **Recartix Forte** tablets; and Kshs. 612,141.00 – taxes application to the importation of other products entered in the same entry as the **Recartix Forte** tablets. While the applicant company settled the taxes in respect of the other products, it, however, did not respond to the demand of 08th August 2011 despite a reminder made vide a letter of 12th September 2011.
 16. On 20th September 2011, the respondent's officer issued a final demand for the taxes in respect of the **Recartix Forte** tables in the amount of Kshs. 1,963,655.00 to which the applicant responded vide a letter dated 28th September 2011 in which it sought to set out the ingredients of the product, the medical conditions to which the product is applicable, and information on a comparable product which was classified as a medicament, namely, cartel forte. To this letter the applicant attached literature on **Recartix Forte** and cartel forte, sample packs for **Recartix Forte** and cartel forte, copies of the demand letter dated 20th September 2011 and the tariff ruling dated 25th February 2011. However, after considering the literature, the Respondent re-affirmed its tariff ruling as communicated to the applicant company vide the letter of 25th February 2011.
 17. When the applicant failed to pay the taxes as outlined in the demand letters, the respondent moved to suspend the applicant company's clearing agent, Rising Freight Limited, from the Simba system which action prompted the applicant company to pay the taxes demanded in respect of the **Recartix Forte** tablets vide F147 Number NBI 262494 dated 05th December 2012 on 06th December 2012 though it was indicated that the payment was being made "**on protest as the Directors of Europa Healthcare are out of the country...**". Subsequently, on 21st December 2012, the applicant company through its clearing agent sought to apply for a review of the demand on the **Recartix Forte** tablets which letter was, however not specific on the decision or demand against which a review was being sought.
 18. According to the deponent, all communication to the applicant company was sent to the same postal address. In her view, the Pharmacy and Poisons Board may recommend certain products to be used as medicaments although for tax purposes the products may not qualify under Chapter 30 of the H.S. Code which classifies medicaments.
 19. To the deponent, the applicant has never made an application for review as is anticipated under Section 229 of the **East African Community Customs Management Act, 2004** (hereinafter referred to as the EACCMA) to which the respondent would have been required in law to give a decision and the respondents have since re-classified **Cartil Forte** under the same H.S. Code AS **Recartix Forte**, that is, H.S. Code 2106.90.91 as per the Common External Tariff 2012 edition. To her the initial classification of **Recartix Forte** and **Cartil Forte** as medicaments under H.S. Code 30.04 was based on the information available at the time. However, the respondent's officers

- subsequently sought more information on the products which informed the change in classification from medicament to food supplement under H.S. Code 2106.90.91.
20. She therefore deposed that there has been no violation of the applicant company's legitimate expectation as there can be no legitimate expectation contrary to the law hence this application is without merit and is an abuse of the court process and intended to delay and frustrate the collection of taxes found to be due under law.

Applicant's Submissions

21. On behalf of the Applicant, it was submitted while reiterating the contents of the affidavit in support of the application that the Applicant's application for review was in accordance with section 229(1) of the EACCMA in which it was clearly worded as an application for review. Therefore the letter could not be mistaken for mere correspondence between the parties as it complied with the provisions of the Act. It was therefore submitted that having accepted the applicant's application as provided under section 229(5) of the Act, the taxes demanded are not payable in respect of the item appealed against. This is so because the Respondent failed and or neglected to communicate her decision within the time provided for under section 229(4) hence the applicant is entitled to refund of the taxes paid. In support of this submission the Applicant relied on High Court Miscellaneous Application No. 181 of 2011 – **Ex Parte Unilever Kenya Ltd.**
22. It was reiterated that the Respondent's decision to classify as medicine and not food supplement a similar medicament exported by Galaxy Pharmaceuticals Ltd known as *Cartil Forte* amounted to exposing the Applicant to unfair competition.
23. The Applicant urged the Court not to countenance the shifting of goal posts more than five years after the Applicant started importing the said goods since such a decision is arbitrary and derogates the Applicant's legitimate expectation. On this point the Applicant relied on **Re Keroche Industries Ltd High Court Miscellaneous Application No. 743 of 2006.**

Respondent's Submissions

24. The Respondent, while similarly reiterating the contents of the replying affidavit submitted that the power to classify goods for tax purposes lies with the Respondent and in support of this submission the Respondent relied on **Republic vs. KRA ex parte Harsh Avadan & Others Civil Appeal No. 153 of 2007, Republic vs. KRA ex parte Beta Healthcare International Ltd HC Misc. Application No. 4 of 2009, Republic vs. KRA ex parte Metro Pharmaceuticals Limited HC Misc. Application No. 108 of 2011.**
25. It was submitted that in the letter dated 21st December, 2012, the Applicant did not indicate what decision or omission of the Commission it was appealing against. It was submitted that an application for review must be worded in such a way as to make it very clear that the importer is making an application for review under section 229 and reliance was placed on **Republic vs. The Commissioner of Customs Services ex parte SDV Transami Nairobi HC Misc. Application No. 81 of 2011** and **Republic vs. KRA ex parte Metro Pharmaceuticals Limited** (supra).
26. It was submitted that even assuming that the letter was an application for review, it was clearly outside the time lines set out in section 229(1) of the EACCMA and **Republic vs. The Commissioner of Customs Services ex parte SDV Transami** (supra) was relied upon in support of this submission. According to the Respondent, the fact that several correspondences were exchanged and samples taken and results forwarded to the applicant and its agent afforded the applicant with an opportunity to be heard hence it cannot be alleged that the Respondent's decision was made in breach of the rules of natural justice. In support of this submission the Respondent relied on **Republic vs. Kenya Revenue Authority ex parte Total Kenya Limited Nairobi HC Civ. Misc. Application No. 449 of 2001.** With respect to the issue of legitimate expectation the Respondent relied on **Republic vs. Kenya Revenue Authority ex parte Shake Distributors Limited Nairobi HC Misc. Civil Application No. 359 of 2012.**
27. It was submitted that judicial review is concerned not with the merits of the decision but the decision making process and **Coastal Bottlers vs. Commissioner of Domestic Taxes High Court Misc. Civil Application No. 1756 of 2005** and **Pili Management Consultants Ltd vs.**

Commissioner of Income Tax, Kenya Revenue Authority Civil Appeal No. 154 of 2007 were cited.

28. It was further submitted based on Republic vs. National Management Authority ex parte Sound Equipment Limited [2011] eKLR that where there is an alternative remedy provided by Parliament such as a statutory appeal procedure, it is only in exceptional circumstances and in determining whether an exception should be made and judicial review granted, it is necessary for the Court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what in the context of the statutory powers was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it.

Determinations

29. I have considered the application and the respective positions taken by the parties herein vide the pleadings filed.

30. The first and in my view the main issue for determination is whether the applicant made a competent application for review and if so what were the consequences thereof.

31. Section 229 of the EACCMA provides:

(1) 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.

(2) The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged.

(3) Where the Commissioner is satisfied owing to absence from the Partner State, sickness or other reasonable cause, the person affected by the decision Commissioner was unable to lodge an application within the time specified in subsection (1), and there has been no unreasonable delay by the person in lodging the application the Commissioner may accept the application lodged after the time specified in subsection (1).

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

(5) 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.

(6) During the pendency of an application lodged under this section the Commissioner may at the request of the person lodging the application release any goods in respect of which the application has been lodged to that person upon payment of sufficient duty as determined by the Commissioner or security for the duty and for any penalty that may be payable as determined by the Commissioner.

32. According to the applicant, the Respondent conducted the necessary tests on the samples drawn from the subject goods but did not serve the applicant with the results of the analyses of the sample which was allegedly issued vide a letter dated 25th February, 2011 hence the Applicant could not have known of the results and could not have appealed against the same. However a demand was made 6 months after the date of the alleged letter. Subsequently the application for review which was made vide a letter dated 21st December, 2012 was served on 24th December, 2012 to which no decision has been communicated.

33. Section 229(1) of the EACCMA clearly mandates a person aggrieved with the decision of the Commissioner or any other person on a matter relating to the customs to lodge an application for review in writing within thirty days of the decision or omission. [Underlining mine]. That

provision does not say that the application be made within 30 days of service of the decision in question. However section 229(3) empowers the Commissioner to accept the application where there is a reasonable cause that the applicant was unable to make the application within the said period.

34. It is not disputed that the date of the decision in question was at latest 25th February 2011. The application for review was made vide a letter dated 21st December, 2012 which was served on 24th December, 2012. Obviously the application for review was made way out of time. There is no indication that the said application was accepted by the Commissioner outside the stipulated period. One would have expected the applicant on becoming aware of the decision to take the necessary steps to request for the acceptance of the application for review. In the absence of the said acceptance, there was no valid application for review made by the applicant. As was held in **Republic vs. The Commissioner of Customs Services ex parte SDV Transami** (supra):

“Once the Respondent had communicated in August 2010 that tax was due, it was incumbent upon the Applicant to lodge an appeal within the stipulated or specified period under section 229. That was not done. Therefore it was not open or available to the Applicant to lodge an appeal 5 months after the offensive decision was made. It was not within the jurisdiction and powers of the respondent to entertain an appeal outside the time allowed.”

35. It was further submitted that even if there was an application for review the same was incompetent for lack of clarity. It is clear that section 229(3) provides in mandatory terms that the application for review be in writing setting out the grounds upon which it is lodged. In the letter dated 21st December, 2012, the Applicant ***applied for review of the demand*** and requested for review of the decisions on demand. However, according to the applicant, the demand was made 6 months after the decision. The purported application for review did not however make reference to the decision of 25th February, 2011.

36. I associate myself with the decision in **Republic vs. KRA ex parte Metro Pharmaceuticals Limited** (supra) where the Court expressed itself as follows:

“The Appellant has cited this letter as its application for review under Section 229 of EACCMA. I have carefully looked at Section 229 EACCMA and conclude that any application for review of the decision of the Commissioner of Customs should be worded in such a way as to make it very clear that the importer is making an application for review under Section 229. The letter dated 26th September 2008 cannot be said to amount to an application for review as envisaged by section 229 of EACCMA. The conclusion of the letter as already quoted clearly shows the Applicant was reopening the assessment and not asking for review.”

37. I agree that the letter dated 21st December, 2012 was not clear whether it was challenging the decision of 25th February, 2011 or the demand which came months after the said decision.

38. The other issue taken was that the decision to classify medicament *Recartix Forte* as a food supplement rather than as a drug for sale to patients of osteoarthritis contrary to the decision of the Pharmacy and Poisons Board was wrong, as it exposed the Applicant to unfair competition since a similar medicament imported by a competitor, known as *Cartil Forte* was classified differently. That action, it was contended was discriminatory. In my view, whether the Respondent's classification was right or not was an issue which went to the merits of the case. As was held in **Pili Management Consultants Ltd vs. Commissioner of Income Tax, Kenya Revenue Authority** (supra), “it was not the role of the superior court nor of this Court to determine the correctness or otherwise of the tax which Pili was liable or whether Pili was liable to pay any tax at all for the year 2004.”

39. Whether the respondent was bound by the classification of the said product by the Pharmacy and Poisons Board was the subject of the decision in **Republic vs. KRA ex parte Beta Healthcare International Ltd** (supra) where it was held:

“It was the duty of the applicant in filing the import declaration documents, to correctly assign the customs code to the goods that it had imported. It appears that in filing the customs declaration forms in respect of pharmaceutical products, the applicant assumed that because the Pharmacy and Poisons Board had registered the pharmaceutical products in question as medicaments, then, it followed that the said pharmaceutical products could be declared as medicaments when filing the customs declaration forms. With respect to the applicant, I think the determination in regard to whether a pharmaceutical product is a medicament or a food supplement for the reasons of taxation purposes is of complete different consideration than the requirement that are taken into consideration when a pharmaceutical product is sought to be registered with the Pharmacy and Poisons Board.”

40. Since the Court cannot decide on whether the decision of the Respondent classifying the Applicant’s goods was correct or not, it would follow that the Court cannot find that the Applicant’s legitimate expectation that the said goods would be classified as drugs just as that of the competitor was breached since if the classification of the competitor’s goods was incorrect the Applicant cannot base its legitimate expectation on an incorrect legal position. As was held in **Republic vs. Kenya Revenue Authority ex parte Shake Distributors Limited** (supra):

“It follows that the cornerstone of legitimate expectation is a promise made to a party by a public body that it will act or not act in a particular manner. For the promise to hold, the same must be made within the confines of the law. A public body cannot make a promise which goes against the express letter of the law.”

41. On the allegation that the applicant was not afforded an opportunity of being heard before the decision was made, I can do no better than cite **Republic vs. Kenya Revenue Authority ex parte Total Kenya Limited** (supra) where it was held:

“I agree with counsel for the respondent that the exchange of correspondence in this instance provided the applicant an opportunity to be heard. That opportunity was afforded from the time the first demand was issued on 8th February 2001 and this opportunity was available until at least 4th May 2001.”

42. In the instant case, it is similarly clear that correspondences were exchanged between the parties before the decision was made. Accordingly I am not satisfied that the applicant was not afforded an opportunity of being heard. As is stated by **Michael Fordham** in ***Judicial Review Handbook***; 4th Edn. at page 1007:

“procedural fairness is a flexi-principle. Natural justice has always been an entirely contextual principle. There are no rigid or universal rules as to what is needed in order to be procedurally fair. The content of the duty depends on the particular function and circumstances of the individual case”.

43. In **Kenya Revenue Authority vs. Menginya Salim Murgani Civil Appeal No. 108 of 2009**, the Court of appeal delivered itself as follows:

“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed.”

44. In **R vs. Aga Khan Education Services ex parte Ali Sele & 20 Others High Court Misc. Application No. 12 of 2002**, it was held *inter alia* as follows:

“On the allegation that there was breach of the rules of natural justice, it is not in every situation that the other side must be heard. There are situations where a hearing would be unnecessary and even in some cases obstructive. Each case must be put on the scales by the

court and there cannot be general requirement for hearing in all situations. There will be for example situations when the need for expedition in decision making far outweighs the need to hear the other side and in such situations, the court has to strike a balance.”

45. In Russel vs. Duke of Norfolk [1949] 1 All ER at 118, the Court expressed itself as hereunder:

“There are in my view no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on circumstances of the case, the nature of the inquiry, rules under which the tribunal is acting, the subject matter that is being dealt with and so forth. Accordingly I do not derive much assistance from the definition of natural justice which have been from time to time being used, but whatever standard is adopted one essential is that the person concerned would have had a reasonable opportunity of presenting his case.”

46. Similarly it was held in Simon Gakuo vs. Kenyatta University and 2 Others Misc. Civil Application No. 34 of 2009:

“The *audi alteram partem* rule should not be interpreted to mean a full adversarial hearing or anything close to it as per the courtroom situations and as per section 77 of the Constitution. Interpreting the demands of natural justice as requiring an adversarial hearing or anything similar is a serious misdirection in law. There are no rigid or universal rules as to what is needed in order to be procedurally fair. What is needed is what the court considers sufficient in the context of each situation with its own unique facts with the needs of good administration in view. I urge practitioners of law not to rigidly import the hearing requirements in court room situation etc.”

47. It follows that the Notice of Motion dated 29th July, 2013, is unmerited and is accordingly dismissed with costs to the Respondent.

Dated at Nairobi this 16th day of May 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Chelangat for Mr Ogonji for the Applicant

Miss Mwaniki for the Respondent

Cc Kevin