



**IN THE COURT OF APPEAL FOR EAST AFRICA**

**AT NAIROBI**

**(Coram: Wambuzi P, Law V-P and Mustafa JA)**

**CIVIL APPEAL NO 37 OF 1975**

**COMMISSIONER-GENERAL OF CUSTOMS AND EXCISE.....APPLICANT**

**VERSUS**

**DIVERSEY EAST AFRICA LTD..... RESPONDENT**

**JUDGMENT**

The Excise Tariff Act provides for the levying of excise duty on certain goods manufactured in Kenya, including under item 12 of the schedule to the Act “soap, soap powders, soap extracts and substitutes therefore”. The respondent manufactures a substance known as “Mainline”, which is a lubricant for chain and link conveyors in the bottling industry. It is manufactured, bought and sold solely for that purpose. Its ingredients include certain chemicals which are also used in the manufacture of soap.

The Commissioner General of Customs and Excise contends that “Mainline” is a soap, or substitute for soap, and that it is accordingly liable to excise duty under the Act. Harris J in the High Court decided that “Mainline” was not a soap or a substitute for soap within the meaning of the Act, and granted the respondent a declaration to that effect. The Commissioner-General has appealed against that decision.

After careful consideration of the arguments presented to us, we find ourselves in agreement with the judgment of Harris J. “Mainline” is not manufactured as a soap, or as a substitute for soap, nor is it bought or used as such. As Sir Charles Newbold P said in *Tarmal Industries Ltd v Commissioner of Customs and Excise* [1968] EA 471, 491:

The word ‘soap’, referring as it does to an article in everyday domestic use, must be interpreted in its ordinary meaning and not in any special meaning, such as a chemical meaning or a commercial meaning.

The *Oxford English Dictionary* defines soap as:

A substance formed by the combination of certain oils and fats with alkaline bases and used for washing or cleansing purposes.

The substance “Mainline” is not used for washing purposes. Any cleansing properties it may have are purely incidental to its purpose as an industrial lubricant. It may be chemically classifiable as a soap, but it is not a soap in the ordinary meaning of that word, nor is it a substitute for soap, so as to bring it within the scope of the Excise Tariff Act, whose words must be interpreted in their ordinary meaning as commonly understood. This appeal is dismissed with costs.

*Order accordingly.*

Dated this 21<sup>st</sup> day of January 1976

**S.W.W. WAMBUZI**

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**PRESIDENT**

**E.J.E. LAW**

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**VICE -PRESIDENT**

**A. MUSTAFA**

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**JUDGE OF APPEAL**