

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

CUSTOMS TAX APPEAL NO. E004 OF 2025

(CORAM: CHARLES KARIUKI – J)

**COMMISSIONER OF CUSTOMS AND BORDER
CONTROL.....APPELLANT**

-VERSUS-

**L'ORÉAL EAST AFRICA LIMITED.....
RESPONDENT**

*(Being an appeal arising from the Judgement of the Tax Appeals Tribunal dated November
21, 2024, in Tax Appeals Tribunal Appeal Number No. E 962 of 2023)*

IN

**L'ORÉAL EAST AFRICA LIMITED.....
.....APPELLANT**

-VERSUS-

**COMMISSIONER OF CUSTOMS
ANDBORDERCONTROL.....RESPONDENT**

JUDGEMENT

BACKGROUND:

1. The Respondent is a limited liability company incorporated in Kenya under the Companies Act. CAP 486 of the Laws of Kenya, and whose principal activity is the marketing and distribution of personal care

- products within East Africa.
2. The Respondent is a principal officer appointed under Section 13 of the Kenya Revenue Authority Act, CAP 469 of the Kenya Laws (hereinafter” the Act”). Under Section 5 (T) of the Act, the Kenya Revenue Authority is an agency of the Government for the collection and receipt of all tax revenue. Further, under Section S (2) of the Act with respect to the performance of its functions under subsection (I}, the Authority is mandated to administer and enforce all provisions of the written laws as set out in Part 1 and 2 of the First Schedule to the Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws.
 3. The Appellant imported a Roche Posay Effaclar Gel Cleanser, under import entry numbers 23EMKI M400799690 and 23EMKIM4OO864185, classified under 3401.30.00 of the East African Customs Common External Tariff, Version 2022 (“EACC ET”). The Respondent issued the Appellant with a tariff ruling dated August 24, 2023 Ref I RA/CBC/BIANHO551/09/2023 classifying of the product under EACCET tariff code 3303.99.00.
 4. The Appellant appealed against the Respondent's Decision, as stated in its letter dated September 19, 2023, in which it was noted that the product was to be classified under HS Code 3304.99.00. The Respondent received the said letter on September 20, 2023. Upon considering the application, the Respondent issued its review decision on November 3, 2023, classifying the product under HS Code 3304.99.00.

5. The Appellant, being dissatisfied with the Respondent's review decision, lodged an Appeal at the Tribunal and the Memorandum of Appeal dated December 20, 2023. The Tribunal, after analyzing the issues before it, made findings that the Respondent's Decision was issued beyond the statutory requirement contrary to the provisions of section 229(4) of EACCMA. The Respondent issued the Decision on November 5, 2023, and delivered it to the Appellant via electronic mail. The finding of the Tribunal is that when the Appellant herein failed to comply with section 229(1) of EACCMA Section 229(5) of the East African Community Customs Management Act (EACCMA) states that if a Commissioner does not communicate a decision on a customs review application within 30 days, the application is automatically considered to be allowed by operation of law.
6. This means the application is approved by default, and the Applicant can proceed as if the Decision were formally granted. In view of the provisions of Section 229(5) of EACCMA, the Tribunal found and held that the Appellant's review decision dated November 3, 2023, and issued on November 6, 2023, was statutorily time-barred. Therefore, the Appellant's objection stood as allowed by law pursuant to section 229(5) of EACCMA. Having established the foregoing, the Tribunal found it was moot to examine the remaining issue.
7. FINAL DECISION The upshot of the foregoing is that the Tribunal finds and holds that the Appeal succeeds and consequently makes the following Orders: The Appeal is hereby allowed. The Respondent's review decision issued on November 6, 2023, is hereby set aside. The Appellant is hereby entitled to a refund of any duties paid in protest pursuant to the provisions of section 144(3) of EACCMA. Each party to

bear its own cost.

- i. The Appellant moved this Court through a Notice of Appeal dated December 18, 2024, and its Memorandum of Appeal dated January 16, 2025, preferring an appeal against the Decision of the Tax Appeals Tribunal. The Appeal is based on the following grounds captured in the Memorandum of Appeal:
- ii. THAT the Honorable Tribunal erred in law and fact by holding that the Appellant's Review Decision issued on November 3, 2023, was issued late and thus did not meet the threshold set in Section 229 (4) & (5) of EACCMA;
- iii. THAT the Honorable Tribunal erred in law by failing to consider the Appellant's case on merit, thus failing to decide on the correct HS. Classification of La Roche Posay Effaclar Gel Cleanser imported by the Respondent.
- iv. THAT the Honorable Tribunal erred in law by failing to adhere to the provisions of Section 62 of the Laws of the (Interpretation) Act, 2024, on computation of time, thus finding that the Review Decision issued by the Appellant was out of time.
- v. THAT the honorable Tribunal erred in failing to adhere to the jurisprudence/precedent set by itself on the interpretation of Section 229(4) of EACCMA in finding that the Appellant's Review Decision issued on November 3, 2023, was issued outside the stipulated timelines.
- vi. THAT the Honorable Tribunal misdirected itself on both facts and law, and thereby arrived at wrong, erroneous, and absurd findings/decisions.

8. From the onset, it is essential to note that in its Judgment, the Tribunal in Paragraph 85 only framed the following two issues for determination:
- a) Whether the Appellant's review decision dated November 3, 2023, was statutorily time-barred; and
 - b) Whether the Appellant erred in classifying the consignment under HS Code 3304.99.00 instead of HS Code 3401.30.00.
9. However, having decided on the first issue above, the Tribunal deemed the second issue moot and therefore did not address it. The Tribunal well captured this in Paragraph 105 of its judgment. This thus means that, as per Section 56(2) of the Tax Procedures Act, this Honorable Court can only consider the issue that the Tribunal determined if it raises a question of law. Section 56 (2) of the Tax Procedures Act states that:
- “An appeal to the High Court or to the Court of Appeal shall be on a question of law only.”***
10. The parties were directed to submit their Appeal via written submissions, which they filed.

APPELLANT SUBMISSIONS.

WHETHER THE REVIEW DECISION WAS ISSUED WITHIN THE STATUTORY TIMELINES

11. While the Tribunal, in its Judgment, held that the Appellant's review decision, issued on November 3, 2023, was out of time, the Appellant states that the Tribunal erred in the computation of Days.

12. To expound further in the timeline, it is paramount to first answer the question of what qualifies as “days” as provided under section 229 (4) of the East African Community Customs Management Act, the Appellant states that at the point of establishment of the East African Customs Union, a Protocol was passed which provides that: -

- “i. Pursuant to the provisions of Article 75 of the Treaty for the establishment of the East African Community, the provisions for the establishment of the East African Community Union are hereby set forth,**
- ii. AND WHEREAS by the provisions of paragraph 7 of Article 75 of the Treaty, the Partner States agreed to conclude the Protocol on the Establishment of a Customs Union within a period of four years;**
- iii. AND WHEREAS by the provisions of paragraph 1 of Article 151 of the Treaty, the Partner States undertook to conclude such**
- iv. Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for co-operation and integration.”**

13. The East African Customs Management Act is silent on whether 'days' refers to calendar days or working days. However, the Protocol on the Establishment of the East African Community, which is the grand norm establishing the East African Community, defines days under Article 1 as follows: "Days” means working days in any calendar month.

14. Based on the above definition, on August 24, 2023, the Appellant issued

the Respondent with a Tariff Ruling Ref: KRA/CBC/BIA/THQ/651/08/2023 informing them of the classification of the product under tariff 2022 EAC/CET Code 3304.99.00 upon making verification findings pursuant to the classification enquiry made by the Respondent.

15. On September 19, 2023, the Respondent appealed the Decision to classify the product under HS Code 3304.99.00 through a letter received on September 20, 2023.
16. On October 26, 2023, the Appellant invited the Respondent for a working meeting.
17. On October 30, 2023, the Appellant's counsel wrote to the Appellant and in part stated that: -

“We also note that your meeting invite did not provide a specific agenda, as the title suggests that we are to discuss L'oréal Products. In our assessment, the following products are those whose tariff classification is currently in contention with KRA.

- ***La Roche-Posay Effaclar Gel Cleanser***
- ***Ganier Even & Matter Micellar Cleansing Water***
- ***L'oréal Paris Revitalift Depluming Gel wash.***

While your email did not specify which products you would like to discuss tomorrow, we do note that for the first product above (Effaclar), we lodged our application for review on September 20, 2023, which KRA received on the same day. As per the provision of Section 229(4) of the East African Community Customs Management Act (EACCMA), the Commissioner had 30 days to

communicate her Decision. The same should therefore have been sent and received by October 20, 2023. As the same was not received from the KRA, we, by virtue of the provisions of Section 229(5) of EACCMA, hereby consider our application for review dated September 20, 2023, as allowed by the Commissioner and the additional taxes paid under protest duly vacated. In this regard, we expect that tomorrow's discussions will focus on the other two products, and that any talks on Effaclar will be strictly on a without prejudice basis.”

18. The meeting between the parties was held on October 31, 2023, and a written response was issued on November 3, 2023. At these meetings, the Respondent's representatives presented new information for the Appellant's consideration.
19. 15. During the hearing of the Appeal at the Tribunal, the Appellant's witness, Ms. Stella Mwangi, stated that the parties had engagements and discussed the products, following which a physical meeting was held. Among the deliverables was that the Appellant would provide additional documents which were vital to enable the Appellant to understand the product better and to issue its Decision.
20. The Appellant maintains that it was justified in requesting the additional documents, which the Appellant actually provided after the meeting. Of interest in this matter is that the parties held a meeting on October 31, 2023, during which new information was provided for review by the Appellant. The Respondent reviewed the same and issued a ruling on November 3, 2023, which was two days after the meeting.

1) Based on the foregoing, the Review decision made on November 3 was issued within the timelines, as the days began to run from the date the Respondent submitted the last information, as provided for in **Section 229(4) of the East African Community Customs Management Act. Section 229(4)** of the East African Community Customs Management Act reads as follows;

“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 applying, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.”

21. In the case *of Hydery (P) Limited Vs. Commissioner of Investigations & Enforcement, TAT Appeal No. 278 of 2021*, the Honorable Tribunal held that: -

“In this regard, and in view of the chronology of events provided by both parties, it is clear to the Tribunal that the Respondent was within its rights to ask for further information as it deemed fit or required. Section 229 of EACCMA provides that the Respondent is mandated to issue a decision within thirty days of receiving either an application or the requested documents.”

22. In this case, the Commissioner's last request for documents was made on April 13, 2021. To the extent that the Appellant submitted no further documents, the Respondent's issuance of a decision on May 12, 2021, which was the 29th day after its last request for records, was well within the thirty-day timeline envisaged by Section 229(4) of EACCMA.

23. The Tribunal, in the circumstances, finds that the Respondent's Decision was issued within the statutory timelines.
24. From the foregoing, it is the Appellant's case that the Respondent should not be allowed to engage the Appellant on one hand and produce information and further information on the other hand, and expect time to continue running while parties are deliberating in good faith.
25. In so submitting, we rely on the case of **CSARS v Capstone 556 (Pty) Limited 2016 ZASCA**, where the Court ruled that delays caused by the taxpayer cannot be used as a defence against the Commissioner taking action within statutory timeframes.
26. The information and documents provided by the Respondent on all occasions were reviewed and formed part of the review decision.
27. From the foregoing, the Appellant maintains that the Review Decision in this matter was issued within the statutory timelines and, as such, the Tribunal erred in finding that the Appellant's Decision was issued out of time.

RESPONDENT SUBMISSIONS

28. The Respondent submits that this Court should resist any temptation to decide on the factual issue of classification of the disputed product even though the Appellant has argued and submitted on the same as Section 56(2) of the Tax Procedures Act, 2015 of Kenya is a jurisdictional provision that limits appeals from the Tax Appeals Tribunal to the High Court and the Court of Appeal to questions of law only. The text of the subsection is:

"An appeal to the High Court or to the Court of Appeal shall be on a

question of law only".

29. This provision means that higher courts cannot re-evaluate the facts as determined by the Tax Appeals Tribunal unless the Tribunal's factual findings were perverse or not supported by evidence. The interpretation of the law itself is a question of law that the High Court or Court of Appeal can rule on.
30. The Respondent herein has restricted itself only to the issue determined by the Tribunal, which essentially is the sole basis of the Appellant's Appeal.
31. The Respondent submits that in the original case, the issue in contention and on which the Tribunal rendered its Decision, was whether the Appellant's review decision dated November 3, 2023, and issued on November 6, 2023, was statutorily barred under the provisions of **Section 229 (1) of the East African Community Customs Management Act (EACCMA)**.
32. The Respondent lodged its application for review through its letter dated September 19, 2023, which the Appellant received on September 20, 2023. This was in line with the provisions of **Section 229 (1) of EACCMA**.
33. **Section 229 (4) of EACCMA** provides that,

“The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection. Given that the Appellant received the application for review on September 20, 2023, she had until October 20, 2023, to issue her review decision. The same

was, however, sent and received by the Respondent on November 6, 2023, long after the thirty-day mandatory deadline imposed by Section 229(4) of EACCMA had expired. Section 229 (5) of EACCMA provides that, “Where the Commissioner has not communicated his or her decision to the person applying for review within the time specified in subsection (4), the Commissioner shall be deemed to have decided to allow the application.”

34. The Respondent submits that the Appellant did not respond to the application for review letter dated September 19, 2023, within the legally mandated thirty-day deadline. In this regard, the Appellant was deemed to have allowed the said application, and as such, by the operation of the law, her review decision received on November 6, 2023, was null and void. See the case of *Republic Vs The Commissioner of Customs Services, Ex parte Unilever Kenya (Misc. Civil Application No. 181 of 2011)*.
35. As held in the above case, the Commissioner of Customs & Border Control, who is the Appellant in this case, was barred from recovering taxes demanded because of failing to respond to the application for review within the statutory thirty days.
36. In paragraph 4 of her Memorandum of Appeal, the Appellant claims that the Tribunal erred in law and fact by failing to adhere to the jurisprudence/precedent set by itself on the interpretation of **Section 229 (4)** in finding that the Appellant's review decision was issued outside the stipulated timelines as outlined under **Section 229**. The Respondent submits that this claim and ground are baseless, given that the Tribunal has previously upheld the view that the provisions of **Section 229 (4)** of

EACCMA are couched in mandatory terms and thus strictly adhered to the compulsory thirty-day deadline. Reliance is made on the case of **BIC East Africa Limited vs. Commissioner of Customs & Border Control (Tax Appeal No. 127 of 2020)**.

37. In paragraph 3 of her Memorandum of Appeal, the Appellant claims that the Tribunal erred in law by failing to adhere to the provisions of Section 62 of the Laws of the Community (Interpretation) Act, 2024, on the issue of computation of time while finding that the review decision issued by the Appellant was out of time.
38. The Respondent submits that this provision of the law was neither argued nor relied on by the Appellant in the Tribunal. The Court can refer to the Appellant's submissions on the issue as per pages 61 to 63 of the Appellant's Record of Appeal. In addition, while the Appellant has referred to the legal provision in her Memorandum of Appeal, she has not submitted on the same in her written submissions (see Paragraphs 67 to 85 of the Appellant's written submissions), where she has addressed the issue of time. The Respondent therefore submits that this assertion is evidently an afterthought, intended to salvage an otherwise untenable position.
39. Nonetheless, having analyzed Section 62 of the Laws of the (Interpretation) Act, 2024, the Respondent notes that the provision contains several subsections. However, the Appellant has not specified which subsections of Section 62 were ignored by the Tribunal while making its Decision. Nonetheless, the Respondent submits that the only subsections that the Appellant could be referring to or relying on are Section 62 (1) and (f) on the issue of computation of time on matters

affecting the provisions of EACCMA. As aforementioned, the Appellant received the Respondent's application for review on September 20, 2023. This, therefore, meant that as per the provisions of Section 229 (4) of EACCMA, the Appellant had until October 20, 2023, to issue her review decision. The same was, however, sent and received by the Respondent on November 6, 2023, after the thirty-day mandatory deadline had expired.

40. According to **Section 62(1)(f)**, this provision cannot be applied where a deadline of 30 days is specified, which is clearly longer than the 6-day timeline provided therein. On the other hand, **Section 62 (1) (e)** only applies where a deadline prescribed by an enactment (in this case, EACCMA) falls on a weekend or on a public holiday. However, the Respondent notes that in this case, the Appellant's review decision was due on October 20, 2023, which fell on a Friday, as the same was a public holiday. Therefore, even while taking the provisions of Section 62 (1) (e) into consideration, the Appellant had until Monday, October 23, 2023, to issue her review decision. The review decision issued on November 6, 2023, would still be time-barred.
41. In her written submissions, the Respondent notes that the Appellant's argument around the issue of whether his review Decision was late is anchored on the issue of the definition of days, which the Appellant claims should be interpreted as per Article 1 of the Protocol on the Establishment of the East African Community Customs Union (the Protocol) and Section 2 of EACCMA.
42. The Appellant claims that while EACCMA does not define the word "Days", the Protocol does. The Appellant refers to Article 1 of the

Protocol, which defines the word “Days” as meaning working days in any calendar month (emphasis ours). The Appellant is therefore relying on this provision to allege that the thirty days referred to in Section 229 (4) of EACCMA refer to thirty working days and as such that she issued the review decision within the required timelines.

43. In addition, in her written submissions, the Appellant claims that, having requested a meeting for the Respondent to provide more information, she had thirty days from the date of the meeting, held on October 31, 2023, to issue her review decision. As such, the review decision received by the Appellant on November 6, 2023, was issued within the thirty-day timeline.

44. To this, the Respondent submits that the Appellant is clutching at straws. While the Protocol does define the word “Days”, the preamble to the Protocol provides as follows: ***“In this Protocol, except where the context otherwise requires...” (emphasis ours)***. The Respondent submits that the preamble is very clear that the definitions provided under Article 1 are to be applied within the provisions of the Protocol unless the context otherwise requires. The Respondent notes and submits that in the Protocol, no context involves the definition of the word "Days" to be applied anywhere outside the Protocol. The meaning of the word “Days” in the Protocol refers to provisions such as Article 20(3) and Article 37, which specify communication and notification deadlines between member countries. These are the deadlines that should be within the respective working days referred to therein.

45. The Respondent also notes that the preamble to **Section 2 (1) of EACCMA** provides that: ***“In this Act, unless the context otherwise***

requires...” (emphasis ours). The Respondent submits that the preamble is very clear about the definitions provided under Section 2 as being applicable within the provisions of EACCMA unless the context otherwise requires. Consequently, the Respondent submits that the application of the Protocol as a customs law is only about the respective clauses of EACCMA.

46. The Respondent notes that **Section 229 (4)** does not refer to the Protocol as far as the definition of the word days is concerned. The Respondent further submits that the context of the Protocol applying as a customs law is about provisions such as Section 111, which provides for the application of the Rules of Origin provided under the Protocol, or **Section 137 (1)**, which refers to the Trade Remedies established under the Protocol, etc.
47. The Respondent also notes and submits that by the time the two parties held a meeting on October 31, 2023, in which the Appellant claims that further information was provided, the thirty-day deadline had already expired on October 20, 2023. In addition, the Respondent’s tax agent had already written to the Appellant informing her that any discussions on Effaclar Gel Cleanser were to be held on a without prejudice basis. Please refer to pages 15 - 16 of the Respondent’s Statement of Facts.

ISSUES ANALYSIS AND DETERMINATION

48. After reviewing the tribunal record and submissions filed, I find that the issues of whether the Respondent's objection decision was issued within statutory timelines and the costs are relevant.
49. The duty of the High Court of Appeal from Tribunal decision is restricted

by the provisions of Section 56(2) of the Tax Procedures Act, 2015 of Kenya, which entails a jurisdictional provision that limits appeals from the Tax Appeals Tribunal to the High Court and the Court of Appeal to questions of law only. The text of the subsection is:

“An appeal to the High Court or to the Court of Appeal shall be on a question of law only”.

50. This provision means that higher courts cannot re-evaluate the facts as determined by the Tax Appeals Tribunal unless the Tribunal's factual findings were perverse or not supported by evidence. The interpretation of the law itself is a question of law that the High Court or Court of Appeal can rule on.
51. The Respondent also submits that all these issues were analyzed and determined by the Tribunal in Paragraphs 86 to 104 of the Judgment, wherein the Tribunal applied its mind and relevant case law to rule in favor of the Respondent. Based on these paragraphs, it is the Respondent's submission that the Tribunal's Decision is reasonable based on the facts presented to it and its analysis of these facts and applicable laws.

ANALYSIS

Where the impugned Decision on objection was time-barred.

52. Section 229 (1) of the East African Community Customs Management Act (EACCMA) provides that:

“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, apply for review of that decision or omission”.

53. The Respondent lodged its application for review through its letter dated September 19, 2023, which the Appellant received on September 20, 2023. This was in line with the provisions of Section 229 (1) of EACCMA.
54. **Section 229 (4) of EACCMA** provides that; *“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 applying, communicate his or her decision in writing to the person lodging the application stating reasons for the decision”*.
55. The Appellant received the application for review on September 20, 2023; she had until October 20, 2023, to issue her review decision. The same was, however, sent and received by the Respondent on November 6, 2023, long after the thirty-day mandatory deadline imposed by Section 229(4) of EACCMA had expired.
56. Section 229 (5) of EACCMA provides that, *“Where the Commissioner has not communicated his or her decision to the person applying for review within the time specified in subsection (4), the Commissioner shall be deemed to have decided to allow the application.”*
57. The Appellant did not respond to the application for review letter dated September 19, 2023, within the legally mandated thirty-day deadline. In this regard, the Appellant was deemed to have allowed the said application, and as such, by the operation of the law, her review decision received on November 6, 2023, was null and void.

58. The above statutory position was affirmed in the case of *Republic Vs The Commissioner of Customs Services, Ex-Parte Unilever Kenya (Misc. Civil Application No. 181 of 2011) where Korir J* held that non-communication of the Respondent's Decision within the statutory period of 30 days meant that the Applicant's application for review had been allowed by operation of the law, [Section 229 (5)] and that the tax payer did not thereafter owe the taxes that the Respondent had demanded.
59. As held in the above case, the Commissioner of Customs & Border Control, who is the Appellant in this case, was barred from recovering taxes demanded because of failing to respond to the application for review within the statutory thirty days.
60. In paragraph 4 of her Memorandum of Appeal, the Appellant claims that the Tribunal erred in law and fact by failing to adhere to the jurisprudence/precedent set by itself on the interpretation of **Section 229 (4)** in finding that the Appellant's review decision was issued outside the stipulated timelines as outlined under Section 229. The Respondent submits that this claim and ground are baseless, given that the Tribunal has previously upheld the view that the provisions of Section 229 (4) of EACCMA are couched in mandatory terms and thus strictly adhered to the compulsory thirty-day deadline. In the case of the Tribunal's own Decision of BIC East Africa Limited vs. Commissioner Customs & Border Control (Tax Appeal No. 127 of 2020), the Tribunal in Paragraph 20 of its Judgement held as follows:

“Additionally, the Tribunal finds the Respondent's late response to the review application to be in gross violation of Section 229 (5) of the EACCMA 2004, which stipulates that where the

Respondent had not communicated their Decision within the specified time of 30 days, the review application shall be deemed to have been allowed by the Respondent. To contextualize this, as of June 7, 2019, the Appellant's review application was deemed allowed, meaning that it was tax-exempt in the eyes of the law. It also meant that the Appellant was well within its right to apply for a refund of the taxes paid earlier under protest. Our resolve in this regard is further cemented because Section 229 (4) & (5) of the EACCMA are cushioned in mandatory terms, hence the Respondent was not allowed to extend the same timelines.”

61. The High Court also upheld the above Decision by the Tribunal in its own Decision in *Commissioner of Customs and Border Control v Bic East Africa Limited [2022] KEHC 15981 (KLR)*, where Justice Mabeya, in Paragraph 23 of his Judgement, held as follows:

“From the foregoing, it is clear that the Appellant must respond to an application for review within 30 days of the receipt of such application. The law leaves no room for the Appellant to extend the time by which to respond to a review application. Only the taxpayer enjoys the extension of the time by which to bring the application for review, and even then, the taxpayer must show good cause to the Appellant for such extension of time.”

62. In paragraph 3 of her Memorandum of Appeal, the Appellant claims that the Tribunal erred in law by failing to adhere to the provisions of Section 62 of the Laws of the Community (Interpretation) Act, 2024, on the issue of computation of time while finding that the review decision issued by

the Appellant was out of time.

63. The Respondent submits that this provision of the law was neither argued nor relied on by the Appellant in the Tribunal. The Appellant's submissions on the issue as per pages 61 to 63 of the Appellant's Record of Appeal. In addition, while the Appellant has referred to the legal provision in her Memorandum of Appeal, she has not submitted on the same in her written submissions (see Paragraphs 67 to 85 of the Appellant's written submissions), where she has addressed the issue of time. Thus, this assertion is evidently an afterthought, intended to salvage an otherwise untenable position.
64. Nonetheless, having analyzed **Section 62** of the Laws of the Community (Interpretation) Act, 2024, the Court finds that the provision contains several subsections. However, the Appellant has not specified which subsections of Section 62 were ignored by the Tribunal while making its Decision. Nonetheless, it is manifest that the only subsections that the Appellant could be referring to or relying on are Section 62 (1) and (f) on the issue of computation of time on matters affecting the provisions of EACCMA. These provisions state as follows:
- “a) Where - i) The time for doing anything is limited, or a particular day is specified, by an enactment; and ii) that time expires on, or that time or day falls on, a Saturday, a Sunday, or a public holiday, the thing may be done on the next day that is not a Saturday, a Sunday, or a public holiday;*
- b) Where a period of time set for the doing of anything does not exceed six days, Sundays and public holidays are not to be included in the computation of the period.”*

65. As aforementioned, the Appellant received the Respondent's application for review on September 20, 2023. This, therefore, meant that as per the provisions of Section 229 (4) of EACCMA, the Appellant had until October 20, 2023, to issue her review decision. The same was, however, sent and received by the Respondent on November 6, 2023, after the thirty-day mandatory deadline had expired.
66. According to **Section 62(1)(f)**, this provision cannot be applied where a deadline of 30 days is specified, which is clearly longer than the 6-day timeline provided therein. On the other hand, **Section 62 (1) (e)** only applies where a deadline prescribed by an enactment (in this case, EACCMA) falls on a weekend or on a public holiday. However, the Respondent notes that in this particular case, the Appellant's review decision was due on October 20, 2023, which fell on a Friday, as the same was a public holiday. Therefore, even while taking the provisions of **Section 62 (1) (e)** into consideration, the Appellant had until Monday, October 23, 2023, to issue her review decision. The review decision issued on November 6, 2023, would still be time-barred.
67. In her written submissions, the Respondent notes that the Appellant's argument around the issue of whether his review Decision was late is anchored on the issue of the definition of days, which the Appellant claims should be interpreted as per Article 1 of the Protocol on the Establishment of the East African Community Customs Union (the Protocol) and Section 2 of EACCMA.
68. The Appellant claims that while EACCMA does not define the word "Days", the Protocol does. The Appellant refers to Article 1 of the Protocol, which defines the word "Days" as meaning working days in

- any calendar month (emphasis ours). The Appellant is therefore relying on this provision to allege that the thirty days referred to in Section 229 (4) of EACCMA refer to thirty working days and as such that she issued the review decision within the required timelines.
69. In addition, in her written submissions, the Appellant claims that, having requested a meeting for the Respondent to provide more information, she had thirty days from the date of the meeting, held on October 31, 2023, to issue her review decision. As such, the review decision received by the Appellant on November 6, 2023, was issued within the thirty-day timeline.
70. The preamble to Section 2 (1) of EACCMA provides that: ***“In this Act, unless the context otherwise requires...”***. The Respondent submits that the preamble is very clear about the definitions provided under **Section 2** as being applicable within the provisions of EACCMA unless the context otherwise requires. Consequently, the Respondent submits that the application of the Protocol as a customs law is only about the respective clauses of EACCMA.
71. The provisions of **Section 229(4)** do not refer to the Protocol insofar as the definition of the word 'days' is concerned. The Respondent further submits that the context of the Protocol, as a customs law, pertains to provisions such as Section 111, which provides for the application of the Rules of Origin under the Protocol, or **Section 137(1)**, which refers to the Trade Remedies established under the Protocol, e.t.c.
72. By the time the two parties held a meeting on October 31, 2023, in which the Appellant claims that further information was provided, the thirty-day deadline had, in any event, already expired on October 20, 2023.

- i. Thus, the Tribunal's Decision that the Appeal succeeds and the orders allowing the Appeal are upheld.**
- ii. The Appellant's review decision, issued on November 6, 2023, is set aside and is upheld.**
- iii. The Respondent is entitled to a refund of any duties paid in protest pursuant to the provisions of section 144(3) of EACCMA.**
- iv. Each party to bear its own cost.**

DATED AND DELIVERED IN NAIROBI VIA MICROSOFT TEAMS

THIS 14TH NOVEMBER, 2025

.....

CHARLES KARIUKI

JUDGE