



Commissioner of Customs and Border Control v L'Oreal East African Ltd (Customs Tax Appeal E001 of 2025) [2025] KEHC 16917 (KLR) (Commercial and Tax) (14 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CUSTOMS TAX APPEAL E001 OF 2025
CM KARIUKI, J
NOVEMBER 14, 2025**

**BETWEEN
COMMISSIONER OF CUSTOMS AND BORDER CONTROL APPELLANT
AND
L'OREAL EAST AFRICAN LTD RESPONDENT**

JUDGMENT

Background:

1. The Appellant is established under the *Kenya Revenue Authority Act*, Cap 469 Laws of Kenya. The Kenya Revenue Authority (“KRA”) is an agency of the Government of Kenya for assessing, collecting, and accounting for all revenue. The Respondent is a Private Limited Liability Company incorporated in Kenya. Its main form of business is button of personal care products marketing within East Africa.
2. The Appellant flagged the Respondent’s shipment declared through Entry Number 23EKIM40067783I for verification of the Harmonized System Code applied by the Appellant for the Respondent’s product. Garnier Pure Active 3-in-1- Charcoal (Garnier Pure Active) declared by the respondent under HS Code 3401.30.00 of the EAC/CET version 2022. The Appellant then issued a Tariff Ruling on 19th July 2023 Reference No. KRA/C&BC/BIA/THO_/504/07/2023 wherein it reclassified the Product to HS Code 3304.99.00.
3. The Respondent lodged an Application for Review via a letter dated 24th July 2023 objecting to the appellants’ Ruling and engaged in talks with the Appellant in a meeting at the appellant’s offices on 1st August 2023 for further information.
4. The appellant consequently issued a Review Decision dated 1st August 2023 upholding its ruling and subsequent reclassification of the respondent’s product under HS Code 3304.99.00 and demanded an excise duty of Kshs. 415,565.00 paid by the Appellant under protest vide a letter dated. 8.8.2023.



5. Aggrieved by the appellant's Decision, the Respondent filed a Notice of Appeal dated and filed on 14th September 2023 and memorandum thereafter was lodged. The Tribunal heard the appeal and overturned the appellant herein decision thus instant appeal was lodged.
6. From the onset, it is important to note that in its Judgment, the Tribunal in Paragraph 98 only framed the following two issues for determination:
 1. Whether the Appellant's review decision dated 3 November 2023 was statutorily time barred; and
 2. Whether the Appellant erred in classifying the disputed product under HS Code 3304.99.00 instead of HS Code 3401.30.00.
7. However, having decided on the first issue above, the Tribunal found the second issue moot and thus did not make a determination of the same. This was well captured by the Tribunal in Paragraph 121 of its judgment. This therefore means that as per Section 56 (2) of the [Tax Procedures Act](#), this Honorable Court can only look at the issue that was determined by the Tribunal if the same 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”
8. This Court will resist any temptation to decide on the issue of classification of the disputed product despite the fact that the Appellant has argued and submitted on the same. The Respondent herein has restricted itself only to the issue determined by the Tribunal which essentially will be the sole basis of the Appellant's appeal. However, the Respondent has raised a preliminary objection at paragraph 10 stating that the Appeal is barred by 19 days.
 - a) Whether the appeal is time barred and thus fatally defective
9. The Respondent states that the Appellant filed its Notice of Appeal on 22 November 2024. This was within the 30 days required under Sec 32 (1) of the [Tax Appeals Tribunal Act, 2013 \(TAT Act\)](#) given that the Honorable Tribunal's Judgment was issued on 25 October 2024. The manner in which an appeal is to be filed is provided for under Rule 3 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015 (“the Rules”) promulgated by the Chief Justice which provide as follows:

“ The appellant shall, within thirty days, after the date of service of a notice of appeal under section 32(1), file a memorandum of appeal with the Registrar and service a copy on the respondent”.
10. The Respondent states that Under Rule 3 above, the Appellant was required to file its Memorandum of Appeal within 30 days of serving its Notice of Appeal. Given that the Appellant had filed and served its Notice of Appeal on 22 November 2024, it was required by law to file its Memorandum of Appeal by 22 December 2024. However, from the review of the Judiciary's Case Tracking System (CTS), the Respondent states that the Appellant;
 1. It filed its Memorandum of Appeal on 10 January 2025 and served it on 13th January 2025. The Respondent states that the Appellant thus filed the Memorandum of Appeal nineteen days after the required statutory timeline.
11. As per the provisions of Rule 3 of the Rules, the party filing the appeal is mandatorily required to file the Memorandum of Appeal within thirty days of serving the Notice of Appeal to the other party. This is through the use of the word “shall” meaning that the provision is couched in mandatory terms.



12. From the onset, it is important to note that the Appellant ought to have obtained this court's leave for extension of time to file an appeal before proceeding to file its Memorandum of Appeal as is provided for under Rule 4 of the Rules.
13. By filing the Memorandum of Appeal before obtaining this court's leave for extension of time, the appellant is placing this court in a position where it is impliedly moving the court to remedy illegality. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014]1 eKLR held that:

“ it cannot be ignored that where the law provides for the time within which something ought to be done, if that time lapses, one needs to first seek extension of that time before he can proceed to do that which the law requires. By filing an appeal out of time before seeking extension of time and subsequently seeking the Court to extend time and recognize such an 'appeal', is tantamount to moving the court to remedy an illegality. This, the Court cannot do.”
14. The Appellant being the party dissatisfied with the decision of the Tribunal ought to have lodged an appeal in the manner prescribed in the TAT Act, 2013 and the Rules.
15. Based on the foregoing, the Respondent submits that the appellant's appeal is incompetent given that it is anchored on a defective Memorandum of Appeal having been filed out of time and no steps were taken to remedy the defect before filing the appeal. On this ground alone, the appeal ought to be struck out.
16. The Appellant submits that she filed its appeal within timelines as stipulated by statutes. [Order 50, rule 4. Clearly indicates when time does not run. Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act: Provided that:

“The rule shall not apply to any application in respect of a temporary injunction. filed”
17. The Notice of Appeal on 22nd November 2024 and the Memorandum of Appeal on 10th January 2025 and served the same on 13th January 2025. The Appellant submits that the Appeal was filed timeously and within confines of the law.
18. The Appellant submits that in accordance with the Civil procedure rules the period between 21st December 2024 and 13th January 2025 and according to the Judiciary notice 15th December 2025 the time had stopped running for filling the Memorandum of Appeal. To support this submission the Appellant relies on the cases of *Kimolo & another v Karanja & another* ((Suing as the administratrix of the Estate of Peter Karanja Ndungu (Deceased)) (Miscellaneous Civil Case E004 of 2024) [2024] KEHC 5438 (KLR) (25 April 2024). The Appellant further contend that the time within which to lodge an appeal had not run out as the time fell within the courts Christmas vacation which by law is not included in the computation of time. As such, the period from 21st December 2024 to 15th January 2025 is to be excluded from the computation of time. Therefore, the Appeal before this court is within timelines and the Court and the Advocate on record for the Respondent should take judicial notice of the Vacation period.



Court Verdict On Po

19. The court agrees with the appellant that the appeal was lodged within timelines as stipulated by statutes. Order 50, rule 4. Clearly indicates when time does not run.

“Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act: Provided that this; rule shall not apply to any application in respect of a temporary injunction. filed”

20. The Notice of Appeal on 22nd November 2024 and the Memorandum of Appeal on 10th January 2025 and served the same on 13th January 2025. The respondent does not contest that fact which is in tandem with the contention by the appellant that the Appeal was filed timeously and within confines of the law. The provisions of Order 50, rule 4. Of the Civil procedure rules provide period to be skipped in computation of time and for that matter, the period between 21st December 2024 and 13th January 2025 and accordingly time had stopped running for filling the Memorandum of Appeal in the instant matter. The cases of Kimolo & another v Karanja & another (Suing as the administratrix of the Estate of Peter Karanja Ndungu (Deceased)) (Miscellaneous Civil Case E004 of 2024) [2024] KEHC 5438 (KLR) (25 April 2024) are apt in the holding so. As such the time within which to lodge an appeal had not run out as the time fell within the courts’ Christmas vacation which by law is not included in the computation of time. As such, the period from 21st December 2024 to 15th January 2025 is be excluded from the computation of time. Therefore, the Appeal before this court is within timelines and the Court and the Advocate on record for the Respondent should take judicial notice of the Vacation period.

On The Main Appeal

21. A tariff ruling dated 5th September 2023 was prepared and communicated to the Respondent. The product was classified under 2022 EAC/CET Code 3304.99.00. The Respondent appealed the decision to classify the product under HS Code 3304.99.00 vide unreferenced appeal letter dated 3rd October 2023 which was received by the Appellant on the same day.
22. There was a meeting engagement during this period that was held on 31st October 2023 where parties deliberated more about the products and more information was advanced by the Respondent for consideration. The Appellant issued an appeal response on 3rd November 2023 vide an appeal response upholding the classification in HS Code 3304.99.00.
23. Aggrieved by the Appellant’s decision, the Respondent lodged its Memorandum of Appeal before the Honorable Tribunal for determination, which Judgement was delivered in their favor. The tribunal only determined one issue namely, Whether the Appellant’s advanced ruling dated 3rd November 2023 was within timelines. Which upon same succeeding held others to be mute.

Appellant’s Case And Analysis Of The Issue Decided:

Whether the appellant’s advanced ruling dated 3.11.2023 was within timelines.

24. The Appellant submits that the procedure or process that follows Tariff Classification: is that a tariff dispute is forwarded from the release station. An analysis leading to tariff determination is done online



- and memo is done to the importer on the decision undertaken. In case the importer is dissatisfied, an appeal is lodged by the importer.
25. A review of the appeal is undertaken, and the review ruling is communicated to the importer. The importer would still object to the findings, the matter is then forwarded to Policy for *the constitution* of a Technical Committee to deliberate on the tariff dispute.
 26. The Ruling of the Technical Committee is deemed to be the final findings of the Appellant. The importer is required to abide by the ruling or forward the matter to the Tax Appeals Tribunal.
 27. While the Respondent has gone to great lengths to mislead the Tribunal as to the timelines of issuing a review decision, the Respondent's own documents provided a chronology that proves that the Appellant was well within timelines.
 28. The Appellant prepared a tariff ruling dated 5th September 2023 and communicated to the Respondent. The product was classified under 2022 EAC/CET 3304.99.00.
 29. The Respondent appealed the decision to classify the product under HS Code 3304.99.00 vide unreferenced appeal letter dated 3rd October 2023 which was received by the Appellant on the same day. On 31st October 2023, there was a meeting held to discuss the L'Oreal Products whose tariff classification were in contention namely:
 - 1) La Roche Posay Effaclar Gel Cleanser
 - 2) Garnier Even & Matte Micellar Cleansing Water; and
 - 3) L'Oreal Paris Revitalift Replumping Gel Wash.
 30. In the email correspondences leading up to the meeting, the Respondent stated that:

“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 20th September 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 Appellant had 30 days to communicate her decision. The same should therefore have been sent and received by 20th October 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 20th September 2023 as allowed by the Appellant and the additional taxes paid under protest duly vacated. In this regard, we expect that the discussions tomorrow shall be on the other two products and that any discussions on Effaclar shall strictly be on a without prejudice basis.”
 31. The Respondent acknowledged that the only decision that was out of time was the one related to La Roche Posay Effaclar Gel Cleanser. Section 229(4) of EACCMA provides that:

“The Appellant shall, within a period not exceeding thirty days of receipt of the application under subsection (2) and any further information the Appellant may require from the person lodging the application, (emphasis is mine) communicate his or her decision in writing to the person lodging the application stating reasons for the decision.”
 32. The Appellant had several meetings with the Respondent and its representatives who brought new information for consideration by the Appellant each time these meetings were called.



33. That of interest to this issue is that the parties had a meeting on 31st October 2023 whereby new information was provided for review by the Respondent. The Appellant reviewed the same and gave a ruling on 3rd November 2023 which is 2 days after the meeting.
34. The Appellant relies on the case of *Hydery (P) Limited v Appellant for Investigations and Enforcement TAT No. 278 of 2021*, where the Tribunal faced the same facts and ruled that;

“In this regard and in view of the chronology of events provided by both parties, it is clear to the Tribunal that the Appellant was within its rights to ask for further information as it deemed fit or required. Section 229 of EACCMA provides that the Appellant is mandated to issue a decision within thirty days of either receiving an application or documents requested by itself. In this particular case, the last request for documents by the Appellant was made on 13th April 2021. To the extent that no further documents were submitted by the Respondent, the Appellant’s issuance of a decision on the 12th of May 2021, which was the 29th day after its last request for documents, was well within the thirty-day timelines.”
35. 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.
36. The Appellant relies on the case of *CSARS v Capstone 556 (Pty) Limited 2016 ZASCA* where the court ruled that delays caused by the Respondent cannot be used as a defense against the Appellant taking action within statutory timeframes. The information and documents provided on all occasions by the Respondent were reviewed and formed part of the review decision.
37. Section 229(4) of EACCMA provides that times start running at the last day of engagement. Both parties had an engagement on 31st October 2023, meaning the Appellant had 30 days from this day to issue a response. The review decision was issued on 3rd November 2023 which is well within the stipulated timeline of 30 days.

Respondents’ Submissions:

38. The Respondent makes these submissions based on the following as the issues for determination:
 - a. Whether the appeal is barred and thus fatally defective; and
 - b. Whether the Honorable Tribunal erred in law by ruling that the Appellant’s Review Decision dated 3 November 2023 and issued on 6 November 2023 was statutorily time barred.
 - c. Whether the Honorable Tribunal erred in law by ruling that the Appellant’s Review Decision dated 3 November 2023 and issued on 6 November 2023 was statutorily barred.
39. From the onset, it is important to note that in its Judgment, the Tribunal in Paragraph 98 only framed the following two issues for determination:
 1. Whether the Appellant’s review decision dated 3rd November 2023 was statutorily time barred; and
 2. Whether, the Appellant erred in classifying the disputed product under HS Code 3304.99.00 instead of HS Code 3401.30.00.
40. However, having decided on the first issue above, the Tribunal found the second issue moot and thus did not make a determination of the same. This was well captured by the Tribunal in Paragraph 121 of its judgment. This therefore means that as per Section 56 (2) of the *Tax Procedures Act*, this Honorable



Court can only look at the issue that was determined by the Tribunal if the same 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”

41. The Respondent the Court should resist any temptation to decide on the issue of classification of the disputed product despite the fact that the Appellant has argued and submitted on the same. The Respondent herein has restricted itself only to the issue determined by the Tribunal which essentially should have been the sole basis of the Appellant’s appeal.
42. The Appellant flagged one of the Respondent’s shipments for verification to determine the Harmonized System (HS) Code applied by the Respondent for its product Garnier Even & Matte Micellar Cleansing Water (Micellar Cleansing Water) which the Respondent declared under HS Code 3401.30.00 of the East African Customs Common External Tariff, Version 2022 (EACCET).
43. Subsequently, the Appellant issued a Tariff Ruling on 5 September 2023 attached at pages 1 - 3 of the Respondent’s Statement of Facts. In the ruling, the Appellant reclassified Micellar Cleansing Water to HS Code 3304.99.00.
44. Being dissatisfied by the Appellant’s decision in the Ruling, the Respondent lodged its application for review through its letter dated 3 October 2023, objecting to the Appellant’s decision and setting out the background to the issue and specific grounds for review of the Appellant’s decision. The Respondent’s application for review is attached at pages 4 - 11 of the Respondent’s Statement of Facts.
45. Subsequently and before issuing her review decision, the Appellant invited the Respondent for a meeting through an email dated 26 October 2023. The meeting was scheduled to be held on 31 October 2023 at the Appellant’s offices.
46. During the meeting, the Respondent provided further information and justification in support of its case to classify Micellar Cleansing Water under HS Code 3401.30.00. Thereafter, the Appellant issued her review decision dated 3rd November 2023 which was sent and received by the Respondent via the Appellant’s email dated 6th November 2023. The email is attached at page 12 of the Respondent’s Statement of Facts while the review decision is attached at pages 13 - 15 of the Respondent’s Statement of Facts. In her review decision, the Appellant upheld the decision to reclassify Micellar Cleansing Water to HS Code 3304.99.00 as per the aforementioned Tariff Ruling.
47. Aggrieved by the Appellant’s Review Decision, the Respondent lodged a Notice of Appeal, the Memorandum of Appeal and Statement of Facts dated 20 December 2023 which were subsequently stamped on 21 December 2023. These documents are attached at pages 16 - 95 of the Respondent’s Statement of Facts.
48. The Respondent during hearing of the Appeal before the Tribunal adduced evidence through its technical witness Philippe Rapold. The Respondent’s witness statement signed and dated 10 July 2024 is attached at pages 96 - 97 of the Respondent’s Statement of Facts.
49. In addition, the Respondent filed its written submissions dated 30 September 2024. The submissions are attached at pages 98 - 117 of the Respondent’s Statement of Facts.
50. 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 3rd November 2023 and issued on 6th November 2023 was statutorily barred.



51. Section 229 (1) of 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 lodge an application for review of that decision or omission”.
52. The Respondent vide its letter dated 3 October 2023 lodged an application for review as provided for by Section 229 (1) of EACCMA. The application for review was received by the Appellant on even date as per the email attached at pages 119 - 120 of the Respondent’s Statement of Facts.
53. 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 lodging the application communicate his or her decision in writing to the person lodging the application stating reasons for the decision”.
54. Given that the Appellant received the application for review on 3 October 2023, she had until 2 November 2023 to issue her review decision. The same was however sent and received by the Respondent on 6 November 2023, after the expiry of the thirty-day mandatory deadline imposed by Section 229 (4) of EACCMA.
55. Section 229 (5) of EACCMA provides that:
- “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.”
56. The Appellant did not respond to the application for review letter dated 3 October 2023 within the legally mandatory set deadline of thirty days. In this regard, the Respondent submits that the Appellant was deemed to have allowed the said application and as such by the operation of the law, her review decision received on 6 November 2023 was null and void.
57. 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 had been demanded by the Respondent.
58. 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.
59. In paragraph 4 of her Memorandum of Appeal, the Appellant claims that the Honourable 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 Appellant’s review decision was issued outside the stipulated timelines as outlined under Section 229. The Respondent submits that this claim and ground is 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 thirty-day mandatory deadline. Reliance made on BIC East Africa Limited vs. Commissioner Customs & Border Control (Tax Appeal No. 127 of 2020) where the above decision by the Tribunal was also upheld by



the High Court in its own decision in *Commissioner of Customs and Boarder Control v Bic East Africa Limited* [2022] KEHC 15981 (KLR).

60. 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.
61. The Respondent submits that this provision of the law was neither argued nor relied on by the Appellant in the Tribunal. The Court referred to the Appellant's submissions to the Tribunal on the issue as per pages 399 to 402 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 the same in her written submissions where she has addressed the issue of time. The Respondent therefore submits that this assertion is evidently an afterthought, aimed at salvaging an otherwise untenable position.
62. Respondent submits that, Section 62 of the Laws of the Community (Interpretation) Act, 2024 contains several subsections. However, the Appellant has not specified which subsections of Section 62 were ignored by the Tribunal while making its decision. 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.
63. These provisions state as follows: where the time for doing anything is limited, or a particular day is specified, by an enactment; and that time expires on, or that time or day falls on, a Saturday or a Sunday or a public holiday, the thing may be done on the next day that is not a Saturday or a Sunday or a public holiday; 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;
64. As aforementioned, the Appellant received the Respondent's application for review on 3 October 2023. This therefore meant that as per the provisions of Section 229 (4) of EACCMA, the Appellant had until 2 November 2023 to issue her review decision. The same was, however, sent and received by the Respondent on 6 November 2023, after the expiry of the thirty-day mandatory deadline.
65. From the reading of Section 62 (1) (f), the same cannot be applied where there is a deadline of 30 days which is clearly more 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 submits that in this particular case, the Appellant's review decision was due on 2 November 2023, which fell on a Thursday and which was not a public holiday.
66. In her written submissions, the Respondent notes that the Appellant's argument around the issue of whether the 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.
67. The Appellant's claim is that while EACCMA does not provide for a definition of the word "Days", the Protocol provides for the same. 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.
68. In addition, in her written submissions, the Appellant claims that having requested for a meeting for the Respondent to avail more information, that she had thirty days from the date of the meeting held



- on 31st October 2023 to issue her review decision and as such, the review decision received by the Appellant on 6th November 2023 was issued within the thirty days' timeline.
69. 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...."
70. 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 submits that in the Protocol, there is no context that requires the definition of the word "Days" to be applied anywhere outside the Protocol. The definition of the word "Days" in the Protocol is to be applied on provisions such as Article 20 (3) and Article 37 which provide for communication and notification deadlines between member countries. These are the deadlines that should be within the respective working days referred to therein.
71. 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 with regard to 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 with regards to the respective provisions of EACCMA. The Respondent submits that Section 229 (4) does not refer to the Protocol in 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 with regard to provisions such as Section 111 which provides for 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.
72. The Respondent also submits that all these issues were analysed and determined by the Honourable Tribunal in Paragraphs 100 to 120 of the Judgment wherein the Tribunal applied its mind and relevant case law to rule in favour 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. To the specific issue of whether the Appellant had 30 days after the meeting of 31st October 2023 to issue its review decision, the Respondent would like to refer the Court to Paragraphs 105 to 112 of the Tribunal's Judgment where the Honorable Tribunal analysed on the issue of the use of the conjunctive "AND" as opposed to the use of the conjunctive "OR" under Section 229 (4) of EACCMA and thus concluding that the use of the conjunctive "AND" meant that the Appellant had no choice but to issue a review decision within 30 days of receiving the application for review.
73. It is the Respondent's submission that the court needs to look into this issue, so as to convince itself to the conclusion reached by the Tribunal given the evidence and testimony presented to it at the initial trial. Having said that, the Respondent submits and cautions the court that in analyzing this issue, it should be guided by the aforementioned case of *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others (Supra)* .where the Respondent submits that unless this court finds that the Tribunal's decision was not based on the evidence on record or was so perverse that no reasonable tribunal would have arrived at the same conclusion, it would have no choice but to uphold the Tribunal's decision.

Issues Analysis And Determination:

74. The court having considered the tribunal judgement, parties' pleadings, documents and submissions puts forth the following issues for determination:



- a. Whether the Honorable Tribunal erred in law by ruling that the Appellant’s Review Decision dated 3rd November 2023 and issued on 6th November 2023 was statutorily time barred.
 - b. Costs.
 - c. Whether the appeal is time barred and thus fatally defective.
75. From the onset, it is important to note that in its Judgment, the Tribunal in Paragraph 98 only framed the following two issues for determination: Whether the Appellant’s review decision dated 3 November 2023 was statutorily time barred?
76. Under Section 56(2) of the *Tax Procedures Act*, this Court can only look at the issue that was determined by the Tribunal if the same 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”
77. The Respondent herein has restricted itself only to the issue determined by the Tribunal which essentially should have been the sole basis of the Appellant’s appeal.
78. The Appellant flagged one of the Respondent’s shipments for verification to determine the Harmonized System (HS) Code applied by the Respondent for its product Garnier Even & Matte Micellar Cleansing Water (Micellar Cleansing Water) which the Respondent declared under HS Code 3401.30.00 of the East African Customs Common External Tariff, Version 2022 (EACCET).
79. Subsequently, the Appellant issued a Tariff Ruling on 5 September 2023 attached at pages 1 - 3 of the Respondent’s Statement of Facts. In the ruling, the Appellant reclassified Micellar Cleansing Water to HS Code 3304.99.00.
80. Being dissatisfied by the Appellant’s decision in the Ruling, the Respondent lodged its application for review through its letter dated 3 October 2023, objecting to the Appellant’s decision and setting out the background to the issue and specific grounds for review of the Appellant’s decision.
81. Subsequently and before issuing her review decision, the Appellant invited the Respondent for a meeting through an email dated 26 October 2023. The meeting was scheduled to be held on 31 October 2023 at the Appellant’s offices.
82. During the meeting, the Respondent provided further information and justification in support of its case to classify Micellar Cleansing Water under HS Code 3401.30.00. Thereafter, the Appellant issued her review decision dated 3 November 2023 which was sent and received by the Respondent via the Appellant’s email dated 6 November 2023. In her review decision, the Appellant upheld the decision to reclassify Micellar Cleansing Water to HS Code 3304.99.00 as per the aforementioned Tariff Ruling.
83. Aggrieved by the Appellant’s Review Decision, the Respondent lodged a Notice of Appeal, the Memorandum of Appeal and Statement of Facts dated 20 December 2023 which were subsequently stamped on 21 December 2023.
84. The Respondent during hearing of the Appeal before the Tribunal adduced evidence through its technical witness Philippe Rapold. The Respondent’s witness statement signed and dated 10 July 2024 is attached at pages 96 - 97 of the Respondent’s Statement of Facts.
85. In addition, the Respondent filed its written submissions dated 30th September 2024. The submissions are attached at the issue in contention and on which the Tribunal rendered its decision, was whether the



- Appellant's review decision dated 3rd November 2023 and issued on 6 November 2023 was statutorily barred.
86. Section 229 (1) of 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 lodge an application for review of that decision or omission”.
87. The Respondent vide its letter dated 3rd October 2023 lodged an application for review as provided for by Section 229 (1) of EACCMA. The application for review was received by the Appellant on even date.
88. 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 lodging the application communicate his or her decision in writing to the person lodging the application stating reasons for the decision”.
89. Given that the Appellant received the application for review on 3 October 2023, she had until 2nd November 2023 to issue her review decision. The same was however sent and received by the Respondent on 6 November 2023, after the expiry of the thirty-day mandatory deadline imposed by Section 229 (4) of EACCMA. Section 229 (5) of EACCMA provides that:
- “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.”
90. The Appellant did not respond to the application for review letter dated 3 October 2023 within the legally mandatory set deadline of thirty days. Thus, the Appellant was deemed to have allowed the said application and as such by the operation of the law, her review decision received on 6 November 2023 was null and void.
91. 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 had been demanded by the Respondent.
92. 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.
93. In paragraph 4 of her Memorandum of Appeal, the Appellant claims that the Hon 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 Appellant's review decision was issued outside the stipulated timelines as outlined under Section 229. This claim and ground is not sound 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 thirty-day mandatory deadline. See the TAT decision in the case of BIC East Africa Limited vs. Commissioner Customs & Border Control (Tax Appeal No. 127 of 2020). The



above decision by the Tribunal was also upheld by the High Court in its own decision in *Commissioner of Customs and Boarder Control v Bic East Africa Limited* [2022] KEHC 15981 (KLR).

94. 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. That this provision of the law was neither argued nor relied on by the Appellant.
95. In the Tribunal while the Appellant has referred to the legal provision in her Memorandum of Appeal, she has not submitted the same in her written submissions where she has addressed the issue of time in matter of filing the instant appeal.
96. Nonetheless, having analyzed Section 62 of the Laws of the (Interpretation) Act, 2024, the court observes 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 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.
97. These provisions state as follows: where –the time for doing anything is limited, or a particular day is specified, by an enactment; and that time expires on, or that time or day falls on, a Saturday or a Sunday or a public holiday, the thing may be done on the next day that is not a Saturday or a Sunday or a public holiday; 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.
98. As aforementioned, the Appellant received the Respondent’s application for review on 3rd October 2023. This therefore meant that as per the provisions of Section 229 (4) of EACCMA, the Appellant had until 2 November 2023 to issue her review decision. The same was, however, sent and received by the Respondent on 6 November 2023, after the expiry of the thirty-day mandatory deadline.
99. From the reading of Section 62 (1) (f), the same cannot be applied where there is a deadline of 30 days, which is clearly more 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 court observes that in this particular case, the Appellant’s review decision was due on 2 November 2023, which fell on a Thursday, and which was not a public holiday.
100. In her written submissions, the Appellant’s argument around the issue of whether the 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.
101. The Appellant’s claim is that while EACCMA does not provide for a definition of the word “Days”, the Protocol provides for the same. 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.
102. In addition, in her written submissions, the Appellant claims that having requested for a meeting for the Respondent to avail more information, that she had thirty days from the date of the meeting held on 31 October 2023 to issue her review decision and as such, the review decision received by the Appellant on 6 November 2023 was issued within the thirty days’ timeline.



103. 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...” 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. Thus, in the Protocol, there is no context that requires the definition of the word “Days” to be applied anywhere outside the Protocol. The definition of the word “Days” in the Protocol is to be applied on provisions such as Article 20 (3) and Article 37 which provide for communication and notification deadlines between member countries. These are the deadlines that should be within the respective working days referred to therein.
104. Further, the preamble to Section 2 (1) of EACCMA provides that:
- “In this Act, unless the context otherwise requires...” (emphasis ours). The preamble is very clear with regard to the definitions provided under Section 2 as being applicable within the provisions of EACCMA unless the context otherwise requires. Consequently, the application of the Protocol as a customs law is only with regard to the respective provisions of EACCMA. Section 229 (4) does not refer to the Protocol as far as the definition of the word days is concerned.”
105. Further the context of the Protocol applying as a customs law is with regard to provisions such as Section 111 which provide for 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.
106. The instant issues were analyzed and determined by the Honourable Tribunal in Paragraphs 100 to 120 of the Judgment wherein the Tribunal applied its mind and relevant case law to rule in favor of the Respondent. Based on these paragraphs, the Tribunal’s decision is reasonable based on the facts presented to it and its analysis of these facts and applicable laws.
107. To the specific issue of whether the Appellant had 30 days after the meeting of 31 October 2023 to issue its review decision, the Court has perused Paragraphs 105 to 112 of the Tribunal’s Judgment where the Honourable Tribunal analyzed on the issue of the use of the conjunctive “AND” as opposed to the use of the conjunctive “OR” under Section 229 (4) of EACCMA and thus concluding that the use of the conjunctive “AND” meant that the Appellant had no choice but to issue a review decision within 30 days of receiving the application for review.
108. The court has looked into this issue, so as to convince itself as to the conclusion reached by the Tribunal given the evidence and testimony presented to it at the initial trial. Has been guided by the case of *John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others (Supra)* where the Court of Appeal observed as follows:
- “...what amounts to “matters of law” as the interpretation or construction of *the Constitution*, statute or regulations made thereunder or their application to the sets of facts established by the trial Court. As far as facts are concerned, our engagement with them is limited to background and context and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into considerations of the credibility of witnesses, or which witnesses are more believable than others; by law that is the province of the trial court.”
1. This court therefore finds that the Tribunal’s decision was meritorious and thus Review Decision dated 3rd November 2023 and issued on 6th November 2023 was statutorily time barred thus null and void.



2. Thus, this Appeal be and is hereby dismissed with orders that parties bear their own costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS IN NAIROBI THIS 14TH NOVEMBER, 2025

.....

CHARLES KARIUKI

JUDGE

