THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 103 OF 2019

RI DISTRIBUTORS LIMITED AND 11 OTHERS ==========APPLICANTS

VERSUS

UGANDA REVENUE AUTHORITY ==========RESPONDENT

BEFORE DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MS. CHRISTINE KATWE

RULING

This ruling is in respect of the respondent's decision to declare sugar and rice not eligible for customs warehousing under the East African Community Customs Management Act (EACCMA).

The applicants are purportedly engaged in the business of importation and re-exportation of sugar and rice to Democratic Republic of Congo (hereinafter Congo) and South Sudan. Upon the purported importation, the applicants warehouse the sugar and rice for both domestic and re-exportation purposes. On the 17th October 2019, the respondent published a notice in the New Vision listing products which should not be eligible for customs warehousing under the East African Community Customs Management Act (EACCMA) and the Regulations thereunder. The said decision was effective 20th October 2019. The notice was gazetted in the Uganda Gazette of 25th October 2019 under General Notice 1487 of 2019.

The following issues were set down for determination;

1. Whether the notice published by the respondent was proper and legal?
2. What remedies are available?

The applicants were represented by Mr. Enos Tumusiime while the respondent by Mr. George Okello, Mr. Habib Arike, Mr. Ronald Baluku and Mr Aliddeki Ssali. Alex.

The dispute between the parties arose from the respondent's decision to publish a notice in the newspaper and the Uganda Gazette listing some goods including sugar and rice as ineligible for warehousing. The applicants who deal in sugar and rice were aggrieved by the said notice.

The applicants' first witness, Mr. Isaac Nsereko, the Managing Director of the first applicant, holding powers of attorney for all the other applicants, testified that their main business is the importation of rice and sugar from different parts of the world. They warehouse the said commodities in Uganda while looking for markets within and outside Uganda. The commodities are re-exported to South Sudan and Congo. After finding the markets they pay import duty and the commodities are re-exported to the said countries. He testified that the applicants store their commodities in warehouses jointly supervised by bond operators and customs officers deployed by the respondent. He testified that the business of transit employs close to 4,000 people directly and 15,000 people indirectly. They own and control over 600 trucks. A study showing Uganda as a logistic Hub was attached to his witness statement. The bond operators provide bonds and guarantees to the respondent. The applicants are tax compliant.

The witness further testified that on 17th October 2019, the respondent put a notice in the New Vision stopping the applicants from warehousing imported sugar and rice without first paying import duty. The respondent did not consult or give notice to the applicants. At the time the respondent issued the said directive the applicants had already ordered several consignments of rice and sugar which were in transit. The applicants obtained an interim order and later an injunction from the Tax Appeals Tribunal restraining the respondent from enforcing the directive. That on 11th August 2020 the respondent in contempt of the Tribunal's order issued a directive stopping the applicants from warehousing the said commodities. The applicants have several consignments from different countries in transit. The directive implies the applicants will pay taxes before the goods have reached Uganda and before the commodities are sold. He contended that if the directive is not reviewed the applicants will be driven out of business as the costs of

the said commodities will shoot up. It is the importers in Sudan and Congo who pay for the imports. The applicants have been compliant with the re-exportation procedures. The respondent inspects warehouses confirming that it is compliant. He also testified that since the duty on the imported sugar was increased by 150% the applicants no longer import sugar for sale on the local market but for re-export to Congo and Sudan. The main purpose for warehousing is to enable the applicants look for markets and secondly to look for time to raise money to pay taxes for the commodities sold on the local market.

The respondent's witness, Mr. Stephen Magera, its Assistant Commissioner –Field Services testified that under Regulation 64(k) of the East African Community Customs Management Regulations the respondent has discretion to gazette goods that are not supposed to be warehoused. In the exercise of his powers under the law the Commissioner made a decision that there will be no more warehousing of certain items. On 25th October 2019, the respondent published in the Uganda Gazette a list of goods not to be warehoused which included rice, sugar, wines and spirits.

The respondent gazetted the said goods for reasons it stated. Firstly to protect local manufacturers of sugar like Kakira Sugar Works Limited. Secondly, to prevent round tripping of rice and to protect unfair competition from people who dump or divert goods declared for export. Excise duty on wines and spirits has increased tax evasion, smuggling and dumping. The respondent also wished to protect the local industry for building materials such as steel, nails, cement, iron sheets and tiles locally manufactured. The respondent not to warehouse tires and tubes to prevent diversions and dumping. Dentifrices and foodstuff are not to be warehoused in the interest of public health and safety. Used motor vehicles of 14 year old are not to be warehoused because of a 15 year ban on used motor vehicles. Garments and foot wear are not to be warehoused to protect the local industry.

Mr. Magera stated that at the time of the advert he was not aware that the applicants had consignments en route to Uganda. The respondent is not informed when goods arrive at

Mombasa, but when the importers make declarations. The role of customs is to facilitate trade, collect revenue, protect industry as well as collect data for international trade.

The respondent's second witness, Mr. Wilberforce Mubiru, the Secretary Uganda Manufacturers Association, testified that the Association represents the interests of sugar millers. He testified that since 2018 Uganda emerged as a producer of surplus sugar within the East African Community. The sugar market receives cheap and subsidized sugar from countries like Thailand, Brazil, and India threatening local producers and markets. There are some importers who warehouse the sugar, repackage and sell it on the local market. At times, sugar for export is smuggled back into the Uganda market. The witness testified that these challenges were raised by the Association before the President who advised that sugar bonds be closed. The respondent did not implement the said advice. Later, the Commissioner in the exercise of his powers decided there would be no more warehousing of sugar. Before the decision would be effected the Tribunal issued orders stopping its implementation. Ever since the Uganda sugar market continues to suffer unabated.

On the first issue, the applicant contended that the notice of 17th October 2019 stopping the applicants from warehousing sugar and rice was too short, improper and irrational. The applicant cited **Council of Civil Service Union v Minister for Civil Service** [1985] AC 374 where Lord Diplock stated that "a decision is irrational if it is so outrageous in its defiance of logic or acceptable moral standards that no reasonable person who had applied his mind to the question could have arrived at it." The applicant contended that the respondent ought to have given the applicants sufficient notice to enable them raise finances to pay taxes of imported rice and sugar.

The applicants contended that the respondent did not consult them nor gave them a right to a fair hearing. They contended that the said right is enshrined in Article 28(1) of the Constitution. They cited **Haji Kaala v A.G** MA No. 23 of 2017 where court held that a holder of a valid license ought to have been heard by the minister even if the minister had powers to cancel such a license. The applicants also cited **Twinomuhangi v Kabale**

District and Others [2006] HCB 130 where court held that procedural impropriety is where there is a failure to act fairly in decision making. The applicant also contended that the notice in the New Vision and Gazette was issued without giving them notice. The applicants argued that Constitution of Uganda, National Objectives and Directives, Principles of State Policy Chapter XIV and Article 40(2), Article 20(1), Article 21(1) (2) & (3) guarantee a right to equal and non-discrimination.

The applicants argued that the Gazette notice issued cannot act retrospectively and is null and void. The notice published by the respondent was effective 20th October 2019 but was gazetted on 25th October 2019. See **Simba Steel and Aluminum ltd v URA** Tat No.19 of 2000.

The also argued that under the *ejusdem generis* principle of statutory interpretation, "any other goods which the commissioner may gazette" under the Regulation 64; cannot include sugar and rice as they are not of the same genus as the rest of the items in the Regulation. The applicant cited **ATC v Eaton Towers** HCCS 323 of 2018 where Justice Ssekaana quoted **Black's Law Dictionary** which defined the *ejusdem generis* principle as "a canon of statutory construction that where general words or phrases follow a list of specifics, the general words or phrases will be interpreted to include only the items of the same type as those listed." The applicants also cited **Radio Pacis ltd v Commissioner General, Uganda Revenue Authority** Civil Suit 8 of 2013 where court held that when a list or string of genus describing terms is followed by a wider residuary or sweeping up words, the latter words are taken to be restricted by implications to matters of the same limited character with the former. It is assumed the general words were only intended to guard against some incidental omissions in the objects of the kind mentioned and were not intended to extend to the objects of a wholly different kind. The applicants argued that sugar and rice do not fall under the same genus or category as acid, ammunition, explosive, fireworks, perishables or combustible goods. The applicants also argued that dry fish is a food which cannot be warehoused because of the stench. The applicants further cited **Stanbic Bank & 3 Others v Attorney General** MA 645 of 2011 where court held that classification of business should be in line with the original intent of the statute.

The applicants argued that since sugar and rice are not the same genus or category as the other items listed under EACCMA and Regulation 64 the respondent acted ultra vires.

The applicants contended that the respondent did not adduce documentary evidence to prove that sugar and rice was being flooded into the market and smuggled. The applicants argued that the respondent did not act independently but under the pressure from Uganda Sugar Manufacturers Association to fight off competition. The applicants witness' Mr. Isaac Nsereko denied that the applicants were involved in flooding goods on the market and in smuggling. He testified that the respondent supervises and controls all the warehouses. He also testified that re-export trade is worth US$ 370 million per annum to Uganda. Investors have made extensive investments in the re-export sector, transport and warehousing. Over 18,000 Ugandans are being employed in the sector. The respondent collects a lot revenue from the said sector.

In its response, the respondent raised preliminary objections. It contended that the powers of judicial review enshrined in S. 36 of the Judicature Act is a preserve of the High Court. S. 36 of the Act provides that the High Court may make an order prohibiting any proceedings or matter, or certiorari removing any proceedings or matter to the High Court. The Act states the High Court and not the Tax Appeals Tribunal. The respondent contended that the applicants are asking for prayers that are a preserve of the High Court.

The respondent also submitted that under the ECCMA and Regulations the Commissioner Customs has the discretion to gazette any other goods that are not supposed to be warehoused. The respondent contended that it gazetted the goods to protect the local manufactures, to prevent round tripping rice and smuggling, to protect legitimate market players from unfair competition from people who dump or divert goods declared for export. The respondent argued that the directive contained in the notice was legal, lawful and proper. The respondent cited **Black's Law dictionary** that defines 'legal' to mean "involving the law generally falling within the province of the law, established, required, or permitted by law". The word 'illegal' is defined to mean "forbidden by law". It contended that the word illegal as used by the applicants is misplaced. The respondent

argued that it was legally performing statutory duties as provided for under the law. The respondent contended that there was no impropriety on its part as alleged by the applicants. The applicants obtained an order stopping it from implementing the notice and no evidence has been adduced to show that several containers in transit have been affected by the notice. There was nothing irrational about the notice and based on the above Regulation it was legal, lawful and proper.

In respect of irrationality, the respondent cited **Republic v National Water Observation & Pipeline Corporation and 11 others** [2015] eKLR where it was held that once in a judicial review, court fails to sniff any illegality, irrationality and procedural impropriety It should down its tools forthwith. Judicial intervention ensures that an agency remains within the area assigned to it by parliament. The respondent contended that it was acting within the mandate entrusted to it by parliament and it should not be interfered with. In **Alcohol Industry Association of Uganda Limited & 39 others v The Attorney General & another** (MA 744 of 2019) Justice Musa Ssekaana held that public bodies should not be prevented from exercising the powers conferred under the statute. The respondent contended that the applicants are simply protecting their interests without looking at public interest. The date of publication of the notice in the newspapers and subsequent gazette is not a decision irrational as alleged by the applicants. The gazette notice did not occasion any injustice to the applicant. Regulation 64(k) does not require the commissioner to give a public hearing before it can gazette an item.

The respondent submitted that the principle of *ejusdem generis* does not apply. It cited **Registered Trustees of Kampala Institute v Departed Asian Property Custodian Board** SCCA No. 23 of 1993 where it was held that the principle was inapplicable since the provisions of The Expropriated Properties Act are quite distinct and speak for themselves. The respondent argued that Regulation 64(k) is very clear and it speaks for itself. The scope and effect of the regulation 64 is to the effect that the commissioner has powers to include more items on the list.

The respondent contended that under S. 229 of EACCMA the applicants were supposed to seek review before the commissioner. The applicants skipped the procedure and filed this application directly without complying with the procedures under the law. The respondent argued that if the applicants are aggrieved with the decision of the commissioner in respect of Regulation 64(k) they should file an application before the East African Court of Justice.

In rejoinder, on the preliminary point of law, the applicants responded that Order 6 Rule 5 of the Civil Procedure Rules requires the respondent to have pleaded it in its defense. This was not done and it was raised during submission stage. The applicant cited **Musa AF Enterprises Co. Ltd v Billen General Trading** Civil Suit No.102 of 2013 and **National Union of Clerical Commercial and Technical Employees v NIC** SCCA No. 17 of 1993 and argued that preliminary objections must be raised at the commencement of proceedings not at the closure. The applicants also argued that they applied for review and not for judicial review alluded to by the respondent. They have good grounds for review under S. 14 of the Tax Appeals Tribunal Act.

The applicants also contended that the *ejusdem generis* principle is not applicable to the current case. It does not stop the respondent from warehousing sugar and rice because they belong to the same genus as the goods listed in the Regulation.

Having listened to the evidence and read the submissions of the parties, this is the ruling of the tribunal.

The Tribunal will address the preliminary objections raised by the respondent first. A preliminary objection on a point of law unlike one on fact can be addressed at any time during a trial before delivery of judgment. The respondent contended that the applicants filed this application as one for judicial review under the Judicature Act which is a preserve of the High Court. The respondent argued that the Judicature Act mentions the High Court and not the Tax Appeals Tribunal. The Tribunal wishes to state the powers of the Tribunal established under the Constitution of Uganda to listen to all tax disputes are set out in the

Tax Appeals Tribunal Act. Under S. 14 of the Tax Appeals Tribunal Act an aggrieved party may apply to the Tribunal for review. The word "review" is defined by **Black's Law Dictionary** 10th Edition page 1514 as "consideration, inspection, or reexamination of a subject or thing." While administrative review is defined as "judicial review of an administrative proceeding." An application for judicial review under the Judicature Act involves the Court issuing the prerogatives of certiorari and mandamus where there is an irregularity in the procedure taken by an administrative body. The judicial review under the Judicature Act is done by courts of law. The Tribunal is not a court of law under the Judicature Act. However it can still review administrative proceedings under the Tax Appeals Tribunal Act. The Tribunal like courts have general power to review decisions of an administrative body which act illegally, irrationally or with procedural impropriety. The tribunal as a court of first instance in tax matters has the powers to listen to all tax disputes. Under S. 19 of the Tax Appeals Tribunal Act., the Tribunal can set aside a decision which is similar to quashing a decision. The decision by the respondent not to warehouse certain goods was a taxation decision. Under S. 14 of the Tax Appeals Tribunal Act the Tribunal is empowered to listen to grievances involving taxation decisions. In the circumstance the first preliminary objection is overruled. The second one will be addressed later.

It is not in dispute that the applicants are in the business of trading in sugar and rice. The applicants bring in sugar and rice from outside countries and warehouse them in custom bonded warehouses. Mr. Isaac Nsereko stated that because of the increase in the duty of sugar, it is no longer sold on the local market but are for export.

On 17th October 2019, the respondent issued a notice in the New Vision newspaper which was subsequently published in the Uganda Gazette stopping the applicants from warehousing listed goods without first paying taxes with effect from 20st October 2019. The said notice listed the following goods: 1) sugar, 2) Milled and Broken rice of HS Code 1006.30 and 1006.40, 3) Wines and Spirits (except for duty free shops), 4) Building materials, 5) Motor vehicle tyres and tubes, 6) Motor cycle tyres and tubes, 7) Used Motor vehicles of 14 years old from the date of manufacture, 8) Dentifrices, 9) Garments of all

kinds 10) Footwear of all kinds. The notice further stated that the customs clearance for the products highlighted shall be facilitated under the Single Customs Territory arrangement where taxes will be paid upon arrival at the first ports or on entry into the East African Community. Subsequently the respondent issued a similar notice in the Gazette of 25th October 2019. At the time, the respondent issued the notice, the applicants had several consignments of rice and sugar in transit. The applicants filed this application.

The respondent issued the notice under S. 47(1) of the East African Community Customs Management Act (EACCMA). S. 47 of the Act reads:

> "(1) Subject to any regulations, goods liable to import duty may on first importation be warehoused without payment of duty in a Government warehouse or a bonded warehouse.
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> (2) On, or as soon as practicable after, the landing of any goods to be warehoused, the proper officer shall take a particular account of such goods and enter such account in a book; and such account shall, subject to section 52 and 58, be that upon which the duties in respect of such goods shall be ascertained "

Emphasis is put on the words "first importation". S. 47(1) allows goods liable to import duty on 'first importation' to be warehoused without payment of duty. It does not apply to subsequent importations. Regulation 64(k) of the East African Community Customs Management Regulations 2010 was issued under S. 47 of the EACCMA 2010 and provided that the following goods shall not be warehoused-

> "(a) acids for trade and business;
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> (b) ammunition for trade and business;
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> (c) arms for trade and business;
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> (d) chalk;
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> (e) explosives;
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> (f) fireworks;
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> (g) dried fish;
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> (h) perishable goods;
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> (i) combustible or inflammable goods except petroleum products for storage in approved places;
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> (j) matches other than safety matches;
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> (k) any other goods which the Commissioner may gazette."

The items listed in the New Vision of 17th October 2019 and the Gazette of 25th October 2019 are not among those listed under the Regulation. However the Regulations provided that the Commissioner may gazette other goods. Hence the list of the items in the notice.

It is not the duty of the Tribunal or courts to unsystematically interfere with the actions of administrative bodies when they are exercising the mandate given to them. In **R v Secretary of State for the Home Department exparte Doody [1994] 1 AC 531** Lord Mustill noted: "The Court must constantly bear in mind that it is the decision maker not the Court that Parliament has entrusted not only with the making of the decision but also the choice of how the decision is made." Regulation 47 states that the Commissioner may warehouse any other goods it gazettes. The word "may" in the Regulations implies that administrative discretion ought to be exercised when making the decision to gazette. Discretion is defined by **Black's Law Dictionary** (supra) p. 565 as "Wise conduct and management without constraint, the ability coupled with the tendency to act with prudence and propriety." Administrative discretion is defined as "A public official's power to exercise judgement in the discharge of its duties." **Halsbury's Laws of England** 3rd Edition Volume 30 paragraph 1326 states that;

> "Where public bodies are given a discretion in the exercise of powers conferred upon them by statute, the courts will not interfere with the exercise of that discretion so long as it is exercised bona fide and reasonably; nor will the decision of an administrative body be interfered with by the courts if there is anything on which the body could reasonably have come to its conclusion."

In **Breen v Amalgamated Engineering Union** [1971] 2 QB1 Lord Denning emphasized the importance of an unfettered discretion by noting that:

> "The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant consideration and not by irrelevance. If its decision is influenced by extraneous consideration which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith, nevertheless the decision will be set aside."

Therefore the Tribunal has to clearly caution itself on interfering with actions of administrative bodies as such interference may bring the wheel of administration to a halt.

The Tribunal like any other court will not interfere in the exercise of administrative discretion unless it is done illegally, irrationally or without procedural impropriety. In **Twinomuhangi Pastoli v Kabale District Local Government Council, Katarishangwa Jack and Beebwajuba Mary** [2006] 1 HCB 30 Kasule J defined those terms as follows:

> "2. Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or it's principles are instances of illegality."
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> 3. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.
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> 4. Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural Justice or to act with procedural unfairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

Therefore, the Tribunal will ask itself: Did the Commissioner act illegally, or irrationally or with procedural impropriety.

On the legality of the notice, the applicants contended that under *ejusdem generis* principle of statutory interpretation, "any other goods which the commissioner may gazette" under Regulation 64; would not include sugar and rice as they are not of the same genus with the other items listed in the Regulation. In **Eaton Towers Uganda Limited v Kampala Capital City Authority** Civil Suit No. 302 of 2018 His Lordship Ssekaana Musa cited **Black's Law Dictionary** 8th Edition 2004 at page 156 which defined "the principle of *ejusdem Generis* as a canon of statutory construction that where the general words or phrases follow a list of specifics, the general words or phrases will be interpreted to include only the items of the same type as those listed. According to the Free Dictionary, *ejusdem Generis* is a Latin term which means "of the same kind," and it

is used to interpret loosely written statutes." Therefore the Tribunal has to ask itself: Were the items listed by the respondent in the notice of 17th October 2019 and the Gazette of 25th October 2020 supposed to be of the same kind as those in the Regulations?

The Tribunal notes that the respondent was acting under Regulation 64(k) of the East African Community Customs Management Regulations 2010 which was issued under S. 47 of the EACCMA 2010. The Tribunal notes that the following items in Regulation 64(k) are combustible or flammable; a) acids, b) ammunition, c) arms, e) explosives, f) firework i) combustible or inflammable goods and j) matches. The following items are perishable; g) dried fish and h) perishable goods. However the said list contains d) chalk. Chalk cannot be said to be flammable or perishable. It is neutral. Therefore, the list may contain items that may neither be flammable or perishable. Fish is food. Though not perishable, sugar and rice are also food. Therefore there may qualify to be listed. The list in the Regulations does not seem to be conclusive. The list in the Regulations was made by the Minister and not by Parliament. By applying the *ejusden generis* principle the Tribunal cannot conclude that that the Commissioner acted ultra vires the said Regulations. The applicants have not adduced any other evidence to show that the respondent acted contrary to the provisions of the Act and the Regulations. There was no illegality of the part of the Commissioner Customs Department in publishing the public notice dated 17th October 2019 and the Gazette of 25th October 2019, restricting warehousing of imported rice and sugar. The respondent was simply performing its statutory duties.

Furthermore, the Tribunal notes that the said list of imports were supposed to facilitate the implementation of the Single Customs Territory arrangement where taxes are paid upon arrival at the first ports or on entry into the East African Community. In July 2014, the Summit of Heads of States of the East African Community countries decided that the partner states should implement the Single Customs Territory to facilitate clearance and improvement of cargo movement. All imports are supposed to be under the said arrangement. The respondent is issuing pierce-meal lists of imports that should fall under the arrangement. It is surprising that five years down the road, the Single Customs Territory arrangement has not been fully implemented.

The second criterion the Tribunal must consider is whether the respondent acted irrationally. In **Council of Civil Service Union v Minister for Civil Services** [1985] AC374 Lord Diplock held that;

> "By 'irrationality' mean a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system..."

The rules of natural justice and good practice require that any person who appears before a public body for an administrative decision to made against him such person should be treated fairly, in good faith and properly.

The first allegation by the applicants is that the respondent did not act in good faith. It is contained in the attachment to the applicant's fist witness. The issue of good faith cannot arise because whereas the respondent listed about 10 items in the notice of 17th October 2019 and the Gazette of 25th October 2019, the applicants who import 2 items are the only ones aggrieved. It is not clear why the parties who import the other items have not challenged the notice of the respondent published in the New Vision and the Gazette. In the Bible, Jesus was concerned when out of the ten lepers he healed only two came back to thank Him. Arguing that the respondent did not act in good faith when most of the importers on the list have not complained raises doubt on the said allegation.

The applicants argued the respondent's notice in the New Vision would have economic repercussions on them. Firstly, the applicants argue that if the directive or order of the Commissioner is implemented, they would stand to lose. There would be loss of income, loss of jobs, loss of investments, insecure cargo and liquidity challenges. The respondent on the other hand, argued that it has to protect local manufacturers, protect round tripping of rice and legitimate markets, avoid tax evasion, prevent transit diversions and dumping, protect interest of the public and to implement a ban on used vehicles over 14 years imposed by the government. What we have, is individual interests of the applicants conflicting with the public goals of the government. S.3 of Uganda Revenue Authority Act

Cap.169 provides for the functions of the Authority and the laws it administer; it includes Customs Tariff Act, East African Customs and Transfer Tax Management Act, East African Excise Management Act and Excise Tariff Act. The respondent is the only institution empowered with the responsibility of administering EACCMA and the regulations thereunder. The tribunal notes that taxes are not imposed solely for the purpose of raising revenue. Taxes also serve as tools to achieve other macro-economic objectives. Taxes are imposed to control inflation, minimize balance of payment deficits, discourage the consumption of certain goods, and protect local industries. Therefore the State has to make a balance where the individual interests of importers conflict with public interest or its goals. But where the respondent is implementing a government decision which gives priority to public interest or goals over individual interests the Tribunal cannot say it is acting irrationally. It is not the duty of the Tribunal to state which of the parties is correct or which views should be considered over the other. Those are debates that should be considered by the lawmakers when making the laws. In **Alcohol Industry Association of Uganda Limited & 39 others v The Attorney General & another Miscellaneous Application** No. 744 of 2019 Justice Musa Ssekaana held that "courts should consider and take into account a wider public interest... The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good."

The applicants stated that the main purpose of warehousing is to enable them look for markets and to give them time to raise money from local banks to pay for commodities sold on the local market. Taxes should be paid promptly if the Government is to deliver services and its mandate in time. Taxes under the EACCMA become due as soon as the goods enter the boundaries of any partner state of the East African Community under S. 47(2) of the EACCMA. It only becomes a question of where the Partner State wants to collect them. S. 47(1) of the East African Community Customs Management Act (EACCMA) allows goods on 'first importation' to be warehoused without payment of duty. It allows an exception to the general rule that taxes should be paid promptly. In short the Regulations should apply to goods on first importation. There is no evidence that the goods the applicants are importing are their first importation. If the respondent is allowing

importers to warehouse goods after first importation without payment of duty, as the applicants are claiming that as an entitlement, then this is a mystery. It seems warehousing of goods without payment of duty after the first importation became business as usual. Furthermore, it is not the responsibility of the State or the respondent to facilitate the financing of business transactions of importers or traders. At the time of import, an importer should be ready to pay the taxes due unless it is on first importation.

The Tribunal wishes to state that goods destined for markets outside the East African Community have no business in warehouses in Uganda. Goods in transit should not be allowed to enter warehouses as they are not imports. The East African Community Customs Management Act deals with imports and exports of the Community. One wonders what legal regime the parties use when goods are in transit. The contention that the applicants import goods into Uganda and then re-export them is a delusion. It implies that the applicants pay import duty and then export duty to Uganda and then import duty in the neighbouring country. This would be costly. A good in transit is not an import nor is it a re-export. It is simply a good that is en route to a neighbouring country. Therefore, the rule of *ejusdem Generis* cannot apply to goods in transit as they are not supposed to be in the warehouse in the first place. The applicants should arrange with the State to provide transit centres for goods in transit. The goods should be strictly monitored so that they are not short landed. For the respondent to allow such a situation to continue is unacceptable under the EACCMA.

The second ground raised by the applicants is that the respondent ought to have given them a right to be heard. S. 229(1) of the EACCMA Act 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 decision or omission lodge an application for review of that decision or omission." The applicants did not comply with the said Section. By doing so, they simply denied themselves a right to be heard. They have themselves to blame. This was raised as a preliminary objection. However it was mostly factual and should have been raised at the beginning of the trial. If that had been brought to the attention of the Tribunal at the commencement of the trial it would have

asked the applicants to first go back to the Commissioner for a review of his decision. This was not done. However the Tribunal will listen to the dispute without any due regard to technicalities.

The applicants also argued that the respondent did not consult them. There is no law that requires a recipient of an administrative action to be consulted. However it is good manners, good practice and good public relations that a public body like the respondent consults and sensitize members of the public before it implements a new administrative action which may affect them. This does not only build goodwill towards the action but reduces friction when it comes to implementing it. Nevertheless, the omission by the respondent to consult the applicants cannot be said to be irrational to warrant a decision to set it aside.

Lastly, the applicants contended that the respondent did not give them adequate notice. The respondent listed the goods not to be warehoused on 17th October 2019. The said action was to become effective on the 20th October 2019. The Gazette of 25th October 2019 did not give any notice at all. The effective date of the implementation of the Regulation should be the date of the Gazette, which it mentions. There was no notice in the Gazette. Notice is required as the applicants must brace themselves for the change in bringing in goods. This is because the respondent all along allowed the applicants to warehouse their goods and allowed them to pay duty thereafter. Notice of two to three months would be adequate. The decision by the respondent to give the applicants three days' notice in the New Vision and no notice in the Gazette was irrational. However, the irrationality of the respondent's decision was blunted by the passage of time. The application of law is not static. The applicants applied to the Tribunal which issued an interim order and later a temporary injunction restraining the respondent from implementing the directive in the notice. A temporary injunction is an equitable remedy. Equity helps the vigilant. Since the time the temporary injunction was issued in January 2019 and the time of this ruling, over 6 months have passed. This is adequate time for the applicants to have made adjustments so as to embrace the directive. Therefore to grant the applicants extension of time, which they have not prayed for may be rendered

unnecessary. The applicants ought to have known when the application in the Tribunal served its purpose and withdrawn it.

As regards procedural impropriety, it was contended that the Commissioner at the time it listed the goods in the New Vision Newspaper it had not gazetted the items. The respondent after the Newspaper advert listed the goods not to be warehoused in the gazette. The Regulations require the Commissioner to gazette the goods not to be warehoused. There is no requirement to list the goods in a Newspaper. Since the Commissioner gazetted the goods not to be warehoused that would suffice. Listing the goods in the Newspaper did not prejudice the applicants other than alerting them of the intention of the respondent.

Having taken all the above into consideration, the tribunal notes that decision by the respondent to list sugar as one of the items not to be warehoused is within its mandate under the law. There is ample evidence that the government has to protect the local industries that manufacture sugar from unfair competition arising from dumping, diversion of sugar in transit and tax evasion. The evidence by Mr. Wilberforce Mubiru that there is sugar being diverted into the local market was not controverted to the satisfaction of the Tribunal not to believe him. The applicants contended that the respondent did not avail documentary evidence to show that sugar was being smuggled and or dumped. One who is involved in smuggling or dumping cannot avail such information to the respondent or the Tribunal. The Tribunal states that the Commissioner was justified in listing sugar as an item that should not be warehoused.

The following items as per the gazette of 25th October 2019 that were not in dispute should also not be warehoused: Wines and Spirits (except for duty free shops), Building materials, Motor vehicle tyres and tubes, Motor cycle tyres and tubes, Used Motor vehicles of 14 years old from the date of manufacture, Dentifrices Garments of all kinds, Footwear of all kinds

In respect of rice, the Commissioner listed milled and broken rice of HS Code 1006.30 and 1006.40 as goods that should not be warehoused. HS Code 1006.30 deals with semi-milled or wholly milled rice, whether or not polished or glazed. HS code 1006.40 deals with broken rice. However there are HS codes which deal with rice that were not mentioned. HS Code 1006.10 deals with rice in the husk (paddy or rough). HS Code 1006.20 deals with Husked brown rice. The evidence adduced before the Tribunal shows that there is round tripping of rice. The evidence did not show which or the rice was round tripped. It is not clear why the commissioner restricted the rice to be warehoused to only milled and broken rice. No explanation was given to the Tribunal why other rice should not be warehoused. Those whose import milled, and broken rice will feel they are being discriminated against from those who import other rice. The law should be applied uniformly. For the Commissioner to exercise discretion administratively he ought to act without constraints and should act with prudence and propriety. The Tribunal therefore refers the decision to gazette only milled and broken rice back to the respondent for reconsideration under S. 19(c) of the Tax Appeals Tribunal Act. The Tribunal directs the Commissioner custom to gazette the import of all rice without out any restrictions. Since it is going to affect importers other than those of broken and milled rice, the Commissioner is directed to give them adequate notice of about two to three months before the action becomes effective. This is because rice unlike sugar is a whole food. We do not want the respondent to be held responsible for causing food shortages in neighbouring countries. The Tribunal makes that recommendation of adequate notice because the respondent allowed the above situation to continue unabated. However during the time of the notice, the respondent should ensure that there is no round tripping and dumping of rice on the local market. It must put stringent measures in place.

In the circumstances this application is dismissed with the following orders;

1. The directive not to warehouse sugar takes immediate effect from the date of this ruling.
2. The following items that were not in dispute should also not be warehoused: wines and spirits (except for duty free shops), building materials, motor vehicle tyres and tubes, motor cycle tyres and tubes, used motor vehicles of 14 years

old from the date of manufacture, dentifrices, garments of all kinds, footwear of all kinds

3. The decision in respect of milled and broken rice is remitted back to the respondent for reconsideration so as to include all rice imported. The Commissioner should re-gazette imported rice and give importers adequate notice of two to three months.
4. The tribunal will award half the costs to the respondent as it did not give the applicants adequate notice and it allowed a situation to continue which is not supported by the EACCMA. The preliminary objections of the respondent were also overruled.

It is so ordered.

Dated at Kampala this day of 2020.

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DR. ASA MUGENYI	**DR. STEPHEN AKABWAY**	**MS. CHRISTINE KATWE**
CHAIRMAN	**MEMBER**	**MEMBER**