THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO.101 OF 2023

ARANID UGANDA LIMITED...APPLICANT

VERSUS

THE COMMISSIONER CUSTOMS, UGANDA REVENUE AUTHORITY..RESPONDENT

BEFORE MS. CRYSTAL KABAJWARA, MS. KABAKUMBA MASIKO, MR. WILLY NANGOSYA

RULING

This ruling is in respect of an application brought under section 14 of the Tax Appeals Tribunal Act ("TAT Act") and rule 7 of the Tax Appeals Tribunal Rules ("TAT Rules") seeking remedies against the Respondents for the alleged wrongful and illegal detention of its truck, which was seized on grounds of transporting uncustomed goods. The Applicant came before the Tribunal seeking an award of damages and declarations that:-

a. The Applicant was not liable for smuggling, the Respondent having failed to commence prosecution against it.
b. The Respondent is illegally holding its truck as the Applicant was not convicted of the charge cited by any competent court.
c. An award of Shs. 378,000,000 being compensation for the value of the truck.
d. Award of special damages of Shs. 350,000,000.
e. Award of general damages of Shs. 158,000,000.
f. Award of aggravated damages against the Respondent of Shs. 180,000,000.
g. Costs of the Application.

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1. Background

The Applicant is a company duly incorporated and registered under the laws of Uganda and provides transport and logistics services. On 9 March 2023, the Applicant was contracted by a one Mulabbi Daniel (the client) to deliver his goods from Liberty Customs Bonded Warehouse to Kisekka Market in Kampala City. The client presented the Applicant with customs documents that showed that he had fully settled his tax liability with the Respondent.

The Applicant transported the client's goods with its motor vehicle registration no. UAV 254K, together with another truck, registration No. UBA 161A. While enroute, the Applicant's vehicle was intercepted by the Respondent's enforcement officers and diverted to Nakawa Head Office.

The truck was diverted and taken to Nakawa Head Office of the Respondent, for verification of the goods. The Respondent's officers were presented with a customs declaration IM4 C23845 as proof of payment of taxes in respect of the goods.

Upon further investigation, the second truck was found to have the same declaration number as the Applicant's truck. Upon verification, it was established that the Applicant's truck was loaded with uncustomed goods and the truck was seized.

On 28 April 2023, the Applicant was issued with a seizure notice for motor vehicle UAK.

Upon payment of the taxes and penalties by the client, the goods were released on 5th May 2023.

By letter dated 14 June 2023, the Respondent requested the Applicant to settle the offence of conveying uncustomed goods and this has not been done to date.

The Applicant contended that he was merely contracted to transport goods belonging to a third party (the client) and he had no involvement in the alleged smuggling or under-declaration of the goods.

2. Issues for determination

During the scheduling conference, the parties mutually agreed on the following issues:

(i) Whether the seizure and the continued detention of the Applicant's motor vehicle was lawful?

(ii) Whether the Applicant was entitled to the remedies prayed for?

3. Representation

At the hearing of this Application Mr. Joseph Angura and Ms. Carol Kay Achak appeared for the Applicant while Mr. George Ssenyomo appeared for the Respondent.

4. Submissions by the Applicant

The Applicant submitted that the actions of the Respondent in detaining the Applicant's vehicle for one year and six months is wrong, illegal and high handed.

The Applicant did not engage in smuggling

Specifically, the Applicant argued that they did not use the truck to smuggle or convey uncustomed goods as alleged by the Respondent. The Applicant stated that Section 199 (b) of the East African Customs Management Act, 2014 (EACMA) which the Respondent relied upon to seize the vehicle was incorrectly applied by the Respondent.

The Applicant stated that the above section provides as follows:

Master of vessel, etc., used for smuggling commits and offence

199. "A master of any aircraft or vessel, and any person in charge of a vehicle, which is within a partner state and –

> *(b) Which has in it, or in any manner attached to it, or which is conveyancing, or has conveyanced in any manner, any goods imported, or carried coastwise, or intended for exportation, contrary to the Act; commits an offense and shall be liable –"*

The Applicant argued that the above provision is concerned with goods smuggled into or to be exported outside the East African Community and that the title which clearly

indicates the phrase "used for smuggling" indicates that the intended purpose of the provision is to deal with smugglers.

The Applicant went on to state that they were not involved in smuggling as the goods that the Applicant was conveying were already in Uganda, under the control of the Respondent and duly cleared and exited by the Respondent. For one to be considered a smuggler, one must import, export or carry coastwise goods with the intent of defrauding customs revenue as defined in section 2 of the EACCMA.

The Applicant also stated that the use of the words "conveying any goods imported, or carried coastwise, or intended for exportation" literally means goods which are outbound or inbound in the EAC and that the carriage of goods within the country does not qualify the goods as imported.

The Applicant also stated that for one to be criminally liable for any criminal act, one must have a guilty mind. In the present case, the Applicant submitted that they were an innocent party and did not have full knowledge that the goods they were asked to convey had not paid duty.

All processes for the release of the goods were followed

The Applicant also submitted that the goods were in a customs bonded warehouse that was under the control of the Respondent. All processes were followed before the goods were released to the Applicant namely:

(i) The goods had been declared with the Respondent via ASYCUDA, were give entry numbers and were subjected to a verification process to ascertain their true nature; and
(ii) All exit documents had been fully signed and stamped by the Respondent's officials

The Respondent failed to issue a seizure notice within the required timeframe

The Applicant also submitted that upon seizure of the vehicle, the Respondent was required to issue the Applicant with a seizure notice within a period of one month as required by section 214 of the EACCMA. The section provides as follows:

(1) *"Where anything has been seized under this Act, then, unless such thing was seized in the presence of the owner of the thing, or, in the case of any aircraft or vessel, of the master thereof, the officer effecting the seizure shall, within one month of the seizure, give notice in writing of the seizure and of the reasons to the owner or, in the case of any aircraft or vessel, to the master."*

(2) *Where any such thing has been seized in the presence of any person coming within the definition of owner for purposes of this Act, then it shall not be necessary for the officer effecting the seizure to give notice any other person coming within such definition.*

(3) *a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming with in such definition."*

The Applicant stated that when the Respondent intercepted the vehicle, the driver was ordered to take it to the Respondent's head office in Nakawa, where he was told to park it. The driver was not issued with a seizure notice and was therefore not informed of the wrong that he or the vehicle had committed. On 19 April 2023, the directors of the Applicant wrote to the Respondent to enquire of the vehicle and the Respondents thereafter issued a seizure notice on 28 April 2023.

The Applicant relied on the case of ***Kasibo Joshua v The Commissioner for Customs, HCT-00-CC- MA 44 of 2007*** where the High Court emphasized the importance of a seizure notice under the EACCMA as follows:

"There is no doubt that the boat was impounded. It therefore followed that under section 214 (1) of the EACCMA that a notice of seizure had to be issued to the Applicant within one month."

The Applicant therefore contended that having failed to issue the seizure notice within the time required by the law, the seizure and continued detention of the Applicant's vehicle was unlawful and contravened section 214 of the EACCMA.

The Respondent did not follow the laid down procedure in the EACCMA for release or condemnation of the vehicle

The Applicant also submitted that the Respondent failed to release the Applicant's vehicle despite the Applicant having written to the Respondent on 18 May 2023 claiming the vehicle as per the requirements of section 214 (4) (a) of the EACCMA. The section provides as follows:

> *4. Where anything liable to forfeiture under this Act has been seized, then subject to subsection (1) (a) and subsection (3)-*
> *(a) The owner may, within one month of the date of the seizure or the date of any notice given under subsection (1) as the case may be, by notice in writing to the Commissioner claim such thing.*

Following the claim, the Respondent failed to follow the procedure for the release of the vehicle as required by section 216 of the EACCMA.

The Applicant submitted that section 216 of the EACCMA mandates the Respondent, within a period of sixty days, to either require the claimant to institute proceedings for the recovery of the impounded vehicle or for the Commissioner to institute proceedings for condemnation of the vehicle within a period of sixty days. Where either proceeding is not commenced within this timeframe, the Respondent is required to release the vehicle to the claimant.

The Applicant relied on the case ***of Uganda Revenue Authority v Congo Tobacco Ltd, HCT-00-CC-CA-03-2006,*** where **Kiryabwire J** (as he then was) stated:

> *"Where the Commissioner fails within the period of two months either to require the claimant to institute proceedings or the Commissioner fails to institute proceedings in accordance with the Subsection (1) then such a thing shall be released to the claimant."*

The Applicant submitted that the Respondent was continued refusal to release the vehicle was unlawful.

The Respondent continued to detail the vehicle despite a release order

The Applicant submitted that on 8 of May 2023, Mr. Daniel Mulabbi, who had hired the Applicant's vehicle applied to the Respondent to allow his goods to be warehoused and to the release the Applicant's vehicle (see PEX, 6 Page 12 of joint trial bundle). The Respondent declined to release the vehicle and demanded that the Applicant pay advance income tax of Shs. 300,000 as a condition for the release.

The Applicant was issued with a PRN of Shs. 300,000 which they paid on 29 March 2023 (see PEX. 7, page 13). However, the Respondent did not release the truck

On 8 May 2023, when Mr. Mulabbi paid the taxes and penalties, the Respondent issued a release order for both the goods and the vehicle (see PEX 8, page 14). However, the Respondent only released the goods and has continued to hold the vehicle to this day. The Applicant called upon the Tribunal to take note of the fact that the Respondent had continued to detain on the said vehicle illegally.

In conclusion, the Applicant sought several remedies aimed at restoring it to the position it would have been in had the Respondent not unlawfully seized and detained its truck.

5. Submissions for the Respondent

In response, the Respondent submitted the following:

a) The vehicle was liable to forfeiture in accordance with section 199 (b) (iii) of the EACCMA as it was found to be conveying uncustomed goods. The term "uncustomed goods" is defined by section 2 of the EACCMA to mean dutiable goods on which the full duties dues have not been paid, and any goods, whether dutiable or not, which are imported, exported, or transferred or in any way dealt with contrary to the provisions of the customs laws.

b) Further, section 211 (1) of the EACCMA provides for the forfeiture of a vessel of less than 250 tons register used to convey goods liable to forfeiture.

c) Section 213 (4) empowers a person, who is a police officer, seizing or detaining a thing liable to forfeiture, that may be required for use in connection with any court

proceedings, to keep that thing in custody of the police until those proceedings are completed.

Based on the above provisions, the Respondent submitted that the seizure of the vehicle and continued detention was lawful. Specifically,

a) It is an offence is a master conveys goods contrary to the EACCMA as per section 199. Further, section 199 is so wide that it is not restricted to smuggling alone.
b) With regard to the seizure notice, the Respondent submitted that one is not required if the seizure has been made in the presence of the owner. This is as per section 214 (1) (b) of the EACCMA. The Respondent stated that the vehicle was seized in the presence of the Applicant's driver hence a seizure notice was not required.
c) With regard to the failure to release the vehicle within sixty days, the Respondent submitted that the Applicant did not claim the vehicle as required by section 214 (4) of the EACCMA. Therefore, the vehicle could not be released after sixty days.
d) In response to the issue of holding the vehicle despite being released, the Respondent stated that they never released the vehicle. The Respondent only released the goods following payment of taxes and penalties. In addition, the Respondent submitted that according to section 213 (4) of the EACCMA, proceedings under the Act may commence within a period of five years. Therefore, the Respondent lawfully detained the vehicle pending prosecution.
e) Regarding the Applicant's claim for special damages, the Respondent submitted that these had not been proved. In addition, the Respondent stated that the Applicant was not entitled to general damages as there was no wrongdoing by the Respondent

The Respondent concluded that the seizure of the truck was lawful and in accordance with the provisions of the EACCMA. Therefore, the Respondent prayed that the Tribunal dismiss the Applicant's request for release of the motor vehicle and affirm the seizure. The Respondent emphasized the lawful seizure of the Applicant's truck by making reference to the seizure notice dated 28 April 2023, issued by the Respondent and

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marked as REX4, which clearly outlined the grounds for the seizure in accordance with section 199 of the EACCMA.

6. The submissions of the Applicant in rejoinder

In rejoinder, the Applicant reiterated its earlier position on its prayers and called upon the Tribunal to draw attention to the period of one year and six months that the truck has spent under the Respondent's custody.

7. The determination of the Application by the Tribunal

Having studied the submissions of the parties, this is the decision of the Tribunal.

This dispute revolves around the seizure and continued detention of the Applicant's vehicle by the Respondent after the vehicle was found conveying uncustomed goods. The primary question for determination is whether the seizure and continued detention of the vehicle was lawful. Therefore, in addressing this question, we shall address the question in three parts:

(i) Whether the Applicant's vehicle was rightfully seized;
(ii) Whether the Respondent followed the right seizure procedure; and
(iii) Whether the continued detention of the vehicle by the Respondent was lawful.

(i) Seizure of the vehicle

Section 199 (b)(iii) of the EACCMA to the effect that a master of any vessel which is within a partner state and which is conveying or has conveyed any goods imported, contrary to the EACCMA commits an offence. The offender is liable to a fine not exceeding five thousand dollars and the vehicle in respect of which the offence has been committed shall be liable to forfeiture.

The undisputed facts of this case are that the Applicant's vehicle, registration number UAV 254K, was found conveying uncustomed goods. A verification exercise established

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that the vehicle was loaded with uncustomed goods. Following this, the vehicle was detained by the Respondent.

In their defense, the Applicant stated that they did not have full knowledge that the goods they were contracted to transport had not paid duty. The Applicant also argued that section 199 only deals with smuggling and does not apply to conveyance of uncustomed goods. The Applicant also argued that the goods were under the control and the Respondent and were duly cleared and exited by the Respondent.

We agree with the Respondent's submission that Section 199 is not restricted to smuggling. It also creates an offence for persons conveying goods imported into a partner state contrary to the Act. Conveying goods that have not paid duty is contrary to the Act.

Whilst it is unfortunate that the Applicant did not have knowledge that the goods they were contracted to carry were uncustomed, the offences under section 199 are of strict liability. This means that the Applicant's liability does not depend on their intentions or whether they had a guilty mind at the time the offence was committed.

According to Section 199 (b)(iii), the master of the vessel that commits the offence is liable to a fine not exceeding five thousand dollars and the vehicle that in respect of which the offence was committed is liable to forfeiture.

Therefore, it is reasonable to conclude that the Applicant's vehicle was rightfully seized.

(ii) Whether the Respondent followed the right seizure and detention procedures

The Applicant argued that the Respondent did not issue a seizure notice as required by the law while the Respondent submitted that a seizure notice was not warranted in the circumstances.

The procedure for seizure is set out in section 214 of the EACCMA. The section provides as follows:

(1) "Where anything has been seized under this Act, then, unless such thing was seized in the presence of the owner of the thing, or, in the case of any aircraft or vessel, of the

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master thereof, <u>the officer effecting the seizure shall, within one month of the seizure, give notice in writing of the seizure and of the reasons to the owner or, in the case of any aircraft or vessel, to the master.</u>"

Provided that –

(a) Notice of seizure shall not be given in any case where any person has, within a period of one month, been prosecuted for the offence by reason of which the thing has been seized…

(b) Where any such thing has been seized in the presence of any person coming within the definition of owner for purposes of this Act, then it shall not be necessary for the officer effecting the seizure to give notice any other person coming within such definition.

(c) a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming with in such definition."

(2)……

(3). Where <u>anything liable to forfeiture under this Act</u> has been seized, then –

(a) If any person is being prosecuted for the offence by reason of which the thing was seized, the thing shall be detained until the determination of such prosecution and dealt with in accordance with section 215

(b) In any other case, the thing shall be detained until one month after the date if seizure, or the date of any notice given under subsection (1), as the case may be and if claim is not made as provided in subsection (4) within a period of one month, such thing shall be deemed to be condemned.

(4). Where anything liable to forfeiture under this Act has been seized, then, subject to subsection (1) (a) and subsection 3-

(a) the owner may within one month of the date of seizure or the date of any notice given under subsection (1), as the case may be, by notice in writing to the Commissioner claim such thing."

From the reading of the above provision, the correct process to follow where things liable for forfeiture are seized is as follows:

(i) The Respondent must within a period of one month give a seizure notice except where the thing was seized in the presence of the owner or where prosecution has commenced within a period of one month of the seizure;

(ii) Where the offender is being prosecuted, the seized thing shall be detained until the determination of such prosecution. In other cases, the thing shall be detained until one month after seizure or the date of any seizure notice.

(iii) The owner of a seized thing may, within one month of the date of the seizure or the date of the notice, claim such a thing by notice in writing to the Commissioner

(iv) The Commissioner may permit the thing to be delivered to the person making a claim, subject to the claimant giving security for the payment of the value of the thing as determined by the Commissioner.

Further, according to section 216 of the EACCMA, where a notice of a claim has been given in accordance with section 214 above, the Commissioner may within two months (sixty days) of the date of the claim:

a) Require the claimant to institute proceedings for the recovery of the thing within two months of the claim; or

b) Himself or herself institute proceedings for condemnation of such thing.

Where the Commissioner fails to do any of the above within the specified period of two months, then such thing shall be released to the claimant.

According to the facts, the vehicle was seized by the Respondent on 9 March 2023. On 19 April 2023, the Applicant's director, Charles Okure wrote to the Respondent requesting for the release of the vehicle (see PEX 4 on Page 4 of the Applicant's trial bundle). On 28 April 2023, the Respondent issued the Applicant with a seizure notice.

The Respondent submitted that a seizure notice was not warranted in the circumstances as the seizure happened in the presence of the Applicant's driver.

The term "owner" is defined by section 2 of the EACCMA to mean, in respect of a vehicle, every person acting as agent for the owner or who is in possession or control of the vehicle.

We therefore agree with the Respondent that a seizure notice was not warranted as the vehicle was seized in the presence of the Applicant's driver, who is considered to be the owner of the vehicle within the meaning of section 2 of EACCMA.

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Having established that a seizure notice was not warranted, the next step that ought to have been followed by the Respondent was to prosecute the Applicant.

In the present case, however, no proceedings have been instigated by the Respondent. Instead, to date, the Respondent has continued to detain the Applicant's vehicle.

This is contrary to Section 214 (3) (a) which subjects the detention of the vehicle to the determination of the prosecution.

It is not clear why the Respondent has to date not prosecuted the Applicant for the offence committed. However, where such proceedings have not been initiated, section 214 (3) (b) provides that the thing (vehicle) shall be detained until one month after the date of seizure or the date of the seizure notice.

In the present case, the Respondent seized the vehicle on 9 March 2023 and issued a seizure notice on 28 April 2023. In the absence of prosecution, the Respondent should only have detained the vehicle up to 27 May 2023, being one month from the date of the seizure notice.

From the date of seizure of the vehicle, there were several correspondences between the Applicant and the Respondent. These include the Applicant's letter dated 19 April 2024 (PEX 4), a demand notice by the Applicant's lawyers dated 3 May 2023 (PEX 12) and another dated 18 May 2022 (PEX 13). The Respondent responded on 14 June 2024 (REX 9) advising the Applicant to settle the offence committed. The letter is not supported by an assessment indicating the amount payable to "settle the offence".

On the other hand, the Applicant submitted that they were asked to pay advance income tax of Shs. 300,000, a fact that is not disputed by the Respondent. The legal basis of this amount is not clear. The Applicant however went ahead and paid the monies in the hope of securing their vehicle (see PEX 7).

It is evident that following the seizure of the vehicle, the Respondent failed to follow due process in a) ensuring that the Applicant was properly prosecuted and the fine for offence paid and b) in continuing to detain the vehicle in the absence of prosecution proceedings.

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Therefore, whilst the initial seizure of the vehicle was lawful, the continued detention of the vehicle was marred with irregularities which negated the initial lawful seizure.

Consequently, the Respondent failed to follow due process.

(iii) Whether the seizure and continue detention of the Applicant's motor vehicle was lawful

Having established that the procedure for the detention of the vehicle was marred with irregularities, it follows that the continued detention is unlawful.

Specifically, following the Applicant's requests to the Respondent for the release of the vehicle, the Respondent ought to have followed the procedure in section 216 of the EACCMA which is to:

a) Require the claimant (Applicant) to institute proceedings for the recovery of the vehicle within two months of receipt of the Applicant's claim; or
b) Institute proceedings for the condemnation of the vehicle.

The Respondent submitted that the Applicant did not make a claim as required by the law. We disagree with this position. The Applicant wrote to the Respondent on three occasions requesting for the release of the vehicle. The correspondences were largely ignored by the Respondent until 14 June 2023.

The Respondent had the option under section 214 (6) of releasing the vehicle to the Applicant subject to the Applicant giving security and this option was not pursued.

Instead, the Respondent opted to detain the Applicant's vehicle such that by the time of filing this Application, the vehicle was still under detention.

The Respondent has sought protection under section 213 (4) which provides that proceedings for an offence under the Act may be commenced, and anything liable for forfeiture may be seized, within five years from the date of the offence. It should be noted that the provision cited by the Respondent is in section 222 and not 213 (4). Section 213 (4) deals with an entirely different matter. Therefore, we shall proceed on the basis of section 222.

Section 222 sets the maximum timelines within which seizure or prosecution proceedings must occur. However, section 214, which sets out specific procedures for seizure, renders section 222 to be a general provision. It should be noted that in the present case, seizure proceedings were already initiated by the Respondent. Section 214 is clear and more specific than section 222 in so far as it requires the Respondent to commence prosecution within a month of seizure.

It would be an absurd outcome if section 222 is used to delay the proper, efficient and judicious management of the collection of customs duties. This provision is intended to aid the Respondent in circumstances where the offence committed comes to their knowledge subsequent to the act giving rise to the offence. It is not intended to be used as a blank cheque for laziness, excess and impunity.

Having failed to institute any proceedings within the given timeframe of two months as required by section 216 (2), the Respondent ought to have released the vehicle to the Applicant.

We therefore find that the Respondent blatantly disregarded the procedure contained in the EACCMA, which resulted in a great injustice to the Applicant. It is unconscionable for the Respondent's officers to detain the Applicant's vehicle for eighteen months. This points to a callous indifference on the part of the Respondent's officers to the potential suffering caused to the Applicant's business and the livelihoods that depend on it.

(iv) The remedies available to the Applicant

Having established that the Respondent's actions were unlawful, we now have to consider the remedies available to the Applicant.

The Applicant has prayed for the following remedies:

(i) An award of Shs. 378,000,000 being compensation for the value of the truck,

(ii) Award of special damages of Shs. 350,000,000,

(iii) Award of general damages of Shs. 158,000,000,

(iv) Award of aggravated damages against the Respondent of Shs. 180,000,000, and

(v) Costs of the Application.

The above remedies are dealt with below:

(i) Compensation of the value of the truck / vehicle

Whilst the Applicant is seeking compensation for the seized vehicle to the tune of Shs. 378,000,000, they have not adduced evidence that indicates the value of the vehicle.

In that regard, the Tribunal is unable to establish the value of the vehicle.

The Applicant however provided a report from the Chief Mechanical Engineer (see PEX 18, 19 and 20) which states that the vehicle was in need of certain repairs. However, the cost of the repairs was not quantified. We would recommend that the Applicant obtains a more recent report from the Chief Mechanical Engineer establishing the cost of restoring the vehicle to a road worthy condition following its detention. The costs of repair should be met by the Respondent.

(ii) Special damages

Special damages are specific, quantifiable losses that the Applicant claimed to have suffered as a result of the unlawful detention of the truck. This includes costs incurred in attempting to recover the vehicle, such as legal fees, transportation expenses, and other related costs. The Applicant sought a reimbursement of these out-of-pocket expenses, arguing that they would not have been incurred but for the Respondent's unlawful actions.

Special damages must be proved and should be based on a precise calculation (see ***Nanjib Mujib v Attorney General, HCSS 150 of 2014)***

While the Applicant has indicated that they suffered lost income due to cancelled contracts and lost daily income of Shs. 750,000 per day, this has not been proved. The Applicant attached a contract with Bolloré; however, the contract does not state the value of the contract. In addition, the Applicant provided service orders from Bollore. However, these do not state the frequency e.g. whether they are daily or not. It would have been more appropriate to include a calculation of the specific damages, supported with the underlying transactional documents.

In the premises, we find that the Applicant has failed to prove specific damages.

(iii) General damages

General damages are awarded at the discretion of the court to restore the plaintiff to the correct position that they would have been had the injury or damage not occurred (see ***Nanjib Mujib v Attorney General*** supra).

Having established that the Respondent unlawfully detained the Applicant's vehicle, the Tribunal hereby awards the Applicant general damages of Shs. 100,000,000.

(iv) Aggravated damages

Aggravated damages are awarded to take into account factors such as malice or arrogance (see ***Obongo v Kisumu Council [1971] EA 91***). In the present case, the Respondent's officers detained the Applicant's vehicle for eighteen months. There were several options available to the Respondent such as releasing the car subject to security as provided for by section 216 of the EACCMA. The Respondent instead chose to detain the car thereby denying the Applicant a source of income / livelihood. Further, the Respondent could have prosecuted and required the Applicant to pay the statutory fine. This option was not pursued.

We therefore find that the Respondent acted maliciously, and we award aggravated damages of Shs. 50,000,000.

Conclusion

Having found that the Respondent unlawfully detained the Applicant's vehicle contrary to the EACCMA, the Tribunal hereby allows the application with costs to the Applicant and orders as follows:

(i) The Respondent should release the Applicant's vehicle immediately.

(ii) The Respondent should meet the cost of repairing the Applicant's vehicle back to a road worthy condition following deterioration from the long detention period. The repair costs should be quantified by the Chief Mechanical Engineer.

(iii) The Applicant is awarded general damages of Shs. 100,000,000 and aggravated damages of Shs. 50,000,000.

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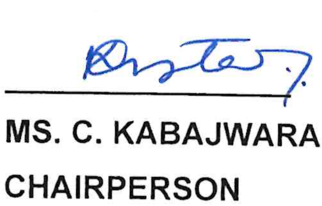
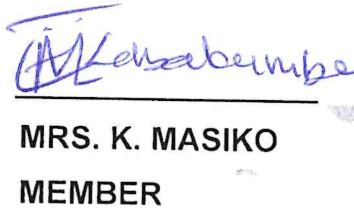
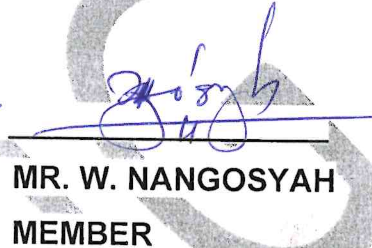
(iv) The fine of five thousand dollars that would have been payable by the Applicant under section 199 (b) (iii) of the EACCMA for conveying uncustomed goods should be offset against the damages.

(v) Interest at a rate of 2 per cent per month will accrue on the damages from the date of this decision until paid by the Respondent.

Dated at Kampala this 18th day of October 2024.







MS. C. KABAJWARA	MRS. K. MASIKO	MR. W. NANGOSYAH
CHAIRPERSON	MEMBER	MEMBER

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