**THE REPUBLIC OF UGANDA,**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**CIVIL SUIT NO 227 OF 2013**

**WORLD POINT GROUP LTD}............................................................................PLAINTIFF**

**VERSUS**

1. **ATTORNEY GENERAL}**
2. **UGANDA REVENUE AUTHORITY}...................................................DEFENDANTS**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**JUDGMENT**

The Plaintiff's action against the Defendants jointly and severally is to recover monies collected in taxes by the second Defendant on behalf of the first Defendant and or as a result of the actions of the first Defendant, general damages, interest thereon and costs of the suit arising out of the governments alleged unreasonable or unjustified cancellation/lifting and or failure to extend the duty free sugar import licence granted to the Plaintiff.

The Defendants denied the claim and maintained that the period of the licence expired and the Plaintiff was liable to tax and properly assessed for import duty and taxed the plaintiff.

The Plaintiff's grievance is that sometime in the month of May in the year 2011, the whole country was hit by an acute scarcity of sugar, causing the sugar prices to suddenly sky rocket, culminating in a national crisis and public outcry. To arrest the escalating public discontent government designed emergency measures, which involved inviting private companies and individuals by way of adverts in the national media to apply for and be granted duty free sugar import clearance licenses. The Plaintiff applied for and was granted a Duty Free Sugar Import clearance license under the sugar policy of 2010; to import 2000 metric tons of sugar vide MTIC/DSIC/001. The Plaintiff proceeded and imported its pre-approved quota of sugar from India and presented the same in accordance with the terms of the Duty Free Sugar Import clearance licence to the Ministry of Trade Industry and Cooperatives. When the sugar arrived at Mombasa port, well within the stipulated time, there were operational delays at the port which the Plaintiff brought to the attention of the Defendants immediately and requested for their intervention. The 2nd Defendant issued a letter confirming that the Plaintiff is a bona fide importer of sugar but the shortcomings at the port frustrated the sugar from leaving the port within the appropriate timeline. When the sugar finally arrived in Uganda, the 2nd Defendant disregarded the duty free import clearance facility and compelled the Plaintiff to pay the duties that the importation attracted. The Plaintiff sought the intervention of the Attorney General to no avail. The Plaintiff in an effort to mitigate loss, paid taxes for some of the sugar and disposed of the same in the Ugandan market and in some other instances re-exported some consignments to some neighbouring countries, all at a great cost, for which it holds the Defendants jointly and severally liable. The Defendants were not justified in disregarding the duty free sugar import license in the circumstances of the case. As a result of the conduct of the Uganda Revenue Authority and the Ministry of Trade, Industry and Cooperatives, it suffered special damages.

Consequently, the Plaintiff claims special damages ofUganda Shillings 400,000,000/- (Uganda shillings four hundred million being transport costs for re-export, Uganda shillings 206,093,100 (Uganda shillings two hundred six million ninety three thousand one hundred), being taxes paid for the sugar sold on the local market and Uganda shillings 100,000,000/- (Uganda shillings one hundred million being storage and demurrage.

As a result of the conduct of the Defendants the Plaintiff claimed to have suffered an estimated loss of profit amounting to US$ 1,873,872/- (United states Dollars one million eight hundred seventy two thousand only). The Plaintiff prayed that Judgment be entered against the Defendants jointly and severally for orders that damage suffered by the Plaintiff, as particularized, the Defendants do make good the loss suffered by the Plaintiff as a result of losing the expected profit and for interest on the same from the date of judgment till payment in full.

In the first Defendant’s written statement of defence it is averred that it would raise a preliminary objection to the effect that the Plaintiff’s claim is bad in law, misconceived and that the same should be struck out with costs. The Defendant averred that the expenses stipulated under the head of “Particulars of Special damage, are speculative, unfounded and extortionist. The Defendant averred that the alleged loss suffered for which the Plaintiff seeks to recover special damages was self-inflicted and therefore not recoverable as the Plaintiff applied for and was granted the Duty-Free Sugar Import Clearance on 23/08/2011. The Plaintiff had notice of the fact that the said Duty-Free Sugar Import Clearance was due to expire on 23/02/2012. The Plaintiff, well aware of the said expiration date elected to embark on the importation and clearance of its consignment well out of the time provided for in the Duty-Free Sugar Import Clearance.

The second Defendant by its written statement of defence averred that by legal notice No. EAC/37/2011 of 01st September, 2011; Uganda was granted a stay of application of the East African Community Common External tariff (EAC-CET) and allowed to import Forty thousand (40,000) metric tons of sugar at 0% import duty rate. The stay of application of the Common External Tariff was for six months with effect from 23rd August, 2011 till 23rd February, 2012 and was duly operationalised and overseen by the 2nd Defendant. As an administrative control measure between Kenya Revenue Authority and the 2nd Defendant it was a requirement that clearance is obtained for sugar consigned to Uganda via Kenya. Upon the Plaintiff’s request, the Defendant by a letter dated 31st October, 2011 introduced the Plaintiff to Kenya Revenue Authority. The Plaintiff imported sugar into Uganda after the tax exemption period had expired. The Plaintiff on 19th June, 2012 requested the 2nd Defendant to clear its sugar duty-free, beyond the exemption period, which request was legally untenable. The 2nd Defendant had no mandate to review the exemption terms and duly advised the Plaintiff to pay the due taxes and *ipso facto,* its actions were justified in the circumstances. The 2nd Defendant had nothing to do with the shortcomings the Plaintiff faced at Mombasa Port and ipso facto, is not responsible for any consequential losses/ costs the Plaintiff alleges it suffered. The 2nd Defendant denied that the Plaintiff suffered damages and loss and further averred that if any such damages and loss were suffered, the 2nd Defendant is not responsible.

The Plaintiff was represented at the proceedings by Counsel Julius Galisonga appearing together with Counsel Shafir Yiga while the Defendant was represented by Counsel George Okello assisted by Counsel Ronald Baluku. After filing on record the points of agreement and disagreement and adducing evidence, the court was addressed in written submissions.

**Written Submissions**

**The written submissions of the Plaintiff’s Counsel:**

In the year 2011, Uganda was hit by scarcity of sugar, causing the sugar prices to suddenly skyrocket. The government in the bid to mitigate the shortage of sugar and pursuant to the sugar policy 2010 granted a licence to select entities to import duty free sugar. The Plaintiff applied to the government for inclusion in this arrangement and on the 23rd August, 2011 it was granted a license to import duty free 2000 metric tons of sugar. This licence was granted to operate within a specific time and pertinently, in this case, the license that was granted to the Plaintiff was set to expire on 23rd February, 2012. The 2nd Defendant was obliged to oversee and operationalize the waiver of the tax element in respect to the license. Thereupon and clearly relying on the licence, the Plaintiff imported 1560 metric tonnes of sugar from India. The sugar arrived in Mombasa port in Kenya in October 2011. However, while clearing the sugar for importation to Uganda from Mombasa port to Uganda, the Kenyan Revenue authority demanded confirmation from the 2nd Defendant that the Plaintiff is an importer of duty free sugar into the East African Customs Union. This confirmation became a prerequisite for releasing the sugar to the Plaintiff. The Plaintiff made this known to the 2nd Defendant and sought this confirmation to be made to Kenya Revenue Authority. However, the 2nd Defendant neglected to make the communication and therefore failed in its obligation hence causing much delay. In fact, this delay lasted until the license actually expired. This much delay further caused the Plaintiff to incur storage and demurrage costs. The sugar eventually arrived in Uganda. However, upon its arrival, the 2nd Defendant sought the Plaintiff to pay taxes including the import taxes that had been waived by the license. On 19th June 2012, the Plaintiff requested the second Defendant to exempt it from paying taxes on the imported sugar. The second Defendant rejected the request. The Plaintiff applied to the second Defendant for permission to re-export some of the sugar to Rwanda and South Sudan and permission was granted. The Plaintiff exported the sugar hence incurring further costs.

In the joint scheduling memorandum filed on 29th June, 2015 the following issues were raised for trial;

1. **Whether the Defendants owed any duty to the Plaintiff when the Plaintiff's sugar arrived at Mombasa port in 2011.**
2. **If so, whether the Defendants breached that duty**
3. **Whether the refusal to grant an extension of the license exempting the Plaintiff from paying duty on its imported sugar beyond 23rd of February 2012 was justified or reasonable?**
4. **What are the remedies available?**

**RESOLUTION OF ISSUES**

**ISSUE 1**

**Whether the Defendants owed any duty to the Plaintiff when the Plaintiff's sugar arrived at Mombasa port in 2011?**

The Plaintiff’s Counsel defined a duty according to **Black's law dictionary, 8th edition, Page 543,** to mean "a legal obligation that is owed or due to another and that needs to be satisfied; an Obligation for which somebody else has a corresponding right. The Plaintiff’s Counsel further submitted as follows;

It is an agreed fact that in response to a shortage of sugar the Government of Uganda as represented by the 1st Defendant issued the Plaintiff a license vide legal Notice Number EAC/37/2011 under the East African Community Common External Tariff (EAC-CET) allowing Uganda to import sugar at 0% import Duty rate which fact is confirmed in paragraph 2 of the witness statement of DW1 Magera Stephen. It is an admitted fact in paragraph 2 of the witness statement of DW1, Magera Stephen that the 2nd Defendant being the authority that oversees matters of tax collection in the Republic of Uganda was mandated to operationalize and oversee this importation of 0% import duty. Counsel submitted that this created a duty on the part of the 2nd Defendant to deal with and help resolve any administrative matters that would arise during the subsistence of the license and which related to the same. It is not disputed that the Plaintiff imported sugar within the time granted in the license, the sugar arrived at Mombasa port accordingly and the Plaintiff faced difficulties at the Port causing it to ask the 2nd Defendant to help resolve. It is confirmed by PW1 and DW2 that the Plaintiff on encountering such problems wrote to the 2nd Defendant and informed the authority of the request for confirmation by the Kenya Revenue Authority which is the authority that handles tax collection in the Republic of Kenya where the goods were at the exact moment. It is also confirmed by DW2 that the 2nd Defendant wrote a letter dated 31st October, 2011 to the Deputy Commissioner of customs Kenya Revenue Authority confirming the Plaintiff as a bona fide importer of sugar as such there was a duty owed by the 2nd Defendant. This duty included the confirmation and correspondence with the Kenya Revenue Authority to ensure the performance and implementation of the licence. The 2nd Defendant was not writing the letter to Kenya Revenue Authority out of courtesy but was doing its job under the legal notice. The content of the letter written by the 2nd Defendant to the Kenya Revenue Authority was a confirmation of the Plaintiff as a bona fide importer of sugar. PW1 testified that it had presented the documents to Kenya Revenue Authority but there was still confirmation required from the Uganda Revenue Authority, as to the authorship and authenticity of the same. The entire arrangement for tax exemption in Legal Notice No. EAC/37/2011 was an inter-state/inter – governmental arrangement. The 1st Defendant through its government ministry granted and issued the duty free licenses while the 2nd Defendant had the mandate to oversee the operation of the same. The fact that the Plaintiff was granted the license by the 1st Defendant, the 2nd Defendant was thereby mandated with the duty to ensure that the license as issued is implemented. Based on the foregoing, the Defendants owed the Plaintiff a duty when her goods arrived at Mombasa.

**ISSUE 2**

**If so, whether the Defendants breached that duty**

With regards to this issue the Plaintiff’s Counsel submitted as follows;

The Defendants breached their duty to the Plaintiff as there was a duty owed by the Defendants. It has been submitted that it is undisputed that the Plaintiff informed the 2nd Defendant that the Kenya Revenue Authority required confirmation of the Plaintiff as a bona fide importer of sugar to which DW1 confirmed that the 2nd Defendant wrote a letter to Kenya Revenue Authority confirming the Plaintiff as a bona fide importer of sugar. In his testimony PW1 stated that Kenya Revenue Authority declined to clear the sugar at the time because it needed clearance from Uganda Revenue Authority and PW2 further testified that the Plaintiff checked with Kenya Revenue Authority but the confirmation had not been received. PW1 testified that he went to the 2nd Defendant and informed the commissioner of the fact that Kenya Revenue Authority had not received the clearance. PW1 further testified that he engaged in various meetings with the 2nd Defendant about the confirmation to Kenya Revenue Authority but the company could not take any steps in clearing the goods when Kenya Revenue Authority was not accepting. The 2nd Defendant did not establish any proof that the letter was actually delivered on time. At the time, the 2nd Defendant was well aware that the licence to import sugar was scheduled to expire at a certain point and that time was of the essence. Nevertheless, the 2nd Defendant stalled, procrastinated in making the confirmation when requested hence making it impossible for the Plaintiff to actually deliver the sugar to Uganda within the scheduled time. By so doing, the second Defendant failed in performing its obligations and therefore breached its duty to the Plaintiff. **Black’s Law dictionary, 8th Edition page 201**, defines breach of a duty to mean violation of a legal or moral obligation. By failing to respond to the confirmation request, the 2nd Defendant was in breach of its duty to the Plaintiff as such the 1st Defendant was vicariously liable for the breach accordingly.

**The 2nd Defendant’s Counsel opted to reply to issue 1 and 2 together and replied as follows;**

The 2nd Defendant did not owe any duty of care to the Plaintiff. Counsel cited the case of **Stovin versus Wise (1996) 3 ALLER 801,** where **Lord Hoffman** held that;

"In determining whether a public authority was under liability for a
negligent omission to exercise a statutory power, the court had to
decide, in the light of the policy of the statute conferring the power, whether the authority was not only under a duty in public law to
consider the exercise of the power but also under a private law duty to act, which gave rise to a claim in compensation against public funds for any failure to do so. So if the policy of the act is not to create a statutory liability to pay compensation, the same policy should ordinarily exclude the existence of a common law duty of care."

The 2nd Defendant’s Counsel further submitted as follows;

Vide Legal Notice No. EAC/37/2011 dated 1st September, 2011; Uganda was granted a stay of application of the East African Community Common External Tariff and was allowed to import 40,000 metric tons of sugar at an import duty rate of 0% for a period of six months starting 29th August, 2011. The 2nd Defendant was to operationalise this legal notice by not charging import duty on sugar for the period of six months starting from the 29th August, 2011 on all those persons who had been granted the exemption licenses. The minister of trade, industry and Cooperatives granted the Plaintiff permission to import 2000 metric tons of sugar duty free till the 23rd February, 2012. Under the said license, the Plaintiff had an obligation to submit to URA retired import documents within 10 days of clearance, no obligation was assigned to the 2nd Defendant and the said legal notice did not create any statutory liability for compensation. Applying the above authority to the facts, the legal notice approved by the Council created no statutory liability on the 2nd Defendant and as such, the 2nd Defendant did not owe any duty of care to the Plaintiff. As such the issue of breach does not arise. In the alternative without prejudice to the above submissions, even if Court were to proceed to consider that the 2nd Defendant owed a duty of care to the Plaintiff, there is no material whatsoever to demonstrate and prove that the 2nd Defendant breached that duty of care. PW1 testified that the Plaintiff’s sugar arrived in Mombasa sometime in the month of October 2011. That the Plaintiff engaged a clearing agent and one David Mutebi who always informed him of what was happening. However, neither the Clearing agent nor David Mutebi testified in this matter as such PW1’s evidence on the alleged delays in Mombasa is hearsay evidence. That they engaged a clearing agent who informed them that Kenya Revenue Authority needed a confirmation from URA that the Plaintiff was the bona fide importer of sugar. That he interacted with Mr. Kamajugo whom he says was helpful to him and that he advised him to write a letter to URA. He wrote the letter to URA sometime in October 2011 but when asked to present the letter, he did not have it. DW1 testified as follows; that upon receipt of the Plaintiff’s letter and based on the contents therein, the 2nd Defendant on 31st October, 2011 wrote a letter confirming that the Plaintiff was a bona fide importer of sugar. Upon receipt of the 2nd Defendant's letter, the Plaintiff’s sugar was cleared import duty free. PW1 during cross examination also agreed to this position when he testified that, "When Kenya Revenue Authority told me that they hadn't received URA's letter, I approached the 2nd Defendant's Commissioner of Customs not in writing and he informed me that he would check. That indeed after a couple of days, my sugar was eventually cleared." The warehousing entry marked as exhibit D1 shows that most of the Plaintiff’s sugar was already in Uganda during the exemption period.DW1 further testified that it was because of logistical issues on the part of the Plaintiff that some sugar remained in Mombasa and this evidence was uncontroverted. Counsel submitted that the delay was not caused by the 2nd Defendant instead it's the Plaintiff who caused his own delay.

**In reply to the 2nd Defendant’s submissions on issue 1 and 2 the Plaintiff’s Counsel** re-iterated their earlier submissions and emphasized that it is an admitted fact that the sugar arrived at Mombasa, an entry point to the East African Customs Union in October 2011, long before the expiry of the license. Counsel submitted that for purposes of benefitting from the Duty free license, this was enough, as under **S.2 (1) of the EACCMA 2004** "import" means to bring or cause to be brought into the partner states from a foreign country while under **S. 2 (2) (c) of the EACCMA, 2004**, the time of import of goods is deemed to be the time of which the goods come within the boundaries of the partner states. As between the EACCMA, 2004 and Legal Notice No. EAC/37/2011 the statutory provision in the Act prevails. For that reason, once the goods arrived at Mombasa in October 2011, they had reached within the licensed period and hence the Plaintiff was entitled to benefit from the licence. This is because the obligation to pay duties arises upon importation, as defined in **S.2 (2) (c) of the EACCMA, 2004.**

Counsel submitted that the case of **Stovin versus Wise (1996)3 ALLER 801** is distinguishable from the present case because it was not relating to interpretation of tax statutes but rather related to the duty of a highway authority to remove an obstruction on the highway that restricted visibility at a road junction. What court must consider in this case are statutory provisions and the legal notice relating to tax matters. Every time there is an ambiguity in the interpretation of tax laws, the ambiguity should be interpreted in favour of the tax payer. He relied on the decision of Justice Kiryabwire in **Stanbic Bank Uganda Ltd & 7 other banks Vs Uganda Revenue Authority HCT-00-CC-CA-170-2007 and 792-2006(Consolidated)** wherein he stated thus;

"…the law is fairly settled that the ambiguity should be construed in favour of the tax payer."

In line with the aforesaid case of **Stanbic Bank Uganda Ltd and 7 other banks Vs URA (ibid),** where there was any failure on the part of any organ of a customs union member country, then the tax payer ought not to suffer. Counsel prayed that this honourable court interprets **S.2 (1)** and **S.2 (2) (c)** of the **EACMA** 2004 in favour of the Plaintiff. He noted that in reply to the 2nd Defendant's submission on the case of **Stovin versus Wise (1996)3 All ER 801, Lord Hoffman** stated that;

"in determining whether a public authority was under liability for a negligent
omission to exercise a statutory power, the court had to decide, in light of the policy of the statute conferring the power, whether the authority was not only under a duty in public law to consider the exercise of the power but also under a private law to act, which gave rise to a claim in compensation against public funds for any failure to do so. So if the policy of the act is not to create a statutory liability to pay compensation, the same policy should ordinarily exclude the existence of a common law duty of care."

Counsel further submitted that the foregoing submission is wayward, in light of the clear admission in the testimony of the 2nd Defendant's witness, Magera Stephen,in paragraph 3, of his witness statement, to the effect that the duty of the 2nd Defendant was to operationalise and oversee the legal notice.The arrangement, under which the sugar was imported, was not the ordinary arrangement of imports and exports, which do not require issuance of legal notices, and which in any case are managed by the 2nd Defendant. Under the East African Community Customs Management Act. This was a special arrangement under which a special arrangement was made, vide Legal Notice No. EAC/37/2011 was issued which indeed created a special obligation on the 2nd Defendant to operationalise the same. Under **S.117 (3)** of the **EACCMA,** conditions are set when an exemption is granted, on which basis the license was expected to expire by 23rd February, 2012 but the question is who should suffer where fulfilment of an obligation, was frustrated by authorities of a member country such as was the case? Given the clear provisions under Articles 5 and 7 of the **Treaty for the Establishment of the East African Community** and Article 3, 4, 9 and 13 of the **Protocol on the Establishment of the East African Customs Union** which are all aimed at promoting commerce and removal of none tariff impediments to trade in the customs union. All these obligations lie on the partner states and not on the tax payers. The 2nd Defendant's assertion as such only points to the fact that the 2nd Defendant was not only under a public duty to consider the exercise of power but was rather under the private law to act and see to it that they did everything possible to ensure that everyone granted the sugar free import license was put into effect. One such was by directly confirming with Kenya Revenue Authority that the Plaintiff was a bona fide importer of sugar. It was not discretionary for the 2nd Defendant to choose to operationalise the licence but was rather an obligation upon them to ensure that the Plaintiff's sugar that was already at the port reaches the Uganda market within the prescribed time and as the Plaintiff's witness testified under cross examination the Kenyan authorities demanded specific actions by the 2nd Defendant which were not proved to have been satisfied hence causing gross delay.

There was only one way through which they would do this which was directly confirming with the Kenya Revenue Authority that the Plaintiff was a bona fide purchaser of sugar and not merely sending the confirmation through the Plaintiff's agent which made it subject to suspicion and was eventually rejected with reasons that Kenya revenue authority was waiting for confirmation from their counter parts in Uganda. This resulted in the delay in clearing the Plaintiff's sugar which resulted in some of it reaching the Ugandan market when the import free licence for sugar had expired. He submitted that the policy issued by the Minister of Trade, Industry and Cooperatives created a Private law duty to act and not a public law to consider the exercise of power conferred upon the 2nd Defendant. Therefore it ought to have carried out that duty instead of omitting to do the same which occasioned great loss to the Plaintiff as its sugar reached the Ugandan market way after the licence had expired. In evaluating this issue of' duty of care, he invited court to consider the principle of "legitimate expectation", which has evolved in administrative law. According to **Daphne Barak-Erez. *The Doctrine* of *Legitimate Expectations and the Distinction between the Reliance and Expectation Interests,* European public law, volume 11, Issue 4, (2005) p.583-601 at 584**, she states thus;

"Traditionally, English administrative law had recognized only procedural protection for legitimate expectations(so that when legitimate expectations were infringed, only additional procedural rights, such as hearing, were granted).At present however, support has been established for granting substantive protection to legitimate expectations through the enforcement of individual expectations when these were generated by the administrative authorities."

Courts of law have gone ahead to consider the doctrine. Lord Woolf, MR in the case of **R V North and East Devon Health Authority ex parte Pamela Coughlin [2001] QB 213** held thus;

*"*56. What is still the subject of some controversy is the court's role when a member of the public, as a result of a promise or other conduct, has legitimate expectation that he will be treated in one way and the public body wishes to treat him or her in a different way. Here the starting point has to be to ask what in the circumstances the member of the public could legitimately expect. In the words of Lord Scarman in Re Findlay (1985) AC 318 at p338, "But what was their legitimate expectation?" Where there is a dispute as to this, the dispute has to be determined by the court, as happened in Findlay. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.

57. There are at least three possible outcomes. (a) The court may decide that the
public authority is only required to bear in mind its previous policy or other
representation, giving it weight it thinks right, but no more, before deciding whether to change course. Here the court is confined to reviewing the decision on Wednesbury grounds. This has been held to be the effect of changes of policy in cases involving the early release of prisoners (see **Re Findlay (1985) AC 318: R V Home Secretary ex parte Hargreaves (1997) WLR 906**). (b) On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is not contentious that the court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it (see **A-G for Hong Kong v Ng Yuen Shiu (1983) 2 AC 629** in which case the court will itself judge the adequacy of the reason advanced for the change of the policy, taking into account what fairness requires). (c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to make a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.

58...In the case of the first, the court is restricted to reviewing the decision on conventional grounds. The test will be rationality and whether the public
body has given proper weight to the implications of not fulfilling the promise. In the case of the 2nd category the court's task is the conventional one of determining whether the decision was procedurally fair. In the case of the third, the court has when necessary to determine whether there is a sufficient overriding interest to justify a departure from what has been previously promised.”

Counsel submitted that the 2nd Defendant just like it states in paragraph 3 of its witness statement made an unambiguous promise to operationalise and over see that the sugar free import license issued to the Plaintiff was put into effect, which would entail continuous coordination with other entities and organs of member countries including Kenya Revenue Authority, Kenya Ports Authority etc. when need arose. The Plaintiff relied on it and reasonably expected the 2nd Defendant to fulfil its promise. The exercise of that promise was not inconsistent with the 2nd Defendant's duty but it went ahead and failed/ refused to fulfil the promise to the detriment of thePlaintiff. Counsel prayed that this honourable court finds that the Plaintiff's legal expectation was breached when the 2nd Defendant failed/ refused to directly confirm with Kenya Revenue Authority or take all reasonable steps to ensure that no delay was caused to the Plaintiff which occasioned loss to the Plaintiff as its sugar reached the Ugandan market after the expiration of the import free license for sugar. He also prayed that court finds that the 2nd Defendant owed a duty to the Plaintiff to directly confirm with Kenya Revenue Authority that the Plaintiff was a bona fide importer of sugar rather than send the letter through the Plaintiff's agent which was a breach of duty by the 2nd Defendant.

Counsel submitted in reply to the 2nd Defendant's contention that PW1's evidence on the alleged delays is hearsay evidence that this is wayward, in the sense that PW1 was the principle officer of the Plaintiff dealing with this importation to which reports were made on the importation of sugar. When difficulties arose, he personally not only contacted but also met with the then commissioner customs of the 2nd Defendant to no avail and the documentary evidence on the file clearly indicates when the sugar arrived at the port ClF Kampala.

Counsel cited **Section 58** of the **Evidence Act Cap. 6,** which provides that all facts, except the contents of documents, may be proved by oral evidence. The bills of lading clearly indicate that the sugar arrived at Mombasa port in early October 2011 within the prescribed time. Its transportation to the Ugandan market was only delayed by the 2nd Defendant's omission to carry out its duty of confirming directly with Kenya Revenue Authority in time about the fact that the Plaintiff was a bona fide importer of sugar. Counsel replied to the 2nd Defendant's contention that DW1 upon receipt of the 2nd Defendant's letter, the Plaintiff's sugar was cleared. Counsel submitted that the Plaintiff in paragraph k and in his testimony states that some sugar was let through after much difficulty and the same arrived in Uganda within the licensed period. However, the Plaintiff goes on to state in **paragraph I** of his witness statement that the release of the sugar was after going through much difficulty and tossing back and forth between the officers of the 2nd Defendant and Kenya revenue authority, hence it was not possible to have all the sugar released from Mombasa before the expiry of the license. In reply to the 2nd Defendant's contention that DW1 testified that some of the Plaintiff's sugar remained in Mombasa because of logistical issues Counsel submitted that that is a baseless submission from the bar, not backed with any proof of any such logistical problems, examples of which are neither cited or proved, which should be rejected and should not be believed, given the fact that the importation was ClF Kampala, which in itself confirms that all costs for importation of the sugar were covered to Kampala such that there could not be cause for any logistical problem to stop the importation to Kampala. Counsel emphasized that at all material times, the 2nd Defendant was aware that the Plaintiff's sugar was at the port in Mombasa and that the said sugar was subject to strict timelines under the duty free import license. It was the 2nd Defendant's duty to directly confirm with Kenya Revenue Authority that the Plaintiff was a bona fide importer of sugar and not sending the same through its agent and that it failed in its duty to do so which occasioned loss to the Plaintiff.

Issue 3

Whether the refusal to grant an extension of the license exempting the Plaintiff from paying duty on its imported sugar beyond 23rd of February 2012 was justified or reasonable?

The Plaintiff’s Counsel submitted that in the circumstances, the Defendants were obligated to take steps to ameliorate the situation the Plaintiff found itself in, on account of circumstances well beyond it but which as demonstrated above are attributable to the 2nd Defendant. As such refusal to extend the licence was unreasonable and unjustified.

**In reply to the Plaintiff’s submissions on issue 3** the 2nd Defendant’s Counsel submitted that the 2nd Defendantdoes not have authority to grant an exemption. Under **section 112 (l) (b) of the EACCMA,** Preferential tariff treatment shall be applied to goods imported under any tariff arrangement that may be approved by council.He cited **Section 5 of the EACCMA** which provides that there shall be appointed a commissioner who shall be responsible for management and control of customs in each partner state.Further under the EACCMA, the Commissioner customs does not have powers to grant an exemption. Counsel submitted that the Plaintiff on the 19th June, 2012 applied to the Commissioner customs for an exemption requesting for a waiver to clear 1584 metric tons of sugar. On the 21st June, 2012 the Commissioner customs declined to grant the same and advised her to pay the taxes. On the 7th February, 2013 the Plaintiff wrote to the Attorney General requesting him to intervene in grievances in respect of duty free sugar imports. The Plaintiff did not avail any response from the Attorney General in respect of its letter. DW1 and PW1 testified that the 2nd Defendant does not have authority to grant an exemption and as such she could not extend it. The 2nd Defendant’s Counsel submitted that since the 2nd Defendant did not have authority to grant an exemption, issues of justification for renewal cannot be addressed by the 2nd Defendant.

**In reply to the Defendant’s submissions on issue 3,** the Plaintiff’s Counsel also made reference to **Section 112(1) (b) of the EACCMA** whichprovides that preferential tariff treatment shall be applied to goods imported under any tariff arrangement that may be approved by council and **section 5 of the EACCMA** whichprovides that there shall be appointed a commissioner who shall be responsible for management and control of customs in each partner state. Counsel submitted that the Plaintiff rightly applied to the commissioner customs for an exemption requesting for a waiver to clear 1584 metric tons of sugar on 19th June, 2012 as it is clearly admitted by the 2nd Defendant that it was the 2nd Defendant with the duty to operationalise the license. Counsel defined “operationalise" simply to mean to put into operation, to give effect and as such being the one responsible, as admitted, it was the proper authority to seek intervention from in the circumstances of the case. The same commissioner is the one responsible for management and control of customs in each partner state and with the power to communicate any application to the council. Moreover, the East African Customs Union is composed of partner states and tax payers seeking its intervention can only do so through organs .of their respective member states, such as the 2nd Defendant, which was responsible for the operationalization of the legal notice.

ISSUE NO 4

**What remedies are available to the parties?**

The Plaintiff’s Counsel submitted as follows:

The Plaintiff is entitled to recover general and special damages which it suffered on account of breach of duty by the 2nd Defendant; the Defendants owed the Plaintiff a duty which the Defendants breached. In establishing the remedies available to the Plaintiff it is imperative to accentuate the liability of the Defendants in respect to their breach. PW1 submitted that eventually the sugar was cleared from Mombasa and delivered to Uganda outside the time in the license. PW1 further stated in the witness statement that when the sugar arrived the Plaintiff wrote to the 2nd Defendant seeking to clear the goods without taxes but the 2nd Defendant declined and ordered the Plaintiff to pay the taxes. That he paid taxes for some of the sugar but failed to sell it on the market since the market price had dropped way below that it was incurring losses. That the expiry of the sugar was nearing and the 2nd Defendant threatened to destroy it. As a result the Plaintiff Company applied to the 2nd Defendant to allow it to re-export the sugar to Rwanda and the Republic of South Sudan. The permission was granted and the Plaintiff in fact re-exported the sugar. It should be noted that it is not in dispute that the sugar arrived in Uganda beyond the time in the license. Whereas, in principle, at the time objectively, the import tax applied, it is important to focus on the cause of the failure to actually deliver the sugar within the necessary time in determining the liability and the remedies available. Failure by the 2nd Defendant to perform its obligations amounted to a breach that actually led to the delayed arrival of the goods. Counsel submitted that the Defendants were liable for the delay and should therefore bear the damages and the costs suffered by the Plaintiff.

With regards to special damages, the Plaintiff’s Counsel submitted that it has been decided by courts of law that special damages must be specifically pleaded and proved. He cited the case of **GAPCO (U) LIMITED Vs A.S TRANSPORTERS SCCA NO. 07 OF 2007**, Okello JSC held that:

"In my opinion, the principle governing an award of special damages is clear. Special damages must be pleaded and proved. These were so pleaded and the learned justices of appeal found evidence to prove part of the lost income and made the award. Special damages however need not always be proved by production of documentary evidence. Cogent verbal evidence can also do"

Counsel submitted that the special damages pleaded include lost profit, cost of re-export, storage and demurrage. The testimony of PW1 in 1 (p) and (t) of his witness statement, which was not controverted was that the total cost of a kilogram of sugar ClF Kampala was Uganda Shillings 2,297/- (Uganda shillings two thousand two hundred ninety seven only) to be sold at a whole sale price of Uganda shillings 3, 000/- Uganda shillings three thousand only. This was to convert into a net profit of Uganda shillings 703/- (Uganda shillings seven hundred three only) per kilogram, which was then frustrated by the duties that were then being demanded by the 2nd Defendant, compelling the Plaintiff to re-export the sugar to mitigate loss. He further submitted that the price index issued by the Uganda National Bureau of Standards for December 2012 for sugar, tea and spices, thereof points to the truthfulness of the testimony of PW1 that sugar was to be stabilized to the price of Uganda shillings 3,000/- (Uganda shillings three thousand only). Counsel submitted that per the license granted to the Plaintiff the Plaintiff was granted permission to import 2,000 Metric tons of sugar but from the letters from the 2nd Defendants granting the Plaintiff to re-export the sugar the Plaintiff re-exported 1,117 metric tons of sugar totalling about 1,177, 000 (one million one hundred seventy seven thousand kilos) making a loss of Uganda shillings 827,431,000/- (Uganda shillings eight hundred Twenty seven million, four hundred thirty one thousand only), which he prayed that the Defendants be compelled to pay jointly and severally. This submission is premised on the authority of **Hororanto Busulwa Ssalongo v. Abdu Senabulya & 5 Others, H.C.C.A. No.7 of 2002,** whereit was held that special damages must be strictly proved although they need not be proved by documentary evidence in all the cases.

Secondly, the Plaintiff claimed Uganda shillings 400,000,000 (Uganda shillings four hundred million) being payments for transport to re-export and storage services and receipts to prove the same were attached to the supplementary witness statement of PW1, which were admitted in evidence. It was testified by PW1 that this amount was paid to Eastern Logistics Limited as cost for storage, demurrage and transportation of the sugar from Mombasa to Kampala, storage in Kampala and transportation of the sugar to the re-export destination. It is not in dispute that the sugar was in Mombasa for a long while, it is also not disputed that the sugar was eventually in Uganda and that it was later re-exported. In the premises, Counsel prayed that the Defendants be ordered to pay the Plaintiff lost profits as submitted above, as well as the transport and storage cost.

With regards to general damages, the Plaintiff’s Counsel submitted that the award of general damages was ably discussed in the case of **Gentex Enterprises Ltd Vs. M&B Engineers Ltd HCCS No. 74 of 2013** where Hon. Mr. Justice Christopher Madrama Izama held that;

“The law on general damages and interest is well settled. I agree with the Plaintiff's Counsel that the law is that the Plaintiff is entitled to be restored to a position he would have been in had the injury complained of not occurred under the common law Maxim of Restitutio in intergrum.

While in **Mohanlal Kakubhai vs. Warid Telecom Civil Suit No. 0224 OF 2011** Bashaija J, stated that;

‘Also, in the assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered per **Uganda Commercial Bank vs. Kigozi (2002) 1 EA. *305.*** A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the position he or she would have been if she or he had not suffered the wrong per **Charles Acire vs. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd vs. Umar Salim, S.C.C.A. NO.17 of 1992.** It is also the established the law that special damages must be specifically pleaded and strictly proved, but that strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence; for example by evidence of a person who received or paid money or testimonies of experts conversant with the matters per **GAPCO (U) Ltd. v. A.S. Transporters (U) Ltd, C.A.C.A. No. 18 of 2004.’**

Counsel submitted that from the evidence of PW1, the Plaintiff being a business entity was greatly inconvenienced by the conduct of the Defendants, from the time the sugar was stuck at the Port, having to go to the Defendant's offices, as seen from the numerous letters. There was constant fear of the rising costs of keeping the sugar and expiry of the same. At the end of it, the Plaintiff had to go through the hustle of re-exporting, including hiring vehicles to transport and mobilize resources to pay for the same. He invited court to follow the decision of **Takiya Kashwahiri and Another vs. Kajungu Denis, C.A.C.A No 85 of 2011,** where the Court of Appeal of Uganda stated that general Damages are compensatory in nature in that they should restore some satisfaction, as far as money can do it, to the injured Plaintiff. On account of the Defendants conduct, the Plaintiff was not able to earn profits that he had anticipated on the sugar even after selling it in on markets in the neighbouring countries such as Rwanda. If it was able to sell the sugar finally it did not earn the profits it had anticipated. Additionally, the Plaintiff's money arising from the losses has succumbed to currency fluctuations and therefore would not be the same as it was at the time of the loss. In view of the particular circumstances of this case, and the suffering it has occasioned on the Plaintiff is at Uganda shillings 1,000,000,000/= **(one billion)** as general damages to the Plaintiff.

With regards to interest, the Plaintiff’s Counsel relied on section **26 (2) of the Civil Procedure Act cap 71** whichempowers court to award interest in addition to any other award made.

Counsel also relied on the decision of this court in **GENTEX ENTERPRISES LIMITED vs. M&B ENGINEERS LTD (supra)** which **followed the** case of **ECTA (U) Ltd vs. Geraldine Namubiru and Josephine Namukasa S.C.C.A No 29 OF 1994, and judgment of ODOKI Ag DC.J** as he then was that the Court has discretion to award reasonable interest on the decretal amount and a distinction must be made between awards arising out of Commercial or business transactions which would normally attract a higher interest, and awards of general damages which are mainly compensatory.

Counsel submitted that the Defendants had been negligent in carrying out their duties to operationalise the license granted to the Plaintiff to import sugar free of import duty and the Plaintiff lost out on the business it intended to procure from the importation of sugar under the 0% import duty. He prayed that the interest at a rate of 20% on the general damages and special damages be awarded from the date of delivery of judgment up to the date full payment is made.

With regards to costs for the suit, Counsel relied on section 27 of the **Civil Procedure Act Cap 71** which empowers this court to make an award of costs and costs follow the event unless court otherwise orders.

**In reply to the Plaintiff’s submissions,** the 2nd Defendant’s Counsel submitted that the Plaintiff is not entitled to any remedies. Counsel cited the case of **East Suffolk Rivers Catchment Board vs. Kent & another (1940) 4 All E.R. 527 at 543,** where **Lord Atkin** while dissenting held that where a public Authority honestly exercises its authority, it cannot be held liable for the damages caused.

Applying the law to the facts, the 2nd Defendant’s Counsel submitted that the 2nd Defendant honestly exercised its authority when it issued a confirmation letter to the Plaintiff and as such should not be condemned to damages. Counsel submitted that the question of damages was extensively discussed by the Court of Appeal in the authority of **Uganda Revenue Authority vs. David Kitamirike C.A.C.A No. 43 of 2010** where it was held that general damages are awarded by the court at large after due assessment. They are compensatory in nature and should offer some satisfaction to the injured Plaintiff. On the other hand aggravated damages are compensatory but enhanced damages due to the aggravating conduct of the Defendant and the exceptional harm done to the injured party.

Both general and aggravated damages focus on the conduct of the Defendant in causing the injury to the Plaintiff that is being compensated for. The authorities relied upon by the Plaintiff point to one principle that in awarding both general and exemplary damages, the Defendant must be at fault. The 2nd Defendant did not breach any duty owed to the Plaintiff and as such the Plaintiff has failed to show that it was the conduct of the 2nd Defendant that has caused her loss and inconvenience and as such the Plaintiff is not entitled to both General and exemplary damages. The question of special damages was extensively discussed by the Supreme Court in the authority of **Uganda Telecom Limited versus Tanzanite Corporation S.C.C.A No.17 of 2004** where it was stated as below;

"Special damage" is that damage in fact caused by wrong. It is trite law that this form of damages cannot be recovered unless it has been specifically claimed and proved or unless the best available particulars or details have before trial been communicated to the party against whom it is claimed. In a claim for loss of profits, the normal measure of damages, as stated in section 50 (3) of the Sale of Goods thereby incorporating the common law as stated in **Barrow vs. Amand (1846) 8. QB 610** and is that contract price less the market price at the contractual time for acceptance. This represents the amount the seller must obtain to put himself in the position he would have been in had the contract been carried out, since he can sell the goods in the market per **McGregor on Damages, Fifteenth Edition 1988**."

DW1 testified that huge quantities of the Plaintiff’s sugar arrived in Uganda within the exemption period and that for the sugar where the Plaintiff cleared other taxes, she enjoyed the prices on the local market. PW1 during cross examination admitted that the Plaintiff sold sugar on the Ugandan market within the exemption period. Further, the ware housing entry that was unchallenged by the Plaintiff clearly shows that huge quantities of the Plaintiffs sugar was within Uganda, implying that he benefited from the prices on the Ugandan local market. DW1's unchallenged evidence was to the effect that the reason why the other Sugar did not reach Uganda within the exemption period was due to logistical issues on the part of the Plaintiff. DW1 also testified that the exemption was only limited to import duty and that the person granted the exemption was still liable to pay other taxes like excise duty, withholding and import VAT. PW1 testified that the license granted to him was limited to 2000 metric tons. He also testified that despite that, he imported 2080 tons and that he sold some sugar on the Ugandan market, a reason why he requested to re-export less tons of sugar. DW1 testified that the Plaintiff requested them to extend the exemption period which request the 2nd Defendant refused on grounds that she did not have the authority. PW1 subsequently applied to the relevant ministry (Ministry-of trade) which request was denied. PW1 stated that following the refusal to extend the exemption period, he applied to the 2nd Defendant to re-export the remaining sugar. DW1 also testified that permission was granted and that on re-export, no taxes are paid. PW1 testified that following that permission on various times, the Plaintiff re- exported some sugar to various countries like Rwanda, South Sudan and the Democratic Republic of Congo. PW1 also testified that he contracted Eastern Logistics for the re-export but did also contract other agents and that he only used one transport Company, Eastern Logistics who charged for the transportation services and payment was upon arrival of the goods. PW1 testified that, “I don't have the bill for transportation but I have their receipts showing payment and the sum of shillings 400,000,000/= was paid for transportation and storage".

He further testified that Eastern Logistics issued the receipts but did not know the person who signed and issued them. He stated that Shillings 180,000,000/= was paid on the 22/06/12 towards storage and transportation and that he did not know how much went to storage and transportation. **PW1** testified that the receipts do not show the quantity of sugar and the destination and that he did not know the end point but there were other documents explaining that which he did not have. He also testified that the mode of transport was by road but could not remember the number plates of the vehicles that transported the sugar. **PW1** referred to export entry of 31/12/12 and stated that it was used to transport sugar to South Sudan and that it doesn't show the place of storage and the bonded ware house is not shown. The letter shows bond No. W0245 and that he did not know the owner of the bond and that the charges of storage were never got from the bonded warehouse but were given to him by Eastern Logistics Limited. PW1 testified that he did not know whether Eastern Logistics Limited owned a bonded ware house. The receipt adds up to Shillings 400,000,000/= for storage and that's what the Plaintiff paid. He also testified that he did not issue the receipt dated 25/07/12 and that Shillings 120,000,000/= should have been in its right place. PW1 added the sum of the receipts to shillings 420,000,000/= but insisted that the company incurred shillings 400,000,000/=. PW1 testified that he paid demurrage but did not have evidence to support his allegation. He submitted that the Plaintiff did not pay any taxes to URA since taxes are not paid on re-exports and that based on the contradictions on proof of payment of transport costs, the Plaintiff has failed to prove special damages. With regards to interest and costs, it is the 2nd Defendant's submission that her actions did not cause any loss to the Plaintiff and as such is not entitled to the same and prayed that the suit be dismissed with costs.

**In reply to the 2nd Defendant’s submissions, the Plaintiff’s Counsel** submitted that the Plaintiff is entitled to special damages prayed for because as earlier submitted, the 2nd Defendant owed a duty to the Plaintiff which it breached. As a result of the breach, the 2nd Defendant suffered tremendous loss as he had to re export the sugar to other countries. Through this he incurred transport and storage expenses. PW1 during examination stated that the costs incurred were for transport and warehousing. He stated that the Plaintiff incurred transport and storage expenses to the tune of Uganda shillings 400,000,000 (Uganda shillings four hundred million only). According to the case of **GAPCO (U) LIMITED vs. A.S TRANSPORTERS SCCA NO. 07 OF 2007, Okello JSC** held that the principle governing an award of special damages is that they must be pleaded and proved. Special damages however need not always be proved by production of documentary evidence and cogent verbal evidence can do.

He submitted that the testimony of Moses Balyeku is that the expected profit per kilogram of sugar at the price agreed on with government was Uganda shillings 703/= (Uganda Shillings Seven Hundred Three Only). Because of the unavoidable delays and the conduct of the 2nd Defendant, the sugar could not be sold on the Ugandan market which caused a net loss of Uganda shillings 703/= (Uganda Shillings Seven Hundred Three Only) per kilogram of sugar that was delayed. The sugar delayed was 1584 metric tonnes that is to say 1,584,000 kilograms. This amounted to a total loss of Uganda shillings 1,113,552,000/= (Uganda Shillings One Billion One Hundred Thirteen Million Five Hundred Fifty Two Thousand Only). Counsel submitted that they abandon the claims in paragraph 8 of the plaint. The Plaintiff proved through receipts and in his testimony that he incurred expenses of Uganda shillings 400, 000,000/= Uganda shillings 180,000,000 on 22nd June, 2012, Uganda shillings 120, 000,000 on 25th July, 2012, Uganda shillings 60,000,000 on 15th November, 2012, and Uganda shillings 60,000,000 on 10th October, 2012. Counsel further submitted that the Plaintiff contracted Eastern Logistics Ltd to oversee both the storage and transportation of sugar and that the costs indicated on the receipts were payments for both the services. He maintained that the 2nd Defendant owed a duty to the Plaintiff which it breached and the Plaintiff suffered damages. He submitted that the Plaintiff would in the circumstances be entitled to an award of the remedies prayed for. Counsel also submitted that **section 27** of the **Civil Procedure Act Cap. 71** empower this honourable court to award costs and prayed that the Defendants be ordered to pay to the Plaintiff the costs of this suit.

**Judgment**

I have carefully considered the pleadings and established the issues from the pleadings as well as submissions of Counsel. One issue was not addressed and is whether the sugar was imported after the period agreed to in the pleadings had expired. It is a rule for the framing of issues that issues arise inter alia from the pleadings and contents of documents according to Order 15 rule 3 of the Civil Procedure Rules which provides that:

“3. Materials from which issues may be framed.

The court may frame the issues from all or any of the following materials—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and

(c) the contents of documents produced by either party.

After perusal of the document granting the exemption, the subject matter of this suit, the issue became whether the sugar was imported after expiry of the license giving a period of six months within which to import the sugar. Before delving into the issue that emerged, the rules further gives the court jurisdiction to amend the issues even at the stage of issuing a decree. Therefore the rules permit issues to be amended at any time before passing a decree. Order 15 rule 5 of the Civil Procedure Rules provides as follows:

“5. Power to amend and strike out issues.

(1) The court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The court may also at any time before passing a decree strike out any issues that appear to it to be wrongly framed or introduced.”

A perusal of the Plaint disclosed the facts the Plaintiff relied on for the cause of action as follows: Sometime in the month of May 2011, Uganda was hit by an acute scarcity of sugar causing the sugar prices to suddenly skyrocket and this resulted in a national crisis and public outcry. The government of Uganda took emergency measures which included inviting private companies and individuals to apply for and be granted duty free sugar import clearance licences. The Plaintiff applied for and was granted a duty free sugar import clearance licence under the sugar policy of 2010 to import 2000 metric tons of sugar. The Plaintiff proceeded and imported its pre-approved quarter of sugar from India and presented the same in accordance with the terms of the duty free sugar import clearance licensed by the Minister of Trade, Industry and Cooperatives. When the sugar arrived at Mombasa port, within the stipulated time, there were operational delays at the port which the Plaintiff brought to the attention of the Defendants and requested for their intervention. The second Defendant issued a letter confirming that the Plaintiffs were bona fide importers of sugar but the shortcomings at the port frustrated the sugar from leaving the port within the appropriate time lines. When the sugar finally arrived in Uganda, the second Defendant disregarded the duty-free import clearance facility and compelled the Plaintiff to pay the duties that the importation attracted. The Plaintiff sought the intervention of the Attorney General to no avail. The Plaintiff in an effort to mitigate loss, paid taxes for some of the sugar and disposed of the same on the Ugandan market and in some other instances re-exported some consignments to neighbouring countries at great cost for which it holds the Defendants jointly and severally liable. The Plaintiff contended that the Defendants are not justified in disregarding the duty free sugar import licence in the circumstances of the case. The Plaintiff claims special damages of Uganda shillings 400,000,000/= being transport costs for re-export of the sugar, Uganda shillings 206,093,100/= being the taxes paid for the sugar sold on the local market and Uganda shillings 100,000,000/= being storage and demurrage charges. The Plaintiff further claims loss of profit in the amount of US$1,873,872. The Plaintiff further claimed interest on the above two items from the date of judgment till payment in full.

The first and second Defendants filed separate written statements of defence. The second Defendant, Uganda Revenue Authority denied the claim and among other things argued that by Legal Notice No. EAC/37/2011 of 1st of September 2011, Uganda was granted a stay of application of the East African Community Common External Tariff (EAC - CET) and a “lot” to import 40,000 metric tons of sugar at 0% import duty. The stay of application of the Common External Tariff was to last for a period of six months starting 29th of August 2011 to 29th of February 2012 and was duly operationalised and overseen by the second Defendant. As an administrative control between Kenya Revenue Authority and the second Defendant, it was a requirement that clearance is obtained for sugar consigned to Uganda via Kenya. Upon the Plaintiff’s request, the Defendant by letter dated 31st October, 2011, introduced the Plaintiff to Kenya Revenue Authority. The Plaintiff imported sugar into Uganda after the tax exemption waiver period had expired. The Plaintiff on 19th of June 2012 requested the second Defendant to clear its sugar duty-free, beyond the exemption period, which request was legally untenable. The second Defendant had no mandate to review the exemption terms and duly advised the Plaintiff to pay the taxes and ipso facto, its actions were justified in the circumstances. The second Defendant had nothing to do with the shortcomings the Plaintiff faced at Mombasa port and ipso facto, is not responsible for the consequential losses/costs the Plaintiff alleges it has suffered. The second Defendant prayed for dismissal of the suit.

Similarly the first Defendant denied the claim in the suit and prayed for dismissal of the suit. Additionally the first Defendant averred that the claims of the Plaintiff and alleged loss suffered were self-inflicted and not recoverable. The claims were extortionate and unfounded. The Plaintiff applied for and was granted a duty-free sugar import clearance on 23rd of August 2011. The Plaintiff had notice that the duty-free sugar import was due to expire on 23rd of February 2012. Being aware of the expiry date, the Plaintiff elected to embark on the importation and clearance of its consignment which was well out of the purview of the duty-free sugar import clearance.

In the joint scheduling memorandum signed by Counsel of the parties on 29th of June 2015 the following are the agreed facts and issues for trial namely:

Agreed facts as between the Plaintiff and the second Defendant:

* In the year 2011, Uganda was hit by scarcity of sugar, causing sugar prices to suddenly skyrocket.
* The Plaintiff applied to the government and was on 23rd August, 2011 granted licence to import duty free, 2000 metric tons of sugar subject to specific regulations.
* The duty-free sugar import licence was to expire on 23rd of February 2012.
* The Plaintiff proceeded and imported the sugar and it arrived at and was declared at the Mombasa entry point sometime in the month of October 2011.
* That indeed the Plaintiff requested for the confirmation from Uganda Revenue Authority its authenticity as an importer of duty-free sugar into the East African customs union which URA did.
* The Plaintiff imported 1560 metric tons of sugar from India, and the same arrived in Uganda at the time when the duty-free import sugar licence had expired.
* While the sugar was still at Mombasa port, at the Plaintiff's request, the second Defendant introduced the Plaintiff to the Kenya Revenue Authority, on 31st October, 2011.
* When the sugar arrived in Uganda, the Plaintiff on 19th June, 2012 requested the second Defendant to exempt it from paying taxes on the imported sugar and the Defendant rejected the request.
* The Plaintiff applied to the second Defendant for permission to re-export several metric tons of sugar to Rwanda, and South Sudan and permission was granted.

In the written submissions of the Plaintiff, the Plaintiff addressed the court on the following issues:

1. Whether the second Defendant owed a duty of care to the Plaintiff and if so did the second Defendant breach it?
2. Whether the refusal to grant an extension of the licenses exempting the Plaintiff from paying duty on its imported sugar beyond 23rd of February 2012 was justified or reasonable?
3. What remedies are available to the parties?

The Defendant similarly argued the same issues. I have carefully considered the second issue which is whether the refusal to grant an extension of the licenses exempting the Plaintiff from paying duty on its imported sugar beyond 23rd or 29th of February 2012 was justified or reasonable.

The second issue proceeds from the premises that sugar was imported after 23rd of February 2012. Furthermore, that it was necessary for the second Defendant to extend a licence beyond 23rd February, 2012 when it was due to expire.

By legal notice number EAC/37/2011, the Chairperson Council of Ministers in exercise of powers conferred upon the Council of Ministers by article 12 (3) and 39 (c) of the Protocol on the Establishment of the East African Community Customs Union, stayed the application of the EAC CET on 40,000 metric tons and applied import duty at the rate of 0% for six months. Pursuant to the exemption for 40,000 metric tons of sugar, the Minister of Trade and Industry and Cooperatives on 23rd of February 2012 approved the Plaintiff for the importation of 2000 metric tons of sugar duty-free and the licence was to expire on 23rd of February 2012.

It is an agreed fact that the Plaintiff imported the sugar and it arrived in Mombasa port in October 2011 before the expiry of the period granted by the licence. The licence was granted in August 2011 and two months later the sugar, the subject matter of the license, had been imported into the East African Community and specifically it had arrived and been received in the territory of Kenya. However, it had not been transported into Uganda.

The terms of the licence were inter alia the following:

1. Sugar imported duty-free should not be re-exported to EAC Partner States.
2. Must have adequate warehouse for all the imported sugar and (at?) their location.
3. It must ensure compliance to industry standards and codes of practice.
4. Permit free entrance, at all times, to sugar import steering committee members from the Ministry of Trade, Industry and Cooperatives for the sector for purposes of monitoring distribution process of sugar.
5. It must develop and implement safety programs, equipment and plans for protection of occupational health, industrial safety and environment during operation.
6. It must uphold and practice at all times, the principle of free market and fair competition in business operations. This forbids the following;
	1. Hoarding of products for purposes of profiteering from artificial shortages.
	2. Collusion with other marketers to fix market prices.
	3. Deliberate discrimination or unreasonable restriction on sale of products and services to all persons in the supply chain.
7. Submit sugar import data to and as required by the Ministry responsible for industry.
8. Submit URA retired import documentation within 10 days of clearance.…"

In the written submissions of the second Defendant's Counsel, it is also admitted that sometime in October 2011, the Plaintiff sugar arrived at Mombasa. The Plaintiff informed the second Defendant sometime in October 2011, that Kenya Revenue Authority requested her to produce a confirmation letter from the second Defendant confirming her as an importer of sugar. The second Defendant by letter dated 31st of October 2011, wrote a letter to Kenya Revenue Authority confirming the Plaintiff as a bona fide importer of sugar. Upon receipt of the second Defendant's letter, the Plaintiff sugar was cleared duty-free. Finally, the Defendant’s Counsel submitted that due to logistical issues on the part of the Plaintiff, the Plaintiff failed to bring the sugar from Mombasa into Uganda within the exemption period.

The factual matter derived from the contention between the parties is that the Plaintiff failed to bring the sugar into Uganda from Mombasa within the exemption period of six months. This factual matter is an agreed fact and is not contentious because the Plaintiff's Counsel also submitted that the Plaintiff imported 1560 metric tons of sugar from India which arrived in Mombasa port in Kenya in October 2011. However before clearing the sugar for importation into Uganda from Mombasa port, the Kenya Revenue Authority demanded confirmation from the second Defendant that the Plaintiff is an importer of duty-free sugar into the East African Customs Union. The confirmation became a prerequisite to releasing the sugar to the Plaintiff. The Plaintiff made this known to the second Defendant and for its confirmation to be made known to Kenya Revenue Authority. However, the second Defendant failed to make the communication leading to much delay. The delay lasted until the licence actually expired.

The assumption of both Counsel is that importation occurred after the licence expired for whatever reason which caused the delay. This unique situation generates a different controversy of law as to when the sugar is imported according to the definition of an “import” under the East African Community Customs Management Act. The resolution of the issue is simple and straightforward.

Under section 2 (1) of the East African Community Customs Management Act (EACCMA), the word “import” is defined. The word "import" means to bring or cause to be brought into a Partner States from a foreign country. A foreign country is also defined. The term "foreign country" means any country other than a Partner State. When the sugar arrived at Mombasa Port in October 2011, it had been imported from a foreign country into a Partner State (Kenya) as clearly defined by the EACCMA. Furthermore the time of importation is defined by section 2 (2) (c) of the EACCMA which provides as follows:

“(2) For the purposes of this Act-

(c) the time of importation of goods shall be deemed to be the time at which the goods come within the boundaries of the Partner States.”

The time within which the goods came within the boundaries of the Partner States was October 2011 within the period prescribed by the license (of six months). In fact the sugar was imported within 2 months under the instrument granting the exemption. The goods had therefore been imported by October 2011.

The exemption was granted by Legal Notice No. 37 of 2011 by the Council of Ministers. The legal notice was issued under the **Protocol on the Establishment of the East African Customs Union** and specifically articles 12 (3) and 39 (c) thereof. The Chairperson of the Council of Ministers wrote that:

“In Exercise of the powers conferred upon the Council of Ministers by Article 12 (3) and 39 (c) of the Protocol on the Establishment of the East African Customs Union, the Council of Ministers has approved the following measures on customs duty rates on items provided under The Harmonized Community Description and Coding System in Annex 1 to the Protocol.

1701.11.90 Sugar: Rwanda to stay application of EAC CET on fifty thousand metric tonnes and apply import duty rate at 0% for six months.

1701.11.90 Sugar: Uganda to stay application of EAC CET on forty thousand metric tonnes and apply import duty rate at 0% for six months. “

The notice is deemed to have come into force on the 29th day of August, 2011. Under article 1 of the Protocol the term "Protocol" means the “Protocol establishing the East African Community Customs Union and any annexes to the Protocol”. Secondly article 12 (3) of the Protocol quoted in the above cited legal notice provides as follows:

“3. The Council may review the common external tariff structure and approve measures designed to remedy any adverse effects which any of the Partner States may experience by reason of the implementation of this part of the Protocol or, in exceptional circumstances, to safeguard Community interests.”

In other words the Council approved some measures by suspending operation of tariffs on imported sugar from outside the customs union. The common external tariff structure (EAC CET) is issued under Article 12 (1) of the Protocol which provides that:

“The Partner States hereby establish a three band common external tariff with a minimum rate of 0 per centum, a middle rate of 10 per centum and a maximum rate of 25 per centum in respect of all products imported into the Community.”

Uganda as a partner state was given a quota of 40,000 metric tonnes to import sugar from outside the union at 0% import tariff. Duty could not be charged on 40,000 metric tonnes of sugar within a period of six months with effect from 29th August 2011. This period ended on 29th February 2012. The exemption quota was granted to Uganda and not to individuals. Under this broad exemption the Ugandan Ministry of Trade, Industry and Cooperatives licensed Ugandan traders to import specified quantities of sugar to fulfil its quota allocation of 40,000 metric tonnes. The Plaintiff was allocated a quota of 2,000 metric tonnes. The licence admitted in evidence shows that the Plaintiff had a licence of 6 months within which to import 2000 metric tonnes of sugar. The tax exemption was supposed to be endorsed on the bill of lading. The Ministry of Trade, industry and Cooperatives could revoke or suspend the licence.

I must observe that the exemption applied to Ugandan importation of sugar for a period of six months and it becomes clearer that the sugar is imported when it reaches the Union and 0% tariff is to be imposed on it. It is purely a case of management how the 40,000 metric tonnes would be allocated to traders. The exemption was not granted by the Minister but the sugar quota granted to Uganda of 40,000 metric tonnes was managed by the minister through licensing of individuals who were given specified quantities or quotas to import out of the total exemption granted to Uganda of 40,000 metric tonnes. Furthermore, I must observe that the minister had no authority to exceed the Ugandan quota of 40,000 metric tonnes. How he or she fulfilled the importation of 40,000 metric tonnes within a period of six months from 29th August 2011 was purely an administrative or management issue. What is pertinent is that he had no authority under the Legal Notice to licence the importation of more than 40,000 metric tonnes.

The Attorney General is vicariously liable for acts or omissions of the minister if any civil liability arises from his administration of his quota. However having licensed the Plaintiff, the job of importation proceeded through the Plaintiffs own initiative. The terms of the license could however be enforced by the Ministry of Trade, Industry and Cooperatives. He had power to suspend or revoke the licence. Could this authority be imputed on officials of the second Defendant? I think not. The role of the second Defendant was to deal with and manage revenue collection.

The second Defendant manages the East African Community Customs Management Act and for purposes of the Protocol would implement the law by not levying taxes on the sugar which enjoyed exemption under Legal Notice No. 37 of 2011. I have accordingly considered the terms of the EACCMA 2004 on exemptions. Exemptions under the EACCMA it is enabled by section 114 of the Act which provides as follows:

“**114.**-(1) Duty shall not be charged on the goods listed in Part A of the Fifth Schedule to this Act, when imported, or purchased before clearance through the Customs, for use by the person named in that Part in accordance with any condition attached thereto as set out in that Part;

(2) Duty shall not be charged on the goods listed in Part B of the Fifth Schedule to this Act when imported in accordance with any condition attached thereto as set out in that Part.

(3) The Council may by notice in the Gazette amend the Fifth Schedule.

The duty free sugar quota allocated to Uganda presumably could be managed under section 114 (2) and Part B of the Fifth Schedule and specifically item 20 thereof which also provide as follows:

“20. Relief goods imported for emergency use in specific areas where natural disaster/calamity has occurred in a partner state. Goods for emergency relief purposes of such quantities and within the specified period imported by government or its approved agent or a non-governmental organisation or a relief agency as authorised by the director/Commissioner responsible for this disaster management in a partner state provided that:

1. the goods are household utensils, foodstuffs, materials for provision of shelter, and equipment and materials for health, sanitary and education purposes,
2. the goods are for use in areas where natural disaster or calamity has occurred in partner state,
3. the importation shall be made within six months or such further period not exceeding 12 months as the Commissioner of the partner state may permit in each case,
4. the quantities of imported goods shall be subject to such limitations as the Commissioner may impose, and
5. the Commissioner shall submit a notification of the exemption detailing the description of the goods and quantities to the directorate for circulation to other Partner States.”

While section 114 gives authority to the Commissioner of the Partner State to classify goods that enjoy exemption under section 114 and the Fifth Schedule of the EACCMA, in this case the exemption was a Protocol matter issued by the Council of Ministers under **the Protocol on the Establishment of the East African Customs Union**. The authority to import the sugar was granted by the Council of Ministers recognised under the EACCMA. The Council of Ministers have power to amend the Fifth Schedule under section 114 (3) of the EACCMA, 2004. While legal Notice No. 37 of 2011 was not couched as an amendment of the fifth schedule, the Council has jurisdiction to grant an exemption or to stay the operation of the external tariff under the Protocol on the Establishment of the East African Customs Union by notice in gazette. This can be read together with section 114 (3) of the EACCMA which gives them authority to schedule exempted products by notice in the gazette. The exemption was for a limited period and not for a class of product only but for a particular product, quantity and duration of time. The exemption was for six months and there was not need to schedule it under section 114 (3). In the circumstances, I need not go into the powers of the Commissioner of Customs under section 114 and Fifth Schedule of the EACCMA.

The exemption in question was to import into the Union with the final destination of Uganda. The rationale for having the import complete by importation into any Partner State implied that where a prohibited good for instance is imported, the import is complete and the offence committed when it enters the East African Union or to be more precise when it enters the territory of any Partner State. The suspect who is charged in Uganda cannot argue that the goods had not been “imported” into Uganda because it was in Kenya and therefore the offence is not committed. The offence is complete when the goods enter any territory of any Partner State of the East African Customs Union. Similarly importation of sugar is made under the East African Community law and is complete when the sugar enters the territory of any Partner State of the Union. This is made clearer by the definition of an import under the protocol. Under article 1 of the Protocol establishing the customs union the following are the definitions: The tariff in question was a ‘common external tariff’ applying to goods originating outside the Union. Under article 1 of the Protocol on the Establishment of the East African Customs Union the phrase "common external tariff" means an identical rate of tariff imposed on goods imported from foreign countries. Secondly, the words “import” means “with its grammatical variations and cognate expressions, to bring or cause goods to be brought into the customs territory”. The customs territory is the customs union comprising of the territory of all partner states. It is defined under article 1 of the the Protocol on the Establishment of the East African Customs Union as: "customs territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the Community under Article 3 of the Treaty”. Finally, "imported goods" means “goods other than Community goods”. It follows that “imported goods” are any goods originating from a foreign country other than a Partner State of the Union.

Two other definitions are pertinent. These are definitions for “customs union” and “competent authority”. The "Customs Union" means the East African Community Customs Union established by Article 2 of the Protocol. Lastly a "competent authority" means a body or organisation designated by the Community to administer the customs law of the Community. The second Defendant is the competent authority to administer the customs law of Uganda and therefore East African Union. They were obliged to enforce the exemption from tariff of 40,000 metric tonnes of sugar to be imported into the customs union by Uganda under Legal Notice No. 37 of 2011. They had no power to extend the exemption issued by the Council of Ministers beyond the six months granted. Only the Council of Ministers could extend the stay of application of the EAC CET (East African Community Common External Tariff) on forty thousand metric tonnes and apply import duty rate at 0% for six months.

However, it is debatable whether the Minister of Trade is a competent authority to administer customs law. In my humble view, the Minister’s authority started and ended with granting and allotting Uganda’s quota of 0% tariff sugar amounting to 40,000 metric tonnes within the period stipulated in the gazette notice of the Legal Notice issued by the East African Community Council of Ministers.

The conclusion from the law is that it is the second Defendant which is the competent authority under the Protocol establishing the customs union to administer the customs law of the Union under which the sugar in controversy was imported.

To be more precise the Minister of Trade, Industries and Cooperatives merely licensed the individual traders such as the Plaintiff but did not grant the exemption. It was the East African Community organ namely the Council of Minister which granted the exemption and gave Uganda a quota of 40,000 metric tons. Once the quota ceiling of 40,000 metric tons is reached within the 6 months (unless otherwise extended to 12 months), no more sugar can be imported by any company into the East African Community let alone Uganda at 0% tariff.

The question or issue of the sugar being transported to Uganda has nothing to do with the import of the sugar as defined by the EACCMA. The Defendant erroneously proceeded to assess the Plaintiff for import duty when the quota allotted to the Defendant was imported within time into a Partner State and was part of the sugar exempted from customs duty by the Council of Ministers.

Considering issue number 1 the question for consideration is whether the Defendant owed a duty to the Plaintiff. Both parties having proceeded on an erroneous understanding of the East African Community Customs Management Act and the fact that exemption to import duty is granted by the Council of Ministers the issue is superfluous and answering it leads to no possible good. The sugar was imported within the six months granted under Legal Notice No. 37 of 2011 and the licence issued to implement it by the Minister of Trade, Industry and Cooperatives.

Remedies:

1. The Plaintiff’s claim in the plaint is for special damages of Uganda shillings 400,000,000/= being transport costs for re-export.
2. Uganda shillings 206,093,100/= being the taxes paid for the sugar sold on the local market.
3. Uganda shillings 100,000,000/= being storage and demurrage.
4. Loss of profit of US$1,873,872.
5. Interest on the above amounts from the date of judgment till payment in full.
6. Costs of the suit.

The Plaintiff reiterated submissions on remedies which have been written above in the rejoinder arguments.

I have carefully considered the submissions of both Counsel on the issue of remedies which have been reproduced at the beginning of this judgment. The second Defendant proceeded from the premises that it did not breach any duty owed to the Plaintiff and the Plaintiff failed to show that it was the conduct of the second Defendant that caused the loss.

Following the resolution of the court of the first two issues, the court had framed another issue under Order 15 rule 5 of the Civil Procedure Rules. The issue was whether the sugar had been imported within the time granted in the licence. The conclusion was that sugar had been imported within the stipulated time under the EACCMA. It followed that there was an erroneous application for extension of time. It also followed that the Plaintiff was wrongly taxed because the sugar imported had been exempted from tax. The question is how much was the tax in question? In other words, was the external tariff imposed on the Plaintiff? Last but not least some of the sugar was re-exported from the customs union.

I have carefully considered the question of the re-export of sugar and the alleged consequential damages arising there from. The sugar was not supposed to be re-exported because it was imported into Uganda to fill the gap of a deficit. The sugar was supposed to be imported tax-free. I have carefully considered the evidence and tried to establish whether the Plaintiff paid the amount of Uganda shillings 206,093,100/=.

Some of the sugar was re-exported. I am unable to establish from the evidence how much money in duty was charged on the Plaintiff. I have considered the admitted document of the Defendant dated 21st of June 2012 responding to the managing director of the Plaintiff on their request for tax exemption on sugar. The last paragraph which is the second paragraph of the letter reads as follows:

"The importation of duty-free sugar ended in February 2012. You are therefore advised to pay all the duties thereon. Please get in touch with the customs station of clearance for further facilitation.

Some of the sugar was sold on the Ugandan market and the letter clearly indicates that what was involved was 1584 metric tons of sugar. How many tonnes were re-exported?

As far as the re-exported sugar is concerned, this was done contrary to the policy to import sugar into Uganda for alleviating the sugar crisis in Uganda. It was unlawful and contrary to EA Legal Notice No. 37 of 2011 granting the territory of Uganda a quota of 40,000 metric tons of sugar duty-free, to re-export the duty-free sugar to another country. For that reason no damages can be awarded for transporting the sugar to another country, neither can any damages be awarded for demurrage charges. The purpose of exemption of Uganda from import duty for 40,000 metric tonnes of sugar was meant to alleviate a problem in Uganda. To purport to re-export the sugar to another country was in breach of the purpose for which exemption was granted. It was a abuse of the exemption granted. The exemption could have been granted to Rwanda or another East African Community Partner State. Furthermore, the first and second Defendants had no authority to grant the Plaintiff an extension of licence which in any case was superfluous because the sugar was imported within the time limits set by the Council of ministers. For that reason any consequential remedies sought for demurrage or alleged damages suffered as a consequence of failure to extend the licence cannot be granted. Furthermore, damages arising out of the erroneous and misguided re-export of sugar cannot be granted. The question is whether the parties including Uganda Revenue Authority should be excused from liability.

In my holding the only acceptable claim the Plaintiff can have is for refund of any duties charged on the duty-free sugar which was sold in Uganda. The duty-free sugar sold in Uganda from the said consignment, the subject matter of the suit and the licence is available from the records of the second Defendant and the amount of taxes or duties paid by the Plaintiff can easily be established by both parties.

I further agree with the submissions of the Defendants Counsel that the second Defendant did not owe any duty to the Plaintiffs to grant them an extension of licence. As had been concluded on the issue raised by the court, the sugar was imported within the period stipulated in the legal notice. It was imported into the customs union and the exemption concerned external tariff affecting importation of sugar from a foreign state. A foreign country is a country which is not part of the East African customs union. Furthermore, it was only the Council of ministers which could extend any period for importation of sugar. Furthermore, it is the Council of Ministers which determined that Uganda was allotted 40,000 metric tons. Even this quantity of sugar, should not be exceeded without further allocation of quotas by the Council of ministers. The second Defendant had no authority to grant an extension of licence to the Plaintiff. Furthermore the second Defendant or the first Defendant did not have authority to have the sugar re-exported to a third country. The community law takes precedence over domestic legislation under which the purported authority for re-exportation of sugar could have been undertaken. The sugar could not be lawfully re-exported under the EACCMA which deals with East African customs matters. Section 253 of the EACCMA clearly provides as follows:

"This Act shall take precedence over the partner states laws with respect to any matter to which its provisions relate."

In the premises the following orders shall issue:

1. The Plaintiff is entitled to refund of any taxes paid on the sale of sugar in the domestic market of Uganda. These taxes will be established by the second Defendant from the records of the sale of sugar in Uganda from the consignment allotted to the Plaintiff under the licence the subject matter of the suit.
2. Interest of 2% per month amounting to 24% per annum is payable on the duties imposed on the Plaintiff on the sale of sugar in the domestic market from the consignment the subject matter of the suit from August 2012 up to the date of judgment.
3. Further interest is awarded on the aggregate sum at the rate of 20% per annum from the date of judgment till payment in full.
4. The claim for aggravated and exemplary damages as well as general damages is not granted.
5. The part of the suit which has succeeded succeeds with costs of the suit.

Judgment delivered in open court on 29th August, 2017

**Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Counsel Ronald Baluku for URA

Counsel Wanume Isaac holding brief for Julius Galisonga

No one for the Attorney General

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**29th August, 2017**