



**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION**



(Coram: Yohane B. Masara, PJ; Richard Wabwire Wejuli, DPJ; Richard Muhumuza, Gacuko Leonard & Kayembe Ignace Rene Kasanda; JJ)

**APPLICATION NO. 15 OF 2025
(Arising from REFERENCE NO. 39 OF 2025)**

MATCH MASTERS LIMITED APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF THE
UNITED REPUBLIC OF TANZANIA RESPONDENT**

30TH APRIL 2026

RULING OF THE COURT

A. INTRODUCTION AND BACKGROUND

1. The Applicant filed this Application on 29th August 2025, under Certificate of Urgency, seeking interim orders pursuant to Article 39 of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rule 84(1) of the East African Court of Justice Rules of Procedure, 2019 (“the Rules”).
2. On 1st July 2025, the Finance Act, 2025 amended the Excise (Management and Tariff) Act, Cap. 147 by imposing a levy of Tsh 400 per kilogram on “imported” safety matches (HS Code 3605.00.00) while exempting identical domestically manufactured goods.
3. It is alleged that the Tanzania Revenue Authority has applied the levy on the Applicant’s Kenyan-origin products at the point of entry, notwithstanding that intra-EAC goods are not “imports” within the meaning of section 2(1) of the East African Community Customs Management Act, 2004.

B. PARTIES

4. The Applicant, is a Kenyan-incorporated limited liability company engaged in the manufacture of safety matches with over 25 years of lawful intra-EAC trade in the United Republic of Tanzania. Its principal place of business is Magana Road, Kikuyu, Kenya.
5. The Respondent is the Attorney General of the United Republic of Tanzania, who is the chief legal adviser of the Government of Tanzania and is being sued on behalf of the Government.

C. REPRESENTATION

6. The Applicant was represented by Advocates Faith Macharia and Alice Kamau, while the Respondent was represented by Ms Vivian Method and Ms Grina Aden, Principal State Attorneys and Mr Daniel Nyakihya, Senior State Attorney.
7. When the matter came up for hearing on 12th March 2026, the Court inquired from the parties how they wished to proceed; whether to argue the Application first or move directly to the main Reference.
8. The Applicant, through Advocate Faith Macharia, strongly urged the Court to hear the Application as a priority, emphasizing immediate and ongoing harm, including absorption of the impugned excise duty, unsustainable price reductions and imminent risk of permanent exclusion from the Tanzanian market.
9. The Respondent, through Counsel Vivian Method, did not concede to the Application but indicated readiness to proceed with arguments on the Application.
10. The Court directed that the hearing proceeds on the Application for interim relief.
11. A significant procedural issue then arose concerning the Supplementary Affidavit filed by the Applicant on 3rd March 2026, deponed by Mr Kushar Shah. After extensive submissions on service, leave under Rule 54 and electronic filing under Rule 133 of the Rules, the Court exercised its discretion to validate and admit the Supplementary Affidavit on record, only in the interest of justice.

12. The Court then issued directions for the orderly closure of the affidavit evidence and submissions as follows:

i. Respondent to file any reply to the Supplementary Affidavit by 19th March 2026;

ii. Applicant to file written submissions by 23rd March 2026;

**iii. Respondent to file reply submissions by 7th April 2026;
and**

iv. Applicant to file rejoinder submissions, if any, by 10th April 2026.

13. No immediate interim measure was granted pending full closure of the evidence and submissions.

14. The Court indicated that, taking into account the urgency of the matter, it would deliver its Ruling within April 2026.

D. ISSUE FOR DETERMINATION

15. The sole issue is whether the Applicant has satisfied the trifold test for the grant of interim injunctive orders of relief under Article 39 of the Treaty, and if so, whether

16. the interim injunctions orders sought should be granted.

E. COURT'S DETERMINATION

17. The Applicant contends that the levy imposed by the **Finance Act 2025** constitutes discriminatory internal taxation, a disguised barrier to intra-Community trade and a violation of the Customs Union and Common Market Protocols.

18. That the alleged immediate effects include: zero sales in July 2025, forced absorption of the levy through unsustainable price reductions, distributor ultimatums and the risk of permanent market displacement in a price-sensitive Fast-Moving Consumer Good (FMCG) sector where substitution at Tsh 100 per matchbox is instantaneously undisputed.
19. The Applicant prays for orders staying the application of the excise duty imposed by Section 34(u) of the **Finance Act, No. 11 of 2025** on its Kenyan-origin products pending the hearing and determination of **Reference No. 39 of 2025**.
20. The Respondent opposes the Application, asserting that the harm is purely financial and compensable in damages and that the balance of convenience favours the Respondent.
21. To arrive at our determination of the issue, we have carefully considered the affidavits, including the Supporting Affidavit, Supplementary Affidavit, Further Affidavit, and the Respondent's Replying Affidavit with Annexures AG-1 to AG-5, the written submissions of both parties and the authorities cited.
22. Article 39 of the Treaty provides: **"The Court may, in a case referred to it, make any interim orders or issue any directions which it considers necessary or desirable."**
23. Rule 84(1) of the Rules operationalises this jurisdiction upon application supported by an affidavit.

24. This Court has consistently applied the trifold test authoritatively restated in Francis Ngaruko vs Attorney General of Burundi, EACJ Application No. 3 of 2019, [2022] EACJ 24, thus:

- i. a serious triable issue;
- ii. a threat of irreparable injury not adequately compensable by damages; and
- iii. where the first two limbs leave room for doubt, the balance of convenience.

25. This test draws from earlier jurisprudence, including Prof. Peter Anyang' Nyong'o & 10 Others vs Attorney General of Kenya & 14 Others, EACJ Reference No. 1 of 2006 and has been applied in British American Tobacco (U) Ltd vs Attorney General of Uganda ("BAT Uganda"), EACJ Reference No. 7 of 2017, Kioo Ltd vs Attorney General of Kenya, EACJ Application No. 9 of 2020 (arising from Reference No. 13 of 2020), Centre for Law Economic and Policy of East African Integration (CLEP East Africa) vs Attorney General of the Republic of Kenya, EACJ Application No. 7 of 2024 (Arising from Reference No. 10 of 2024) and Awil & Others vs Federal Republic of Somalia & Another, Consolidated Applications Nos. 16 & 17 of 2025.

26. The test is preservationist, not punitive. It ensures that the Court's eventual judgment retains practical effect.

i. Serious Triable Issue

27. The threshold is deliberately modest. The Reference must disclose a substantial, non-frivolous cause of action within the Court's

jurisdiction under Articles 27 and 30 of the Treaty. It need not be proved on a balance of probabilities at this stage.

28. The Reference raises at least six weighty issues of Treaty compatibility, each of which strikes at the heart of the EAC integration architecture. These include:

- a) discriminatory internal taxation contrary to Article 75(5) – (6) of the Treaty and Article 15(1) – (2) of the Customs Union Protocol;**
- b) unlawful reclassification of intra-EAC goods as “imports” in breach of section 2(1) of the East African Community Customs Management Act, 2004 and Articles 10, 13 and 14 of the Customs Union Protocol;**
- c) the imposition of a disguised barrier to intra-Community trade contrary to Article 75(4) of the Treaty and Articles 2(4), 3(a)–(d) of the Customs Union Protocol;**
- d) the unlawful exercise of fiscal sovereignty in a manner that distorts the Common Market;**
- e) the undermining of the free movement of goods and the foundational objectives of regional integration under Articles 2, 3, 4(1) – (3), 10 –14 of the Common Market Protocol; and**
- f) the question whether ongoing harmonisation under Article 32 of the Common Market Protocol can suspend binding non-discrimination obligations.**

29. These allegations are not peripheral or speculative; they go to the very core of the non-discrimination, national treatment, and free

movement pillars upon which the EAC Customs Union and Common Market Protocols rest.

30. The Respondent, in its Reply Submissions, contends that the process of ongoing harmonisation of domestic tax policies under Article 32 of the Protocol on the Establishment of the East African Community Common Market precludes any finding of discrimination and therefore negates the existence of a serious triable issue.

31. At the interlocutory stage, this Court does not resolve contested questions of law or fact, nor does it determine the ultimate merits of the Reference.

32. The inquiry under the first limb of the **Ngaruko** test (*supra*) is deliberately modest. The Court asks only whether the Reference discloses a substantial, non-frivolous cause of action that possesses “substance and reality” and falls within the Court’s jurisdiction under Articles 27 and 30 of the Treaty. The Court does not interrogate whether the impugned measure is ultimately lawful or whether harmonisation processes may ultimately justify differential treatment. Such determinations are reserved for the hearing of the substantive Reference.

33. The Respondent’s reliance on Article 32 therefore misses the point. Ongoing harmonization may constitute a defence on the merits, but it cannot, at this preliminary stage, extinguish the existence of a serious triable question concerning the compatibility of the Impugned Amendment with the non-discrimination and national treatment obligations enshrined in **Articles 75(5) – (6) of the Treaty, Article**

15 of the Customs Union Protocol, and Articles 2 – 4 and 10 – 14 of the Common Market Protocol.

34. Moreover, the Respondent's own institutional documents provide contemporaneous and compelling confirmation that a serious triable issue exists. Annexure AG-3 (the bilateral Joint Technical Committee report) expressly lists the measure under the heading "Discriminatory Domestic Taxation Measures", records the differential treatment as "domestic rate: N/A; imported rate: Tsh 400/kg."
35. Annexure AG-5 (the 1st Extraordinary SCFEA Report signed by Tanzania's own Minister of Finance) goes further: it records binding directives requiring elimination of the excise duty by 30th August 2025 and repeal of the offending provisions by 30th September 2025. These documents, tendered by the Respondent himself, constitute powerful evidence that the legality of the Impugned Amendment raises legitimate, arguable questions of Treaty compatibility.
36. The issues identified above are precisely the "weighty issues" that warranted interim relief in **British American Tobacco (U) Ltd vs Attorney General of Uganda** (*supra*) and **Kioo Ltd vs Attorney General of Kenya** (*supra*). In both cases, the Court held that questions concerning the non-discriminatory treatment of like goods within the Community, and the application of the Customs Union and Common Market Protocols to such goods, call for full adjudication on the merits.

37. The present Reference raises exactly the same category of questions, reinforced by the Respondent's own institutional acknowledgements of discrimination.

38. A Partner State cannot, on the one hand, acknowledge the discriminatory character of a measure in its own bilateral and Community processes and, on the other, invite this Court to treat the matter as insubstantial at the interlocutory stage.

39. We therefore find that the Applicant has clearly and unambiguously satisfied the first limb of the **Ngaruko** test (*supra*) and accordingly find establishment of clear and compelling serious triable issues.

ii. Irreparable Injury not adequately compensable by Damages

40. The second limb requires demonstration of harm by whose nature or magnitude; damages cannot atone for it. Harm by which difficulty of assessment or impossibility of restoration is decisive.

41. The evidence before us establishes four mutually reinforcing anchors of irreparable harm.

42. Before turning to the evidence, we note that certain assertions and characterisations advanced in the Applicant's Written Submissions go beyond the facts deposed in the Supporting Affidavit, Supplementary Affidavit and Further Affidavit. The Court has disregarded such non-evidentiary submissions from the Bar and confines its analysis strictly to the sworn evidence when applying the second and third limbs of the **Ngaruko** test.

43. On that basis, the affidavits establish the following four anchors of harm:

- i. **First, the Impugned Amendment immediately disrupted exports, resulting in zero sales in Tanzania in July 2025, accumulation of unsold inventory, increased warehousing costs, and cash-flow strain;**
- ii. **Second, the Applicant has absorbed the full excise duty by reducing wholesale prices to remain competitive, as confirmed by its letter to the Tanzania Revenue Authority (Annexure AG-1) and the Supplementary Affidavit;**
- iii. **Third, it faces the risk of losing its 25-year market presence, goodwill, and distributor relationships in a price-sensitive FMCG market where safety matches retail at approximately Tsh 100 per box; and**
- iv. **Fourth, the discriminatory levy threatens the value of its registered trademarks for Kasuku, Tinga, and Paka, together with the commercial relationships built over more than two decades.**

44. These anchors mirror the harm recognised as irreparable in **BAT Uganda** (*supra*) and **Kioo Ltd** (*supra*), where the Court held that loss of goodwill, reputation, market position, and business disruption in manufacturing sectors is “virtually impossible to repair or redeem once lost.”

45. The Respondent’s Reply Submission characterises the harm as purely financial and self-induced. He has tendered no evidence

showing how such losses can be quantified. This characterisation is unpersuasive.

46. The evidence shows defensive trading at a loss to preserve market presence, the very conduct that demonstrates irreparable harm, not its absence.
47. In **Centre for Law Economic and Policy of East African Integration (CLEP East Africa) vs Attorney General of Kenya & Another** (*supra*), this Court made it clear that once a respondent asserts that the injury complained of is capable of being compensated by an award of damages, the *onus probandi* shifts to that respondent to demonstrate, with concrete evidence or analysis, how the alleged losses, particularly loss of goodwill, market position, distributor relationships, brand equity and structural market displacement can be assessed with reasonable precision and adequately redressed in monetary terms. A bare assertion that damages would suffice is legally insufficient, the respondent must go further and show a realistic and workable method of quantification.
48. In the present case, the Respondent has done no more than make a generalised claim that the Applicant's harm is "purely financial" and therefore compensable.
49. Having asserted compensability, the Respondent bore the evidential burden under **CLEP East Africa** (*supra*) but failed to discharge it. He tendered no evidence showing how such losses can be quantified, thereby failing the shifted onus. This failure

powerfully reinforces the Applicant's case that the harm is, by its very nature, irreparable.

50. We are convinced that the harm is irreparable.

iii. Balance of Convenience

51. Even if any doubt remained, the balance tilts decisively in the Applicant's favour. The *status quo* to be preserved as per the Application is the pre-1st July 2025 position of unimpeded intra-EAC trade, free of the discriminatory levy. The orders sought are narrow, targeted, and fully reversible, they apply only to the Applicant's Kenyan-origin safety matches and do not suspend the Finance Act in its entirety.

52. The affidavits show that, following the coming into force of the Impugned Amendment, the Applicant experienced zero sales in July 2025, was compelled to absorb the excise duty by reducing wholesale prices, and received warnings from distributors that they would cease stocking its products unless prices remained competitive.

53. In a price-sensitive FMCG market where safety matches retail at approximately Tsh 100 per box, such developments carry a real risk of permanent loss of market position that may not be fully restored even if the Applicant ultimately succeeds in the Reference.

54. Refusal of interim relief would expose the Applicant to the risk of losing its 25-year market presence in Tanzania, together with the goodwill attached to its registered trademarks (Kasuku, Tinga and Paka) and its established distributor relationships.

55. By contrast, granting relief visits only temporary, quantifiable and fully recoverable revenue deferral on the Respondent, enforceable through existing statutory mechanisms.
56. The asymmetry is manifest and identical to that found decisive in **BAT Uganda** (supra) and **Kioo Ltd** (supra) in which the Court held that: *“the Respondent State would suffer less injury from being temporarily restrained from collecting excise duty ... than the injury that would accrue to the Applicant.”*
57. The Respondent’s own documents (**AG-3 and AG-5**) further undermine any claim of convenience. His submissions in Reply emphasize fiscal sovereignty and public revenue. While legitimate, these interests are constrained by Treaty obligations.
58. Public interest in Treaty compliance, non-discrimination and the integrity of the Common Market strongly favours relief.
59. The balance of convenience overwhelmingly favours the Applicant.

F. CONCLUSION

60. The interim orders sought are narrow, targeted, preservationist and fully reversible.
61. They preserve the subject-matter of the Reference, prevent irreparable harm, and ensure that this Court’s eventual judgment retains practical meaning rather than becoming academic.
62. The interim protection is both justified and necessary to uphold the non-discrimination, national-treatment, and free-movement pillars of the EAC Customs Union and EAC Common Market.

63. The Applicant has satisfied all three limbs of the trifold test. The Application succeeds.

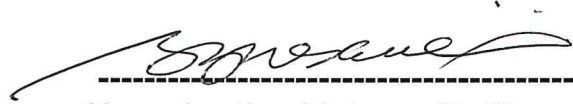
G. ORDERS

64. We accordingly make the following Order:

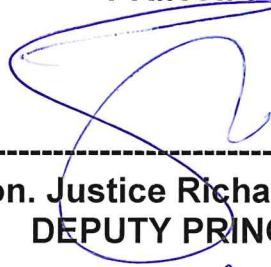
- a. Pending the hearing and final determination of **Reference No. 39 of 2025**, the Respondent, its agents and the Tanzania Revenue Authority are hereby restrained from levying, collecting, or enforcing the excise duty of Tsh 400 per kilogram imposed by **section 34(u) of the Finance Act, No. 11 of 2025** (as inserted into the Fourth Schedule of the **Excise (Management and Tariff) Act, Cap. 147**) on safety matches (HS Code 3605.00.00) manufactured by the Applicant in Kenya and imported into the United Republic of Tanzania as intra-EAC goods.
- b. The order shall take effect forthwith and shall remain in force until **Reference No. 39 of 2025** is determined or until further orders of this Court.
- c. Costs of this Application shall be in the Cause.

65. It is so ordered.

Dated, signed and delivered at Arusha this 30th Day of April 2026.



Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



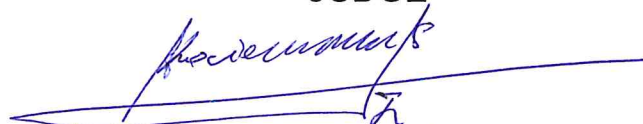
Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE



Hon. Justice Richard Muhumuza
JUDGE



Hon. Justice Dr Leonard Gacuko
JUDGE



Hon. Kayembe Ignace Rene Kasanda
JUDGE