REPUBLIC OF KENYA
IN THE TAX APPEALS TRIBUNAL
APPEAL NO.35 OF 2016

INTEX CONSTRUCTION LIMITED .....APPELLANT

VS

COMMISSIONER OF DOMESTIC SERVICES .....RESPONDENT

JUDGEMENT

BACKGROUN:

1. The Appellant Intex Construction Limited is a limited liability company, incorporated under the Companies Act Cap 486 of the laws of Kenya. Its main occupation is in the civil engineering sector involving undertaking of large-scale construction contracts for its clients who include the Government of the Republic of Kenya among others. The taxpayer pin number is P000596273H.
2. The Respondent, is established under Section 3 of the Kenya Revenue Authority Act, Cap 469 - Laws of Kenya and is empowered by Section 5 of the same Act to assess and collect tax revenue for the Government of The Republic of Kenya and to administer the various tax laws of Kenya.

CAUSE OF ACTION

3. The Respondent issued a confirmed assessment on 9th March 2016, which among other tax heads had two items causing dissatisfaction to the Appellant i.e. a) VAT on financial claims and b) restriction on interest expense. The Appellant sent a notice of intention to appeal against on 7th April 2016.

4. Subsequently, the Appellant filed it's Memorandum of Appeal and Statement of Facts with the Tax Appeals Tribunal on 20th April 2016 and served the Respondent. The Respondent filed it's response on 19th May 2016.

5. The Appellant prays to the Tribunal to direct the Respondent to amend both the assessments to NIL.

6. **ISSUES UNDER CONTENTION AND FOR DETERMINATION:**

   (A) VAT:_ *VAT on Financial Claims. Ksh.63.200,000.00,*

   (B) Corporation Tax:_*Interest Restriction Ksh.60,264,227.00,*

7. **APPELANT'S ARGUMENTS:**

   i) **(A) VAT on Financial Claims:**

   Appellant states that assessment was based on grounds that Appellant did not adhere to the tax points as provided for under **Sections 13(1)(d) of VAT Act Cap 476** (now repealed) **and Section 12 of VAT Act 2013,** Which state that***....tax point shall be the earlier of supply of goods or services/ issuance of invoice/ Certificate of work done/ or receipt of payment.***

8. The Appellant averred that financial claims do not attract VAT because they are not based on either supply of goods or supply of services. ***The*** Appellant sort to clarify that the financial claims are compensation by

an employer to recompense the a contractor for loss of business occasioned by an employer in delaying a project and stated that there are no goods or services associated with this compensation. The Appellant relied on **Section 2 of the VAT Act Cap 476 and Section 2 of VAT Act 2013,** both of which define "services" as ...

"any supply that is not supply of goods or money".

9. The Appellant pointed out that the sections of the law relied upon by the Respondent to assess tax on these payments relate to tax points, and they do not therefore apply to the taxability of these financial claims, and are only applicable to taxable transactions. The Appellant referred the Tribunal to paragraph. **1(h), VAT Cap 476** (now repealed) **and para 1(h) of VAT Act 2013,** both of which provides for exemption from VAT:

".... the making of any advance or the granting of any credit."

10. On the issues of **interest restriction of Corporate tax,** the Appellant argued that the Respondent restricted interest on the grounds that the **Finance Act 2010** amended **Section 16(2)(j), viz.**

"such that it changed the legal requirement so that interest restriction became applicable also to the companies owned wholly by resident shareholders."

The Appellant disagreed with the Respondent's interpretation and stated that the amendment that the Commissioner can now restrict ***deemed interest,*** which was not provided for earlier besides the case the legislation remained intact. The Appellant relied on **Section 16(2)(j)** ***where it provides..***

"interest payments in proportion to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds the greater of:-

(i) three times the sum of revenue reserves and the issued and paid up share capital of all classes of the shares of the company; or

(ii) the sum of all loans acquired by the company prior to 16th June 1988 and still outstanding in that year, where the company is in the control of a non-resident person alone or together with four or fewer other persons and where the company is not a bank or a financial institution licensed under the banking Act; and for the purposes of this paragraph, "control" shall have the meaning ascribed to it by paragraph 32(1) of the Second schedule.

Provided that this paragraph shall also apply to loans advanced by a non-resident associate of a non-resident company controlling the resident company."

The Appellant's interpretation of Section 16(2)(j) as set out above, prior to 2010 amendment, is that it only imposes interest restriction on interest payments on loans provided by non-resident controlling shareholders or by their non-resident associates.

11. The Appellant also relied on the amendment to the ***Finance Act 2010*** reproduced hereunder:-

"...or <u>an amount of deemed interest,</u> where the company is in the control of a non-resident person alone or together with four or fewer other persons and where the company is not a bank or a financial institution licensed under the banking Act; and for

purposes of this paragraph "control" shall have the meaning ascribed to it in paragraph 32(1) of the Second schedule;"

12. The Appellant **contended** that the effect of the amendment of the Finance Act 2010 was only to add

'deemed interest' where interest free loans had been provided to resident companies by their controlling nonresident companies or by non-resident associates of the controlling company."

The Appellant's position was that interest restriction can only apply where the company is controlled by a non-resident person alone or with four or fewer other persons.

13. The Appellant averred that interest restriction cannot therefore apply in it's case since it is a wholly locally controlled company through ownership by Kenyans. The Appellant stated that the interest restriction by the Respondent lack legal backing and is therefore erroneous.

14. It was the Appellant's view that the **"residence"** of the controlling company is central to **Section 16(2)(j)** whether before or after the 2010 amendment and cannot be dispensed with by addition of **"deemed interest"** to the section.

15. The Appellant averred that in interpreting the law governing the matter of "interest restriction" there is no way "residence" can be separated from it as it is the determinant factor and that even the 2010/2011 Budget speech by the then Deputy Prime Minister and Minister in charge of Finance, only added a further parameter to rein in non-resident associates of non-resident shareholders who may also

through their tax planning schemes, give loans to resident companies controlled by non-resident persons. It reads:

> ***"This year Mr. Speaker, I am proposing additional measures to deal with the tax planning schemes involving interest free loans advanced to local businesses by non-resident Associates".***

Thus, there was no intention to restrict interest on locally controlled companies but only on foreign controlled companies by non-resident Associates.

16. On "thin capitalization", the Appellant pointed out that this is an international taxation measure where businesses operating in countries with different tax regimes may wish to use debt financing to their subsidiaries operating in a territory with higher tax regime, but opt to invest more funds where they enjoy a tax advantage. It therefore does not apply to local companies who have borrowed locally.

17. The Appellant claimed **"Legitimate expectation"** in the interpretation of the section after the amendment, which it claims, ought not to change the interpretation from what it has always been since June 1988. The Appellant argued that a different interpretation of **Section 16(2)(j)** by the Respondent creates ambiguity to the amendment, and relied on the ruling by **Judge J.G. Nyamu** in **Application No.743 Keroche Industries 2006,** which stated that;

> ***"In the presence of ambiguity the interpretation must be construed in favour of the Appellant."***

Further in **Barclays Bank of Kenya Vs KRA; J Majanja** quoted **Russel v Scott (1948)2 ALL ER 5 ed under article 14** that:

"my Lords there is a maxim of Income tax which though it may sometimes be overstretched, yet it ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute un-ambiguously imposes the tax upon him".

18. The Appellant urge the Tribunal to set aside the assessments in question and to direct the Respondent to amend the same to Nil.

19. **RESPONDENTS ARGUMENTS:**

On the issue of ***VAT on Financial Claims Ksh. 63.2 million.*** The Respondent argued that the construction contracts are wholesome and cannot be opened up to separate components which are subject to VAT and those that are not since they all emanate from one contractor. The Respondent gave an example of a financial consultancy contract where VAT is chargeable for the full price although there may be non-VAT chargeable components like labour, professional indemnity insurance etc.

20. The Respondent established that the Appellant had declared income for Corporate Tax in it's Financial Statements, which included income from financial claims but failed to declare the same for VAT hence the assessment.

21. With respect to the Appellant's argument that VAT was raised on grounds that the Appellant did not adhere to the tax points as defined by **Section 13(1)** of the **VAT Act Cap 476** (now repealed) and **Section 12(1) of VAT Act 2013,** the Respondent stated that this was only for purpose of making the point that delay in payments is not a factor in determining the time of supply or the tax point.

22. The Respondent pointed out that according to it's letter Of 6th, November 2015 to the Respondent, the Appellant had already conceded to paying VAT on financial claims amounting to 63.2Milion. which it had declared as income in its financial statements relating to Kagio, Lewa and Makuyu projects but did not declare these amounts for VAT.

23. The Respondent demonstrated with documentary support (financial claim demand notes) that revealed that the financial claims are in effect additional income arising from alterations, additions, variations, omissions of work, working at reduced rate, loss of profit etc which form part and parcel of the main contract and which are provided for under various originating contractual clauses of the main contract. The Respondent referred the Tribunal to documents in it's bundle **pages 24** to **47** which comprised the various correspondence exchanged between the Appellant and it's employer, Kenya National Highways Authority and pointed out that the originating clauses included addendum no. 1 of the Makuyu, Githambo project, Clause 67.1 of the conditions of the contract Part (ii) Kagio Baricho Project and Clause 67.1 of the conditions of the contract Part (ii) Lewa Isiolo Projects (pages, **24, 56** and **59)** Respondent's Statement of facts.

24. The Respondent further argued that despite the assertion by the Appellant that the Financial claims are not chargeable to VAT, they are actually subject to and taxable under VAT Act. The Respondent demonstrated That in the Respondent's bundle **Folio 25**, on **page 48 and 49**, payments were made composed of such financial claims and the Appellant charged VAT on the total figure, which included

Financial Claims and therefore the Appellant can not turn around and claim that these financial claims are not chargeable for VAT.

25. The Respondent averred that the Appellant had stated that the claims were paid to compensate for financial loss due to delay occasioned by the Employer (KeNHA) contrary to what KRA Audit Team was informed. It was on record that on **page 51** to **54** of Respondent's bundle, the Appellant had requested to be allowed to pay VAT on financial claims on receipt of its payment. This in the Respondent's view is an admission by the Appellant that the charges including financial claims were subject to VAT.

26. The Respondent pointed out further that Appellant's request in their correspondence to pay VAT on financial claims after getting payment from the Employer is not consistent with the requirements of **Section 13(1) of Cap 476** (now repealed) and **Section 12(1) of VAT Act 2013**, since the services had already been delivered, going by the tax points as defined in those Sections of the Act.

27. The Respondent refuted the Appellant's allegations that the financial claims were compensation for loss of business and therefore did not have corresponding services performed or goods delivered, hence no VAT was applicable. The Respondent was emphatic that services were performed for the employer and paid and the same attracted VAT.

28. The Respondent further argued that the Appellant referred to exemptions given by the **Third Schedule of VAT Cap 476** (now repealed) paragraph **1(h)** and **VAT Act 2013** paragraph **1(h),** and observed that these provisions are not relevant to the case at hand as they relate to financial services provided by financial institutions

licensed under the Banking Act. The Respondent stated that the Appellant is not a financial institution licensed under the Banking Act and that its claim is not for **advance** or for **credit** referred to in the said paragraphs.

29. The Respondent averred that the financial claims requests to the employer by the Appellant for payment do state that they are for services performed and hence taxable under VAT.

30. The Respondent went ahead to produce evidence in support of it's averment and itemized projects with a total value of Ksh.396,000,000 attracting **VAT of** Ksh.63,200,000.00.

31. On the issue of **Interest Restriction Ksh.60, 264,225**, the Respondent asserted that analysis of the Financial statements for the year of income 2013 revealed that all loans held by the company during the year exceeded three times the value of total reserves and issued and paid up share capital of all classes, hence the Appellant is "thinly capitalized".

32. The Respondent stated that the entire interest cost as per financial statements for 2013 was Ksh.837,998,300.00 which exceeded the limit provided in law. Subsequently interest cost equal to Ksh.60,264,225.00 was disallowed as restricted interest cost under **Section 16 (2)(j)** of Income tax Act. The Respondent added that this issue was independent of the residence status of the shareholders of the company as per the income Tax Act Cap 470 as amended in year 2010 by **Section 32(1) of Finance Act 2010.**

33. The Respondent argued that the amendment in bringing in the clause **"or an amount of deemed interest"** separated the scenarios to bring in

"thinly capitalized companies" under interest restriction irrespective of control residential status. The Respondent said it did not matter whether the company is resident controlled or non-resident controlled. The Respondent was categorical If the relationship between the debt financing and capital financing produces the scenario of "thin capitalization", then interest restriction applies.

34. The Respondent referred to Tax Appeal currently before this Tribunal Nairobi ***Tax appeal number 26 of 2016, East Africa Growers Limited Vs. Commissioner of Domestic Taxes,*** which in its view advances the scenario. The Respondent's position and interpretation of **Section 16(2)(j)** is the same, i.e. interest is restricted and disallowed due to the Company being thinly capitalized, although locally controlled.

35. The Respondent insisted that the correct interpretation of that amendment is that it introduced two scenarios (i) where interest restriction is to apply to a local company if thinly capitalized and (ii) interest restriction to apply to deemed interest in case of interest free loans advanced by non-resident controlling shareholder or by their non-resident Associates.

36. The Respondent urged the Tribunal to dismiss the Appeal with costs as it lacked merit.

37. **ANALYSIS AND FINDINGS**

Having listened to the parties the Tribunal has also noted that the definition of services which is very wide and in **Section 2** defined **supply of services** to mean .....

" anything done that is not a supply of goods or money, including

a) performance of services for another person,

b) grant, assignment, or surrender of any rights,

c) The making available of any facility or advantage

d) *The toleration of any situation or refraining from doing any act".*

The Tribunal finds that Appellant's **financial claims** do definitely fall under this definition.

38. The Tribunal also noted from the correspondence between the Appellant and its employer (KeNHA) that the summary of the claims listed as per the heading comprise of

> *"THE COST CLAIM DUE TO ALTERATION, ADDITION& OMISSION OF WORKS AND WORKING AT REDUCED RATE DUE TO DEFAULT OF EMPLOYER"*

and observed that such description as the heading suggests, did not isolate financial claims as a specific claim and even if it did, it would still fall under the terms of the main contract and therefore it would be included in the bill value as a component cost of the main contract which is subject to VAT as defined above.

39. The Tribunal agreed with the Respondent that a Road construction contract is **"a service"** as defined by the taxing sections of ***VAT Act 2013, Section 5(1)(a) and Section 2*** which cover the services provided by the Appellant in the contract.

40. The Appellant has asserted that **VAT Act Cap 476** (now repealed) and **VAT Act 2013,** do not impose tax on either financial claims or on loss of profits; However the Respondent has pointed out in reply that the issue has nothing to do with the financial claims or the loss of profits which may be components of a larger claim, and asserts that rather

the issue is primarily " Whether or not Payments of claims under the Road construction contracts are taxable under VAT" and if the answer is in the affirmative then the charges are rightly taxed under **VAT Act 2013 Sections 2 and Section 5(1)(a).** The Tribunal agrees with this view.

41. The Tribunal is cognizance of the nature of similar contracts and that although there is usually a price for the initial contract, during performance, there are provisions for variations.

42. The Tribunal referred to the Appellant's letter dated **6th, November 2015,** on pages **51 to 54** of the Respondents bundle whereby Appellant is requesting the Respondent to be allowed to pay VAT amounting to Ksh.63.2 million after receiving payment from the ministry. On another paragraph in the same letter, Appellant is requesting the Respondent to be allowed to pay VAT amounting to Ksh.57.6 million after receiving payments from the Ministry, owing to the financial crises being experienced in the Construction industry. Respondent refers to these offers by the Appellant and states that the appellant could not have made these requests if it believed that VAT was not applicable to the underlying charges.

43. The Tribunal also noted as pointed out by the Respondent elsewhere that the Appellant has forwarded a computation summary headed **(GRAND SUMMARRY OF CLAIM FOR PROLONGATION PERIOD OF 234 DAYS),** In this summary, on pages **29 and 49** of the Respondents bundle of documents, Appellant has listed costs which include the financial claims amounting to Ksh.184,946,345.85 and has added **VAT at 16%** amounting to Ksh.29,591,415.34 bringing the

total demand presented to the employer to Ksh.214,537,761.19 Tribunal agrees with Respondent that having charged VAT on its demand note to employer, it is inconsistent for the Appellant not to declare the same in the VAT returns.

44. The Tribunal was satisfied that once a contract has been entered into the VAT is based on contract price plus any other variations agreed between the parties as provided for under conditions of the contract and that all such charges which form income to the contractor, are taxable under VAT.

45. In mitigation to the Appellant's failure to observe the tax points, Tribunal examined the situation encountered by the contractors whereby the employer especially the Government delays payments to the contractor, and yet the Revenue Authority expects the Contractor to pay taxes as they fall due on due dates and established that this is indeed most unfair as one cannot be expected to pay out what it has not received, especially in huge contracts where progression of the contract works requires colossal financial outlays and observed that the law making arm of the state needs to seriously address this unfortunate inconsistency in the current provisions with regard to tax points.

46. Having analyzed the foregoing the Tribunal finds that VAT on financial claims is payable to the Respondent as per Section 19(1) of the VAT Act 2013.

47. **On (B) Interest restriction:** the Tribunal analyzed the submissions by the parties in relation to the statute both prior to and after amendment. The main point of contention is that The Appellant's

interpretation of the amendment of **Section 16(2)(j) in June 2010,** did not bring locally controlled companies under interest restriction with regard to thin capitalization_while the Respondent interprets the same amendment to the effect that it actually brings all companies under interest restriction for thinly capitalized companies whether they are locally controlled or foreign controlled.

48. The Tribunal finds that prior to amendment in year 2010: Section 16(2)(j) provided:

> ***"Notwithstanding any other provision of this Act, no deduction shall be made in respect of interest payments to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds the greater of :-***
>
> ***(i)three times the sum of revenue reserves and issued and paid up share capital of all classes of shares of the company; or***
>
> ***(ii) The sum of all loans acquired by the company prior to 16th June 1988 and still outstanding in that year, where the company is in control of a non-resident person alone or with four or fewer other persons and where the company is not a bank or a financial institution licensed under the banking Act; and for purposes of this paragraph "control" shall have the meaning ascribed to it in paragraph 32(1) of the Second Schedule; Provided that this shall also apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company."***

49. The Tribunals interpretation of this Section prior to the amendment in June 2010, is that interest restriction will occur on interest "paid"_by a

resident company which is under control by non-resident company and on loans advanced by either the non-resident controlling company or by its non-resident associate. Thus if such loans were provided on interest free basis and no interest was "paid" then interest restriction would not arise since there is no interest "paid". **(emphasis ours)** the Tribunal also notes that from the wording of the section, it is clear that locally controlled companies are not covered by the interest restriction. This is because in order to arrive at the basis for interest restriction one needs to compare three times the Equity funds total value with the sum of loans value since 16th June 1988 and still outstanding, where the company is controlled by foreigners in the manner stated in that Section of the Act so as to get the greater of the two, i.e.(i) and (ii), and then determine by how much the interest paid exceeds the greater of the two.

50. After amendment by Section 23(a) of Finance Act 2010, **Section 16(2)(j)** provided;

> "*Notwithstanding any other provision of this Act, no deduction shall be made in respect of interest payments to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds the greater of :-*
>
> *(i)three times the sum of revenue reserves and issued and paid up share capital of all classes of shares of the company; or*
>
> *(ii) The sum of all loans acquired by the company prior to 16th June 1988 and still outstanding in that year, or an amount of deemed interest where the company is in control of a non-resident person alone or with four or fewer other persons and*

where the company is not a bank or a financial institution licensed under the banking Act; and for purposes of this paragraph "control" shall have the meaning ascribed to it in paragraph 32(1) of the Second Schedule; Provided that this shall also apply to loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company."

51. The Tribunal noted that the wording of the section is the same both before and after the amendment except for the phrase **"deemed interest"**.

52. The Tribunal's interpretation of the change introduced by the amendment is that where non-resident persons provide loans or their non-resident associates on interest free basis the Commissioner can now deem interest on such interest free loans and use it to work out interest restriction as per the amendment. Thus whereas before the amendment, interest was restricted only on INTEREST "PAID" now DEEMED INTEREST on interest free loans can be restricted.

53. The Tribunal does not find any wording in **Section 16(2)(j)** that introduces interest restriction on locally controlled companies by reason of being **"thinly capitalized".** This is not expressly mentioned in **Section 16(2)(j)** as reproduced above and therefore the interpretation by the Respondent can only be said to be indirectly implied as it is not expressly stated in the wording of the section. The Tribunal therefore finds Respondent's interpretation rather remote to the section. The Tribunal observes that from the wording of the section and even after the amendment, that in a self-assessment

regime, it is most unlikely that a taxpayer would read it and assess themselves for tax under provisions of the section as it stands. Thus, the wording is not clearly expressed to warrant a controlled company, to asses itself despite being "thinly capitalized".

54. The Tribunal observes the section has created ambiguity and gives the benefit of this ambiguity to the Appellant. In doing so the Tribunal has relied on the case of :-

JAFFERALI MOHAMEDALI ALIBHAI v THE COMMISSIONER OF INCOME TAX (ETC VOL 3 Par II case 84:-

"that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him"

The Tribunal does not find the section imposing interest restriction on the Appellant.

Further In the case of *CAPE BRANDY SYNDICATE v INLAND REVENUE COMMISSIONERS [1921] K.B 64* where Ronlat J, restated the principle in these words:

"in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown or that there is to be any discrimination against the crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no reason for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing to be implied. One can only look fairly on the language used."

The Tribunal finds that the Respondent has based its interpretation on intendment or implication and is trying to read in interest restriction on the Appellant.

in the case of ***RAMSAY LTD v INLAND REVENUE COMMISSIONER (1992) AC 300*** the same principles were expressed as follows:-

i) ***"A subject is only to be taxed on clear words not upon intendment, or upon the "equity" of an Act". Any taxing Act of Parliament has to be construed in accordance with this principle. What are "clear words" is to be ascertained upon normal principles; these do not confine the courts to literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole and its purpose may, indeed should be regarded ..." ..... A subject is entitled to arrange his affairs so as to reduce his liability to tax. The fact that the motive for a transaction may be to avoid tax does not invalidate it unless a particular enactment so provides. It must be considered according to its legal effect."***

The Tribunal finds no clear words in the section, introducing "interest restriction" on locally controlled companies.

ii) Thus, in the case of ***COMMISSIONER OF INLAND REVENUE THE DUKE OF WESTMINISTER [1986] AC I,*** at page ***24 Lord Russel*** addressed some of the points covered above, as follows:-

"I confess that I view with disfavor the doctrine that in taxation cases the subject is to be taxed, if in accordance with the court's view of what it considers the substance of the transaction, the court

thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy but only by plain words of a statute applicable to the facts and circumstances of the case. As Lord Cairns said many years ago in PARTINGTON v ATTORNEY GENERAL "As I understand the principle of fiscal legislation it is this, if the person sought comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot, bring the subject within the letter of the law, the subject is free however apparently within the spirit of the law the case ought otherwise appears to be ..." (emphasis ours)

In the case of *SCOTT v RUSSELL (INSPECTOR OF TAXES TC 394 at pg 424,* Lord Simonds observed:

"that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him."

And In *CONSUMER PRODUT SAFETY COMMISSION Et al. vs. GTE SYLVANIA, Inc. et al., 447, U.S. Supreme Court* where it noted that;

"....we begins with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of statute itself.... In interpreting a statute, a court should always turn to one cardinal canon before all others. Court must presume that a legislature says in a statute what it means and means in a statute what it says there....."

55. **DECISION**

Having considered the pleadings and the arguments by the parties the Tribunals finds that:-

i) VAT on financial claims in the sum of Kes.Sh.63.2 million is payable to The Respondent as provided for in Section 19 (1) of the VAT Act 2013.

ii) The Tribunal allows the Appeal on Interest Restriction in the sum of Kes.Sh.60.2 million, and directs the Respondent to vacate the assessment.

iii) There shall be no Orders as to Costs

DATED and DELIVERED at NAIROBI this 27th day of September 2017

In the presence of:- John Thindi .....for the Appellant

Sylvia Ochako Kenyatta...for the Respondent

GEOFFREY C KATSOLEH
CHAIRPERSON

.....
PANAGIPALLI V R RAO
MEMBER

.....
DANIEL TANUI
MEMBER

.....
GABRIEL KITENGA
MEMBER

.....
FRANCIS KIVULLI
MEMBER