

NewsFlash

ISSUE 08

IN THIS EDITION

Two new KRA Board Directors sworn in

Win for RECTS as driver is jailed four years for diverting transit cargo

EAC revenue authorities meet to discuss trade facilitation

Fair administrative action in tax administration

Don't have a date! No worries; Africa will take you out

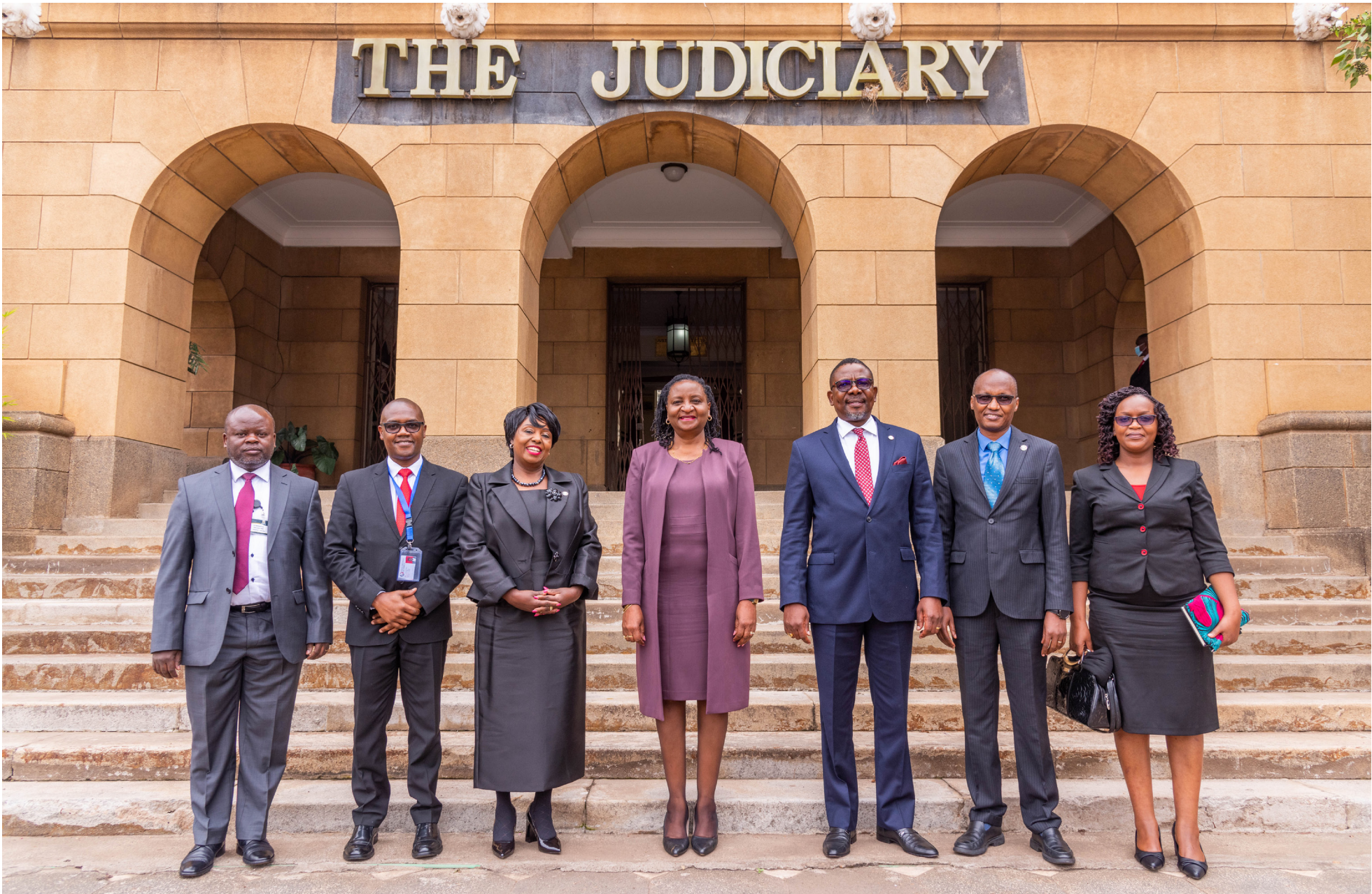
Two new KRA Board Directors sworn in



Amb. Richard Opembe takes oath of office as a KRA Board member at the Supreme Court.



Mrs Sally Mahihu takes oath of office as a KRA Board member at the Supreme Court.



Mr Opembe (3rd R) and Mrs Mahihu (3rd L) with Legal Services & Board Coordination Commissioner Mr Paul Matuku (2nd R) and other staff pose for a photo with Judiciary Chief Registrar Mrs Anne Amadi (C).

Win for RECTS as driver is jailed four years for diverting transit cargo

by Winnie Mugho

KRA's use of technology to monitor transit cargo has led to the sentencing of a truck driver to four years in prison without the option of a fine for stealing a coffee consignment in transit from Uganda to the Netherlands. Mr Musyoka Munyao was handed the sentence by a magistrate court in Eldoret town.

The crime was unearthed when KRA's Regional Electronic Cargo Monitoring System (RECTS) sent a tamper alert,

indicating that the consignment had been interfered with. The court heard that on 29th Sep, 2020 Mr Munyao, being the driver of truck registration number KCF 210Q/ZF2580, colluded with others not before court to steal the coffee consignment around Bayete area near Burnt Forest on the Eldoret-Nakuru road.

Witness accounts from then in-charge of Eldoret Rapid Response Unit Mr Jackson Kiburu (currently Assistant Manager, Petroleum Monitoring), the Northern Corridor Transit Patrol

Unit (NCTPU) officers among others detailed how the culprits colluded and offloaded the consignment in a homestead next to the highway and replaced it with ballast.

The Rapid Response Unit team from Eldoret responded and intercepted the truck loaded with ballast and recovered 134 bags (8.4 tonnes) part of 21.8 tonnes of the stolen coffee at the homestead. The driver escaped but was later arrested by officers from the DCI.



An officer inspects ballast that was replaced with the coffee on transit.

EAC revenue authorities meet to discuss trade facilitation

by Emmy Neema

East African Community (EAC) partner revenue agencies recently met at the Port of Mombasa to foster collaboration in trade facilitation and compliance.

Chief Manager, Port Operations, Ms Rosemary Mureithi and managers Mr Robert Wanjagua (Port Operations), Mr Warren Olesaya (CFS Operations) and Mr Brian Mwachiro (Enforcement) represented KRA.

Uganda Revenue Authority (URA) Assistant Commissioner Mr Julius Rubagumya reiterated the need for teamwork, trust and proper communication among the partner agencies. "We should count on one another, communicate, know the challenges we face and jointly set measures without compromising trade facilitation," he said.

Mr Rubagumya urged the EAC revenue authorities to embrace efficiency and transparency while implementing compliance. He also underscored the need for deeper conversations to resolve strategic business challenges at the EAC level. "This meeting should formulate a policy to be presented in the EAC technical working group discussion as the members present are the ones on the ground," he said.

Ms Mureithi noted that some Single Customs Territory (SCT) modules have not been fully implemented, adding that full adoption of the SCT strategies would allow incorporation of the Democratic Republic of Congo and South Sudan into the SCT platform.

Mr Mwachiro called for the harmonisation of tax differentials to enhance cross-border trade, while Mr Olesaya lauded paperless processes in cargo clearance, which he said has reduced delays. The meeting recommended establishment of an SCT liaison office in the region to coordinate clearing and manage all SCT issues.



Participants during the EAC partner revenue agencies meeting in Mombasa.

Fair administrative action in tax administration

by Mary Ngoiri

The right to a fair administrative action is embedded under Article 47 of the Constitution of Kenya 2010, which recognises the right of every person to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Additionally, the Constitution provides that where a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action. Subsequently in 2015, the Fair Administrative Action Act, 2015 (FAAA) was enacted to give effect to Article 47 of the Constitution.

The FAAA regulates the powers, functions and duties exercised by authorities or quasi-judicial tribunals. The FAAA further governs any act(s), omission(s) or decision(s) of any person, body or authority that affects the legal rights or interests of any person to whom such action relates. Accordingly, the right to a fair administrative action serves to ensure the promotion of fundamental rights and freedoms by limiting excessive exercise of powers by administrative bodies.

Fair administrative action is a core principle in public administration and a guarantee of fairness in decision making by persons whom power has been bestowed to exercise on behalf of others. KRA, being a revenue administrative body, makes decisions which affect the legal rights of others, be it taxpayers or internal employees. Accordingly, the need to comply with the tenets of the right to a fair administrative action cannot be underscored. Robin Creyke opines that the concept of fair administrative action was coined for the Kenyan citizen that is prejudiced by administrative decisions resultant

from improper exercise of administrative powers.

Section 4 of the FAAA reiterates the provision as is in the Constitution and proceeds to add that every person has the right to be given written reasons for any administrative action that is taken against him. Further, where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:-

- a. **Prior and adequate notice** of the nature and reasons for the proposed administrative action;
- b. An **opportunity to be heard** and to make representations in that regard;
- c. **Notice of a right to a review or internal appeal** against an administrative decision, where applicable;
- d. **A statement of reasons** pursuant to Section 6;
- e. **Notice of the right to legal representation**, where applicable;
- f. **Notice of the right to cross-examine** or where applicable; or
- g. **Information, materials and evidence to be relied upon in making the decision** or taking the administrative action.

With the entrenchment of the right to a fair administrative action in the Constitution, there arises a procedural legitimate expectation premised on the presumption that a public authority will follow a certain procedure to arrive at a decision. However, there cannot be a legitimate expectation against clear provisions of the law or the Constitution. Expectation would only be legitimate if it has a basis in the law. In instances where

the law prescribes the procedure to be followed by a public body, then such procedure must be followed to the latter. Such examples include the making of an objection decision in determination of a tax assessment as envisaged under the Tax Procedures Act or in the determination of an employee's disciplinary case as prescribed in the Employment Act among others.

Failure to observe the principles of a fair administrative action may form a basis for an aggrieved party to seek judicial review action. The action may lead to remedies such as declarations, damages and injunctions as set out under Section 11 of the Fair Administrative Action Act which is an expansion from the traditional remedies available before the promulgation of the Constitution of Kenya 2010 and the enactment of the FAAA. It is apparent that the FAAA widened the scope of judicial review in Kenya by going beyond the traditional approach restricted to procedural considerations, to now include consideration of the merits of an administration action or decision forming the subject of the judicial review proceedings.

Accordingly, staff acting in their official capacity and required to make a decision on any matter that affects the rights of others ought to consider the merits of any case in addition to following the laid out procedure. This is also in addition to observing the principles of a fair administrative action as set out in the law to avoid unnecessary litigation detrimental to the Authority. Administrative decisions are subjected to both procedural and substantive scrutiny and must pass the tests of fairness for them to stand.

Don't have a date! No worries; Africa will take you out

by Latifa Said

This article tries to present an analogy of the African Continental Free Trade Area (AfCFTA) Rules of Origin. The AfCFTA is a trade agreement bringing together countries in Africa to remove barriers on intra-Africa trade. Currently, 43 countries have ratified the agreement and the members are referred as states parties. This means this article will be one big party.

Tariff concession (where import duties are removed/lowered for goods traded amongst the members) and Rules of Origin are two integral parts of all trade agreements.

What are the Rules of Origin? These are the specific provisions developed from principles established by national or international agreements, applied by a country to determine the origin of goods (trade in goods). In determining the origin of goods in a trade agreement area, 'originating' will refer to certain conditions that have been met to allow those goods to be given tariff concessions. 'made in a country' may not necessarily mean 'originating'.

Let us actualise our big party in this article. You have a date (could be with your spouse, boy/girlfriend, siblings, children, friend, colleagues, or even with yourself). We are getting ready to go; Argan oil products from Morocco have you cleaned in no time. Let us check the wardrobe for what to wear — Kente material from Ghana and sewn in Nigeria (I hear they have better fundis than ours, no offence to our fundis). Remember to zip up the zipper from Eswatini on the trouser/skirt.

What is a date without some bling bling? Do I put on the gold plated watch from South Africa (for the guys)? For the ladies, we are spoilt for choice; do I put on the Tanzanite earrings from Tanzania or the diamond necklace from Namibia. Why settle for one if you can put both of them on.

The leather shoes and handbag/wallet from Ethiopia are next on the list. We are now set to go. We need a ride, calling for an Uber Chapchap that runs on petrol from Nigeria takes us to the restaurant.

At the restaurant, the waiter takes you to your table; made of timber from the Democratic Republic of Congo (DRC). As you settle in, Rwanda music is playing in the background. The waiter brings you beef soup from Uganda's Ankole cows. The main course consists of steak from Botswana, potatoes from Egypt and greens from Kenya cooked in olive oil from Tunisia. All these the chef prepared using gas from Angola. We are accompanying this with orange juice from Egypt or apple juice from South Africa.

It is getting a bit chilly; we need to put on the Masaai shuka shawl/jacket from Kenya as we await the desserts. The waiter brings a chocolate cake that the chef made from cocoa from Ivory Coast, sugar from Mauritius (I hear their sugar has sugar in it - meaning sweeter), and wheat flour from Zambia. Accompaniment to the dessert is coffee from Ethiopia or we can be easy on the caffeine and take Kenyan tea.

Time to go back home, the Uber chapchap runs on petrol



from Algeria. At home, you brush your teeth using the clove toothpaste from Zanzibar. Before you sleep, you reflect on the date and how we can actualise the AfCFTA to achieve Agenda 2063 of the African Union: The Africa we want.

I cannot wait for a date with Africa herself.

Idea evaluation process

by Brian Ndege

Idea evaluation is one of the critical stages in successful idea management. As such, the Innovation Unit in SIRM is tasked with spearheading a culture of creativity and innovation in KRA and coordinating evaluation of innovative ideas submitted by staff through the Idea Management Platform – iNNOVATE.

Idea evaluation refers to the process of determining which business ideas offer valuable opportunities and are worth pursuing i.e. process of determining viability of ideas. After an idea has been submitted, the Innovation team holds an idea screening session with the idea submitter to have a better understanding and identify the experts and stakeholders to be engaged during idea evaluation.

Who are the stakeholders? These are subject matter experts, usually the owner of the process on which the idea falls; these



are the primary stakeholders. Secondary stakeholders e.g. those offering support in the process and beneficiaries are also

identified. After idea screening, a business case is developed. This entails thorough research and analysis in preparation for idea evaluation. The Innovation team then conducts an idea evaluation session.

The idea evaluation session comprises the Innovation team as the facilitator, the identified stakeholders and the idea submitter. During the session, the idea submitter presents their idea, for which a business case has been drafted, to the stakeholders to evaluate. The importance of the evaluation is to make decision on whether the idea is viable or not. Viable ideas are those that are found to be of value addition and can be implemented. Viable ideas are recommended to the relevant user department for implementation. Staff are encouraged to submit ideas via the iNNOVATE platform on KRAHub or via innovation.kra.go.ke.

Pictorials

Familiarisation Tour



Students of the Strathmore Advanced Management Programme with senior KRA leadership (who also took part in the programme) during their visit to Times Tower. They learnt more about the mandate, structure and operations of KRA.

New DTD Staff



Domestic Taxes Commissioner Mrs Rispah Simiyu (C) with other KRA leaders receive 220 new DTD officers after the team completed corporate induction. The officers will now undergo technical training at KESRA.

NewsFlash

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