

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2782 OF 2004



BETWEEN

I RAZAK.....APPLICANT

AND

MALAWI REVENUE AUTHORITY.....RESPONDENT

JUSTICE DR JANE ANSAH

Chalamanda: of Counsel for the Applicant
Chamkakala of Counsel for the Respondent
Makhanamba: Official interpreter/Clerk

RULING

The plaintiff on 21st September brought an *ex-parte* application for an interlocutory injunction. The application was heard by the Hon. Justice Potani who granted the application on condition that an inter-parties application be filed within 7 days. This is an inter-parties application for an interlocutory injunction restraining the defendants whereby the plaintiff wants the defendants themselves or their servants or agents or otherwise howsoever from seizing or detaining or continuing to seize and/or detain the plaintiff's motor vehicle until the determination of the matter herein being a review of the defendants' decision that the plaintiff who is not the original importer of his vehicle pays duty for the same. There is also summons to vacate the interlocutory injunction filed by the defendants. The defendants are praying that the interlocutory injunction that was granted against them restraining them from seizing and/or detaining or continuing to seize and/or detaining the Plaintiff's motor vehicle registration BM 4400, and on order requiring that the same be restored to the Plaintiff be vacated and the defendant be at liberty to continue detaining the vehicle pending the trial of the action or until further order. There affidavits filed for both the plaintiff and the defendants in support of their cases.



THE LAW

The law cited in the application is the Customs and Excise Act (Cap. 42:01). These are 35, section 90, section 91, section 146(1) and section 156(b)(ii) It is pertinent that the sections be quoted in their entirety:

Section 35 reads;

“Without prejudice to the liability of the importer of goods to cause entry to be effected in accordance with section 32(1), goods which have been imported by any conveyance shall also remain the responsibility of the owner of the importing conveyance with the customs laws liable for the duty on all such goods until such goods have been entered or otherwise accounted for to the satisfaction of the Controller.”

Section 90 reads:

“Any person being in possession or control of imported goods or goods which are liable to duty under the provisions of this Act, and any person who offers for sale, exports, or attempts to export such goods or has such goods entered in his books or mentioned in any document referred to in section 167 shall, when requested by an officer so to do, produce proof as to the place and date of entry of the goods and that duty due thereon was paid. If he himself did not pay the duty or make entry of the goods, such person shall produce such evidence as the officer may require to enable him to discover the person who did make such entry and payment in respect of the goods.”

Section 91 reads:

“When any amount of duty has been underpaid or erroneously refunded, the person who should have paid such duty or to whom the refund has erroneously been made shall pay such amount or repay the amount erroneously refunded, on demand being made by the proper officer.”

Section 146(1) reads:

“An officer or police may seize any goods or conveyance which he reasonably suspects may be liable to forfeiture”

Section 156(b)(ii) reads:

In any proceedings under the customs laws---
(b)(ii) the payment of proper duties;

shall be on the person prosecuted or on the claimant of any seized goods seized under the customs laws;”

FACTS

The facts of the case are straight forward. The plaintiff bought the motor vehicle in question from another person through a Stanbic loan facility

which he is still servicing. At the time of purchase the vehicle had already been registered as a Malawian vehicle at the Road Traffic Department. However, the defendants seized the vehicle alleging that duty was not paid for the vehicle and they demand payment of the same.

SUBMISSIONS

Mr Chalamanda counsel for the plaintiff referring to sections 35 and 91 of the customs Act argues that the clear interpretation of these sections is that payment of duty is the duty of the importer not an innocent buyer unless it is shown that the buyer purchased the goods with full knowledge that duty for the commodity was not paid. Referring to the case of *The State vs Commissioner General of Malawi Revenue Authority, ex-parte Chipiliro Phiri Aganile*¹ submits that this case confirms that the defendants cannot seek to collect duty from the plaintiff. He prays that the application for an interlocutory injunction. He further submits that the court has jurisdiction to grant on an interlocutory injunction a relief which would have the effect of granting the relief claimed for in the action. He avers that this is possible where the grant or refusal of an injunction at the interlocutory stage will, in effect dispose of the action finally in favour of whichever party was successful in the application, because there would be nothing left on which the it would be the unsuccessful party's interest to proceed to trial. Quoting what the house of Lord said in the case of *N.W. Limited vs Woods*² that "the degree of likelihood that the plaintiff would succeeded in establishing his right to an injunction if the action had gone to trial. He submits that the judge must give full weight to all the practical realities of the situation to which the injunction will apply.

In reply, Mr. Chimkakato counsel for the defendants argues that the plaintiff was asked to produce Customs Clearance documents, but he failed to do so. The defendants seized the vehicle pending production of the said documents. To the surprise of the defendants, the plaintiff instead of producing the documents, rushed to court and obtained an ex-parte injunction. The defendants submits that the vehicle was seized in accordance with the law, in that investigations revealed that the motor vehicle was registered fraudulent Customs Clearance Certificate. Referring to the case of *Wilson Mlauzi vs Controller of Customs and Excise*³ Mr. Chimkakato submits that although the plaintiff is not an importer any liability for unpaid duty attaches to the chattel therefore he is liable to pay. In the circumstances he prays that the interim injunction be vacated

¹ Misc. Civil cause no. 89 of 2002

² [1979] 1 W.R.L. 1294.

³ Civil Cause No. 1591 of 1998 (unreported) <http://www.judiciary.mw>

and further that the defendants be at liberty to seize the plaintiff's vehicle until the plaintiff produces valid documents showing that the vehicle was duty cleared by Customs. Section 146(1) of the Act authorizes a customs officer or the police to seize any goods which he reasonably suspects may be liable to forfeiture. It is well known that goods which have not been cleared by Customs are liable to forfeiture. In this case the customs officers do reasonably suspect that duty in respect of the plaintiff's vehicle was not paid therefore it is liable to forfeiture. They have rightly so exercised their powers in accordance with section 146(1). What they have done is legally right. The status quo in this case is that the customs officers have ceased the vehicle and according to the Act are asking the plaintiff to produce documents to show that duty was paid. The question of who is to pay duty will be decided at the trial of this case. As for this application my duty is to preserve the status quo. To allow the application for an injunction is to allow the disturbance of the status quo by the operation of the injunction in that the Customs officials will not be in a position to do according to the provision in section 146. The plaintiff's application for an injunction fails and the defendants' summon to vacate the interim injunction succeeds with costs.

Pronounced in chambers this 12th DAY OF November 2004 at the Principal Registry, Blantyre..


DR JANE ANSAH
JUDGE