



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY**

**REVENUE DIVISION**

**REVENUE CAUSE NO. 6 OF 2018**

**WIN WIN GARMENTS COMPANY LIMITED ..... CLAIMANT**

**AND**

**MALAWI REVENUE AUTHORITY ..... DEFENDANT**

**CORAM: HON. JUSTICE R. MBVUNDULA**

Kaliwo, Counsel for the Claimant

Mwangwela, Counsel for the Respondent

Kanchiputu, Official Interpreter

**RULING**

This is the court's decision on an application by the claimant for an interim order barring or restraining the defendant by itself, servants or agents or howsoever otherwise from seizing the claimant's containers whose particulars are contained in the application, imposing duty thereon and preventing the claimant from accessing the same until the action or a further order of the court. A sworn statement by one Arpo Chang, Managing Director of the claimant avails the following facts in support of the application.

Chang deposes that the company was incorporated in Malawi to engage in the manufacture and processing of clothes under the Export Processing Zone (EPZ) at Chirimba in Blantyre. Sometime in 2016 the company applied to the Ministry of Industry and Trade for an extension of its EPZ licence to include the manufacture of

blankets, pillows, duvets and other apparel using used blankets and garments to be imported into Malawi. He states that before issuance of the licence, but based on verbal assurances from the Ministry that the licence would be issued, the claimant, in March 2017, imported two containers of second hand materials to be used in the manufacture. The claimant applied to clear the materials duty free but the defendant refused and imposed duty and a fine which the claimant paid under protest. The licence was later received by the claimant in May 2017, dated 19<sup>th</sup> April 2017, but allowing him production as from 20<sup>th</sup> May 2016. On the strength of the licence, so states the claimant, the company proceeded to import 6 containers of used clothes but when the same arrived in Malawi they were seized by the defendant's officers who alleged that the claimant intended to sell the second hand clothes at a shop in Limbe. The defendant again proceeded to impose duty and a penalty.

It is the claimant's case that the shop in Limbe referred to belongs to a certain Kelvin and the second hand clothes sold there are those for which duty was already paid as earlier stated, or those which were transferred from Lilongwe by the said Kelvin after duty was paid. It is said that the defendant's officers proceeded to inspect the bonded warehouse and confirmed that all the second hand garments imported for EPZ and for which duty had not been paid were in the warehouse but, however, the defendant unlawfully, unfairly insists on payment of duty and penalties on the six containers.

The deponent avers that by reason of the defendant's conduct the claimant has lost and continues to lose business as a result of the defendant's conduct which the claimant considers to be ultra vires, unlawful and prejudicial to the claimant's business, wherefore the claimant seeks an interim injunction order as earlier stated. The claimant believes that damages would not be an adequate remedy as the conduct of the defendant is prejudicial to the claimant's standing as an EPZ licence holder and that no sum of money can compensate it for the loss of reputation and business the claimant will suffer as a result of the defendant's conduct.

For the defendant is a sworn statement by Memory Kondowe a Revenue Officer in the employ of the defendant, and seised of the matter, who confirms the EPZ status of the claimant and the importation of the six containers whose contents were supposed to be used in the manufacture of duvets and blankets.

Kondowe deposes, however, that the materials found in the containers when the defendant's officers carried out an inspection were different from those alleged by the claimant as the containers had goods such as gloves, scarfs and caps, and that

when the claimant's representative was asked for an explanation he said that the goods were wrongly supplied. It is therefore the submission of the defendant that no loss could be occasioned by their non-use as they could not in any event be used for the manufacture authorized under the licence.

Kondowe states that on further investigation the defendant's officers established that the claimant's Managing Director has a shop in Limbe where goods similar to those found in the six containers are sold. She states that on the occasion of their visit to the shop supplies were running low and they were told that more supplies, which had already been offloaded at Win Win Garments premises would soon be delivered to the shop, and when the officers went to the shop later they were told that the goods had been seized by the Malawi Revenue Authority. The deponent concludes that it must be the same goods which were being referred to.

Kondowe states further that an inquiry into the defendant's records revealed that the Managing Director of Win Win Garments also operates another business in the name of Africa Power Supply Co. Ltd whose directors are Chang and Lianghua Liu and that Kelvin does not appear as the claimant's business associate.

Kondowe further deposes that the defendant's officials went to the premises where the alleged manufacturing was to be taking place and they found out that there was a machine for baling second hand clothes and accessories thereto including strings that are used in tying up the bales, and that there was no machine for manufacturing blankets and duvets, and upon inquiring from the Managing Director he stated that he was yet to procure the main machine. On account of these facts coupled with those earlier narrated the defendant's officials concluded that the goods imported by the claimant were intended for sale rather than manufacture of the duvets and blankets and that the EPZ licence could have been fraudulently obtained with the aim of importing second hand clothing and accessories duty free so as to maximise the claimant's returns.

On the basis of the foregoing the defendant placed an embargo on the goods, which the claimant now seek to be undone by an order of injunction, which the defendant opposes. The defendant submits that the claimant does not come before this court with clean hands having perpetrated an illegality from which it seeks to benefit. The application, it is submitted, is clearly an abuse of the court process and that it would be unjust to grant the application.

It is a notorious legal position that an injunction is an equitable remedy which cannot be granted to an applicant who is guilty of some wrongdoing pertaining to the subject

matter of the application for the remedy. It is also the position that the remedy of judicial review does not avail an applicant who withholds from the court some material information. Further still, facts presented to the court by one party and not disputed by the opposing party are deemed to be admitted by the opposing party. Such opposition is by way of a sworn statement in reply stating what the party asserts as the correct position. Failing that he is deemed to admit the position asserted by the other party. In the present matter the claimant has not disputed, as required, the facts narrated in the defendant's sworn statement in opposition. It is therefore this court's conclusion that those facts are admitted, and in effect that the claimant has engaged in acts violating the Customs and Excise Act, an illegality. The claimant also withheld those facts from the court in its attempt to obtain the order of injunction. For these reasons, and in the light of the principles of law aforesaid, the order of injunction cannot avail the claimant. The application is accordingly dismissed with costs.

Made in chambers at Blantyre this 12<sup>th</sup> day of March 2019.

  
R Mbvandula  
**JUDGE**