



JUDICIARY

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 45 OF 2014
(Judicial Review)



BETWEEN:

STATE AND COMMISSIONER GENERAL OF THE MALAWI REVENUE
AUTHORITY.....RESPONDENT
EX PARTE POLYPACK LTD AND 22 OTHERS

CORAM: HON. JUSTICE RACHEL SOPHIE SIKWESE
Kanyenda; of Counsel for the Applicants
Ms Makwinja; of Counsel for the Respondent
Mithi; Official Court Interpreter

RULING

SIKWESE J

Background

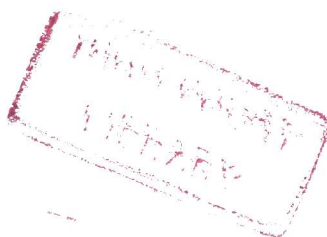
This was the applicants’ application for leave to commence judicial review proceedings against a decision of the respondent, the Commissioner General of the Malawi Revenue Authority to implement suspended domestic excise duty on certain plastic products against the interests of the applicants. The applicants further applied for a stay of the implementation of the respondent’s decision pending determination of the judicial review proceedings.

Leave to commence Judicial Review Proceedings

At an ex parte hearing, the Court granted the applicants leave to commence judicial review proceedings but refused to grant a stay of the decision pending an inter partes hearing. After hearing both parties and after reading their affidavits and skeleton arguments, it was the view of the Court that the matter should indeed proceed for judicial review determination.

Order of Injunction

On the question whether an injunction should be granted, the Court considered the nature of the matters in respect of which relief may be granted by way of an order of injunction, the nature of the persons and bodies against whom relief may be granted by way of such an order, and all the circumstances of the case and whether having regard to the above, it would be just and convenient for the injunction to be granted on an application for judicial review.



In assessing submissions from Counsel for both parties it was apparent that none of the parties could explain the nature of the parties or party who made the initial controversial decision- the suspension/ waiver of domestic excise duty, against which parties and the circumstances. Material facts were missing that would have enabled the Court to make a determination whether or not to grant the order.

Determination

Consequently, in order to protect the interests of both parties without offending the law, it was this Court's decision that the respondents shall collect domestic excise duty in accordance with the prevailing law from the applicants and that the money shall be maintained in a special interest earning account created for purposes of this action. In the event that the applicants' claim succeeds at judicial review, the money realized from the applicants as domestic excise duty shall be refunded to them with any interest that may accrue on it. On the other hand should the respondent be right in implementing the domestic excise duty, the money so realized and any interest accrued on it shall revert to the collecting authority. It is so ordered. Costs to be in the cause.

PRONOUNCED this 29th day of July 2014 in Chambers at the **Principal Registry**.



HON. RACHEL SOPHIE SIKWESE
JUDGE