THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT - 00 - CC - MA - 44 - 2007
(Arising from Miscellaneous Application Cause No. 11 – 2007)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

KASIBO JOSHUA :: APPLICANT

AND

THE COMMISSIONER OF CUSTOMS,
UGANDA REVENUE AUTHORITY :::::::::::::::::::::::::::: RESPONDENT

BEFORE: THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE.

R U L I N G:

The Applicant brought this application against the Respondent for reliefs by way of Judicial review under Section 36 of the Judicature Act (cap 13), Rules 6 and 4 of the Civil Procedure (Amendment) Judicial Review Rules (S1 No. 75 of 2003). He sought orders for declaration, certiorari, prohibition, injunction, mandamus and damages.

The brief facts of the application are that the Applicant is the owner of goods being wines and spirits that were seized by the Respondent. The said goods were seized because they were alleged to be uncustomed goods. The case for the Applicant is that the seizure and subsequent handling of the goods did not follow the law as provided for under The East African

Community Customs and Management Act 2004 (hereinafter referred to as EACCMA). In particular the Applicant contends that the taxes assessed and imposed on the goods was illegal and that the Respondent abused his discretionary powers under the law. The Applicant therefore seeks the following reliefs:-

"(a) Declaration:

(i) That the Respondent's decision to Order for the forfeiture to the state and condemnation of the Applicant's goods to wit, assorted wines and spirits two truck motor vehicles and motor boat engines under the East African Community Customs and Management Act, EACCMA, 2004 is illegal, of no legal consequences, an abuse of discretionary powers and ultra vires the powers reposed on the Respondent under the relevant customs law.

(ii) That the Respondent's Orders under Part XVIII of the EACCMA, for the payment of fines are a nullity in law and contrary to the set fines provided for in the customs law and the Tax assessment made for the Applicant's uncustomed and seized goods is illegal.

(iii) That the Respondent's Order for the seizure of the Applicant's two (2) Yamaha motor boat engines, viz, E75B-692-L512 153-125HP and F99-CMH 66N 5000164

75 HP and two (2) motor vehicles, Mitshubishi Fuso Truck, Reg No. 636UDU and Nissan pickup Truck, Reg No. 635 UDN is wrongful and ultravires the EACCMA.

(iv) That the Respondent, his officers, servants and/or agents impounded and detained the Applicant's motor boat carrying the assorted wines and spirits but did not subject it to the requisite customs procedure and it was converted, pilfered and/or is now lost.

(v) That the Respondent's officers, servants and'or agents while seizing the Applicant's goods led to the pilfering and conversion of some of the Applicant's assorted wines and spirits contrary to the customs law.

(b) An Order of Certiorari quashing the decisions or Orders in (a) (i), (ii) and (iii).

(c) An Order of probation, prohibiting the Respondent and any officer(s) of the Respondent from implementing or otherwise taking further action on the basis of the above impugned decisions or Orders.

(d) An Order of Injunction restraining the Respondent, his officers, servants and/or agents from proceedings to implement the

illegal decisions for forfeiture to the state and condemnation of the Applicant's goods and property.

(e) An Order of mandamus compelling the Respondent to release the Motorboat, the two engines, the vehicles and the goods upon payment of the proper taxes and/or penalties upon review.

(f) Special, general and exemplary damages.

(g) Interest at commercial rate on (f) above from time of seizure till payment in full.

(h) Costs of this application. "

The Respondents by way of reply, assert that the Applicant was involved in smuggling and admitted the offence. The Respondents further assert that the Applicant compounded the offence under Section 219 of EACCMA and was sentenced to the prescribed penalties and his goods condemned in accordance with the law.

Mr. Mulema Mukasa appeared for the Applicant while Mr. Ali Ssekatawa appeared for the Respondent.

The remedies sought by the Applicant are multiple and varied. I shall therefore begin with a review of the law with regard to judicial review under The Civil Procedure (Amendment) (Judicial Review) Rules 2003 (hereinafter referred to as The Judicial Review Rules 2003).

The Judicial Review Rules 2003 in substance revolve around the powers of court to grant prerogative orders as they used to be called.

This power is derived from Section 36(1) of The Judicature Act (cap 13 Law of Uganda Revised Edition 2000). The remedy of judicial review was well articulated by **Kasule Ag. J.** in the case of

> **John Jet Tumwebaze V Makerere University Council** and **3 Others** Civil Application No. 353 of 2005 (unreported)

The orders be they for declaration, mandamus, certiorari or prohibition are discretionary in nature. In exercising its discretion with respect to prerogative orders, the court must act judicially and according to settled principles. In the **John Jet Tumwebaze** case (supra) such principles may include;

- Common sense and justice
- Whether the application is meritorious
- Whether there is reasonableness
- Vigilance and not any waiver of rights by the Applicant

Justice Kasule pointed out that

> *"prerogative orders look to the control of the exercise and abuse of power by those in public offices, rather than at providing final determination of private rights which is done in normal civil suits..."*

I agree with these principles as expounded by the learned Judge in that case. The first line of remedies that the Applicant seeks are various declarations.

According to the case of **John Jet Tumwebaze** (supra) a declaration is defined as

> *"...a pronouncement by court, after considering the evidence and applying the law to that evidence, of an existing legal situation. A declaration enables a party to discover what his/her legal position is, about the matter of the declaration; and thus open a way to the party concerned to resort to other remedies for giving effect to the declared legal situation..."*

There are five specific declarations that the Applicant seeks.

The first declaration relates to the Respondent's decision to order the forfeiture and condemnation of the Applicant's seized goods which he views as illegal, of no legal consequences, an abuse of discretionary powers and ultra vires the customs law. The second declaration sought by the Applicant is that fines imposed on him are contrary to those set by the law. Since the facts around these two areas are the same I shall handle them together. I shall start with the fines.

Counsel for the Applicant submitted that his client had accepted that he was found with uncustomed goods and that he had agreed to compound the offence under Section 219 of The EACCMA. Counsel for the Applicant

argues that this is evidence that his client was repentant and willing to settle the matter amicably with the Respondent.

However, Counsel for the Applicant submitted that the Applicant was instead treated as if he was a criminal, who was unrepentant, had been tried and sentenced for the said offences. Counsel for the Applicant submitted that his client was given the maximum fines under the law which was very harsh. In this regard Counsel for the Applicant submitted that his client was not given a fair hearing. He submits that his client should have been heard in mitigation, which was not done. When the fines were not paid, the Applicant's goods and vehicles were forfeited to the state and condemned.

Counsel for the Respondent does not agree that the forfeiture and condemnation of the Applicants goods and vehicles was in any way improper, an abuse of discretionary powers or contrary to the law. Counsel for the Respondent submitted that the powers of the Commissioner under Section 219 of the EACCMA are discretionary. He submitted that in taking into account the penalties imposed the Commissioner had regard to the following consideration:-

> *"- Public interest (<u>the offence was allegedly committed at a Pastor's residence and publicity</u> – additions mine)*
>
> - *Daring – off loading at Gaba which is not a customs area.*
> - *Risk – smugglers were armed.*

- *Conduct before – Applicant has smuggled before under similar circumstances using similar vessels/vehicles.*
- *Conduct after – even after seizing the Applicant is unrepentant and still brings false documents. "*

Counsel for the Respondent further submits that the Applicant was given an opportunity in mitigation as the original fines imposed on him were reduced from Ushs.271,304,574/= to Ushs.240,530,012/= (i.e. reduced by Ushs.30,774,562/=). He thus is of the view that the fines were judiciously imposed.

It appears to me that any declaration in this regard will revolve around the powers of the Commissioner under Section 219 (1) and (2) of the EACCMA which provides

"(1) …The Commissioner may, where he or she is satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which any thing is liable to forfeiture, compound the offence and may order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner may deem fit; and the Commissioner may order anything liable to forfeiture in connection with the offence to be condemned…

(2) The Commissioner shall not exercise his or her powers under Subsection (1) unless the person admits in a prescribed form that he or she has committed the offence and requests the Commissioner to deal with such offence under this Section..."

To my mind any illegality, abuse of discretion or ultra vires will primarily have to be tested against this Section.

It is not in dispute that the Applicant compounded the offence in the prescribed form. Indeed the Applicant signed six forms (known as C.56) between the 11th September, 2006 and 8th November 2006 requesting the settlement of the offences mentioned therein. This appears to be in conformity with Section 219 (2) of the EACCMA. The next step is to see whether the enforcement action by the Commissioner was in conformity with Section 219 (1) of The EACCMA. The evidence before court is that the Respondent made out 4 settlement orders (on Customs Form F.68). Unfortunately none of the said forms are dated. However, the details can be summarized as follows

	Date	US$
1. Annexture Y_1 to affidavit of J. Rubagumya...	10/07/07	37,698.40
2. Annexture Y_2 to affidavit of J. Rubagumya...	10/07/07	15,000
3. Annexture Y_3 to affidavit of J. Rubagumya...	10/07/07	10,000
4. Annexture Y_4 to affidavit of J. Rubagumya...	10/07/07	10,000
		72,698.40

Clearly annextures Y_1 to Y_4 amount to US$72,698.40- which is far less than initial total of US$271,304,574.00-. One explanation for this is that paragraph 9 of the affidavit of one Julius Rubagumya (the Respondent's Transit Monitoring Manager) refers to a further annexture Y_5 which was not attached to the affidavit. It is however still not clear that the one missing annexture would account for the difference of US$271,231,874.60-. What ever the breakdown was for the first set of fines, the Applicant through his lawyers M/S Tumusiime, Kabega & Co. Advocates on the 5th December 2006 wrote to the Respondents to review the said fines inter alia on the grounds that the assessments were irregular.

By a letter dated 11th April 2007 the Respondents appear to have accepted to revise the fines downs from US$271,304,574 to US$240,530,012-. The exact basis for the review is not clear. However, the Respondent's letter this time provides a detailed worksheet explaining the breakdown of the new fines which is very helpful. The worksheet is as follows:-

Offence No.	Item	Section applied	Penalty in $
NKW/OFF/08/11/06	Motor boat engines	199 217	$7,000 Ushs.12,977,930= $8,000 Ushs.14,831,920=
NKW/OFF/09/11/06	False documents	203	$10,000 Ushs.18,539,900=
NKW/OFF/010/11/06	Assorted wines	200 217	**Taxes** $48,193.86 Ushs.89,350,940= **Penalty** $15,771,275 Ushs.29,239,786=
NKW/OFF/011/11/06	Mitsubishi Fuso 636 UDU	199 217	$5,000 Ushs.9,269,950= $10,000 Ushs.18,539,900=
NKW/OFF/012/11/06	Nissan Datsun 635 UDN	199 217	$5,000 Ushs.9,269,950= $5,000 Ushs.9, 269,950=
Total			**Ushs.240,530,011=**

When one reviews the fines applied under Section 199 of The EACCMA in this case some interesting revelations came out. It would appear that in each case that Section 199 was applied, the maximum fine under that Section was imposed. The same is true for fines imposed under Section 203 of the EACCMA. Of course this raises the question as to what review

was carried out by the Respondent in the first place if the revised worksheet still shows that the maximum fines are being imposed. This can only point to the fact the original penalties of US$271,304,574- had some fundamental errors. Secondly the worksheet shows penalties imposed under Section 217 of The EACCMA. My reading of Section 217 of The EACCMA is that it is not a fine generating Section but rather gives the Respondent powers to condemn items (which is a penalty in itself) that have been seized and forfeited. I am therefore unable to see where the Respondent got the fines that he imposed under Section 217 of The EACCMA. These alleged fines under Section 217 amount to Ushs.71,881,556/=.

I am unable to determine how the fine under Section 200 of The EACCMA was applied on the assorted wines as the dutiable value of the goods was not disclosed to court. But given the errors on the face of the record on the other calculations I am not confident on a balance of probabilities that this figure imposed under Section 200 is correct as well.

I therefore find and accordingly declare that fines imposed on the Applicant are contrary to the set fines provided for in the EACCMA.

The second declaration is about the forfeiture and condemnation of the Applicants goods. Here again one has to look to the provisions of The EACCMA and what happened on the ground. When the offences admitted

by the Applicant were compounded, the Respondent issued the Applicant with four settlement orders (Customs F. 68). One of the settlement orders related to these goods and in addition to the fine had the additional order that

> *"...the goods indicated on seizure notice No. 121308 of 11/9/06 be released after payment of the assessed taxes and fines..."*

It was signed by one J. Rubagumya for the Respondent. Two other settlement orders covered the seized motors vehicles. In addition to the fines there were two identical additional orders that

> *"...the vehicles as per seizure notice... (Nos. 121310 and 121309) of 11/9/06 be released after payment of penalty..."*

These orders were also signed by J. Rubagumya for the Respondent. It would therefore appear to me that as long as the Applicant paid the fines and penalties in the settlement orders, then the goods and vehicles would be returned to him.

Section 210 (b) of the EACCMA provides that uncustomed goods shall be liable to forfeiture. Furthermore Section 211(1) provides for the forfeiture of vehicles used in committing offences under the Act. Section 217(1) and (2) of the EACCMA provides that anything liable to forfeiture may also be condemned as the Commissioner may deem fit.

It is therefore clear that the Respondent has powers of forfeiture and condemnation of goods and vehicles. On the 1st June 2007 the Respondent authority (i.e. The Uganda Revenue Authority) wrote to the Applicants informing him that the fines and penalties were to have been paid by the 31st December, 2006 but were not and that any further review was not accepted. The letter went on to read

> *"…The matter has now been put rest, the goods, vehicles and motor boat engines have been forfeited to the state and condemned pursuant to Sections 217(2) and 219 of the EACCMA. Please do not expect further communication on the matter..."*

It further clear that the Respondent exercised the power of forfeiture and condemnation after, in their view the Applicant had failed to pay the set fines and penalties. This was after the Respondent refused any further review of the said taxes and penalties. I have already found that the Respondent has powers to forfeit goods to the state and to condemn them. However, in this case the Respondent gave the Applicant the initial option to pay the fines and penalties and then recover the goods and vehicles. As it is, as I have already found, these fines and penalties are irregular in this case. It would therefore be wrong to forfeit and condemn the goods and vehicles if the fines and penalties imposed in the first place are wrong. I for that reason declare the forfeiture and condemnation of the Applicants goods and vehicles was ultra vires the EACCMA.

The third declaration relates to the seizure of the Applicants two motor boat engines numbers E75B-692- 512 153-125 HP and F99-CM H66 N5000 164 75 HP; two motor vehicles one truck registered 636 UDN and a pickup registered 635 UDN. From the evidence and the correspondence adduced in court it would appear that the Applicant takes issue with the seizure of the two motor boat engines without the actual seizure of the boat as well by the Respondent. The Applicant alleges that the boat disappeared while in the hands of the Respondent.

Secondly, the Applicant contests the allegation that the said seized vehicles conveyed any of the uncustomised goods. This is because the goods were moved from the boat to the said vehicles by agents of the Respondent and then conveyed to the customed bonded warehouse by the same agents but not the Applicant.

Counsel for the Respondent on the other hand submitted that the motor boat engines and vehicles were subject to forfeiture under Sections 211(1) and (3) of the EACCMA and so the seizure was legal.

Section 213(1) of The EACCMA provides that; any aircraft, vessel, vehicle, goods, animal or other thing liable to forfeiture under the Act may be seized and detained. The procedure for seizure is then outlined in Section 214 of The EACCMA. The Section provides that the officer effecting the seizure shall issue a notice of seizure within one month.

In this particular case notices of seizure (Customs Form 58) were issued with respect to both vehicles (i.e. Nos. 121309 and 121310) and the motor boat engines (No. 121311). I agree with submissions of Counsel for the Respondent that the seizure was proper. Section 213(1) clearly provides that seizure may take place where the person effecting seizure *"has reasonable grounds to believe (it) is liable to forfeiture"*. In other words if an officer has reasonable grounds or probable cause to believe that the motor boat engines and the vehicles were part of the commission of the offence then they may be seized as occurred in this case. I therefore decline to make any declaration as prayed in this third instance.

The forth declaration sought by the Applicant is that his impounded goods and motor boat were not subjected to the requisite customs procedure and were converted, pilfered and or lost. I shall address this issue item by item.

Assorted wines and spirits

The case for the Applicant here is that part of the impounded wines and spirits were not declared on the seizure notice and were therefore converted and or pilfered by some of the agents of the Respondent.

In their affidavits both the Applicant and Mr. Wilber Kirya who works with the Applicant deponed that a third unregistered vehicle was used by agents of the Respondent to load some of these undeclared goods. This

was in addition to the two vehicles of the Applicant that were impounded. The Applicant further deponed that the third vehicle without number plates was driven off by agents of the Respondent to an unidentified place and the goods thereon have never been accounted for.

There is also the affidavit of the one Abdul Mutesi a truck driver who depones that he was hired by agents of the Respondent to take the impounded goods to the customs warehouse at Nakawa. He further deponed that his truck had lost its hind number plates. He further depones that the goods that he transported were off loaded at the Nakawa warehouse. One Herbert Bushara the supervisor intelligence at the Respondent authority, swore an affidavit and deponed that he hired Abdul to transport some of the impounded wines to Nakawa Customs Warehouse

The evidence as I see it, is clear with regard to one fact. That is the existence of a third lorry that did not have number plates that was used by agents of the Respondent to transport some of the impounded goods. What is in contention is whether the goods were taken to an unidentified location and thereafter disappeared or they were taken to the Nakawa Customs Bonded Warehouse.

It would appear to me that the truth of the matter may be best deduced from the handwritten receipt that Abdul got for his services (Annex 'A' to his affidavit) which reads in part

"…I have received 70,000/= being transport charges from Kawuku to Nakawa warehouse

signed Abdul…"

How could such a receipt be given when the said goods are alleged to have disappeared?

It is therefore more likely than not that the goods transported by Abdul did not disappear as alleged but were actually transported to the Nakawa Customs Warehouse.

I accordingly decline to declare that these goods were converted, pilfered and or lost.

The Applicant also seeks a fifth declaration that his motor boat which was impounded and detained was not subjected to the requisite customs procedure and was converted, pilfered and/or lost. The evidence of the Applicant on this prayer is that agents of the Respondent in particular one PC Ochakacon Godfrey (a police officer attached to the URA) and Herbert Bushara removed and seized the motor engines from the boat and thereafter the physical boat disappeared. The Applicant also depones that he knows that a police file on the missing boat referenced 8/28/08/06 was opened in this regard.

Counsel for the Respondent submitted that since the boat conveyed the uncustomed smuggled goods then under Section 211(3) of The EACCMA it

too was liable to forfeiture. However, the boat was detained by the police and was not handed over to customs as required by Secton 213 of The EACCMA. He therefore views this as a problem with the police and not the Respondent.

I have carefully reviewed the evidence in this area. It is clear that the Respondents did not seize the boat as it is not one of the items on any of the seizure notices. A review of the correspondence does not yield better information. In a letter dated 21st December, 2006 from the Respondent to the Applicants former lawyers the loss of the boat was said to a diversionary afterthought.

The evidence that is uncontested is that the boat was taken to Port bell and held there without its engines. That is the last that was heard of the boat. It would appear that PC Ochakacon Godfrey according to the Applicant's lawyers letter to Respondent referenced TK/25/09/CS of the 5th December 2006 may be responsible for its loss. What actually happened to the boat is not clear. It is safe to say that it was eventually lost. However, with regard to the application of customs procedure the law is more involved. There is no doubt that the boat was impounded. It therefore followed that under Section 214(1) of The EACCMA that a notice of seizure had to be issued to Applicant within one month. However, under Section 214(1)(a) such a notice need not be given if the offence has been compounded as occurred in this case. Such a thing may then be

treated according to Section 214(1)(a)(ii) in accordance with part XVIII of the same Act. This means that the boat is liable to both forfeiture and condemnation among other things. What therefore remains is the application of part XVIII to the boat. The letter of the Respondent to the Applicant referenced Cust/LB/3/16 of the 1st June 2007 still seems to doubt the existence of the boat. Probably the loss of the boat made it difficult for the Respondent to make a final decision. I therefore make the qualified declaration that the boat was not fully subjected to customs procedure because it was lost.

The Applicant also seeks an order of certiorari quashing the Respondents decision

i) Forfeiting and condemning the Applicants goods to wit assorted wines, two motor vehicles and motor boat engines.
ii) Payments of the fines assessed under part XVIII of the EACCMA
iii) Seizure of the Applicants two motor boat engines and vehicles

In the case of **John Jet Tumwebaze** (supra) **Justice Kasule** held that

> *"…certiorari issues to quash a decision which is utra vires as vitiated by an error on the face of the record… certiorari looks to the past…"*

The tests to be met and considered by court are well articulated by Hilary Delany in his book *"Judicial Review of Administrative Action"* 2001 Sweet and Maxwell at pages 5 and 6. He writes

> *"…Judicial review is concerned not with the decision, but the decision making process. Essentially judicial review involves an assessment of the manner in which a decision is made, it is not an appeal and the jurisdiction is exercised in a supervisory manner… not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality…"* (emphasis mine).

He goes on to state that each case should be determined on its own merits. I agree with this explanation of the law.

I have already declared that the seizure of the Applicant's goods, two motor boat engines and two motor vehicles was legal. I find no fault with the procedure applied or the decisions taken in this regard. To that extent make no order of certiorari.

As to the payment in fines I have already found as follows. First that before the review it is clear that the original fines imposed by the Respondent had fundamental errors. Secondly fines were wrongly imposed under Section 217 of The EACCMA which has its own penalty of condemnation and so that was illegal. Lastly, where fines were imposed they were the maximum possible under the law. It does not in my view appear rational to impose the maximum fine possible when the offence has been compounded. Compounding an offence in my understanding is

a form of settlement of the offence without prosecution that results into a settlement order. It is a form of plea bargain with the offender that results in an admission of the offence in the expectation, no doubt, of a lighter sentence. This is because no prosecution has taken place saving all concerned valuable time and resources.

Counsel for the Respondent has submitted that the Commissioner's powers to impose fines are discretionary and factors like

- Public interest
- Daring operations
- Mensrea
- Risk
- Conduct before
- Conduct after

were taken into account. Whereas I agree that the Commissioner's powers are discretionary it is clear that an important factor that was not taken into account was that the offence was compounded. If the Respondent considered the Applicant a *"hard core"* smuggler then the offences should not have been compounded and the Applicant fully prosecuted. With the greatest of respect I disagree with the submission of Counsel for the Respondent in this regard. I find that Respondent did not exercise its discretion properly and or judiciously in this regard.

I accordingly quash the fines as imposed on the Applicant.

As to the forfeiture and condemnation of the Applicant's goods I have also previously declared that this was not proper. The Respondent had the right to forfeit and condemn the goods seized outright. However, the orders of settlement issued to the Applicant on compounding the offences were such that the goods would be released to the Applicant if he paid the fines. In other words forfeiture and condemnation would only be after the Applicant's failure to pay the fines. This is the procedure the Respondent chose to use. Since the fines in this case were in some aspects illegal and irrational it would not be just to allow the orders for forfeiture and condemnation to stand and I accordingly quash them. Before I leave the issue of certiorari, it is important to point out that in granting an order of certiorari and quashing the decision of the authority concerned the court does not substitute itself for the authority. The legal power to make the decision remains with the authority. Indeed that is position for all prerogative orders in judicial review (see **De Smith** et al in their book Judicial Review of Administration Action 5th Edition 1995 Para 16-008). That is why rule 10(4) of the Judicial Review Rules 2003 provide

> *"...where the relief sought is an order of certiorari and the High Court is satisfied that there are grounds for quashing the decision to which the application relates, the court may, in addition to quashing the decision, remit the matter to the lower court, tribunal, or authority concerned, with directions to reconsider it and reach a decision in accordance with the findings of the High Court..."*

Since the decisions to which this application relates have been quashed, I hereby also order that they be remitted to the Respondent to reconsider them in line with my findings.

The Applicant also seeks an order of prohibition, prohibiting the Respondent and its officers from implementing or otherwise taking further action on the basis of the impugned decisions or orders. In the **John Jet Tumwebaze** (supra) an order of prohibition was held to

> *"forbid some act or decision which would be utra vires..."*

The Judicial Review Rules 2003 do not prohibit the granting of prerogative orders in combination. This also appears to be the position in England. The authors **De Smith** and others in their book Judicial Review of Administrative Action (supra) at Para 16-008 write

> *"...The prerogative orders may be granted either singly or in combination..."*

In this case an order for certiorari has been given and this encompasses the basic review and relief that the Applicant sought. These quashed decisions have now been remitted to the Respondent to correct them. The authors **De Smith** (supra) at Para 16-009 however, writes

> *"…The court may award a prohibition quousque – an order that is operative until the decision – maker or inferior tribunal has corrected its conduct by containing itself within the bounds of its jurisdiction…"*

I find that this is appropriate for this case. I therefore grant order of prohibition quousque until the decisions remitted to the Respondent have been corrected.

The Applicant has also applied for an order of injunction to restrain the Respondent and its officers from proceeding to implement the illegal decisions for forfeiture and condemnation of the Applicant's goods.
An injunction issues to prevent and forbid the commission of some unlawful or illegal act. In the **John Jet Tumwebaze** (supra) it was held that failure to comply with a court injunction may lead to contempt of court.

Since prerogative orders are discretionary in nature and given that I believe the orders of certiorari and prohibition that I have granted are sufficient in this regard I decline to grant the order of injunction prayed for.

The Applicant also seeks an order of mandamus to compel the Respondent and its officers to release the motor boat, the two engines, the vehicles and the goods upon payment of the proper taxes and or penalties on review. In the **John Jet Tumwebaze** (supra) it was held that

"mandamus... is issued in order to compel performance of a statutory duty. It is used to compel public officers having responsibilities in public offices and public bodies to perform duties imposed upon them by an Act of Parliament..."

Since the impugned decisions have been remitted to the Respondent to be reconsidered court will not issue an order of mandamus, to compel the Respondent to exercise its decision in a particular way. I find that the orders of certiorari and prohibition granted in this regard are sufficient to address all the Applicant's concerns.

The Applicant also seeks an award in special, general and exemplary damages. Special damages must be specifically pleaded and strictly proved. In this case Counsel for the Applicant submitted that the Applicant had stated his loss in special damages in paragraphs 31 to 33 of his affidavit in support of his motion. A review of paragraphs 31 to 33 of the said affidavit shows that the Applicant has done no such thing! He has neither deponed as to what the damages are nor has he proved them. I accordingly grant him no special damages.

As to general damages the general principle in their award is that they are pecuniary compensation given on proof of a wrong or breach. In this regard the claimant must be able to prove some loss. In this case Counsel for the Applicant has submitted that damages should be left in the

discretion of the court. I find that while the Applicant has been able to prove that the Respondent did not exercise its discretion properly he has not been able to prove actual loss or damage. He has also compounded customs offences which are yet to be resolved. In these circumstances I award him normal damages Ushs.3,000,000/=.

As to exemplary damages according to **Odoki Ag. J** (as he then was) in the case of

Ongom and Anor V Attorney General and ors [1979] HCB 267

he held that

> *"...exemplary damages are awarded over and above the compensatory damages where aggravating circumstances have been created... due to the conduct or intention of the defendant..."*

In this case I do not see aggravating circumstances but rather there was just a wrongful application of discretion. I accordingly award no exemplary damages.

Finally given my findings above I allow the application in part and award the Applicant costs.

Geoffrey Kiryabwire

JUDGE

Date: 29/04/08