

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

**HCT - 00 - CC - CA - 03 - 2006**

**UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**CONGO TOBACCO CO. LTD ::::::::::::::::::::::::::::::::::: RESPONDENT**

[Appeal from the ruling of the Tax Appeals Tribunal at Kampala  
in Application No. 20 TAT of 2005]

**BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE**

**J U D G M E N T:**

This is an appeal of a ruling of the Tax Appeal Tribunal (TAT) on its ruling of the 3<sup>rd</sup> February 2006. The brief facts of this appeal are as follows. On or about the 30<sup>th</sup> March 2005 the Respondent company imported into Uganda a consignment of Supermatch Cigarettes loaded on a truck Reg. No. 1821 BB/NK 1822 BB through Bunagana entry point on transit to Ariwara in the Democratic Republic of the Congo.

The consignment was impounded by the Appellant (hereinafter called "URA") somewhere in Kireka, Kampala on the 1<sup>st</sup> April 2005. A formal seizure notice was issued for 413 out of a total of 2213 cartons of cigarettes found containerized on the truck. The truck and cigarettes were then held at the URA Custom bonded warehouse on the same day.

The case for the Respondent as stated at the tribunal is that on the 15<sup>th</sup> April, 2005 the Respondent lodged a letter of claim for the goods as required by law. This was followed by a letter of complaint by the Respondents dated 18<sup>th</sup> May 2005 that the Appellants URA were not responding to their earlier correspondence.

On the 31<sup>st</sup> May 2005 the Appellant URA wrote to the Respondents that the impounded cigarettes had false stamps (i.e. made in Uganda), were underdeclared and so were liable to forfeiture; proceedings for which had commenced.

On the 2<sup>nd</sup> June, 2005 the Respondents wrote to the Appellants to suggest that a fine be paid if there was any wrong doing (after all according to them the URA seals were still intact at the time of the impounding) and the trucks be allowed to continue with the transit through Uganda.

The parties continued to exchange correspondence. Again on the 30<sup>th</sup> June 2005 the Respondents wrote to URA complaining that no action was taking place. On the 4<sup>th</sup> July the Appellant URA wrote to the Respondent to the effect that URA had the power to forfeit or seize goods within 5 years from the date of an offence and that the Respondent was to be prosecuted for the offences they had committed.

Finally the Appellant URA further wrote to the Respondents on the 11<sup>th</sup> August 2005 to institute proceedings for recovery of the truck and cigarettes within 2 months from the 4<sup>th</sup> of July 2005 or else they shall be condemned. It is the case for the Respondent that the URA was by law time barred by reason of the letter of the 11<sup>th</sup> August 2005 to ask them to institute proceedings for recovery.

The Appellants on the other hand without disputing the above flow of correspondence maintain that the seizure was lawful and that in the main the letter of the 11<sup>th</sup> August 2005 could not have been written earlier because the Respondent's letter of 15<sup>th</sup> April 2005 was not on headed paper and so the URA did not know on whom to serve the notice to institute proceedings under the law.

The issues to be determined at TAT were the following:-

- 1- Whether the procedure for seizure/forfeiture of the Applicants' (now Respondents) 2213 cartons of Supermatch cigarettes and truck/trailer by the Respondents (now Appellants) was proper.
- 2- Whether the said goods and truck/trailer can be released in accordance with S.216(2) of the East African Customs Management Act Act 1/2005 (EACMA).
- 3- What are the remedies are available.

At the TAT hearing only the Applicant (now Respondent) called a witness as the URA did not.

The TAT in brief found for the Applicant (now Respondent) in that the procedure used after the said seizure was wrongful and that the goods and truck/trailer must be released and escorted to their exit point at Ariwara.

The Appellant now appeals to the High Court on the following grounds (as amended from the memorandum of appeal);

- 1- That the honourable Tribunal erred in law and fact in holding that the Respondent did not follow the forfeiture procedure.
- 2- That the Tribunal erred in law and fact when it erroneously ruled and made orders to release the supermatch cigarettes/truck and trailer as legal or transit goods.

The Appellant URA was represented by Mr. Moses Kazibwe while Mr. Richard Mwebembezi represented the Respondent. Both counsel decided to file written submissions after a brief hearing.

Section 27(3) of the TAT Act gives the High Court on appeal powers to affirm or set aside the decision of the tribunal, or to remit the case back to the tribunal for reconsideration.

I shall now address the two grounds of Appeal.

**Ground No. 1:** That the Tribunal erred in law and fact in holding that the Respondent did not follow the forfeiture procedure.

It seems that there is no dispute that the procedure to be followed on the seizure of goods such as these is to be found in the East African Customs Management Act (Act 1 of 2005 here is after referred to as the "EACMA") and in particular Section 214 and 216 thereof.

There is also no doubt the parties agree that a proper seizure notice under Section 214 was issued dated 5<sup>th</sup> April 2005. The Tribunal found that the seizure notice was

given to one Patrick Rujungiro, the Respondent's liaison officer. Section 214(4) of the EACMA then provides that after a seizure is made, a notice of claim must be lodged with the commissioner within one month of the date of seizure. Section 214(3) provides that if no notice of claim is made within one month then the thing seized shall be deemed to be condemned.

The Respondents state that a claim was made within the stipulated time by a letter dated 15<sup>th</sup> April 2005. The Appellant disputes that this letter in the form in which it was written amounted to a claim within the meaning of the section as they could not tell from it how to effect notice for proceedings. The tribunal found on the basis of the evidence adduced before it that the letter of 15<sup>th</sup> April 2005 was personally handed to the commissioner of customs Mr. Malinga by the same person served with the notice, Mr. Patrick Rujungiro. The tribunal also found that the letter though not headed had a stamp bearing the address of the current Respondent. It accordingly therefore also found that the said letter complied with Section 214(4) of the EACMA.

On appeal all that counsel for the appellant added was that the notice of claim dated 15<sup>th</sup> April 2005 amounted to an admission of a false declaration.

The Appellant in its wisdom during the TAT hearing did not call any evidence on this point. The Appellant just relied on the documents tendered at the tribunal.

Looking at the letter of the 15<sup>th</sup> April 2005, it clearly identifies the consignment seized by its owner.

It reads;

*"Few weeks ago CTC (meaning Congo Tobacco Company – my clarification) dispatched a consignment of Supermatch cigarettes via Uganda to the Ariwara market in DRC. I am informed that the truck and consignment were impounded in Uganda by URA... The purpose of this letter is to request you facilitate the smooth transit of this consignment via Uganda to the exit border..."*

It was delivered to Mr. Malinga the Commissioner of Customs who on uncontroverted evidence promised to handle the case. Objectively I can not see how anyone can say that this was not a letter of claim.

True the letter did acknowledge and regret the incidence of 413 cartons which they claim was an anomaly from their stores where the goods were ordered but not documented. However, in my view that does not make it any less a letter of claim. I am unable to understand why the Commissioner of Customs armed with this letter did not institute or require the Respondent to institute proceedings within the period required under the law i.e. within 2 months.

I agree with the tribunal that the Appellant's letters dated 4<sup>th</sup> July 2005 and 15<sup>th</sup> August 2005 were time barred as they should have written and handed to the Respondent latest by 15<sup>th</sup> June 2005.

Accordingly, I find that the first ground must fail.

**Ground No. 2:** That the Tribunal erred when it erroneously ruled and made orders to release the Supermatch cigarettes/truck and trailer as legal or transit goods.

Counsel for the Appellant submitted

*"...The order to release the goods to the Respondent on account of a "failure to observe" a procedural requirement amounts to condonation of an illegality" that was brought to the attention of court. See CA No. 4/81 **Makula International Ltd V His Eminence Cardinal Nsubuga and Another...**"*

To the Appellants this was all a procedural error.

Counsel for the Respondent submitted that the Commissioner failed to meet the time lines in Section 216(2) of the EACMA which provides

*"where the Commissioner fails within the period of two months either to require the claimant to institute proceedings or the Commissioner fails to institute proceedings in accordance with subsection (1) then such a thing shall be released to the claimant"*

With the greatest of respect to counsel for the Appellant Section 216(2) is a legal and not a procedural requirement. It is not a mere technicality. Perhaps this submission best sums up the attitude of the Appellant in failing to observe the legal requirements because they erroneously view them as mere procedural and technical rules. This is clearly unacceptable.

I find that TAT in releasing the goods simply was following the law and did the right thing.

The second ground of appeal accordingly fails as well.

I accordingly dismiss this appeal with costs to the Respondent and uphold the findings of TAT.

**Geoffrey Kiryabwire**

**JUDGE**

**Date: 27/02/07**

27/02/07

1:50am

**Judgment read and signed in Court in the presence of:**

- R. Mwebembezi for Respondent

**In Court**

- Representative of URA
- Rose Emeru – Court Clerk

.....  
**Geoffrey Kiryabwire**  
**JUDGE**

**Date: 27/02/07**