

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL SUIT NO 004 OF 2011 (O.S)

TESTIMONY MOTORS LTD

**(SUING BY REPRESENTATIVE ACTION ON
BEHALF OF NUMEROUS IMPORTERS OF
USED MOTOR VEHICLES IN UGANDA
AND ON ITS OWN BEHALF).....**

PLAINTIFF

VERSUS

THE COMMISSIONER CUSTOMS}

UGANDA REVENUE AUTHORITY}..... DEFENDANT

BEFORE HONOURABLE MR JUSTICE CHRISTOPHER MADRAMA

RULING

The applicant brought this application under order 37 rules 6 and 8 of the Civil Procedure Rules for determination of the following questions:

1. Whether the directive of the Commissioner Customs Uganda revenue authority to unilaterally suspend the operation of the transaction value method set out under section 1 to 2 and the fourth schedule of the East African Community Customs Management Act, No. 5 of 2005 with regard to used motor vehicles is lawful.
2. Whether the plaintiffs are entitled to an account and a refund of monies illegally collected by the defendant from the 20th day of April, 2010 onwards, pursuant to the said directive of the Commissioner customs Uganda Revenue Authority.

The application is supported by the affidavit of one Twesigye Osborn a director of the plaintiff company. He avers in paragraph 1 that he has been authorised by numerous importers of used motor vehicles in Uganda to bring a representative action he also brings the action on behalf of the first plaintiff company. The representative order was issued by the deputy registrar on 11 April 2011.

The gist of the grounds in the affidavit in support of the originating summons are:

- (a) That on the first day of January 2005 the East African Community Customs Management Act, Act No. 5 of 2005 was enacted in the Parliament of the Republic of Uganda.
- (b) That section 122 (1) of the said Act provides that "where imported goods are liable to import duty ad valorem then the value of such goods shall be determined in accordance with the 4th schedule and import duty shall be paid on that value".
- (c) That paragraph 2 of the fourth schedule of the said Act indicates that the customs value of imported goods shall be the transaction value which is the price actually paid or payable for goods when sold for export to Uganda.
- (d) That the interpretative notes of the said Act indicate that the method of valuation are set out in the sequential order of application and the primary method of customs valuation is defined in paragraph 2 (transaction value method) and imported goods are to be valued in accordance with the provisions of this paragraph whenever the conditions prescribed therein are fulfilled.
- (e) That on the 13th day of July 2010 the plaintiff company imported into the country a used motor vehicle from Japan and entered the same for customs purposes vide entry number C68958 with the declared transaction value of United States dollars 5200 in respect of which it was supposed to pay tax of United States dollars 3588 at the rate of Uganda shillings 2232 per United States dollars amounting to Uganda shillings 80,008,416/= under the transaction value method.
- (f) That the plaintiffs companies said declared value was unlawfully rejected by the respondents officials and the plaintiff's company was appraised using alternative methods of valuation which were inapplicable to this transaction and as a result of which it paid customs duty computed on the value of United States dollars 11,200 at the rate of Uganda shillings 2232 amounting to Uganda shillings 19,558,879/= in taxes.
- (g) That upon inquiry the plaintiff's company was informed by the respondent's officials that the operation of the transaction value method in respect of used motor vehicles had been suspended by the Commissioner customs Uganda revenue authority on 19 April 2010.
- (h) The deponent avers that the Commissioner customs has no authority to suspend the operation of an Act of Parliament and that therefore the purported suspension is unlawful.
- (i) Further avers that the matter requires interpretation of the East African Community Customs Management Act, Act No. 5 of 2005 and will not require adducing other

evidence outside the affidavit. That therefore the following questions need to be interpreted or determined namely:

- a. Whether the directive of the Commissioner Customs Uganda Revenue Authority to unilaterally suspend the operation of the transaction value method set out under section 122 of the 4th schedule of the East African Community Customs Management Act, No. 5 of 2004 with regard to used motor vehicles is lawful.
- b. Whether the plaintiffs are entitled to an account and a refund of monies illegally collected by the defendant from the 20th day of April, 2010 onwards, pursuant to the said directive of the Commissioner Customs Uganda Revenue Authority.

At the hearing for leave counsel Kavuma Terrence of Messrs Muwema & Mugerwa Advocates and Solicitors appeared for the applicant.

Learned Counsel submitted that the application was founded under order 37 rules 6 and 8 of the Civil Procedure Rules as supported by the affidavit of Twesigye Osborn seeking the issuance of this originating summons to the Commissioner Customs. The grounds of the application are that the plaintiff and numerous other importers of used motor vehicles are aggrieved by the decision of the Commissioner customs to unilaterally suspend the use of the Transaction Value Method of customs valuation on imported used motor vehicles. The decision of the Commissioner Customs is annexure “G” to the affidavit in support of the summons. Annexure “G” is instructions to all staff to use alternative methods of valuation on used motor vehicles.

Consequently counsel submitted that this originating summons seeks to have this court interpret the provisions of section 122 together with the 4th schedule of the East African Community Customs Management Act 2005 to determine whether the Commissioner Customs URA can unilaterally suspend the operation of the said provisions with regard to used motor vehicles. It is also to determine whether the plaintiffs are entitled to an account of monies allegedly illegally collected pursuant to the said directive of Commissioner Customs. Counsel submitted that court is empowered under order 37 rules 6 and 8 of the Civil Procedure Rules to issue this summons so that the said questions can be interpreted. He relied on a decision of this court in, **Pearl Impex vs. Attorney General and Kampala City Council**. Where there was a decision on issuance of OS for interpreting statutes. He submitted that the court found that where facts are not in dispute, originating summons would be an appropriate procedure for interpreting statutes. The East African Customs Management Act was enacted in Uganda in the year 2005. Further counsel submitted that this issue in the OS is commercial and appropriate for this court to entertain.

On a question put by court as to whether this court should interpret an East African Community Act, counsel submitted that the East African Customs Management Act, 2005 provides for avenues of seeking redress in national courts of Uganda and not in the East African Court of Justice. Referring to section 220 of the Act he submitted that it provides for legal proceedings to be filed in the relevant procedural legislation in the partner states.

Counsel submitted that Order 37 rule 6 requires that the plaintiff discloses an interest and paragraph 2 and 4 of the affidavit in support disclosed that the plaintiff is an importer of used motor vehicles in this country and as such is interested in the proper interpretation and construction of section 122 of the EA Community Customs Management Act vis a vis the decision of the Commissioner Customs. The Commissioner Customs is appointed by the partner states under section 5 of the Act in accordance with national legislation.

Counsel further submitted that the Commissioner Customs can sue or be sued under section 221 of the Act. He prayed that this court issues the OS to the Commissioner Customs to determine questions framed in the summons. Only the Act and the decision of the Commissioner shall be required for this action.

On further questions issued by court on the whether the plaintiff had sought the permission of the long list of persons annexure "B" to the affidavit in support, counsel submitted that publication of the suit can only be done after the summons have been issued. He referred to the case of James Rwanyarare and Ors vs. AG. That all that is needed is that the parties must either give consent or be knowledgeable about the suit. That the requirement is that the representative order and the institution of the suit should be advertised. This is intended to publicize the institution of this suit and will bring it within the knowledge of the beneficiaries of the same.

I have carefully considered the submissions of counsel for the plaintiff and perused the pleadings and documents in support of the application. Before I proceed with this matter, I need to resolve whether this matter is properly before the High Court in terms of jurisdiction and forum. The plaintiff's application seeks to interpret the provisions of the East African Community Customs Management Act 2004. The Act came into force on 1 January 2005.

The preamble to the Act provides and I quote: "*an Act of the community to make provision for the management and administration of Customs and for related matters.*" Section 1 (1) of the Act provides that it may be cited as **the East African Community Customs Management Act, 2004**. In subsection 2 of section 1 the Act it is provided that the Act shall apply to the Partner States. Part 2 of the Act deals with administration of the Act. Section 3 thereof provides "the directorate of Customs as established by the Council and the Treaty shall be responsible for the initiation of policies on Customs and related trade matters in the Community and the coordination of such policies in the Partner States." Section 253 of the Act provides that: "This Act shall take precedence over the Partners States' Laws with respect to any matter to which its provisions relate."

The sum total of the above as far as the suitability of trial of this suit by the High Court of Uganda and for interpretation of the Act if concerned is directed inter alia by sections 1, 2, 3 and 253 of the Act to the effect that:

- a. The Directorate of Customs under the Act is established by the Council created under the treaty forming the East African Community and the Council is responsible for policy matters.
- b. The East African Community Customs Management Act, 2004, is an Act of the East African Community.
- c. The Act is meant to apply to all the Partner States of the East African Community and it takes precedence over national laws.

The East African Community Customs Management Act, 2004 is for all intents and purposes a creature of the East African Community Treaty and therefore part of international law. Its provisions have to be uniformly applied across all the Partner States. For that reason and in theory, the interpretation of its provisions by the High Court of Uganda would if allowed affect the application of the law for all the Partner States a proposition which is without jurisdiction. This in my humble finding is not only inappropriate but the High Court should refrain from interpreting the provisions of the Act for purposes of uniform application of the law in all the Partner States of the Community. The jurisdiction of the High Court extends only to the boundaries of Uganda and certain subjects matters which I need not mention here. The High Court of Kenya, Tanzania, or the courts of Rwanda and Burundi may if different interpretations are permitted come up with different interpretations of the same provisions that the plaintiff would like this court to interpret. Though the East African Community Customs Management Act, 2004 is an Act of Parliament, it is just a domestication of International treaty Law for application and enforcement by national agencies of Partner States in the East African Community Treaty. Counsel referred me to section 220 of the Act to support his contention that the High Court has jurisdiction to interpret the Act.

Section 220 of the Act deals with enforcement of the provisions of the Act but does not apply to questions as to interpretation of the Act. As far as enforcement is concerned, national courts of competent jurisdiction have jurisdiction and should freely exercise the same. Section 253 of the Act is sufficient to show that the Act is treaty law and its provisions prevail over national laws. For purposes of consistency, questions as to interpretation of the Act should be left to the organs of the East African Community Treaty so that the enactment has a uniform application. Obviously for purposes of enforcement, the High Court of Uganda reads and interprets the East African Community Customs Management Act 2004. However this interpretative jurisdiction does not involve deciding questions involving controversy as to the proper meaning of any particular provision which may be in dispute. The interpretation of the High Court should be limited to questions of enforcement of the Act. The rationale for this is obvious. The Act overrides domestic legislation in case of conflict. Its provisions are therefore international or regional in application. Its domestication by enactment by the National Parliament does not change the character of the enactment as the East African Community law. Should the High Court of Uganda indulge the plaintiffs and interpret the Act?

In **Mucheru v Mucheru [2000] 2 EA 455 (CAK)**, the Court of Appeal of Kenya stated the intention of the procedure of originating summons is to enable simple matters to be dealt with in a quick and summary manner.

In this case I am not persuaded that it is appropriate for the High Court of Uganda to interpret the relevant Act. For all intents and purposes, what the plaintiff seeks should be obtained from the East African Court of Justice at Arusha. The jurisdiction of the East African Court of Justice at Arusha was explained in the case of **Modern Holdings (EA) Ltd vs. Kenya Ports Authority Reference NO. 1 of 2008** and at page 7 thereof, the court noted that its jurisdiction was to initially ensure adherence to law in the interpretation and application of and compliance with the treaty.

The plaintiff is at liberty to refer the questions stated for interpretation to the East African Court of Justice at Arusha. For the above reasons, the originating summons will not be issue as prayed for by the plaintiff's counsel.

Ruling delivered this 24th day of June 2011.

Hon. Mr. Justice Christopher Madrama

Ruling delivered in the presence of:

Siraje Ali for testimony Motors,

Ojambo Makoha Court Clerk

Hon. Mr. Justice Christopher Madrama