

**BRUNO FUNGAYI TAKAWIRA**

**Versus**

**ZIMBABWE REVENUE AUTHORITY**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 7 FEBRUARY & 9 MARCH 2023

**Opposed application**

*V. Majoko* for the applicant  
*T. L. Marange* for the respondent

**MAKONESE J:** This is a court application for the following relief:

- “1. The respondent is ordered to refund the applicant the amount of US\$63 783 respondent levied on duty on applicant’s motor vehicle.
2. Respondent to pay the costs of this application.”

The application is opposed by the respondent.

**Factual background**

The applicant is physically handicapped. His physical disability is such that he cannot drive a manual motor vehicle. He can only drive an automatic motor vehicle. There has been for some time in his jurisdiction, legislation under which physically handicapped persons can apply to import motor vehicles under the Customs and Excise Act (Chapter 23:02), as regulated by Statutory Instruments made under the Act. In January 2022, the respondent wrote to applicant requesting suspension of duty on a Toyota Land Cruiser 300 V6 motor vehicle he intended to import. Applicant furnished respondent the engine number and chassis number in respect of the motor vehicle. The value of the vehicle was captured as R2 129 000. By letter dated 24 January 2022 respondent granted suspension of duty on the Toyota Land cruiser motor vehicle in terms of the Customs and Excise Act as read with the Regulations. In the same letter applicant was advised to proceed with a copy of the letter together with other relevant documents to effect clearance at the port of entry.

In about February 2022, applicant presented himself at Beitbridge Border Post with a Toyota Land Cruiser motor vehicle wishing to enter the vehicle under the duty suspension

granted by the respondent. The respondent declined the applicant suspension of duty and insisted on full payment of duty. The applicant paid duty in the amount of US\$63 378 as duty.

Dissatisfied that the respondent had reneged on what it had granted as suspension of duty, applicant brought his application. The applicant seeks that the respondent be held to its written undertaking and refund an amount of US\$63 378,00 he paid as duty on the motor vehicle. Respondent opposes the application arguing that respondent did not err and was entitled to levy full duty on the vehicle applicant had imported. Respondent argues that applicant was granted suspension of duty under Statutory Instrument 101/2011. Respondent contends that on 28<sup>th</sup> February 2022 when applicant imported the vehicle it was noted that the value of the vehicle exceeded US\$40 000. Respondent argues that in terms of SI 10/2022 the maximum limit for the value of a motor vehicle that can be imported under the Statutory Instrument cannot exceed US\$40 000. As the value exceeded US\$40 000, applicant was disentitled to duty suspension.

### **Submissions by the applicant**

Applicant submits that a member of the public is entitled, both in terms of the common law, the Administrative Justice Act (Chapter 10:28) and the Constitution of Zimbabwe (Amend No. 20), 2013 to conduct that is efficient, fair and honest. Applicant contends that respondent having granted applicant suspension on duty on the Toyota Land Cruiser motor vehicle, was estopped from setting up the defence they now seek to raise.

In particular, applicant contends that respondent was very specific when it granted the suspension on duty. In the letter of the grant, the value of the vehicle to be imported was specified as R1 124 000. The value was clearly over US\$40 000.

Applicant submits that having granted a suspension on duty in writing, the respondent could not lawfully withdraw the grant. Applicant contends that respondent does not deny that the exemption was lawfully granted by a duly authorized officer in the employ of the respondent.

Respondent argues, forcefully, that our law pays great honour to the doctrine of sanctity of the contract. This doctrine establishes the principle that lawful agreements are binding and enforceable by the courts. Applicant submits that the respondent is expressly

bound by the letter granting suspension on duty, and such as entitled to the relief sought in the draft order.

### **Submissions by the respondent**

Respondent submits that applicant applied for suspension of duty on a motor vehicle in terms of Statutory Instrument 101/2011. Applicant then imported the vehicle via the Beitbridge Border Post on 28<sup>th</sup> February 2022 and an assessment was raised. It was noted that at the time of importation the import value of the vehicle exceeded US\$40 000 limit as set out in section 6 of Statutory Instrument 10/2022. Applicant was denied the suspension of duty and was made to pay full duties amounting to US\$85 379,86 which consisted customs duty amounting to US\$56 636 and Value Added Tax amounting to US\$28 743. Applicant paid the assessed duty and now seeks a refund on the earlier letter exempting him from paying duty.

Respondent argues that for the applicant to succeed in claims for reimbursement of customs duty he has to show that the payment of duty was not warranted.

Respondent submits that at all material times, prior to February 2022, the suspension of duty was governed by SI 101/2011. The said SI did not place a limit on the value of the motor vehicle that could be imported under suspension of duty on motor vehicles or other goods that were designated for use by the physically handicapped persons.

Respondent argues that for the applicant to claim this refund for customs duty, applicant should have by the time SI 10/2002 was promulgated and come to effect crossed the border with the Toyota Land Cruiser motor vehicle in Zimbabwe. Section 6 of SI 10/2022 provides that once the vehicle exceeds US\$40 000, such motor vehicle cannot benefit under this suspension of duty.

### **Applicable law**

It is common cause that by letter dated 24<sup>th</sup> January 2022, it was known to the respondent that the value of the motor vehicle to be imported was R2 129 000. The value exceeds US\$40 000. The conditions for the grant of the suspension of duty makes no mention of a value exceeding US\$40 000. The issue for determination is whether the respondent acted lawfully in denying the suspension of duty which had been granted in accordance with the law.

The respondent is a public authority. The applicant as a member of the public was entitled to rely on undertakings made by the respondent, *in rebus sic stantibus*, when the undertaking is in writing. Confidence in public administration is lost if a public authority can make an undertaking or grant a suspension, and then, without explanation goes against that which it undertook. The respondent must be accountable and be held to that which it will have undertaken to.

In *S v Zemura* 1974 (1) SA 584, the judge held at page 595 H that:

*“It seems to me that a question of public policy also comes into play here when considering what weight the courts should give to legal advice given by a responsible Government official concerning what I have called an administrative statute, which statute is administered by the department by whom the official is employed. If a member of the public generally relies on such advice and through the supineness or inefficiency of the official, finds himself subject to criminal penalties, the confidence of the public in their government officials will be sadly shaken.”*

Although stated in the context of a criminal matter, the above reasoning applies with equal force on the facts of this matter.

In *S v White* 2017 (1) ZLR 125, the reasoning in *Zemura* (*supra*) was cited with approval as was the following passage in *S v Dary* 1988 (1) ZLR 386 and it was held that:

*“a person who relies on advises of government official should not suffer penalties for relying on such advices.”*

The applicant in my view was entitled to rely on the letter suspending duty on the matter he sought to import. Even if the new statutory instrument was to be applied, the golden rule of interpretation of statutes is that where the language used in a statute is plain and unambiguous it should be given its ordinary meaning unless that would lead to some absurdity or inconsistency with the intention of the legislature. This much is trite.

The facts mandate that the respondent correctly and properly granted applicant the exemption on duty by suspending customs duty on the motor vehicle to be imported. The exemption letter was lawfully given. The letter by the respondent remained effective even as at the date of the imposition of the motor vehicle. The respondent could not renege on the dispensation of duty as all the requirements were met at the time of the grant of the suspension.

The facts in *Fawcett Security Ops v Director of Customs and Excise & Ors* 1993 (2) ZLR 121 (S) bear a striking resemblance. Fawcett sought and was given assurance by an official of the Customs and Excise department that they could import five vehicles. When the vehicles were imported and after they had been cleared, the Customs and Excise Department seized the vehicles on the allegation that they had been imported without a valid licence. It was held that the import licence under which the vehicles had been imported under was issued in respect of twenty vehicles, not the five Fawcett had imported. Fawcett challenged the seizure of the vehicles arguing that customs could not renege on what they had authorized. In allowing Fawcett's prayer to have customs held to its undertaking the Supreme Court held that Fawcett had relied on the assurance given by a customs officer, and that it was reasonable for Fawcett to do so. The court held that equity favoured Fawcett and held the customs department to its promise and ordered release of the vehicles from seizure.

In the case of *Phillips v Eyre* [1870] LR 6QB1 as quoted from Francis Beaman, *Statutory Interpretation* (1984) 444) wherein WALES J made the following remarks:

*“the general principle that legislation, by which the conduct of mankind is to be regulated, ought, when introduced for the first time to deal with future acts, and ought not to change the character of past transactions carried on upon the fact of the then existing law.”*

The maxim *lex prospicit non respicit* (the law looks forward, not backward), is relevant to the present scenario. The rationale for this presumption, under the common law is that new legislation must not be used to limit the enjoyment of fruits of legal agreements entered into on the basis of existing law. To allow statutes to be interpreted and applied retrospectively would amount to taking away the rights of persons protected by valid legislation. It seems to make logical sense, therefore, that whenever there is a substantive statute which seeks to limit the rights that parties already have under a concluded contract, the presumption should be applied in order to safeguard the legitimate interests of the contracting parties unless this is impossible, regard being had to the language used in the legislation.

In *Nkomo & Anor v Attorney General and Others* 1993 (2) ZLR 422 (S), the court held that:

*“It is a cardinal rule in our law dating back probably from Cadex 1:14:17 that there is a presumption against retrospective construction. See Agere v Nyambuya* 1985 (2)

*ZLR 336 (S). Even where a statutory provision is expressly stated to be retrospective in its operation, it is not to be treated as in a way affecting acts and transactions which have already been completed, or which stand to be completed shortly, or in respect of which action is pending or has been instituted but not yet decided, unless such a construction appears clearly from the language used or arises by necessary implication ...”*

In *Rutsate v Ndaweni Wdzwrai & Ors* SC-577-19, the Supreme Court stated that:

“In *Curtis v Johannesburg Municipality* 1906 TS 308 at 311 INNES CJ said:

*The general rule is that in the absence of an express provision to the contrary, statutes should be considered as affecting future matters only; and more especially that they should if possible be so interpreted as not to take away rights actually vested at the time of promulgated.”*

In this matter, it is evident that when applicant obtained an exemption of duty on the 24 February 2022, such exemption was granted in terms of section 1 of the Customs and Excise (Suspension) Regulations, 2003 as amended by SI 101/2011. The respondent argues that the benefit granted lawfully on 24<sup>th</sup> January 2022 should be withdrawn by virtue of SI 10/2022 promulgated on the 7 January 2022.

I am satisfied, that applicant has successfully established that his claim for reimbursement is justified. The respondent sought to escape and renege from obligations validly granted the applicant. Applicant was entitled to rely on the representations made by the respondent in their letter dated 24<sup>th</sup> January 2022. The argument that applicant should have by the time SI 10/2022 had been promulgated crossed into Zimbabwe with the imported vehicle, is without merit.

In the circumstances, and accordingly the following order is made:

1. The respondent is ordered to refund to the applicant the amount of US\$63 378 (sixty three thousand three hundred and seventy eight dollars only) respondent levied as duty on applicant’s motor vehicle.
2. Respondent is ordered to pay the costs of suit.

*Messrs Majoko & Majoko*, applicant’s legal practitioners  
*ZIMRA Legal Services Division* respondent’s legal practitioners