

**BEFORE THE HON. JUSTICE GEOFFREY KIRYABWIRE**

**RULING**

This is an application brought by way of originating summons under orders 46A Rules 6(2) of the Civil Procedure (Amendment) (Judicial Review) Rules seeking orders for: - declaration, certiorari, mandamus, prohibition and costs of the application.

The brief facts of this application are that, the applicant purchased a Motor Vehicle Registration No. UAK 477C from a one Mr. Sam Tumwine. It is the case for the applicant that on the 1<sup>st</sup> of July 2008, the applicant was invited by way of a public notice in the Newspaper by Uganda Revenue Authority (hereinafter referred to as “URA”) to report to the Compliance Manager at their Nakawa head quarters for purposes of updating their records. That the applicant complied with the invitation and proceeded to respondent’s premises where upon the vehicle was impounded and a seizure notice dated 4<sup>th</sup> July 2008 issued alleging the contravention of sections 200 and 210 of the East African Community Customs Management Act 2005. On 8<sup>th</sup> July 2008, a claim was made by the applicant for the vehicle as required by section 214 of the East African Community Customs Management Act 2005 however, the respondent refused to release the vehicle on account that it was due to be the subject of undisclosed criminal proceedings. The applicant therefore contends that the vehicle registration No. UAK 477C is being held illegally by the respondents and ought to be returned to him. The applicant therefore seeks the following relief;

1. A declaration that the plaintiff's motor vehicle registration No. UAK 477C is being wrongfully and illegally held by the defendant.
2. An order of certiorari quashing the seizure order issued by the defendant for the said vehicle.
3. An order of mandamus against the defendant that the said vehicle held by it is immediately released to the custody of the applicant.
4. An order of prohibition precluding the defendant from detaining impounding and/or seizing the same vehicle.
5. That the cost of the application be provided for.

The respondent in reply to the summons avers that Motor Vehicle in question Registration No. UAK 477C was imported /licensed fraudulently by using a forged URA form to wit IM4-SAD number C397 of 10th January 2008 yet the same entries were genuinely used to import printing ink for M/s Picfare Industries Ltd. It is the case for respondent that the forged Uganda Revenue Authority stamps, transit declaration documents and release orders were used to evade custom duties and that the taxes amounting to Ug. Shs. 7,163,863/= (seven million one hundred sixty three thousand eight hundred sixty three Uganda shillings) were allegedly paid to Nile bank and endorsed with the Nile bank stamp which have all been found to be fictitious. They further averred that the applicant was notified about the reasons for seizure and was on several occasions and advised to produce the importer or evidence of payment of custom duties. The respondents therefore contend that the said motor vehicle is an uncustomed and therefore without a valid number plate.

Issues that were raised by the applicant are as follows:-

1. Whether the applicant's Motor Vehicle Registration No. UAK 477C is being lawfully held by the respondent.
2. Whether the respondent having not complied with the provisions of section 214 of the East African Customs Management Act 2005, is entitled to continue the seizure of the applicant's motor vehicle.

Mr. Barata 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 Applicant seeks for an order of certiorari quashing the seizure order issued by the defendant for the said vehicle.

The grounds for certiorari as stated above are that the applicant in response to a public announcement by the respondent took his motor vehicle to the respondent's offices where it was immediately impounded. The respondent was then issued with a seizure notice dated 4<sup>th</sup> July 2008 alleging the contravention of sections 200 and 210 of the East African Community Customs Management Act 2005 (hereinafter referred to as "The EACCMA"). That on 8<sup>th</sup> July 2008, a claim was made by the applicant for the return of the motor vehicle as required by section 214 of the EACCMA. The motor vehicle however, was not returned to the applicant as it was said to be the subject of undisclosed criminal proceedings. The applicant therefore contends that the vehicle registration No. UAK 477C is being held illegally by the respondents and ought to be returned to him.

In response, Counsel for the respondent submitted that the motor vehicle is not being held illegally by the respondent. He submitted that the vehicle is liable to forfeiture under Section 210 of the EACCMA because it is an uncustomed good and that it was entered into Uganda using false entries. Counsel further submitted that on the 19<sup>th</sup> of August 2008 a letter, (marked annexure E) was sent to the applicant informing him that the registration of the motor vehicle was made on forged papers and that custom duty was not paid rendering the whole transaction illegal. The letter also stated that the motor vehicle was a subject of a matter pending before a court of law.

It is clear to my mind that the decision to be reviewed is the seizure order of 4<sup>th</sup> July 2008 where the applicants Mercedes Benz Reg. No. UAK 477C was seized on grounds of contravention of sections 200 and 210 of the EACCMA. However, the respondent based on the affidavit of Mr. Oburu Patrick, (a police officer attached to the URA's CID section) and the submissions of counsel for the respondent suggest that the vehicle in question was seized for being an uncustomed good. In other words that customs duty had not been paid before the motor vehicle was licensed.

Furthermore, the affidavit of Mr. Oburu deponed that the IM4 form that was used to import the said motor vehicle was previously used to genuinely import printing ink for Picfare Industries Ltd (copies are attached to the affidavit marked X1 and X2). He further deponed that URA stamps, transit

declaration documents and release orders were forged and used to evade customs duties. During the hearing Court ordered that respondents produce the original IM4 documents which they did. A close look the said originals of the IM4's from respondents makes the situation worse. The Manifest number is not declared unlike copies originally filed in Court. The court is seized with three (3) different looking sets of the same IM4 form said to be used to import the printing ink and the suit car at the same time. Clearly this is a total mess up.

The Judicial Review Rules 2003 in substance revolve around the powers of court to grant prerogative orders as they used to be called in order to address the areas of illegality, irregularity and procedural impropriety. 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 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.

Judicial review is concerned not with the decision per se but the decision making process. Essentially judicial review involves the assessment of the manner in which the decision is made. The jurisdiction of court 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.

To my mind the decision to be assessed and reviewed is that of the seizure order dated 4<sup>th</sup> July 2008 which cites violation of both sections 200 and 210 of the EACCMA. Section 200(d) (iii) of the EACCMA provides that:

*“A person who, acquires, has in his or her possession, keeps or conceals, or procures to be kept or concealed, any goods which he or she knows, or ought reasonably to have known, to be uncustomed goods, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value of the goods involved, or both.”*

Section 210 of the said Act also relates to seizure inter alia of uncustomed goods. It provides that;

*“In addition to any other circumstances in which goods are liable to forfeiture under this Act, the following goods shall be liable to forfeiture  
(c) any uncustomed goods;”*

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

*“...certiorari issues to quash a decision which is ultra vires as vitiated by an error on the face of the record... certiorari looks to the past...”*

It is the case for respondents that the said motor vehicle was an uncustomed good as provided for under sections 200 and 210 of the EACCMA and that it was licensed on forged documents. The applicant however has failed to show that the seizure order is ultra vires as vitiated by an error on the face of the record and that the vehicle in question had its duties paid. In both cases, the affidavits

submitted by the applicant did not respond to this issue. Counsel for the applicant did refer Court to sections 214, 215 and 216 of the EACCMA which with respect in my view do not address the issue at hand; which is the payment of duty. Counsel for the applicant submitted that the Act provided that one had to be charged with an offence by reasons of which the thing was seized. Section 210 of the EACCMA is very clear that uncustomed goods are liable to forfeiture. The EACCMA does not state anywhere that one has to be charged and prosecuted whilst they are in possession of an uncustomed good. Instead it provides under Section 214(3) (a) that the goods have to be detained until determination of the suit. I find that there is no real connection between the criminal proceedings and the proceedings before this court. The underlying issue before me is whether the said motor vehicle is uncustomed as stated by the respondent. The evidence presented by the respondent in this regard is unshaken.

In this regard therefore, I find that there is nothing to show that there is an error on the face of the record to be corrected. The evidence adduced by Mr. Oburu Patrick in his affidavit was not contested and therefore must be taken to be true.

On the evidence before court, I find that the seized motor vehicle Reg. No. UAK 477C is uncustomed. The decision made by the respondent therefore to seize the vehicle was in accordance with the Act and therefore I find that there is no decision to be quashed

I accordingly disallow the prayer for certiorari.

The Applicant also seeks an order of mandamus against the defendant that the said vehicle held by it be immediately released to the custody of the applicant.

Section 37 of the Judicature Act (Cap 13) provides that the High court may grant an order of mandamus in all cases in which it appears to the High court to be just or convenient to do so.

I find that based on the facts of this case where I have disallowed the prayer for certiorari, that it is not just and convenient to allow a prayer for mandamus. I accordingly also disallow the prayer for mandamus.

The Applicant also seeks a declaration that the applicants's motor vehicle registration No. UAK 477C is being wrongfully and illegally held by the defendant.

Once again the applicant has however failed to show court that the vehicle in question had its duties paid and therefore the URA is illegally holding on to it.

I accordingly find that there is no illegality or irregularity in the continued detention of the Motor vehicle by the respondent.

The Applicant also seeks an order of prohibition precluding the respondent from detaining impounding and/or seizing the same vehicle.

Since I have found no fault with the procedure applied or the decisions taken and already declared that the seizure and detention of the applicants vehicle is not illegal I will not grant prohibition.

Court however notes how unfortunate this situation is for the applicant who did not import the vehicle. But there is nothing much the court can offer him because the Nemodat rule is quite clear; the buyer acquires no better title to the goods than the seller had (see: section 22 of the Sale of Goods Act cap 82).

The applicant therefore did not acquire any better title than that of the person from whom he bought the car. The motor vehicle was uncustomed that is what the applicant bought; an uncustomed vehicle. Therefore the applicant brought the suit against the wrong person. He should have sued the person from whom he bought the car. Sections 214 and 215 of the EACCMA that the applicant largely relied on, does not cure the defect that the motor vehicle had that is, it is uncustomed.

Probably from a practical point of view the other possible remedy to the applicant is to take up the invitation by the Uganda Revenue Authority to pay the necessary custom duties and thereby get the car.

As to costs, the evidence shows that URA had an internal scam that made it possible for the same declaration form to be used for different imports. This is in my view an internal systems failure

within the URA for which they should take responsibility to clean up so that innocent parties are not caught up by its effects. I will therefore deny them costs and order each party to bear its own costs.

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**Geoffrey Kiryabwire**  
**JUDGE**

**Date: 01/10/09**

01/10/09

9:35am

**Judgment read and signed in open court in the presence of;**

- Barenzi for the Applicant
- Rose Emeru – Court Clerk

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**Geoffrey Kiryabwire**  
**JUDGE**

**Date: 01/10/09**