



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CIVIL JURISDICTION]**

Case No. 105 of 2016

Between **DAVID DETAGEOUWA** Applicant

v.

and **DILLON HARRIS (in his capacity as Acting Deputy Secretary
of Customs of the Republic of Nauru)** First Respondent

and **SECRETARY FOR JUSTICE AND BORDER CONTROL**
Second Respondent

Before: **Crulci J**
For the Applicant: **V. Clodumar**
For the First and
Second Respondents: **J. Rabuku**

Date of Hearing: **10 February 2017**
Date of Decision: **14 February 2017**

CATCHWORDS: - Judicial Review – Customs Act 2014 – Import licence

JUDGMENT

1. Before the court is an application for judicial review pursuant to Order 38, *Civil Procedure Rules* 1972, of the decision of Dillion Harris, the first respondent, to withhold the release of two containers sought to be imported by David Detageouwa, the applicant.
2. The applicant David Detageouwa, is the uncle of Unique Narayan (nee Detageouwa), who is the owner of a business called "4T Trading"¹, and the applicant has power of attorney on her behalf² to transact business and represent her legal interests.
3. The two containers imported by 4R Trading on the vessel MV Capitaine Quiros, voyage 57, arrived in Nauru on the 18th of November, 2016. The bill of lading number is CT2159NBI113 and the value of the goods is given as \$55,475. The duty payable is \$6,486.50³. Documents were submitted to Customs on the 28th of November, 2016 and the applicant was told to return on the 2nd of December, 2016.
4. On the 2nd December 2016 the applicant returned to the Customs office at the Nauru International Airport to clear the containers and pay the duty. He was informed by Dillion Harris that an instruction had been received by the Honourable Minister for Finance, David Adeang, M.P., directing him to withhold the processing of the containers until further notice⁴.
5. Leave to apply for judicial review was made *ex-parte* before the learned Registrar on the 21st of December, 2016. Leave was granted for the applicant to serve the respondents with the order and documentation in support; and the matter adjourned to the 28th of December, 2016 for further directions.
6. On the 28th of December, 2016 the learned Registrar granted leave to the applicants to amend the statement of support and writ of summons to include a claim for damages.
7. The amended writ filed on the 5th January 2017 sought the following:
 - a) A declaration that the verbal directive issued by the Honourable Minister for Finance to Dillion Harris in his capacity as Acting Deputy Secretary for Customs, not to process a clearance of two containers belonging to 4R trading was without legal basis and therefore unlawful;

¹ Applicant exhibit DD/01, copy of business licence

² Applicant exhibit DD/02, power of attorney

³ Applicant exhibit DD/03, Bill of Lading

⁴ Applicant exhibit DD/05, letter dated 2nd December 2016 under the hand of Dillion Harris

- b) The order be stayed pursuant to order 38 rule (1) sub-rule (5) of the civil procedure rules 1971; or in the alternative an order of certiorari to quash the directive;
 - c) An order for mandamus to the first respondent to receive payment for the duty assessed at \$6486.50 and to release the two containers CAIU3427600 and GATU1339868;
 - d) A claim for specific and general damages.
8. The following affidavits have been filed:
- a) Affidavit of David Detageouwa, dated 15th day of December 2016;
 - b) Affidavit of Dillion Harris, dated 23rd of January 2017;
 - c) Affidavit of Victor Soriano, in support of the first and second respondents, dated 23rd of January, 2017;
 - d) The affidavit of Mary Japhet, in support of the applicant, dated 21st of January, 2017;
 - e) Affidavit of The Honourable Minister Charmaine Scotty M.P., in support of the first and second respondents, dated 6th of February, 2017;
 - f) A second affidavit of David Detageouwa, dated 9th of February 2017;
 - g) Affidavit of Brenda Soriano, in support of the first and second respondents, dated 9th of February, 2017.
9. Submissions on behalf of the first and second respondent were filed on the 29th December 2016 and 10th of February 2017. Oral submissions by the applicant and respondent were made to the Court on the 10th of February 2017.

APPLICANT'S SUBMISSIONS

10. The applicant was informed by Dillion Harris on the 2nd of December, 2016 that the two containers awaiting clearance were not to be released to him, as Dillion Harris had received an instruction from the Honourable Minister for Finance to hold off the processing of the containers until further notice.
11. The applicant submits that a decision in relation to the processing of containers imported into Nauru is a matter for the Customs Department and in particular the Secretary of Customs. That there is nothing in the *Customs Act 2014* ("the Act") authorising the Minister for Finance to give a direction to the Acting Secretary for Customs.

12. That the affidavit of Mary Japhet explains a possible link between the instruction by the Minister of Finance in relation to the retention of the containers and a family dispute involving the distribution of the proceeds of sale resulting from the contents of the containers.
13. In response to the Affidavit of Victor Soriano filed on behalf of the first and second respondent confirming that 4R Trading does not have an Import Licence (nor has an application been received for one); the applicants say that when enquiries were made in May of 2016 as to whether an Import Licence was required, the advice given was this was not necessary so long as there was a Nauruan Business License in existence:
- “... On the 22nd of May, 2016 upon lodging an application for a business license with the Ministry of Justice Department Office in Nauru, I am advised by a certain Mrs. Brenda Soriano an Office Executive in order for me to apply for import license in as well as a business license that I do not need to apply for an import license to import goods so long as I have a Nauruan business license because import licences are only issued to non-Nauruans operating on island.*
- In order to verify what I was advised by Mrs. Brenda Soriano, I decided to enquire from the Justice Department the following week where I met up with Mrs. Brenda Soriano again. She recapped the above statement and advised that the Business License is sufficient enough for my nature of operation.”*
14. The statutory declaration of Unique Narayan⁵, dated 7th February 2017 details the conversation with a Brenda Soriano, an employee of the Justice Department where she states that on two occasions she was assured that as a Nauruan with a Business Licence, no Import Licence was required.
15. Having subsequently become aware of the requirements of the *Customs (Prohibition of Imports) Proclamation No 1, 2014 S.L No. 8* the applicants have since attempted to obtain an Import Licence but have been informed that any application must wait until these proceedings before the Court have been completed.

FIRST AND SECOND RESPONDENT'S SUBMISSIONS

16. The respondent state that the relief sought by the applicant amount to an injunction requiring the release of the containers detained under the

⁵ Exhibited as DD/01 to the second affidavit of the Applicant, dated 9 February 2017

Customs Act. And that this 'injunction' sought is contrary to section 14 of the *Republic Proceedings Act 1972*, section 14:

"...The Court shall not in any civil proceeding grant any injunction or make any order against the President, the Cabinet, the Government Department, and instrumentality of the Republic, a Minister or an officer of the Republic if the effect of granting the injunction or making the order would be to give any relief against the Republic which could not have been obtained in proceedings against the Republic."

17. The respondent submits to the Court that there is nothing within the Act that prohibits the Acting Deputy Secretary for Customs from obtaining information, in order to carry out his duties and responsibilities, from any particular source.
18. The respondent states that on the applicant's case it is unclear as to which order the applicant wishes to have stayed, is it the verbal directive by the Minister, or (submits the respondent) is it the decision of the respondent Dillion Harris to hold the containers in light of the fact that the business 4R Trading does not have an import license?
19. The affidavit of Brenda Soriano⁶ outlines her recollection of the May 2016 conversation with Unique Narayan. It is at odds with the information in the exhibit filed by the applicant. The affidavit states, relevantly:

"...

e. Like every other business owner who wishes to import goods into Nauru I told Unique Narayan to go to Customs and obtain the form from them.

f. I also told Unique Narayan that Customs will advise and direct her regarding an import licence.

g. I deny the contents of paragraph 3 and 4 of Unique Narayan's Statutory Declaration and state that at no time did I ever advise Unique that she did not need an import licence as she was Nauruan."

CONSIDERATION

20. When these proceedings were first before the learned Registrar by way of an *ex-parte* hearing, the information known to the applicant was that the containers were not being released because of a directive by the Minister for Finance, without any further details as to what that information was based upon. Subsequently, information has been given to the applicants

⁶ Affidavit dated 9 February 2017, in support of first and second respondents

of their non-compliance with Customs requirements for importation of goods.

21. The *Customs Act* 2014 ("the Act") relevantly provides as follows:

"PART 4 - ARRIVAL AND DEPARTURE OF GOODS, PERSONS AND CRAFT

Division 1 – Goods and crafts

21. Goods subject to control of Customs

(1) Goods are subject to the control of Customs:

(a) for goods that have been imported, from the time of importation until the time the goods are lawfully removed for home consumption or exportation from a Customs controlled area;

...

PART 6 - ENTRY AND ACCOUNTING FOR GOODS

Division 1 – Importation of goods

60. Entry of imported goods

(1) Subject to any order made under section 63, goods that are imported or that are to be imported must be entered by the importer:

(a) in a prescribed form and manner (including by electronic means into a computer or other device); and

(b) within a prescribed time or any further time as the Chief collector may allow.

...

PART 9 - ASSESSMENT, REFUNDS AND DRAWBACKS OF DUTY

Division 1 – Assessment and Recovery

117. Release of goods subject to duty

(1) Except as otherwise provided in this Act, or in any cases as may be approved by the Chief Collector, and subject to any securities as the Chief Collector may require, a person is not entitled to obtain release of goods from the control of Customs until the sum payable by way of duty on the goods is paid in full.

(2) An action or other proceeding may not be instituted against the Republic or the Chief Collector or any Customs officer for the detention of goods during a period before the payment of the full sum so payable.

(3) If the Chief Collector considers that undue hardship would result from the payment of duty as required by this section, the Chief

Collector may, subject to conditions as he or she may think fit to impose, direct the release of the goods from the control of Customs and accept payment of duty by instalment over a specified period. (emphasis mine).”

22. Referring to the *Customs (Prohibition of Imports) Proclamation No 1, 2014* S.L No. 8:

“3. Proclamation

- (1) No business shall import any goods into Nauru without an approved import licence issued by the Nauru Customs Division of the Department of Finance.
 - (2) Restrictions and conditions for the issuance of an import license shall be as follows:
 - (a) An approved import license will be issued to **businesses** registered in Nauru if the majority shares are owned by Nauruans.
 - (b) The business must be registered in Nauru, hold a valid incorporation certificate and /or business license.
 - (c) An approved import license may only be issued to a business registered in Nauru when 90% of their employees are Nauru and citizens...
 - (d) The application form for an import license shall be in the manner prescribed by the Customs Division, Department of Finance.
23. The Court notes that the Hon. David Adeang M.P. is, in addition to being the Minister for Finance, also the Minister for Justice, under which sits the Customs Department.
24. The Act makes it clear that goods imported into Nauru are under the control of Customs from the time that they arrive until their lawful removal and that in order for a business to import goods in to Nauru they must be in possession of a valid import license. Customs does not release goods until the duty has been paid (or an arrangement made regarding instalments).
25. Although not pleaded by the respondent, section 117(2) of the Act states no action is to be taken prior to the payment of duty; although I have been unable to find any cases or context where this provision has been cited or used.
26. It is not within the powers of this Court to order the release of goods for which there is no import license, nor for which duty has yet to be paid.

27. It is within the discretion of the Acting Deputy Secretary for Customs to conduct investigations and make decisions in relation to goods Imported into Nauru in his professional capacity.
28. It is to be hoped that at the conclusion of these proceedings the pending application by the applicant for an import license will be considered with some exigency, and the importation of the containers will be concluded upon a satisfactory payment of the requisite duty.
29. As was outlined by Chief Justice Madraiwiwi in *Henshaw v Secretary of Justice*⁷ citing *Reginam v Inland Revenue Commissioner ex parte Preston*⁸:

"Judicial review is available where a decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached, or abuses its powers. Judicial review should not be granted where an alternative remedy is available."

30. In this case an alternative remedy is available to the applicant, namely the acquisition of an import licence.
31. It is open to the applicant in another forum to pursue damages they believe may have been incurred as a result of the information they state was given to them by the Justice Department in relation to the requirement for obtaining an Import Licence.

ORDER

32. The Judicial Review is dismissed.
33. No order as to costs



Judge Jane Crulci

Dated 14 February 2017



⁷ *Henshaw v Secretary of Justice* [2015] NRSC 9

⁸ *Reginam v Inland Revenue Commissioner ex parte Preston* [1985] AC 835, at 862