

Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

IN THE JUDICIAL REVIEW COURT

SUIT NO. M150 OF 1998

REGINA V. THE MINISTER OF FINANCE AND PLANNING
AND THE DIRECTOR OF THE REVENUE PROTECTION
DIVISION EX PARTE LINTON LLOYD SIMPSON

Arthur Kitchin for Applicant
Cheryl Lewis instructed by Director of State Proceedings

HEARD: 7th and 8th February, 2000

Cooke, J.

A motion challenging the revocation of a 20% duty concession to the applicant was dismissed at the conclusion of the hearing. Reasons are herewith reduced to writing.

I will begin by setting out the circumstances which have given rise to this hearing.

1. The applicant whose address is Melkcham, Red Bank P.A. in St. Elizabeth on the 7th February, 1997 made an application for a 20% duty concession to purchase a 1½ ton 1991 Toyota model pick up.
2. The vehicle was to be utilised in farming endeavours, According to a document supporting the application the applicant had leased 8 acres of land of which 4.25 acres were in crops and 3.75 acres in pasture. The annual sales was said to be \$570,000.
3. A lease agreement showed that the applicant had leased a 5 acre lot.
4. The applicant has been involved in the Canadian Farm and Factory programme since 1993. The usual period of his sojourn in Canada was between April and September of each year. Specifically in 1998 he left Jamaica on the 23rd of April and returned on the 3rd of September. His earnings for years 1995 - 1997 was CA \$26,766.18
5. By letter dated 22nd May 1997 the applicant was informed that his application for duty concession had been approved.

6. Miguel Smith Jnr. and Loys Smith-Lyn are brother and sister. They are the cousins of the applicant.
7. In December 1997 a 1998 Toyota Land Cruiser was acquired in the name of the applicant. The purchase order bore the name of Loys Smith as agent of the applicant.
8. The cost of the Land Cruiser, a vehicle which is indisputably described as a sports utility vehicle (S.U.V.) was \$1,694.348. The purchase price was paid by two cheques both drawn on the account of Miguel Smith and/or Violet Smith and/or Loys Smith. The cheques were tendered by Loys Smith.
9. All the relevant papers pursuant to the acquisition of the land cruiser bore the applicants name but has as his address 11 Caledonia Road, Mandeville.
10. 11 Caledonia Road is the address of S & V Development - a real estate and cambio business operated by Miguel Smith Snr.
11. In respect of the relevant papers in '9 (supra) wherever the owners signature was required and the applicants signature appeared such signature was not his.
12. On or about the 7th January, 1998 the presence of the Land Cruiser at 11 Caledonia Avenue attracted the attention of Mr. Vincent McCathy, a Customs Officer attached to the Revenue Protection Division of the Ministry of Finance and Planning. He further observed that on nenerous occasions this vehicle was being driven by Migual Smith Jnr. or Loys Smith-Lyn or Loys' Smith Lyn's husband. During his investigations in an encounter with Miguel Smith Jnr. the latter said "man me in trouble me hear R.P.D. a run investigations of the Land Cruiser". To which McCathy replied in the affirmative. There was a discussion on consequences and Miguel Smith was told to take the vehicle and related documents to the R.P.D. office on the 23rd February, 1998.

13. This was not done. By that date the Land Cruiser was at the home of the applicant. There McCathy proceeded. There was the vehicle; but there were no keys.

14. On 24th February the day McCathy went to the applicant's home and saw the vehicle he asked the applicant some questions. The questions and answers are set out hereunder:-

1. Q. What is your name?

A. Linton Lloyd Simpson

2. Q. What is your address?

A. Melksham, Red Bank

3. Q. Where is your farm?

A. Melksham. It is just a little tomatoe and chickens

4. Q. Where did you apply to get the Concession?

A. The Ministry of Agriculture

5. Q. Did you buy the motor vehicle?

A. Yes

6. Q. Where did you buy the motor vehicle?

A. It was bought from abroad. I don't know exactly where, as it wasn't bought by me personally.

7. Q. Who was the person that bought it?

A. I don't know the name of the person

8. Q. Where did you get the money to buy the vehicle?

A. I work some and borrow some, I work on a farm in Canada.

9. Q. How much money you paid for it?

A. I don't see how or where that is important, you should know that

10. Q. Did you clear the vehicle from the wharf?

A. No.

11. Q. Who did?

A. One of my friend name address

12. Q. Which insurance company are you insured with?

A. I don't know

13. Q. Who licensed the vehicle at the tax office?

A. Me

14. Q. Did anyone accompany you to the tax Office?

A. No

15. Q. When did this vehicle come to be in your possession here at Melksham?

A. About two weeks.

16. Q. How long now has it been cleared from the wharf?

A. I don't remember.

17. Q. How come the vehicle is here, and the keys are not?

A. The keys are with my cousin in Spanish Town.

18. Q. Are you sure the vehicle was imported?

A. Yes

19. Q. Are you sure you went to the wharf with others to clear it?

A. Yes.

15. The vehicle was seized on the 24.2.1998.

16. Court proceedings commenced. On the 2nd of November the Full Court made the following order:-

The Director of the Revenue Protection Division affords the Applicant a hearing within thirty (30) days of the date hereof, failing which the seized property be returned to the applicant.

It is to be noted that the signature on the affidavit supporting the motion in respect of which the order was made was not that of the applicant. It could not

be his because at the relevant time the 28th May, 1998 he was in Canada (see 4 supra).

That affidavit was sworn to in Manchester in Jamaica.

17. Pursuant to the order of the Full Court a hearing took place on the 30th November, 1990. Present were Mr. Locksley Smith a special assistant to the Minister of Finance who was acting on behalf of the Minister and presided; Mrs. Viris Paige -Gardner, Collector of Customs; Mr. Mike Surr ridge, Director of the Revenue Protection Division; Mr. Phillip Sutherland, Attorney-at-Law attached to the Revenue Protection Division. Mr. Arthur Kitchin Attorney-at-Law representing the applicant who was also in attendance.
18. By letter dated 7th December, 1998 the Minister of Finance delivered his decisions:

1. The 20% concession on the vehicle granted to Mr. Simpsom is withdrawn and the full duties will have to be paid.
2. Because of the delay in dealing with the matter, I am giving Mr. Simpson thirty (30) days to pay the duty.
3. If the duty is not paid in the time allowed the vehicle will be forfeited.

Even to the most non-discerning, a cursory review of the circumstances outlined above reveals an exercise of chicanery. The lack of sincerity on the part of the applicant is to be strongly deplored. It is indeed a barefaced applicant who would seek relief from a Court when it is palpably obvious that the application in most unmeritorious. I can only surmise that the applicant must have refused to heed the advice of his legal adviser. The reliefs sought - Certiorari and Mandamus are discretionary in nature. In the present situation this Court considers the applicant to be part of a scheme to falsely obtain the benefit of a 20% duty concession. What has already been said is sufficient to dispose the application for:-

1. An Order of Certiorari to quash the decision and/or orders of the Minister of Finance & Planning contained in his letter dated the 7th day of December, 1998, in respect to the Applicant's Vehicle Concession and/or his 1998 Toyota Land Cruiser Motor Vehicle, Chassis No. JT111GJ9500800769 and registered 7777 BT.

2. An Order of Mandamus to command or compel the Director of the Revenue Protection Division to return to the Applicant forthwith his said 1998 Toyota Land Cruiser Motor Vehicle. Chassis No. JT111GJ9500800769 and registered 7777 BT.

However I will deal briefly with the issues raised. It was submitted that the Minister of Finance & Planning had no jurisdiction to adjudicate on the hearing which the Full Court had ordered. The argument, if what was said, could be so elevated was that the order (see 10 supra) contemplated a hearing by the Revenue Protection Division. This Division is merely an investigative arm of the Ministry of Finance and Planning. The decision maker is the Minister. Accordingly any hearing would have to be conducted under his supervision. That is what was done. To afford a hearing means no more than to facilitate a hearing.

There was a complaint that no reasons for the decisions were provided by the Minister. There is no general duty a common law to provide reasons.

In Lonhro plc v. Secretary of State for Trade and Industry [1989] 1 WLR. 525 Lord Keith at page 539 said:-

The only significance of the absence of reasons is that if all the known facts and circumstances appear to point overwhelmingly in favour of a particular decision the decision maker who has given no reasons cannot complain if the Court draws the inference that he had no rational reason for his decision.

Here the circumstances are compelling as regards the decision reached. It is recognised that the modern trend is towards greater openness and fairness may demand the giving of reasons.

R.V. Civil Service Appeal Board ex parte Cunningham [1991] 4 AER 310, R.V. Higher Education Funding Council ex parte Institute of Dental Surgery [1994] 1AER pg.51 and R.V. Secretary of State for Home Department ex parte Doody [1994] 1 A.C. 532 are illustrative of this trend. However, there are no definitive guidelines as yet. It would seem that where a decision affects a right as opposed to a privilege it is incumbent on the decision maker to give reasons. In this case the 20% concession was a privilege. I hold that the Minister was not in fairness obliged to give any reasons for his inevitable decision.

The applicant also complained that no charges or particulars of any alleged breach of Section 32 of the Customs Act and/or the duty concession dated May 22, 1997 were ever given to the applicant. Is the applicant saying that when he and his legal advisor attended the hearing on the 30th of November 1998 he did not know that it was a hearing in respect of whether or not the 20% duty concession should be revoked? He had all the relevant statements and other documentary material. There is no merit in this complaint.

There can be no complaint that the applicant was not given a fair hearing. The transcript of those proceedings were kindly provided to the Court by Mr. Kitchin. The applicant would seek to complain that material at the hearing contained hearsay information. Mr. Kitchin was given every opportunity to deal with any such instances at the hearing. The applicant further complained that persons who provided material were not present for cross-examination. But there was no request for cross-examination of anyone. All these complaints are of no merit.

The motion is dismissed. There will be Costs to the Respondent to be agreed or taxed.