

IN THE HIGH COURT OF FIJI
IN THE WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 91 of 2020

BETWEEN : **FOUR WHEEL DRIVE SALES [PTE] LIMITED** a limited liability
Company having its registered office at 9 Leonidas Street, Lautoka.

FIRST PLAINTIFF

AND : **SANJEET SINGH** of Leonidas Street, Lautoka, Company Director.

SECOND PLAINTIFF

AND : **FIJI REVENUE AND CUSTOMS SERVICE** a statutory authority at
Revenue and Customs Services Complex, Corner of Queen Elizabeth
Drive and Ratu Sukuna Road, Nasese, Suva.

DEFENDANT

Appearances : **Mr Ricky Rajneel Singh for the plaintiffs**
Mr Edward Eterika for the defendant

Hearing : **Friday, 18th September, 2020 at 9.00am**

Judgment : **Friday, 27th November, 2020 at 9.00am**

J U D G M E N T

[A] INTRODUCTION

(01) The matter before me stems from the plaintiffs' originating summons (expedited form) seeking the grant of the following reliefs;

(1) *A DECLARATION that on the 10th January, 2020 the Defendant's seizure and removal of the plaintiffs motor vehicle particulars whereof is contained in the*

affidavit of Sanjeet Singh the second named plaintiff herein is or was unlawful and ultra vires the Customs Act.

- (2) *A DECLARATION that the defendant's continued detention of the aforesaid motor vehicles from the period 21st January, 2020 and two (2) months and a day thereafter is unlawful and ultra vires the Customs Act.*
 - (3) *A DECLARATION that the plaintiffs are entitled to the possession and control of the aforesaid motor vehicles forthwith.*
 - (4) *A DECLARATION that the plaintiffs are entitled to general damages for the wrongful seizure and/or unlawful continued detention.*
 - (5) *AN ORDER that the Defendant do pay costs on a solicitor/client indemnity basis.*
 - (6) *AND such other Orders as would expeditiously dispose of the issues raised in these proceedings.*
- (02) The plaintiffs' application is made pursuant to Order 7, 25 and 32 of the High Court Rules, 1988 and under the inherent jurisdiction of the Court.
- (03) The application is opposed by the defendant.
- (04) The parties have filed three (03) affidavits for consideration.
- (i) Affidavit of Mr Sanjeet Singh, the second plaintiff, **in support**, sworn on 08th May, 2020.
 - (ii) Affidavit of (Ms) Kelerayani Dawai, Deputy Director, Audit and Compliance, Fiji Revenue and Customs Service, **in opposition**, sworn on 19th August, 2020.
 - (iii) Affidavit of Mr Sanjeet Singh, the second plaintiff, **in reply**, sworn on 01st September, 2020.

[B] THE FACTUAL BACKGROUND

- (01) The affidavit of Mr Sanjeet Singh, the second plaintiff, which is as follows sets out sufficiently the facts surrounding this case from the plaintiffs' point of view as well as the prayers sought by the plaintiffs;
- (1) *THAT I am the 2nd plaintiff/applicant herein and duly authorized to make this affidavit on behalf of the 1st plaintiff as well by virtue of being a director of the 1st plaintiff.*

- (2) *THAT my company and I are engaged in general motor dealership together with motor vehicle restoration of all types.*
- (3) *THAT we also have a keen interest in restoring antique cars.*
- (4) *THAT in the month of January, 2020 we the plaintiffs had in our possession, all lawfully acquired, several antique cars particulars whereof is as follows:*
 - (i) *Toyota Hilux, single cab registration number JI581, owner 4 Wheel Drive Sales (PTE) Limited.*
 - (ii) *Dodge Pickup Truck, registration number DG830, owner 4 Wheel Drive Sales (PTE) Limited.*
 - (iii) *Buick 4door Sedan registration number 4WDSL, owner Sanjeet Singh.*
- (5) *THAT all the aforementioned vehicles had substantially been restored with registration by the Land Transport Authority.*
- (6) *THAT on the 10th January, 2020, the defendant seized all three said vehicles from the plaintiffs' garage at Leonidas Street, Lautoka and removed them to the defendant's premises.*
- (7) *THAT the defendant issued the following detention notices.*
 - (a) *Detention Notice No. 134314 for vehicle registration number 4WDSL.*
 - (b) *Detention Notice No. 134315 for vehicle registration number DG830.*
 - (c) *Detention Notice No. 134316 for vehicle registration number JI581.*

I annex copies of the said detention notice and mark them as annexures "SS1", "SS2" and "SS3" respectively.

- (8) *THAT by 21st January, 2020 the defendant not having responded to several requests by the plaintiffs for release of the said vehicles engaged a law firm to demand from the defendant the immediate release of the said vehicles. I annex a copy of the letter from our former solicitors dated 21st January, 2020 to the defendant and mark the same as annexure "SS4".*
- (9) *THAT save for a brief interview of a fellow director the defendant has for upwards of two (2) months done absolutely nothing.*
- (10) *THAT the plaintiffs have not been charged for any infringement of the Customs Act.*

- (11) *THAT said motor vehicles remain in the custody of the defendant and it is unlikely that they will release the same without the intervention of this honourable Court.*
- (12) *THAT said motor vehicles have a special meaning for the plaintiffs as a lot of time and money has been spent on restoring the same.*
- (13) *THAT the defendant has no reasonable cause to continue detention of the said motor vehicles and I pray for Orders as per our Summons.*
- (02) (Ms) Kelerayani Dawai, the Deputy Director, the Audit and Compliance, Fiji Revenue and Customs Service, in opposition, deposed inter-alia, that;
- (1) *THAT I am duly authorized by the Chief Executive Officer of the Fiji Revenue and Customs Service to make and swear this Affidavit on its behalf in the above matter.*
- (2) *THAT I am responsible for the Investigations Team in Nadi that are in carriage of the investigations of the matter before this honourable court.*
- (3) *THAT I confirm that the contents of this affidavit are true in so far as they are within my personal knowledge. Where the contents are not within my personal knowledge, they are true to the best of my knowledge, information and belief.*
- (4) *THAT I have been informed by our Legal Section that the plaintiffs have filed an originating summons in the High Court on the 24th of June, 2020 for the release of the plaintiffs' vehicles that are currently detained on our premises in Lautoka.*
- (5) *THAT paragraph 1-3 of the plaintiffs' affidavit in support does not require a response.*
- (6) *THAT the defendant denies paragraph 4 and 5 of the plaintiffs' affidavit in support and the plaintiff is put to strict proof of the same.*
- (7) *THAT paragraph 6-7 of the plaintiffs' affidavit in support is admitted.*
- (8) *THAT the defendant denies paragraph 8-9 and the plaintiffs are put to strict proof of the same.*
- (9) *THAT paragraph 10 is admitted only because the investigations are still ongoing and has not yet finalised to warrant the plaintiff being charged for any Customs Offence.*
- (10) *THAT paragraph 11-13 does not require a response from the defendant.*

- (11) *THAT the matter before this honourable court is in relation to the application made by the plaintiffs to have the Court intervene for the release of three vehicles belonging to the plaintiffs which is currently in the custody of the Defendant.*
- (12) *THAT the defendant wishes to advise the Court that the matter in question arose out of a formal complaint lodged with the defendant on allegations that the plaintiffs had in their custody uncustomed goods which were the vehicles.*
- (13) *THAT the defendant, after receiving the information had conducted its preliminary investigation by reviewing all the imports relating to the plaintiffs before formally launching its investigation proper.*
- (14) *THAT the defendant, through its Investigation Team in Nadi was responsible for carrying out the investigations and also were the team responsible for seizing and detaining the vehicles.*
- (15) *THAT the defendant executed a search warrant where the vehicles were seized on the 10th of January, 2020 at the owners' premises at 19 Leonidas Street, Lautoka in their presence on the allegation that the vehicles were uncustomed goods pending investigation on the same. Attached are Annexure "KD-1" is the search warrant executed at the plaintiffs' premises.*
- (16) *THAT a search warrant was issued by the defendant on 14th of January, 2020 to the Land Transport Authority [LTA] to which the following information on the ownership and specifications of the vehicles was uplifted;*
- (a) ***Toyota Hilux Single Cab Registration JI5810** – owned by 4 wheel Drive Sales Limited where the vehicle year of manufacture is 1988 is classified as a right hand drive and brand new vehicle. This specification however is different to the vehicle we have detained which is a left hand vehicle modified as a racing car with a v6 engine fitted at the back.*
- (b) ***Dodge Pickup Truck Registration DG830** – the vehicle as per the LT Record is a vehicle registered with St. John's Ambulance. The Year of Manufacture is 1979 and the vehicle is registered as a right hand vehicle, but the vehicle we detained is not a right hand vehicle but instead a left hand vehicle.*
- (c) ***Buick 4 Door Sedan Registration 4WDSL**- the owner of the vehicle is Mr Sanjeet Singh and is registered Year of Manufacture is 1957. The records state that the vehicle is a right hand vehicle, however, the actual unit detained is a left hand vehicle.*

I annex copies of the search warrant as annexure “KD-2”. Also annexed are the copies of the vehicle search uplifted from LTA as annexure “KD-3”, “KD-4” and “KD-5” respectively.

- (17) *THAT the defendant confirms that as per the LTA’s laws, left hand vehicles are strictly prohibited from being registered with them as was confirmed by LTA through its letter dated 8th February, 2020. Attached as Annexure “KD-6” is the letter from LTA confirming the same.*
- (18) *THAT the defendant confirms that we have not received the Letter dated 21st January, 2020. Furthermore, the letter annexed by the plaintiffs as “SS4” does not show that the same was received with the official stamp of the defendant to confirm service.*
- (19) *THAT the defendant further states that the letter annexed as “SS4” is addressed to the Legal Officer instead of the same being addressed to the Comptroller as is required under the law if the plaintiff wishes to make a written notice of claim for the vehicles.*
- (20) *THAT the defendant, after reviewing the same letter annexed as “SS4” wishes to confirm that the content of the letter is a request for the release of the vehicles, but not in relation to a notice of claim for the vehicles.*
- (21) *THAT if the plaintiff wishes to claim back the vehicles, the process as per the law was to provide a written notice of claim within three months from the date of the seizure of the vehicles, which in this case did not eventuate.*
- (22) *THAT the defendant wishes to advise this honourable court that it is still conducting its investigation into the allegation of uncustomed goods in relation to the vehicles detained to which the defendant has been liaising with Mr Uday Singh, the Director for the first plaintiff via phone calls in relation to the case.*
- (23) *THAT further to paragraph 21, the defendant had requested Mr Uday Singh for certain documents pertaining to the investigations to which the same has not been provided.*
- (24) *THAT the vehicles itself are the subject of the investigations in relation to uncustomed goods and the defendant is of the view that the vehicles must still be detained to prevent any tempering of the evidence by the plaintiffs.*
- (25) *THAT the investigation is a subject matter that is of the interest of the public and that the allegations itself on uncustomed goods is serious that warrants a reasonable cause for the detention of the motor vehicles until the investigations and subsequent prosecution of the matter is completed.*

(03) Mr Sanjeet Singh, the second plaintiff, in reply, deposed, inter-alia that;

- (1) *THAT I am one of the Directors of the plaintiff company and duly authorized to swear this affidavit in reply to the defendant's affidavit in response to the plaintiffs' originating summons.*
- (2) *THAT paragraphs 1-5 of the defendant's affidavit does not require response.*
- (3) *THAT in response to paragraph 6, the plaintiffs maintain the vehicle were lawfully acquired and compliant with registrations by the Land Transport Authority. The plaintiffs further state that all the vehicles in question were registered with the Land Transport Authority.*
- (4) *THAT paragraph 7 of the defendant's affidavit requires no comment as the same has been admitted by the defendant.*
- (5) *THAT in response to paragraph 8 of the defendant's affidavit, the plaintiff maintains that the defendants had not released the vehicles after several requests by the plaintiffs.*
- (6) *THAT in response to paragraph 9 the plaintiffs deny the contents and puts the defendant to strict proof of the same. The defendant has not informed the plaintiffs of any possible breach of law until the defendant's affidavit.*
- (7) *THAT the plaintiffs make no response to paragraph 11 as the same has been pleaded by the plaintiffs.*
- (8) *THAT in response to paragraphs 12-14 the plaintiffs say that they are not aware of any complaints.*
- (9) *THAT save as to admit the seizure of the said vehicles pursuant to a search warrant, the rest of the contents of paragraph 15 are denied.*
- (10) *THAT in response paragraph 16 of the defendant's affidavit, the plaintiffs state as follows:*
 - (a) ***Toyota Hilux Single Cab Registration JI 581*** – *the vehicle was acquired and registered with the Government Department of Corporative on 6 July 1988 with registration No. GK 766. The same vehicle was then acquired by the first plaintiff on 5 January 2018. The said vehicle is right-hand drive.*
 - (b) ***Dodge Pickup Truck Registration DG 830*** – *the vehicle was acquired and registered with St. John Ambulance on 15 July 1998 with registration No. DG 830. The said vehicle was registered as a left-hand drive from the*

very beginning. I annex a copy of the Police report in September 2017 for confirmation of the same and mark it as annexure "SS-1".

(c) **Buick 4 Door Sedan Registration 4WDSL-** the said vehicle was acquired from a metal scrap dealer and reconstructed and passed by Land Transport Authority with registration IH 802. After a lapse of 3 years the number plate was surrendered to Land Transport Authority to avoid arrears of Road Tax because the said vehicle had developed a mechanical problem. The vehicle had been registered as left-hand drive and is a left-hand drive. That I annex the corrected version of the LTA search history and photograph of the said vehicle mark it as annexures "SS-2" and "SS-3".

(11) THAT in response to paragraph 17, the plaintiffs maintain that the vehicles were registered and compliant with Fiji Road Laws at the time of acquisition. The plaintiffs' further state that they have not breached any Customs laws by importing unaccustomed goods.

(12) THAT in response to paragraph 18-21 the plaintiffs deny the same and further states as follows:

(a) The letter dated 21 January, 2020 was sent via email to the defendant which was duly acknowledged by an Officer of the defendant.

(b) The Customs Act does not specify how a correspondence can be served on the defendants. In any event, an acknowledged electronic mail service constitutes proper service.

(c) Based on the letter dated 21 January, 2020, the defendant acted in reliance of the said letter by returning 1 vehicle since initially 4 vehicles seized.

(d) Furthermore, there is no specific format of a Notice of Claim outlined in the Customs Act. Therefore, the letter dated 21 January, 2020 was clearly a request or notice to the Defendant to release the said vehicles.

(13) THAT in response to paragraphs 22-25, the plaintiffs deny the same and puts the defendant to strict proof of the same.

(14) That the defendant has unreasonably and without right seized the plaintiffs' property and is in breach of Section 12 of the Constitution.

[C] **CONSIDERATION AND THE DETERMINATION**

(01) The issues to be considered in this matter are as follows;

- (A) Whether the seizure and removal of the plaintiffs' motor vehicles on the 10-01-2020 is unlawful and ultra vires the Customs Act?
- (B) Whether the defendant's continued detention of the aforesaid motor vehicles from the period 21-01-2020 and two months and a day thereafter is unlawful and ultra vires the Customs Act?
- (C) Whether the plaintiffs' are entitled to the possession and control of the aforesaid motor vehicles forthwith?

Seizure and removal of the motor vehicles

(02) In paragraphs (12) to (16) of the affidavit in opposition sworn on 19-08-2020, (Ms) Kelerayani Dawai deposed;

- (12) *THAT the defendant wishes to advise the Court that the matter in question arose out of a formal complaint lodged with the defendant on allegations that the plaintiffs had in their custody uncustomed goods which were the vehicles.*
- (13) *THAT the defendant, after receiving the information had conducted its preliminary investigation by reviewing all the imports relating to the plaintiffs before formally launching its investigation proper.*
- (14) *THAT the defendant, through its Investigation Team in Nadi was responsible for carrying out the investigations and also were the team responsible for seizing and detaining the vehicles.*
- (15) *THAT the defendant executed a search warrant where the vehicles were seized on the 10th of January, 2020 at the owners' premises at 19 Leonidas Street, Lautoka in their presence on the allegation that the vehicles were uncustomed goods pending investigation on the same. Attached are Annexure "KD-1" is the search warrant executed at the plaintiffs' premises.*
- (16) *THAT a search warrant was issued by the defendant on 14th of January, 2020 to the Land Transport Authority [LTA] to which the following information on the ownership and specifications of the vehicles was uplifted;*
 - (a) *Toyota Hilux Single Cab Registration JI5810 – owners by 4 wheel Drive Sales Limited where the vehicle year of manufacture is 1988 is classified as a right hand drive and brand new vehicle. This specification however is different to the vehicle we have detained which is a left hand vehicle modified as a racing car with a v6 engine fitted at the back.*

(b) Dodge Pickup Truck Registration DG830 – the vehicle as per the LT Record is a vehicle registered with St. John's Ambulance. The Year of Manufacture is 1979 and the vehicle is registered as a right hand vehicle, but the vehicle we detained is not a right hand vehicle but instead a left hand vehicle.

(c) Buick 4 Door Sedan Registration 4WDSL- the owner of the vehicle is Mr Sanjeet Singh and is registered Year of Manufacture is 1957. The records state that the vehicle is a right hand vehicle, however, the actual unit detained is a left hand vehicle.

I annex copies of the search warrant as annexure "KD-2". Also annexed is the copies of the vehicle search uplifted from LTA as annexure "KD-3", "KD-4" and "KD-5" respectively.

(03) In reply, Mr Sanjeet Singh in paragraphs (3), (10) and (11) of the affidavit in reply sworn on 01-09-2020 deposed;

(3) THAT in response to paragraph 6, the plaintiffs maintain the vehicle were lawfully acquired and compliant with registrations by the Land Transport Authority. The plaintiffs further state that all the vehicles in question were registered with the Land Transport Authority.

(10) THAT in response paragraph 16 of the defendant's affidavit, the plaintiffs state as follows:

(a) Toyota Hilux Single Cab Registration JI 581 – the vehicle was acquired and registered with the Government Department of Corporative on 6 July 1988 with registration No. GK 766. The same vehicle was then acquired by the first plaintiff on 5 January 2018. The said vehicle is right-hand drive.

(b) Dodge Pickup Truck Registration DG 830 – the vehicle was acquired and registered with St. John Ambulance on 15 July 1998 with registration No. DG 830. The said vehicle was registered as a left-hand drive from the very beginning. I annex a copy of the Police report in September 2017 for confirmation of the same and mark it as annexure "SS-1".

(c) Buick 4 Door Sedan Registration 4WDSL- the said vehicle was acquired from a metal scrap dealer and reconstructed and passed by Land Transport Authority with registration IH 802. After a lapse of 3 years the number plate was surrendered to Land Transport Authority to avoid arrears of Road Tax because the said vehicle had developed a mechanical problem. The vehicle had been registered as left-hand drive and is a left-hand drive. That I annex the corrected version of the LTA search history

and photograph of the said vehicle mark it as annexures “SS-2” and “SS-3”.

- (11) *THAT in response to paragraph 17, the plaintiffs maintain that the vehicles were registered and compliant with Fiji Road Laws at the time of acquisition. The plaintiffs’ further state that they have not breached any Customs laws by importing unaccustomed goods.*
- (04) Counsel for the defendant submits in paragraph 2.13 of the written submissions filed on 17-09-2020;

2.13 *The defendant submit that the vehicles are currently being investigated as **uncustomed goods** as per Section 129(2) (d). The defendant further submits that it had reasonable grounds to believe that the three vehicles seized were **uncustomed goods** as per Section 129(1), therefore, it had exercised its powers under 129 (2)(d) of the Customs Act to detain and seize the vehicles.*

[Emphasis added]

- (05) “Uncustomed Goods” is defined under Section 2 of the Customs Act, 1986 as follows;

“Uncustomed goods includes dutiable goods on which the full duties have not been paid and any goods, whether dutiable or not, which are imported or exported or in any way dealt with contrary to the provisions of the Customs Act.”

- (06) As I understand the affidavit in opposition of the Comptroller, the Comptroller’s decision that the vehicles were “uncustomed goods” and, therefore, they could be seized and detained has stemmed from the following **irrelevant considerations**;

(16) *THAT a search warrant was issued by the defendant on 14th of January, 2020 to the Land Transport Authority [LTA] to which the following information on the ownership and specifications of the vehicles was uplifted;*

*(a) **Toyota Hilux Single Cab Registration JI5810** – owned by 4 wheel Drive Sales Limited where the vehicle year of manufacture is 1988 is classified as a right hand drive and brand new vehicle. This specification however is different to the vehicle **we have detained which is a left hand vehicle modified as a racing car with a v6 engine fitted at the back.***

*(b) **Dodge Pickup Truck Registration DG830** – the vehicle as per the LT Record is a vehicle registered with St. John’s Ambulance. The Year of Manufacture is 1979 and the vehicle is registered as a right hand vehicle, but **the vehicle we detained is not a right hand vehicle but instead a left hand vehicle.***

(c) Buick 4 Door Sedan Registration 4WDSL- the owner of the vehicle is Mr Sanjeet Singh and is registered Year of Manufacture is 1957. The records state that the vehicle is a right hand vehicle, however, the actual unit detained is a left hand vehicle.

It is in this background of irrelevant facts that the Comptroller decided to seize and detain the vehicles.

- (07) I cannot rely on the above irrelevant consideration to categorise the vehicles as “uncustomed goods”. The relevant consideration is whether full duties have been paid when the vehicles were imported to Fiji? Who imported the vehicles to Fiji? Has the duty been short-paid by the importer? Have the vehicles been imported to Fiji contrary to the provisions of the Customs law? There is not a word about this in the Comptroller’s affidavit in opposition. **Therefore, I fail to see how the Comptroller could categorise the vehicles as “uncustomed goods”.** The Comptroller has relied on irrelevant considerations (see paragraph 6 above) in order to categorise the vehicles as “uncustomed goods” to act under Section 129(1) of the Customs Act, 1986. “Uncustomed goods” is defined under Section 2 of the Customs Act to include; (1) dutiable goods on which full duties have not been paid, and any goods, whether dutiable or not, (2) which are imported or in any way dealt with contrary to the provisions of the Customs Law. It is common ground that the plaintiffs’ have not been charged with Customs offences under the Customs Act.
- (08) **There is no evidence upon which the defendant could rely upon to say that;** (1) the vehicles were imported to Fiji by the plaintiffs and the duty has been short-paid by the plaintiffs (2) the vehicles were imported to Fiji by the plaintiffs contrary to the provisions of the Customs Act, 1986. **Therefore, I fail to see how the vehicles are liable to seizure under the provisions of the Customs Act, 1986.** Under Section 129(1) of the Customs Act, goods liable to forfeiture under the Customs Act can be seized and detained. Section 129(1) of the Customs Act is in the following terms;

129(1) An officer or other person authorised in that behalf by the Comptroller may at any time seize or detain any goods liable to forfeiture under the customs laws or any goods which such officer or other person has reasonable grounds to believe are liable to forfeiture thereunder.

- (09) Counsel for the defendant submits in paragraph 2.10 and 2.11 of the written submissions filed on 17-09-2020;

2.10 Owners as per the definition under Customs Act Section (2) is as follows;

“in respect of goods, includes a person being or holding himself or herself out to be the owner, importer, exporter, consignee or person possessed of or

beneficially interested in or having control of or power of disposition over, the goods”.

2.11 *The Section clearly outlines that Mr Uday Singh and Mr Sanjeet Singh qualifies as the importer, the consignee and the person who is beneficially interested in or having control of power over the goods, hence the Detention notice was served to them.*

- (10) As I said in paragraph (7) above, the relevant consideration is whether full duties have been paid when the vehicles were imported to Fiji? Who imported the vehicles to Fiji? Has the duty been short-paid by the importer? Have the vehicles been imported to Fiji contrary to the provisions of the Customs law? **The defendant is not entitled to seize and remove the vehicles from the plaintiffs custody on the basis that the goods are uncustomed goods unless it could be shown by the evidence that; (1) the plaintiffs’ imported the vehicles to Fiji and the duty has been short paid by the plaintiffs (2) The plaintiffs imported the vehicles to Fiji contrary to the Customs Law. There is not a word about this in the Comptroller’s affidavit in opposition. Therefore, I fail to see how the Comptroller could categorize the vehicles as “uncustomed goods”.** The Comptroller has relied on irrelevant considerations (see paragraph 6 above) in order to categorize the vehicles as “uncustomed goods” to act under Section 129 (1) of the Customs Act, 1986. I reiterate that “uncustomed goods” is defined under Section 2 of the Customs Act to include; (1) dutiable goods on which full duties have not been paid, and any goods, whether dutiable or not, (2) which are imported or in any way dealt with contrary to the provisions of the Customs Law. It is common ground that the plaintiffs’ have not been charged with Customs offences under the Customs Act.
- (11) I conclude that the decision of the Comptroller that the vehicles were “uncustomed goods” and therefore they could be seized and detained ultra vires the Customs Act, 1986. The decision is unreasonable in that the Comptroller had considered irrelevant considerations and disregarded relevant considerations and the decision was made after a long time from the importation of the vehicles. The Comptroller, in the circumstances, appears to have misapplied the relevant statutory provisions i.e., Sections 129(1) and 129 2 (d), and has thereby stepped outside his own jurisdiction in “*Anisminic*” sense (the **Anisminic Ltd v Foreign Compensation**¹).
- (12) Therefore, I hold that seizure and removal of the plaintiffs’ motor vehicles on the 10-01-2020 is unlawful and ultra vires the Customs Act, 1986. In that context, the Court is unable to fathom any reason to justify detention of the vehicles, in terms of Section 129(2) (d) of the Customs Act read with Section 2 of the Act. It follows that the Comptroller cannot rely on Section 157(2) of the Customs Act, 1986 as a way out for the plaintiffs to secure the release of the vehicles because the seizure and removal of the

¹ [1969] 2 AC 147

vehicles is unlawful and ultra vires the Customs Act, 1986. The vehicles are not liable to seizure in terms of Section 129(2) (d) read with Section 2 of the Customs Act. Therefore the provisions of Section 157 and 158 of the Customs Act does not kick in. That being so, there is no requirement on the owner of the vehicles to give notice of claim to the Comptroller. I stress the words “*where goods liable to seizure under the provisions of this Act have been seized*” in Section 157(1) of the Customs Act, 1986. The language of Section 157(1) appears to me to present **no** difficulties of construction and to make clear the limitation of its scope. For the sake of completeness, Section 157 is reproduced below in full.

Notice of claim

157(1) Where goods liable to seizure under the provisions of this Act have been seized, the owner thereof or, in the case of an aircraft or ship the master thereof, may within 3 months of the date of the seizure or of the date of any written notice of seizure, as the case may be, by notice in writing to the Comptroller claim the goods.

(2) If no claim is made within such period of 3 months in accordance with the provisions of subsection (1), the goods are deemed to have been condemned.

[Emphasis added]


ORDERS

I make the following declarations and orders on the Originating Summons;

- (1) A declaration that the **seizure** of the plaintiffs’ motor vehicles on the 10-01-2020 as set out in the detention notice numbers 134314, 134315 and 134316 is unlawful and in breach of Section 129(1) read with Section 2 of the Customs Act, No. 11 of 1986.
- (2) A declaration that the **detention** of the plaintiffs’ motor vehicles on the 10-01-2020 as set out in the defendant’s detention notice numbers 134314, 134315 and 134316 is unlawful and in breach of Section 129(2) (a) read with Section 2 of the Customs Act, No. 11 of 1986.
- (3) The defendant – Fiji Revenue and Customs Service is directed to release the vehicles set out in the detention notice numbers 134314, 134315 and 134316 (marked as SS1-SS3) forthwith to the plaintiff.

- (4) I order that the defendant pay the plaintiffs' costs of these proceedings which are fixed summarily in the sum of \$2,000.00. The costs should be paid within seven (07) days from the date of this judgment.




.....27.11.2020.
Jude Nanayakkara
[Judge]

High Court – Lautoka
Friday, 27th November, 2020.