

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 281 of 1980

Between

EMPEROR GOLD MINING COMPANY LIMITED

Plaintiff

- and -

THE COMPTROLLER OF CUSTOMS AND EXCISE

Defendant

Messrs. S. B. Patel & Co.  
Mr. Grimmett

Solicitors for the Plaintiff  
Counsel for the Defendant

J U D G M E N T

The plaintiff is a limited liability mining company having its registered offices in Vatukoula. It has imported into Fiji various goods required for its mining activities. Those had been landed and were in the custody of the Customs Department, of which the defendant is the principal officer with various powers under the Customs Act. Such goods have to be entered and cleared through customs before reaching the plaintiff. The plaintiff caused the necessary entry forms to be lodged with the defendant, and the defendant or his officers have the duty under the Act of passing the entry forms, collecting such duty as may be payable and releasing the goods to the plaintiff, subject to the provisions of the Act. The defendant admits that there are no reasons why the entry forms should not be passed and the goods released, and I was informed from the bar that he had given instructions to his officers to this effect. However his officers refused to pass the entries and release the goods. The reason for this was that following certain strike action by unions at the mine a so-called black ban has been imposed on the plaintiff by other unions including the union to which the customs officers belong. The defendant is not a member of this or any union, but claimed that he cannot do more than he has done because he was thwarted by the actions of subordinates. It is really a rather extraordinary situation with customs officers refusing to carry out duties they are required by law to perform, and the Comptroller of Customs being powerless to enforce his lawful instructions to his subordinates. It is a situation which I hope is being considered very carefully in other quarters.

The plaintiff in the main action seeks -

- a) an order that the defendant forthwith processes and passes customs entry forms lodged by and on behalf of the plaintiff in respect of certain listed goods;
- b) an order restraining the defendant and/or his servants and/or agents, and/or otherwise from selling the goods referred to;
- c) a declaration that the defendant has acted unreasonably in terminating the pre-release certificates granted by him in respect of certain goods listed;
- d) a declaration that the defendant has acted unreasonably in refusing to exercise his discretion under Section 41 of the Customs Act, and/or the defendant has unreasonably exercised his discretion under Section 41 of the Customs Act in refusing to allow the plaintiff to clear its said goods;
- e) special damages;
- f) general damages;
- g) costs.

In the present proceedings the plaintiff seeks an interlocutory injunction in terms of a) and b) above, pending determination of the action.

With regard to b) the defendant gave an undertaking that the goods would not be sold so that the plaintiff no longer pursued this claim. With regard to the declarations asked for in c) and d) this refers to a discretion given to the defendant under Section 41 of the Act which provides as follows -

"Notwithstanding anything to the contrary contained in this Ordinance, the Comptroller may permit the entry of any goods in such form and manner and subject to such conditions as he may direct to meet the exigencies of any case to which the provisions of this Ordinance may not be strictly applicable."

It is not possible for this Court to say that the Comptroller has not properly exercised his discretion in not allowing the plaintiff to take possession of the goods by some pre-release system.

In any case since this action commenced any decision with regard to the interlocutory injunction has been rendered unnecessary by the fact that some agreement seems to have been reached between the plaintiff and the unions and I am informed that all the plaintiff's goods have now been cleared by the Customs and the plaintiff no longer seeks the interlocutory injunction. These facts would seem also to render any decision in the main action unnecessary except to the extent that the plaintiff claims damages. In the circumstances any further comment by me on the arguments raised by counsels

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are unnecessary, and undesirable since it may be necessary to argue the matter again should the plaintiff decide to pursue the claim for damages. Any question of costs will be reserved.

LAUTOKA,  
17th October, 1980

(sgd.)  
G. O. L. Dyke  
JUDGE

