

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**

**2014/HP/1734**

**(Civil Jurisdiction)**

**BETWEEN:**

**WILFRED MWEENE**

**AND**

**ZAMBIA REVENUE AUTHORITY**



**APPLICANT**

**RESPONDENT**

**Before the Hon. Mr. Justice E. M. Sikazwe in Chambers.**

***For the Applicant : Ms. Susan Chambanange -  
Merrs KBF and Partners***

***For the Respondent : Mr. Banda - Messrs A.M Wood and  
Company  
Ms. D.B Golomota - Legal Counsel Zambia  
Revenue Authority***

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**R U L I N G**

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The Applicant filed in an Exparte Summons for Counsel to apply for Judicial Review pursuant to Order 53 RSC (White Book) 1999 edition.

This Court saw it fit by the nature of what the Applicant had come to Court to have an Inter parte hearing. This was done on 19<sup>th</sup> November 2014. On this day both Counsel sought to have the matter be adjourned for their reasons given. Another date of 5<sup>th</sup> February, 2015 was set.

Parties were also allowed to submit on their affidavit evidence to which both complied.

In support of the Affidavit, the Applicant, stated that as a business man he bought on various dates prior to 12<sup>th</sup> September, 2014, 885 boxes containing pacific cigarettes at a total cash of K973,500.00 from COMESA MARKET in Lusaka. He later kept these cigarettes at his farm in Chilanga area. Zambia Revenue Authority officers got wind of it and on 12<sup>th</sup> September 2014, raided his farm house and confiscated 885 boxes of the said cigarettes. He further stated that the Zambia Revenue Authority, also got away with cash USD 95,000.00, 480,000.00 South African Rand, K68,000.00 a passport and a Certificate of Title. That after that he went to report himself to Zambia Revenue Authority Office and whilst there he met a Mr Moses Shuko one of the employees. Mr Moses Shuko then took over the matter and in his presence he informed the officers to stop whatever they were doing at his premises. But as these officers moved away from his farm house they went with the confiscated items mentioned above. He had tried on several occasions explaining to Zambia Revenue Authority Officers all the circumstances surrounding his business but to no avail. To date Zambia Revenue Authority officers have even not availed to him any seizure notice or a search warrant as required by law and this contravenes the provision of Section 162(7) of the Customs and Excise Act. He has thus suffered loss of business.

In opposing the grant for Judicial Review, the Defendant through the Tax Inspector stated that from the onset the Applicant had failed to disclose material facts and thus the Court should deny the Applicant's request for Judicial Review. He went on to state that the Respondent through the Act was empowered to assess, charge, levy and collect all revenue due to

the Zambian Government under the various pieces of legislation including the Customs and Excise Act. The Respondent was further empowered to investigate, search and seize any goods from a person believed to have contravened the provisions of Customs and Excise Act. To this effect the Respondent on 11<sup>th</sup> September, 2014, though its Investigations Department received intelligence information that a truck had off loaded Cigarettes at house No. 258 Longridge Chilanga, Lusaka, believed to have been imported into Zambia Contrary to the provisions of the Customs and Excise Act. A search warrant was duly obtained from the Subordinate Court on 12<sup>th</sup> September, 2014, one of the Respondent's officer was stationed at the same house of Applicant to keep watch of the said house prior to the search party arriving at the said house. Whilst this was happening, a certain motor vehicle drove to the said house and loaded several cartons of cigarettes. This motor vehicle was intercepted in Chilanga on its way from the same house. Upon search, 62 cartons of unstamped cigarettes were impounded. The search party went to the said house in the company of one Police Officer attached to the Mobile compliance unit and three other officers from Chilanga Police Station. At the said home, there was nobody to serve the search warrant on. The search party had proof that unstamped cigarettes were stored in the said house and if no action was done same unstamped cigarettes would be removed the house.

It was upon this belief that they proceeded to break the locks as empowered by the law in order to gain access to the house. Upon entry another 437 cartons of unstamped Pacific Cigarettes and 78 cartons of unstamped Kingdom Cigarettes were seized. While the search was going on the search party tumbled upon a cell phone number and upon ringing the number, the Applicant responded, but refused to go to his house

under search. The Applicant preferred to meet the search party at its Head office. They met at Head office with the Applicant who complained to the Director of Investigation that he was not complying with the search. He also claimed that he kept some cash money and jewelry in the house which he suspected to have been stolen by the search team.

Following this complaint, the Director of Investigations, the search party and the Applicant agreed to go back to the house and verify his complaint. When they reached home they found that the new locks which they had replaced on the broken one had been tampered with and there was at the house a lady who had given entry and was introduced to them as his wife. This is the time that he claimed to have lost R480.000 and K68.000.00 and that he had left US\$95.000.00 in one of the boxes seized during the search. Apart from this, the Respondent has attempted on several occasions to personally serve the seizure Notice number 08562 dated 15<sup>th</sup> September, 2014 on the Applicant in respect of the seized unstamped Cigarettes from the Applicant's house. The Applicant has not at any time been found at his home and the person living with him has refused to receive anything delivered to the Applicant's house by the Respondent. Further the Applicant on 15<sup>th</sup> September, 2014 when he visited the Respondent's Head Office was served with a letter to attend interviews but declined to receive the letter instead directed that the letter be delivered to his house No. 258 in Chilanga. In short, the Applicant had ignored all invitations to attend interviews at the Respondent's offices in connection with the seized Cigarettes prompting the Respondent to initiate Criminal proceedings. Even the warrant of arrest has not been effected on the Applicant as the Respondent cannot locate the Applicant.

I have considered the VIVA VOCE evidence from both Counsel and taken into account the Affidavit evidence from both camps. The oral and Affidavit evidence from the Respondent has not been challenged by the Applicant. Reading through the lines of the Respondent's Affidavit fortified by the oral submission by the Respondent's Advocate, I find that the Applicant had suppressed vital material facts from this Court, thereby trying to mislead the Court and apply to this court to be granted Judicial Review in this matter. How will the Court grant Judicial Review to the Applicant when the oral submission of the Respondent's Advocate and the Affidavit evidence cannot be challenged. If this Court grants Judicial Review, how will the Applicant engage the Respondent, when all along he has been elusive to the Respondent when called and invited to attend interviews in connection with the 885 boxes containing an uncustomised contraband of pacific as well as Kingdom Cigarettes.

The Applicant is running to Court when he is failing to engage himself with the Respondent on the issue. Time and again Courts have ruled that judicial Review is concerned with reviewing, not the merits of the decision in respect of which the application for Judicial Review is made but the decision making process itself. Further the purpose of Judicial Review is to ensure that an individual is given fair treatment by the authority to which he has been subjected. The Court will not upon a Judicial Review application act as a "Court of Appeal", from the body concerned, nor will the Court interfere in any way with the exercise of any power or discretion which has been conferred on that body, unless it has been exercised in a way which is not within that body's jurisdiction or the decision is Wednesbury unreasonable.

This has not been the case in this matter presented before this Court. On the other hand the Applicant has not come to Court with clean hands. **To that effect Leave to Apply for Judicial Review has been declined.**

Costs in favour of the Respondent, to be taxed in default of agreement.

**DELIVERED IN CHAMBERS THIS 5<sup>TH</sup> DAY OF OCTOBER 2015.**

  
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**E.M. SIKAZWE**  
**JUDGE**