

**IN THE SUPREME COURT OF ZAMBIA**

**APPEAL NO. 158/2016**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**B E T W E E N:**

**ZAMBIA REVENUE AUTHORITY**

**APPELLANT**

**AND**

**BRUCE KASONDE KAEMBA** *(suing in his capacity  
as the chairperson of the Customs Clearing  
Freight Forwarders Agents Association in Zambia)*

**RESPONDENT**

**CORAM: Muyovwe, Wood and Kajimanga JJS.**

**On 9<sup>th</sup> July, 2019 and 2<sup>nd</sup> August, 2019.**

*For the Appellant: F. Chibwe- In House Counsel*

*For the Respondent: No Appearance*

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## **JUDGMENT**

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Wood, JS delivered the judgment of the court.

**Cases Referred to:**

1. *Royal Trading Limited v Zambia Revenue Authority SCZ Judgment No. 39 of 1999*
2. *Admark Limited v Zambia Revenue (2006) Z.R. 43*
3. *Aristogerassimos Vangelatos and another v Metro Investment Limited and 3 others SCZ Selected Judgment No. 35 of 2016*
4. *Crossland Mutinta and Bashir Seedat v Donovan Chipanda SCZ Selected Judgment No. 53 of 2018*

**Legislation Referred to:**

- 1) *Tax Appeals Tribunal Act No. 1 of 2015*
- 2) *Section 164 of the Customs and Excise Act*
- 3) *Regulation 126 of The Customs and Excise (General) Regulations, 2000 (S.I No. 54)*

This is an appeal against a ruling of the High Court on the effect of section 164 of the Customs and Excise Act Cap 322 of the Laws of Zambia.

We must hasten to state that although this court has in its previous decisions on section 164 of the Customs and Excise Act in the case of *Royal Trading Limited v Zambia Revenue Authority*<sup>1</sup> and *Admark Limited v Zambia Revenue*<sup>2</sup> held that the provisions of section 164 (4) are mandatory and parties are obliged to bring their causes of action within three months after the cause thereof arose, the arguments in this appeal are proposing a new dimension. The new dimension is that in this appeal there were two causes of action; one arising within the Customs and Excise Act and as such was caught up by the limitation period as provided in section 164 and the other cause being outside the scope of the Customs and Excise Act was thus outside the clutches of the limitation period provided in section 164 (4) of the Act.

The facts giving rise to this appeal have their roots in the consequences associated with rapid technological changes in how parties conduct business. The appellant collects revenue on behalf of the state. Part of the revenue collected is under the Customs and Excise Act Cap 322. In order to collect this tax, there are numerous Agents who are engaged by third parties to clear goods on their behalf. They work hand in hand with the appellant. This relationship is intended to be mutually beneficial to the parties.

The appellant has the statutory mandate to oversee the implementation of the Act. In order to improve efficiency in revenue collection the appellant introduced a computerized system known as Asycuda++. This was later upgraded to a system called Asycuda World.

Shortly after installing Asycuda World, clearing agents started complaining that it was not effective because it resulted in slowed processing of information and was very unstable, resulting in continuous disruptions leading to loss of vital information. Due to the poor internet service, clearing agents were forced to cross over to other borders in order to obtain acquittals from other countries



and use them to show customs in Zambia. In addition, Asycuda World had outstanding obligations which as a result of duplications of entries of consignment the system failed to identify. It was, therefore, difficult for clearing agents to detect which agent had been instructed earlier in case a customer decided to change agents. This resulted in confusion. The piled up data showed that clearing agents had outstanding payments which resulted in the appellant placing embargoes on about 51 clearing agents as they were unable to fulfill statutory requirements. This effectively meant that their accounts were blocked through no fault of their own and they could not operate their business. It was against the above backdrop that the respondent commenced proceedings in the High Court in a representative capacity.

The respondent's claim was for an order to stop the appellant implementing the use of Asycuda World and revert to Asycuda ++ until it resolved its internet connectivity issues and other ICT operational problems relating to Asycuda World. The respondent also sought a mandatory injunction against the appellant to unblock the clearing agents' accounts.

On 15<sup>th</sup> February, 2016 the appellant filed an application in opposition to the application for a mandatory injunction which had been filed on 28<sup>th</sup> January, 2016. On 22<sup>nd</sup> February, 2016 the appellant filed an affidavit in support of a notice of intention to raise a preliminary issue and to have the matter dismissed on a point of law.

The affidavit in support stated that the issue relating to the blocking of the accounts arose out of the provisions of the Customs and Excise Act and that the respondent had not complied with the provisions of section 164 of the Customs and Excise Act which require notice of action to be given to an officer, clear details of the cause of action and the need to bring such action within three months after the cause arose. The respondents' own affidavit admitted that the respondents had not been able to conduct business for 7 months prior to the writ being issued which was clearly outside the three months limitation period provided for by section 164 (4) of the Customs and Excise Act. Exhibit "WC1" attached to the affidavit shows a schedule of clearing as at 14<sup>th</sup> January, 2015 which indicates that a number of agents had been suspended by that date.

The affidavit in opposition to the notice stated that the mandatory injunction that was being sought was not an isolated cause of action as the other cause of action related to the implementation of the Asycuda World platform. Further, the respondent used the word "*about*" in paragraph 11 of his statement of claim to denote an indeterminate period to cover members whose accounts had been blocked earlier.

The affidavit in opposition further highlights the various notices issued and emails written in relation to the teething problems associated with the implementation of Asycuda World.

In his ruling, the learned Judge took the broad view and agreed with the respondent that there was more than one cause of action namely the one relating to the implementation of the Asycuda World System which was allegedly disrupting and causing losses to the respondents' businesses and the cause of action relating to the suspended accounts. The appellant's view was that the suspension of the accounts and the failure of the Asycuda World System were inseparable. The Judge further held that the appellant had not shown that the implementation of the Asycuda



World System was a matter arising from the Customs and Excise Act and therefore subject to the time limit imposed by section 164 of the Act. He therefore refused to dismiss the matter on a point of law. The Judge however found that the injunctive relief sought was statute barred because it should have been brought to court within three months of the accounts being suspended.

The appellant has now appealed to this court on the following grounds:

- (i) *The court below erred in law and fact when having found that one of the respondent's claims was statute barred omitted to dismiss the writ of summons and statement of claim for irregularity.*
- (ii) *The court below erred in law and fact when it held that the writ of summons and statement of claim were correctly before court without considering whether the respondent's demand letters satisfied the requirements set out in section 164 (2) of the Customs and Excise Act.*
- (iii) *The court below erred in law and fact when it found that the implementation of the Asycuda World System is not a matter arising from the Customs and Excise Act.*

When we heard this appeal on 9<sup>th</sup> July, 2019, Counsel for the appellant submitted that even though both parties had not raised the issue of jurisdiction in the court below and in this court, he felt

obliged to raise it as it could have an effect on the appeal itself. Following our decisions in *Aristogerassimos Vangelatos and another v Metro Investment Limited and 3 others*<sup>3</sup> and the recent case of *Crossland Mutinta and Bashir Seedat v Donovan Chipanda*<sup>4</sup> on jurisdictional questions being raised on appeal, we allowed him to do so.

Counsel's argument is twofold. The first argument is that the respondent in its own statement of claim had acknowledged that the appellant had introduced the Asycuda World System as far back as August, 2014 which clearly meant that by 2015 when the respondents commenced this action they were out of time both under section 164 of the Customs and Excise Act and Regulation 126 of the Customs and Excise (General) Regulations, 2000 (S.I No. 54 of 2000). We Agree. Section 164 of the Customs and Excise Act requires one month notice before a writ can be issued. It also makes it mandatory for the action to be brought within three months after the cause arose. Regulation 126 of the Customs and Excise (General) Regulations 2000 requires an applicant or licensee aggrieved by a decision of the Commissioner-General not to grant or renew a licence to appeal to the Minister within seven days after



being informed of the Commissioner-General's decision. A dissatisfied applicant or licensee has the liberty to appeal the Minister's decision to the High Court. The record of appeal clearly shows that none of the respondents appealed to the Minister first before commencing this action in the High Court. Since this was not done, the High Court Judge had no jurisdiction to determine the matter.


The second argument was that section 5 of the Tax Appeals Tribunal Act No. 1 of 2015 provides that the Appeals Tribunal has jurisdiction to hear and determine appeals from decisions of the Commissioner-General under the Customs and Excise Act and any matter prescribed by the Minister, by Statutory Instrument, to be a matter against which an appeal may be made under the Acts referred to in paragraph (a) of section 5. Section 5 reads as follows:

*"5. The functions of the Tribunal are to hear and determine-*

*(a) appeals from decisions of the Commissioner-General under the Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act, the Value Added Tax Act and other tax legislation; and*


*(b) Any matter prescribed by the Minister, by statutory instrument, to be a matter against which an appeal may be made under the acts referred to in paragraph (a)*

It is quite clear again from section 5 of the Tax Appeals Tribunal Act that the respondents chose the wrong forum to ventilate their grievances. The appellant's arguments on jurisdiction are unassailable and we agree with them. Both this court and the High Court do not have jurisdiction at this stage to hear and determine the respondent's claim. We see no point in deciding the three grounds of appeal as we do not have jurisdiction at this stage to do so. We allow this appeal and set aside the ruling of the High Court. The parties shall bear their own costs.



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**E.N.C MUYOVWE**  
**SUPREME COURT JUDGE**



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**A.M. WOOD**  
**SUPREME COURT JUDGE**



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**C.KAJIMANGA**  
**SUPREME COURT JUDGE**