

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FULL COURT
SUIT NO. M. 34 OF 1998

BEFORE THE HON. MR. JUSTICE ELLIS
THE HON. MR. JUSTICE PANTON
THE HON. MR. JUSTICE GRANVILLE JAMES

REGINA V. MINISTER OF HEALTH EX PARTE HEALTH-PRO (JAMAICA)

Veronica Warren for applicant
Cheryl Lewis for respondent

Heard: July 8 and 10, 1998

PANTON, J.

By an originating notice of motion, the applicant, Health-Pro (Jamaica) Ltd., is seeking an Order of Mandamus "directed to the Minister of Health through the Attorney General requiring him to comply with the Food and Drugs Act and Regulations by issuing to the Applicant herein the proper and appropriate licence to import, sell and advertise for sale, the new drug Pycnogenol, and also that the Applicant be awarded general and exemplary damages ..."

Regulation 65 of the Food and Drugs Regulations, 1975, provides that no person shall import, sell, advertise for sale or manufacture a new drug unless a licence has been issued to that person by the Minister and that person has paid the appropriate fee.

Regulation 68 provides that within 121 days after the filing of an application for a licence to sell, advertise for sale, or manufacture a new drug, the Minister shall notify the applicant whether or not his application is satisfactory and if so grant a licence to the applicant in accordance therewith.

The applicant has contended that the form of response to its application for a licence is inappropriate in that the Minister has granted registration instead of a licence. The Minister has responded to that by saying that locally and internationally the terms "licensing" and "registration" are used inter-changeably.

The factual position, however, is that the applicant has been granted all that it seeks, except that it has not been permitted to advertise for sale without conditions.

The applicant has contended that under Regulation 68, once a licence has been granted, it gives the right to do all the things set out in the regulation. This contention is in our view unsustainable. We think that the Minister may grant a licence to import, or to sell, or to advertise for sale, or to manufacture. The granting of one does not necessarily include all.

The Minister of Health, we feel, is correct in holding the view that the procedure set out in Regulation 4(1) governs advertisements for sale. That being so, written approval has to be sought from the Minister before any advertisement is published.

So far as the award of general and exemplary damages is concerned, we note that the order granting leave did not give leave to seek such an award. Indeed, the order could not have so done.

In our view this motion is misconceived. The Minister has granted the applicant a licence to import and to sell. And the applicant has been doing that without hindrance. There is no reason to compel the Minister to do anything.

The application is accordingly refused with costs to the respondent to be agreed or taxed.

ELLIS, J I agree

JAMES, GRANVILLE . . I agree