

111
SUPREME COURT LIBRARY
KINGSTON
JAMAICA
Judgment Book,

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. M-029 OF 1999

IN THE MATTER OF THE CUSTOM ACT

AND

IN THE MATTER OF THE MERCHANDISE MARKS ACT

AND

**IN THE MATTER OF AN ORDER AND/OR DECISION OF
THE COMMISSIONER OF CUSTOMS AND/OR OFFICERS
OF THE REVENUE PROTECTION DIVISION IN NOTICES
OF SEIZURE DATED 10TH FEBRUARY 1999,
RESPECTING CONTAINER ZCSU 2172518 AND ZCSU
2206095**

AND

**IN THE MATTER OF AN ORDER AND/OR DECISION OF
THE COMMISSIONER OF CUSTOMS AND/OR OFFICERS
OF THE REVENUE PROTECTION DIVISION
CONTAINED IN THREE NOTICES OF SEIZURE DATED
21ST JANUARY, 1999 RESPECTING 7346 PAIRS OF CAT
AND/OR CATERPILLAR SHOES AND
MISCELLANEOUS DOCUMENTS AND ITEMS**

D.M. Muirhead Q.C. and Mrs. P. Levers for Applicant

**Ms. Marcia Dunbar and Miss Karen Stanley instructed by Director of State
Proceedings for Respondent**

HEARD: May 25, 26, 27, 28, 1999 and July 7, 2000

ELLIS J.

By Notice of Motion of April 7, 1999 the applicant Costco Trading Company Ltd comes to this Court for Judicial Review of orders and/or decisions of The Commissioner of Customs.

The applicant seeks the following relief :-

“(i) An Order of Certiorari to remove into this Honourable Court and quash an Order and Decision of the Commissioner of Customs and/or Officers of the Revenue Protection Division :-

- (a) To seize goods belonging to the Applicant in containers # ZCSU 2172518 and # ZCSU 2206095, as set out in Notice of Seizure dated 10th February 1999.
- (b) To seize 392 cases said to contain Cat Brand Footwear 7054 pairs of Cat Footwear) Item number 9865 as set out in Notice of Seizure dated 21st January 1999.
- (c) To seize 175 pairs “CAT’ Shoes as set out in Notice of Seizure dated 21st January 1999.
- (d) To seize a 117 pairs Caterpillar Style 9865 and 9905 Shoes as set out in Notice of seizure dated 21st January 1999, together with miscellaneous items and papers.

(ii) An injunction to compel the said Commissioner of Customs and/or Officers of the Revenue Protection Division to return to the Applicant the property as set out in the Notice of Seizure hereinbefore mentioned.

(iii) An injunction to restrain the said Commissioner of Customs and/or Officers of the Revenue Protection Division from selling/destroying or otherwise disposing of the said goods.

(iv) Damages for :-

- (a) Trespass and/or detinue and/or the unlawful seizure (continuing) of the containers and the contents therein and the property seized as set out in the Notices of Seizure by the said Commissioner of Customs and/or Officers of the Revenue Protection Division.
- (b) Loss of profit resulting from the seizure and the non availability for sale of the Applicant's goods hereinbefore.
- (c) Such further orders or directions as to the Court may seem just.

On the grounds set out in the statement served herewith and used on the application for leave to apply for such orders.

AND THAT the cost of and occasioned by this motion be paid to the Applicant".

When the matter came for hearing Mr. Muirhead Q.C. sought and obtained leave to amend the Statement by adding five [5] additional reliefs as set out below.

"(v) A declaration that the continued seizure of the containers #ZCSU 2172518 and #ZCSU 2206095 and the goods therein and 392 cases said to contain Cat Brand Footwear (7054 pairs), Item number 9865 and 175 pairs 'CAT' shoes and 117 pairs Caterpillar Style 9865 and 9905 shoes and the miscellaneous papers is illegal unlawful and ultra vires the Customs Act and/or the Merchandise Marks Act.

(vi) A declaration that the Applicant is entitled in law to the possession of 392 cases said to contain Cat Brand Footwear (7054 pairs) Item number 9865 and 175 pairs of "CAT' shoes and 117 pairs Caterpillar Style 9865 and 9905 shoes and the miscellaneous papers.

(vii) A declaration that the Applicant is eligible/entitled in law to the container #ZCSU 2172518 and #ZCSU 2206095 and the goods therein upon payment of the proper duties.

(viii) An Order of Mandamus directed to the Commissioner of Customs and/or Officers of the Revenue Protection Division to release/restore the said goods of the Applicant, Costco Trading Company Ltd as set out in three Notices of Seizure dated 21st January 1999.

(ix) An Order of Mandamus directed to the Commissioner of Customs and/or officers of the Revenue Protection Division to release/restore the said goods of the Applicant, Costco Trading Company Ltd. as set out in one Notice of Seizure dated 10th February 1999 upon payment of the proper duties if any."

HISTORY

On the 15th of January 1999 a 40 ft. container ZCSU 2172518 consigned to the applicant arrived in Jamaica on the Ship Zim Italia. Another consignment to the applicant arrived on the 21st January 1999. This consignment was contained in container ZCSU 2206095 on the Ship Zim Canada

The consignments were detained and Notices of Detention were served on the applicant by the Revenue Protection Division on the 15th and 25th January 1999. The grounds for detention were that the consignments were detained for investigation.

Subsequent to the detention notices, Notices of Seizure dated 10th February 1999 were served on the applicant by The Revenue Protection Division. The Notice of Seizure stated that the goods were seized on ground that they were imported contrary to section 210 of The Customs Act.

The applicant as required to do under s. 215 of The Customs Act, on the 15th February 1999 served Notices of Claim on the Commissioner of Customs. It appears

from the applicant's statement that in addition to Notices of Seizure of 10th February 1999, there were three other Notices of Seizure dated 21st January 1999. These dealt with 7346 pairs of shoes as being of (a) "counterfeit brand names", (b) "suspected to be counterfeit" and (c) seized "for investigation".

The goods which were subject to (a) and (b) were goods on which duty had been paid and which were duly released to the applicant. Those subject to "c" were duly released on the payment of the assessed duty. Notice of Claim vide s. 215 of Customs Act was served on the Commissioner on the 11th of February 1999 in respect of (a) and (b) above. No Notice of Claim was served in respect of the goods at "c".

Applicant's Contention

In the light of the history as set out, the applicant contends that :-

- (i) The seizure of the Containers and goods therein was not under a warrant. That circumstance rendered the act of seizure ultra vires and abusive of jurisdiction.
- (ii) The Commissioner of Customs or Officers of the Revenue Protection Division have failed neglected and/or refused to comply with the provisions of the Customs Act. This is so although the applicant has satisfied the requirement of the Customs Act. The continued seizure of the containers illegal, unlawful and ultra vires the Customs Act.
- (iii) The seizure of goods, vide the Notices of 21st January 1999, was without or in excess of jurisdiction and not in compliance

with the Merchandise Marks Act ss. 11, 14, 15 and 16.

- (iv) The applicant imported goods in the ordinary course of business with the origin of those goods clearly indicated. He believed the goods were validly and legally imported. He had no reason to suspect that the importation could or might infringe any Act of Jamaica and particularly the Customs Act or the Merchandise Marks Act. He therefore had a legitimate expectation that the goods were validly imported and were saleable in Jamaica.

In the circumstances, the Commissioners of Customs and the Revenue Protection Division acted arbitrarily, unreasonably, unlawfully and in excess of jurisdiction in seizing 7346 pairs of shoes.

- (v) The Commissioner of Customs and Revenue Protection Division have trespassed on the goods and have wrongfully detained them.
- (vi) The Commissioner of Customs and The Revenue Division have acted maliciously and/or without reasonable or probable cause to the applicant's loss and damage.

Was the Seizure of The Containers and goods done under Warrant?

Section 203 of The Customs Act is as follows :-

203 If any officer shall have reasonable cause to suspect that any uncustomed or prohibited goods, or any books or documents relating to uncustomed or

prohibited goods, are harboured, kept or concealed in any house or other place in the Island and it shall be made to appear by information on oath before any Resident Magistrate or Justice in the Island, it shall be lawful for such Resident Magistrate or Justice by special Warrant under his hand to authorise such officer to enter and search such Resident Magistrate or Justice by special Warrant under his hand to authorise such officer to enter and search such house or other place, by day or by night and to seize and carry away any such uncustomed or prohibited goods, or any books or documents relating to uncustomed or prohibited goods, as may be found therein and shall be lawful for such officer, in case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry or seizure as aforesaid.

The underlining is done by me to emphasize -

- (a) the requirement of reasonable cause to suspect the harbouring of uncustomed or prohibited goods, and
- (b) that the reasonable cause to suspect should be manifest to the Resident Magistrate or Justice by information on oath, before the Magistrate or Justice may issue his warrant to search and seize.

The point as to the validity of a warrant was considered and determined by the Judicial Committee of The Privy Council in the Jamaican case of The Attorney General v Danhai Williams and Danwills Construction Ltd. Privy Council Appeal 70/95 delivered the 12th May 1997.

In the above case, the officer seeking the issuance of a warrant by a Justice of the Peace swore to an affidavit as follows :-

"The information and complaint of in the parish of Kingston made an Oath before me one of Her Majesty's Justice of the Peace in and for the parish of Kingston this 5th day of November in the year of Our Lord Nineteen Hundred and Ninety-Two who saith that he hath good reason to believe that in certain place situated at 105 1/2 Windward Road, in the said parish, occupied by Danhai Williams is kept or concealed uncustomed goods or books or documents relating there to, contrary to section 210 of The Customs Act".

On that information the Justice of the Peace issued the warrant as follows:-

"Toor any Customs Officer.

Whereas the undersigned, one of Her Majesty's Justice of the Peace in and for the parish of Kingston being satisfied upon written information on oath that there is good reason to believe that in a certain place, to wit :-

Danwills Construction Ltd. and Danhai Williams,
105 1/2 Windward Road, Kingston is kept or concealed uncustomed goods on which duty by Law has not been paid, or books, documents on instruments relating there to."

These are therefore in Her Majesty's name to authorise and command you, with proper assistance, by such force as may be necessary by night or by day to enter or go to the said place and to search the same and all persons found therein and to seize all such goods and other articles reasonably supposed to have been used in connection with goods which may be found in the said place and to take further action in the premises as the Law allows.

That warrant was acted upon by the Officer named therein and his action was challenged in the Full Court. The challenge was dismissed by that Court. On appeal to the Court of the Appeal the Court of Appeal it was held that the terms of the warrant showed that the Justice of the Peace did not exercise his discretion properly when he issued the warrant. Action under the warrant was therefore unlawful. Appeal against that decision was taken to the Judicial Committee of the Privy Council. The Judicial Committee of The Privy Council reversed the decision of the Court of Appeal on the validity of the Warrants. Lord Hoffman who delivered the judgment of the Committee said "In this case, each warrant recited upon its face that the Justice was satisfied that there is good reasons to believe that in a certain place to wit [the premises searched} is kept or concealed uncustomed goods or books documents or instruments relating thereto." Prima facie this statement was satisfied that "there was good reason to believe" that uncustomed goods etc. were on the premises, it must follow that he was satisfied that the Officer had reasonable cause to suspect this to be the case.

Lord Hoffman then asked the question if there was anything to show that the Justice had no information on which to conclude that the Officer had reasonable cause to suspect. The argument was advanced for the respondents that the warrant spoke to the Justice being satisfied upon "the written information on oath". The inference, it was argued, could be drawn from that fact to say that the only information was "the written information on oath to the exclusion of any other information. That argument was in part accepted. The "written information on oath" that is the formal affidavit contained no material on which the Justice could have been satisfied as to the Officer's reasonable

cause to suspect. Nevertheless, his Lordship rejected the contention that user of the phrase "written information on oath was exclusive of other information on oath. It was held that reference to written information was too slender a ground on which to found falsity of the Justice's satisfaction that reasonable grounds existed.

The Judicial Committee then judicially and authoritatively widened "written information on oath" to include other information on oath which had not been disclosed. In so doing it cited with approval Forte J.A. dictum on the point where said:-

"The Justice of the Peace, having issued the warrants on the basis of the "information on oath" must have been so satisfied, and it not open to the Court, in the absence of the details of what transpired before the Justice to assume he acted contrary to what is required of him in the Act. For those reasons I would hold that the search warrants were lawfully issued."

It must be noted that the warrants in the instant case suggest that the issuing Justice had wider "information on oath" on which to act than the narrow "written information on oath" in the Danhai William's case. If the "the written information on oath" there, was judicially expanded to include other information on oath so too must "information on oath" in the instant case be accorded that width which is manifest therein.

For the above reasons and on the cited authority I hold that the warrants were lawfully issued and that they are valid warrants.

The applicant's second contention

The applicant contends that the Commissioner of Customs and/or Officers of the Revenue Protection Division have neglected or refused to comply with the Customs Act

and therefore, the continued seizure of the containers is illegal, unlawful and ultra vires the Statute.

This contention demands a consideration of section 215 of the Customs Act.

The section sets out the procedure on seizure. Mr. Muirhead showed that on receipt of the requisite statutory notice the applicant by written notice claimed the goods. He argued that in that circumstance proceedings for forfeiture and condemnation should have been initiated. Section 215 of The Customs Act states that the person from whom seizure has been made must claim the goods "**whereupon**" proceedings shall be taken for the forfeiture and condemnation thereof. The argument was advanced that the underlined word means immediately or within a short time. The Commissioner not having acted in forfeiture or condemnation of the goods is unlawfully holding the goods. The seizure is therefore illegal.

That argument does not hold when reference is made to Strouds Judicial Dictionary of words and phrase fourth Edition Volume 5-Ss. 20. There at page 2760 the words "Thereupon" and "Whereupon" are defined. To "thereupon" the meaning immediately is ascribed. "Whereupon" on the other hand, confers a right to act without involving the idea of any time within which it is to be claimed or enforced.

In the light of that meaning I reject the applicant's contention on this ground.

The applicant alleges that the seizure of the goods under the notices dated 21st January 1999 was without jurisdiction or in excess of jurisdiction. This the applicant says is because the seizure was not in compliance with the Merchandise Marks Act, sections 11, 14, 15 and 16.

Section 11 of the Merchandise Marks Act requires search warrants from a Justice of the Peace. In the light of what was stated earlier in relation to the validity of the warrants I do not deem it necessary to address this point any further.

The Applicant's Third Contention

Here the challenge was based on non compliance with Ss. 11, 14, 15, and 16 of the Merchandise Marks Act and the Customs Act.

In the light of the arguments, the main thrust of the challenge centers on an examination of Section 14 of the Act. The section is in its effect part of the Customs Act. (Subsection 4) It is to be noted, and the Respondent has so said, that section 3 of the Merchandise Marks Act, provides for the forfeiture of goods with counterfeit trademarks.

Such goods would come within the provisions of Ss. 40 and 210 of The Customs Act. The Respondent contends that the goods which were seized bore counterfeit trademarks. In that circumstance they came to be dealt with under the Customs Act.

The applicant challenged the application of the Customs Act. He argued that the Affidavit of Marc Benjamin is inadmissible. This is so because (i) March Benjamin is a Consultant to the Revenue Protection Division and as such he was not an "officer vide S. 2 of the Customs Act. He therefore lacked locus standi. (ii) paragraph 7 of his Affidavit is hearsay and goes only to bolster his assertion that the goods were counterfeit.

Moreover, neither James Zwiers nor Sandra Moreno has given any deposition that goods were counterfeit.

It was further argued that the Respondent acted in the absence of essential preliminaries which would go to found jurisdiction. The documentation with regards to the goods show that they were produced in China and so the goods were excluded from S.40 (11) of the Customs Act. The applicant also said that there is no evidence that the Commissioner of Customs acted under the control of The Minister as required by S. 14(g) of the Merchandise Marks Act.

To those arguments the Respondent submitted that Marc Benjamin being Consultant to the Revenue Protection Division is an "officer" within the Customs Act.

I accept the argument of the Respondent that Marc Benjamin is an "officer" for the purposes of the Customs Act. To hold otherwise would not be in keeping with the factual situation and common sense. Mr. Benjamin had locus standi to depose as he did. Having decided that Benjamin is a competent affiant is his Affidavit admissible?

Benjamin's Affidavit at paragraphs 1-5 is to the effect that between January and February 1999 he received communications from a Mr. Patrick McDonald and Registration Certificates from the Registrar of Companies in the names -

- (i) Caterpillar
- (ii) Cat
- (iii) Nike
- (iv) Nike International with Trade Mark "SWOOSH"
- (v) Addidas No. 19,498
- (vi) Addidas No. 20,555
- (vii) Addidas No. B.16,872

at paragraphs 5-7 he said:-

- 5 "That on January 26th, 1999 I wrote to Mr. James Zwiers corporate counsel Wolverine Worldwide Inc. and included in that letter 2 samples of **CATERPILLAR** shoes. One was a blue **CATERPILLAR** boot which was taken from container No. **ZCSU2172518** and the other was a beige canvas **CATERPILLAR** shoe which was taken from the Head Office of **Costco Trading Company Limited** at 28-30 Orange Street pursuant to a search warrant. The shoes were sent by Fed-Ex airway Bill No. **40058774273.**"
- 6 "That on January 26, 1999, I sent a letter to **Gene Bolmarcich, Trade Mark** counsel Caterpillar Inc. together with a sample blue canvas boot which was also taken from container No. **ZCSU2172518**. This shoe was sent by **Fed-Ex Tracking No. 40658774262.**"
- 7 "That on or about January 28, 1999 I received a facsimile letter from the said Bolmarcich on or about February 2, 1999 I received a facsimile letter from Mr. James Zwiers. The said letters said that the samples are counterfeit. On April 8, 1999 I received a facsimile letter from Sandra Moreno, Sales Representative for the Caribbean Islands for Addidas Latin America. The said letter confirmed that samples of Addidas footwear taken from containers **ZCSU2172518** and **ZCSU2206095** and examined by her are counterfeit. They are now produced and shown to me a copy of each of the said letters marked **Exhibit S.B. 10 to S. B. 12**" for identification.

Mr. Benjamin's affidavit to my mind indicates that as an officer under the Customs Act he obtained information with regards to certain goods. These goods were suspected as being counterfeit. He referred the goods to certain persons to ascertain the status of the goods. Those persons concluded that the goods were counterfeit and conveyed their conclusion to him. He has recited the conclusions and given the sources of the conclusions. In the circumstances the affidavit is properly admissible.

The affidavit is not being admitted to establish ultimately that goods are counterfeit. It is to show why the Commissioner of Customs acted. After all this is judicial review of administrative action. The case of **K. G. Poland et al vs Emanuel J. McMillan {1942} No. 1 Grenada** does not assist the applicant on this point.

Section 14 (1) (g) of The Merchandise Marks Act states - "the Commissioner of Customs in administering the regulations and generally in the administration of this section, whether in the exercise of any discretion or opinion or otherwise, shall act under the control of the Minister"

Mr. Muirhead Q.C. contended that it is an essential preliminary that compliance with the subsection is established. That has to be established before the Commissioner of Customs can have jurisdiction to seize goods.

He said the burden of proving compliance with the subsection rests on the Commissioner of Customs. The absence of such proof means that there was no valid action on the part of the Commissioner. The Commissioner of Customs acted without jurisdiction and ultra virus S. 215 of the Customs Act and continues the wrongful seizure of the goods.

The cases of **Arkwright 12 Q. B 1848 960; -Colonial Bank of Australasia vs Robert Willan 5L.R. 417; and Roberts v Chief Constable of Cheshire Constabulary, Times Law Report January 27, 1999** were cited in support of Mr. Muirhead's argument.

The respondent submitted that officers of Customs found goods in Container ZCSU2206095 bearing brand names of "Nike" and "Addidas". Custom Officers, also acting on information found in Container ZCSU217518 goods with brand names "Nike", "Addidas" and "Caterpillar." The goods were footwear and did not contain any words or marks indicating the country of manufacture and origin. See the affidavits of **Robert Farr and Cecil Harrison.**

—Sections 3 and 14 (a) of The Merchandise Marks Act renders such goods liable to seizure and forfeiture.

It is therefore submitted that the Commissioner of Customs acted with all propriety in this matter.

On this point the case of Robinson v R. C. Hammett, [1938] 1 All E. R. 191 was cited and relied on by Attorney-at-Law for the respondent.

Has the Commissioner of Customs acted in breach of S. 14 (g) of The Merchandise Marks Act?

In my opinion, what the sub-section is demanding is that the Commissioner should not act capriciously.

When Mr. Muirhead was making his submission I reminded him of Carltona Ltd v Commissioners of Works and others [1943] 2 All E. R. 560 and In re Golden Chemical Products Ltd [1976] 1 Ch. 300. Those cases are English decisions and are of persuasive authority. They accept the situation that the duties of Ministers of Government are exercised by responsible officials within the department.

That situation leads to a presumption of regularity in the official actions of public officials.

The presumption has been accepted in this jurisdiction on the case of **Attorney General vs Lopinot Limestone Ltd [1983] W.L.R. 299**. However Mr. Muirhead argued that in the circumstances the Commissioner is obliged to give proof of compliance with the **Section 14 (g)**.

I cannot agree with him. The Commissioner is under no obligation to provide any proof. It is the applicant who challenges the presumption. It is the applicant who is to prove non compliance.

Legally and constitutionally the act of the official, Commissioner in this case, is under the control of the Minister without any need for prior specific proof or ratification afterwards.

I therefore hold that the Commissioner has not acted in breach of **S. 14 (g) of the Merchandise Marks Act**.

Have the seized goods satisfied the requirement of **S. 14 (1) (a) of the Merchandise Marks Act?**

It is useful to state the Section "14(1) In order to make further provision for— prohibiting the importation of goods which if sold, or the exportation of goods prohibited to be exported which, if shipped, put off or water borne to be shipped would be liable to forfeiture -

- (a) all goods, which if sold would be liable to forfeiture under this Act, and also all goods not manufacture within this Island, **bearing any trade marks registered under the Trade Marks Act, as the**

as the trade mark of any manufacturer dealer or trader in this Island, unless such trade mark is accompanied by a definite indication of the Country in which the goods were made or produced, are hereby prohibited to be imported into this Island and, subject to the provisions of this section shall be included among goods prohibited to be imported as if they were specified in paragraph (11) of Section 40 of the Customs Act.”(My underlining).

Mr. Muirhead early in his submissions referred to the affidavit of Juan Machado at page 13 of the Bundle and certain documentary exhibits therewith. He contended that the documentary exhibits recited the goods were made or produced in China. That circumstance be argued satisfies the requirement of the section, and as I understand him, the goods ought not to have been seized.

That argument seems attractive. However on a careful examination of the section and the emphasized Clauses, the argument loses its attraction. It is clear that it is the goods which bears a trade mark which must have the country of manufacture marked thereon. It is not a bill of lading or other document which is to bear the place of origin or manufacture as contended for by Mr. Muirhead.

It is my opinion that an interpretation of the section in the way contended would go to facilitate what the section seeks to prohibit - the importation of goods with counterfeit trade mark. The respondent's reliance on Hammetts case is well founded.

It is to be noted that reference was made to the fact that duty had been assessed on some of the goods prior to seizure.

I do not think that that erases the fact that the goods do not satisfy the statutory requirement. In any event, the payment of any such duty can be repaid to the applicant.

Was there procedural impropriety on the part of the Respondent?

The allegations of procedural impropriety are contained at grounds 6-9 for the application.

They, by my understanding, are saying that there have been breaches of natural justice.

I do not find on an examination of all the circumstances any breach of natural justice.

But if I am wrong in, that, the mere breach of a requirement of procedure without more does no violence to administrative action.

The applicant must positively prove that damage or prejudice resulted from that breach of the procedural requirement.

The applicant also contends that there has not been timely action on the part of the Respondent Commissioner for condemnation proceedings.

This delay, on the argument invalidates the seizure and detention.

That argument is clearly dealt with by Leonard J. in the unreported case of **R v Commissioner of Customs and Excise ex parte Visage Imports Limited**. It is a decision of The Queens Bench Division on 23 July 1993. There were in that case delay of 9 months in proceedings for condemnation. The circumstances of the seizure and the delay bear some resemblance to those in this case. It was argued that the delay should go to quash the seizures of the goods.

Leonard J. rejected the argument and said "They (speaking of the Customs)

acted on suspicion ----- of course, with those suspicions, prompt action was necessary and seizure was clearly essential. If they do not seize the goods then they may not in future be available for seizure.-----The question is whether the delay which occurred were so serious that they should be visited by the process of judicial review in quashing the seizures.----- Again, I accept the submission of the Commissioners that delay in condemnation proceedings, however reprehensible it may be, cannot retrospectively operate to invalidate the seizures.”

I would reject the applicants submissions on the consequence of delay and in so doing I find comfort in the reasoning of Leonard J. in the Visage case.

The applicant also sought injunctions against the Commissioner of Customs to;-

- (a) Compel the Commissioner to return to the Applicant the property as set out in the Notices of Seizure
- (b) to restrain the said Commissioner of Customs from selling or otherwise disposing of the said goods.

In the light of my findings heretofore, the questions of the injunctions do not arise.

However, Attorney-at-Law for the Commissioner conceded that there can be injunctive remedy against the Crown in Judicial Proceedings. That concession was based on the authority of M. v Home Office [1993] 3 W.L.R. 433; I do not think that the concession is proper due to the fact that English Municipal Law - S. 31 of the Supreme Court Act 1981 allows that.

What we have in Jamaica is a Rule of Court as to Judicial Review. That Rule of

Court cannot erase the substantive law in S. 16 of The Crown Proceedings Act.

In the light of my findings the application is dismissed in its entirety.

There will be costs to the Respondent to be taxed if not agreed.