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Judgment No S.C. 54\2002

Civil Appeal No 246\2001

JENNIFER LARDNER-BURKE (nee JONES) v DIRECTOR OF CUSTOMS AND EXCISE

SUPREME COURT OF ZIMBABWE
SANDURA JA, CHEDA JA & MALABA JA
HARARE JUNE 24 & AUGUST 20, 2002

E.T. Matinenga, for the appellant

J. Zindi, for the respondent

CHEDA JA: The appellant approached the High Court seeking an order to set aside the decision of the respondent who had denied her the immigrant rebate for a motor vehicle. The High Court dismissed her application with costs. This is an appeal against that decision.

The appellant was resident in the Republic of South Africa. A Zimbabwean man decided to marry her. She learnt that she was entitled to an immigrant's rebate, which meant she could bring goods without paying duty for them. This is provided for by section 92(3) of the Customs and Excise (General) Regulations 1997 (S.I. 106 of 1997) which reads as follows:-

"Section 92(3) Subject to this section a rebate of duty may be granted in respect of personal and household effects and other goods imported by an immigrant if such effects and other goods –

(a) are shown to the satisfaction of the Director to have been owned by such immigrant at the time of his arrival and at the time of their importation;

(b) are intended for personal use in Zimbabwe by such immigrant but not for trade or commercial purposes;

(c) are imported at the time of arrival of such immigrant or at such time as the Director may in his discretion approve."

It is common cause that the appellant made arrangements for payment for a Pajero motor vehicle purchased from Mitsubishi Corporation Limited. Payment was by bank transfer. It is not clear why so many banks were used but this seems to be the source of the appellant's problem.

The Bank of Tokyo, where the money was to be paid, did not recognise Mees Pierson as an A-grade Bank and they sent the money back. On yet another occasion it was returned because a wrong account number had been given.

However, the money finally got to the Bank of America in London after which it was paid into the Bank of Tokyo for Mitsubishi Corporation.

This was now 27 May 1999. The appellant had been granted a permit issued on 27 April 1999 for 5 May 1999.

It was argued, for the appellant, that once she arranged payment she had no more control of the events that followed and that as far as she was concerned she had paid for the vehicle and she owned it. The respondent's counsel argued that the appellant had to satisfy the Director that she complied with the provisions of s

92(3) of the Regulations.

Counsel for the appellant submitted that payment by bank transfer was more reliable than a cheque, and that once the transfer is done payment has been made. However, that is not the issue. The issue is whether the Director was satisfied that she complied with the Regulations.

The movement of the money from one bank to another resulted in the money delaying and it only reached the Bank of Tokyo for Mitsubishi Corporation on 27 May 1999. In other words, this was the date of payment.

In view of the above, it cannot be said that when the appellant entered Zimbabwe she had paid for the vehicle. It follows that if she had not paid for it she did not own it at the relevant time.

The Director was also concerned about certain documents that she produced. He asked for an explanation, after which he thought some of the documents were intended to deceive.

It was argued that such thinking influenced the Director to the extent that he based his decision on that.

I do not agree.

Even if he mentioned that, his decision was based on the provisions of the Regulations since payment was received after the date of her entry into Zimbabwe. The suspicious documents could also make it difficult for him to be satisfied. The Regulations required that he be satisfied.

The money was paid about a month after she had been issued with a permit. When she moved to Zimbabwe, payment had not been made to the account of Mitsubishi Corporation. The Director was, for good reasons, dissatisfied. He exercised his discretion based on the above facts.

The High Court was therefore correct in dismissing the application.

There is no merit in the appeal.

The appeal is dismissed with costs.

SANDURA JA: I agree

MALABA JA: I agree

Wickwar & Chitiyo, appellant's legal practitioners

Kantor & Immerman, respondent's legal practitioners