

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 113 of 2017

BETWEEN: **VINIL VIKASH KRISHAAN**, trading as **RAINBOW IMPORTS AND WHOLESALERS** of Nadi.

Plaintiff

AND: **FIJI ISLANDS REVENUE & CUSTOMS AUTHORITY**, a statutory authority at Lautoka.

Defendant

Before : Acting Master U.L. Mohamed Azhar

Counsels: Mr. Z. Mohammed for the Plaintiff
 Ms. Raiyawa for the Defendant

Date of Ruling: 20th November 2017

RULING

(Injunctions, mandatory & prohibitory, material non-disclosure and legal proceeding under Customs Act)

01. The plaintiff took out the Writ of Summons issued by this registry on 14.06.2017 together with the Notice of Motion of the same date, seeking an order on the defendant to immediately release all the goods seized by the latter with the cost. According to the statement of claim attached with the Writ, the plaintiff on or about 22nd May 2017 imported certain goods from Chinese Company namely Yuhang Import and Export Limited and paid the full sum of duty imposed by the defendant with the VAT. However, the defendant failed to release those goods to the plaintiff. The plaintiff therefore sought an order on the defendant to release all the declared goods retained by it and general damages for wrongful detention in sum of \$ 50,000.00 and the cost. The Notice of Motion is supported by an affidavit sworn by the plaintiff himself.

02. The said Notice of Motion was taken up on 19th June 2017 for support and the plaintiff filed the Affidavit of Service for the proof of service of the said Notice of Motion on the defendant. However, the defendant was absent and unrepresented. Having heard the

plaintiff's counsel on that day, the court refused to give an order on the ex-parte application as the power to seize the goods is granted by the statute i.e. Customs Act No. 11 of 1986 (hereinafter referred to as *the Act*) and advised the plaintiff to follow the procedures under Part 21 of the Act. In the meantime, the court made the Notice of Motion inter parted and returnable on 03.07.2017. The defendant, thereafter, filed the affidavit in opposition to the said Notice of Motion; however, the plaintiff did not file any affidavit in reply to the affidavit of the defendant. Both counsels by mutual agreement filed the written submissions and moved to dispose the notice of motion based on the affidavits and their submissions.

03. The plaintiff states in his affidavit that, he imported certain goods from China as per the Invoice No. 17/40912 from Chinese Company called Yuhang Imports and Exports Limited. The copy of the Invoice is marked as *VVK 1* and attached with the affidavit. The annexure *VVK 1* is the Invoice issued by the said Chinese company and contains 33 items contained in 377 packages and packed in one full container bearing number PCIU1396956 # 20 GP. The total value of the goods as per the said Invoice is US\$ 6,306.00 and the consignee is Rainbow Imports & Exports – the Trade Name of the plaintiff. Annexing the document marked as *VVK 2* which is a copy of the receipt issued by the defendant for the duty paid in respect those good, the plaintiff avers that the defendant assessed the duty payable by the plaintiff and he paid the same. However, the plaintiff further stated that, the defendant found some goods in the same container, which do not form part of his consignment. The plaintiff thus alleges that, despite the payment of duty imposed by the defendant, the latter wrongfully detained his goods. He annexed the detention notice marked as *VVK 3* and stated that, despite his demand, the defendant failed and or neglected to release the same.
04. The defendant in its affidavit sworn by its senior investigating officer of customs branch, responded to the averments of the plaintiff and at the outset stated that, the defendant did not approve or pass the Customs Entry, because they doubted the accuracy and the truth of the documents attached to the Customs Entry. The defendant's affidavit further states that, the plaintiff declared that, the full load of container was consigned to him. Whilst admitting the detention of the full container, the defendant has given two reasons for the same. First is that, the undeclared goods consist of 200 cartons of DVDs and second is that, the applicant failed to satisfy the defendant on the circumstances surrounding the sale which is essential for the purpose of valuation of the goods. Accordingly the defendant stated that, both the declared and undeclared goods are subject to customs investigation with the charges expected to be laid against the plaintiff.
05. The very important facts, that the plaintiff has surreptitiously hidden to this court and which have core play in deciding this matter, have been set out in paragraphs 8 to 15 of the affidavit of the defendant. One is letter sent by the defendant in reply to the letter sent by the plaintiff requesting the release of detained goods. The said letter is marked as *FRCA 2* and annexed with the affidavit and contents of which will be discussed later in

this ruling. The second fact is that, the customs broker of the plaintiff prepared the Customs Entry which is marked as **FRCA 3** and contained the import declaration, bill lading for one full container load of assorted goods, including musical instruments, paper plates, cups and foam boards. However, upon physical examination of the container, it was found undeclared 200 cartons of DVDs and the duty payable would amount to \$ 665,940.00. The third fact is that, the customs were in doubt on the accuracy of the imports documents and demanded further documents from the customs broker of the plaintiff and the said broker could not provide the same. The fourth fact is that, the customs arranged a meeting with the plaintiff on 22nd May 2017 and the plaintiff informed the customs officers that, he could not read, write and understand English language; he communicated with the supplier in Hindi and the last communication was 4 to 5 months ago; his friend one Meichael Bhinnu Ganga Jalam makes orders to his suppliers and he did not know the model and description of the musical instruments. The notable fact is that, the above facts were disclosed by the defendant only in its affidavit. However, the plaintiff neither denied the affidavit of the defendant nor he filed any affidavit in reply disputing the averments of the defendant, though he (plaintiff) had opportunity to do so.

06. As I stated above, the plaintiff failed to disclose the above relevant facts to the court before moving for the relief he sought from the court. In fact, when this notice of motion was first heard on 19.13.2017, the court specifically urged the plaintiff to follow the steps under Part 21 of the Customs Act which deals with the legal proceedings to recover the goods seized by the customs. The most relevant sections are the sections 157 and 158 which are as follows;

Notice of claim

157 (1) *Where goods liable to seizure under the provisions of this Act have been seized, the owner thereof or, in the case of an aircraft or ship the master thereof, may within 3 months of the date of the seizure or of the date of any written notice of seizure, as the case may be, by notice in writing to the Comptroller claim the goods.*

(2) *If no claim is made within such period of 3 months in accordance with the provisions of subsection (1), the goods are deemed to have been condemned.*

Procedure after notice of claim

158 (1) *If a notice of claim has been given to the Comptroller in accordance provisions of section 157, then the Comptroller may within a period of 2 months from the receipt of such claim, either ----*

(a) *by notice in writing to the claimant, require the claimant to institute proceedings for the recovery of the goods within 2 months of the date of such notice; or*

(b) *himself or herself institute proceedings for the condemnation of the goods.*

(2) *If the Comptroller fails within such period of 2 months wither to require the claimant to institute proceedings or himself or herself to institute proceedings, in accordance with the provisions of subsection (1) then such goods shall be released to the claimant.*

(3) *If the Comptroller, in accordance with the provisions of subsection (1), requires the claimant to institute proceedings within the period of 2 months and the claimant fails to do so, then on the expiration of such period the goods are deemed to have been condemned.*

07. The procedure is simply that, if the goods are seized by the customs, the owner within 3 months from the date of seizure may, notice in writing to the controller of customs, claim the good. If no claim is made within 3 months, the good to be condemned. On the other hand, if the claim has been given to the controller, then the controller within 2 months from the receipt of such claim, either require the claimant by notice in writing to institute proceedings within 2 months from such notice or the controller himself or herself may institute proceedings for condemnation of goods. If the controller fails either to inform in writing or to institute proceedings within 2 months, the goods should be released to the claimant. If claimant fails to institute proceedings as required by the controller within 2 months, then on expiration of such 02 months, the goods are deemed to be condemned.

08. When the goods of the plaintiff were seized by the defendant, the plaintiff claimed the same by his letter dated 30.05.2017. The plaintiff stated in paragraph 8 of his affidavit that, the he made the request to release the goods, but the defendant refused and or neglected to release the same. This is not true. As mentioned above, the plaintiff has surreptitiously hidden the fact that, the defendant replied to his request by letter dated 13.06.2017 which is marked as **FRCA 2**. The said letter is self-explanatory to the fact that, the defendant never refused to release the goods, but acting under the provisions of the Act, had required plaintiff to rectify the irregularities in respect of his import citing the reasons for the same. Considering the importance and relevance of each and every paragraph of the said letter - **FRCA 2**, I reproduce the same below:

*Vinil Vikash Krishnan T/A
Rainbow Imports & Wholesalers
P.O.Box 9876
Nadi Airport*

Date: 13 June 2017

Re: Request Letter

Dear Sir,

Your letter dated 30th May 2017 is kindly acknowledged.

Your request for the release of the goods is also noted, however, you are advised that should you wish to have the goods released, under the provisions of section 161 of Customs Act, 1986, two sufficient bond surety of being double the value of the goods are to be delivered and kept in the custody of the Comptroller of Customs.

Additionally, as informed to you by Customs Officers during processing of Customs Entry C12438 dated 19/05/2017, FRCA is concerned with the truth and accuracy of the documents, and declarations presented thus far, therefore, you are requested to provide documentation to demonstrate that the declared price represents the total amount actually paid or payable on the imported goods.

The reasons to doubt on the truth and accuracy of the documents presented are based on the irregularities as follows:

- 1. Initially you verbally gave declaration that one Mr Meichael Bhinnu Ganga Jalam gave orders to the suppliers, however, Mr Jalam denies the fact that he ordered the goods.*
- 2. You have not provided sufficient evidence of your communication with the shipper of the goods.*
- 3. You have given verbal statement to Customs Officers that you do not understand, read and write English language.*
- 4. You have given verbal statement to Customs Officers that Mr Meichael Bhinnu Ganga Jalam is employed by your company Rainbow Imports & Wholesalers, however, Mr Jalam denies the fact that he is employed by you.*
- 5. You have verbal statement to Customs Officers that you are now aware how you had received the invoice for the goods imported.*
- 6. You gave statement that the last time you had contacted with your supplier was four to five months ago.*
- 7. You had not declared the 120,000 unrecorded DVDs when given a second opportunity by Customs Officers to correctly declare all the details of the consignment.*

You are now given seven days from the date of this letter to respond to the irregularities above and comply by disclosing the correct documents.

Failure to substantiate the above irregularities will leave the Comptroller of Customs & Excise no other option but to deem that Customs value cannot be determined on the basis of the transaction value (invoice value), and thus proceed to use the alternate valuation methods of the Agreement on Customs Valuation (GATT).

I also wish to draw your attention to Article 13 of GATT and also to section 35 of Customs Act, whereby, the Comptroller may require and take security for compliance and generally for the protection of the revenue of the Customs, and, pending the giving of the required security in relation to any goods subject to the control of the Customs, may refuse to deliver the goods or to pass any entry relating thereto.

It has to be also noted that during the course of an investigation, if the Comptroller is satisfied with the commission of offences under the Customs Laws, the goods, the subject matter of an offence, would be liable to forfeiture and may also result in prosecution for the offence.

You may acquire the required form from this office should you decide to arrange for the bond surety above.

I hope the above elucidates our position with regards to your request for the above.

Should you have any queries pertaining to the above, please do not hesitate to contact me on telephone numbers 6626654.

Thank you

Yours faithfully

Sgd:

*[Arvind C. Prasad]
for Chief Executive Officer*

09. The above letter - **FRCA 2** is clear that, the defendant had some concerns on the documents submitted and the declaration made by the plaintiff and requested to respond the irregularities. The **FRCA 2** also evident that, the defendant too wanted the release of good, subject however to the provisions of the Act. The affidavit of the defendant, which stands undisputed by the plaintiff, states that, the defendant had a meeting with the plaintiff to discuss the issues relating to the said goods, prior to issue of this **FRCA 2** to the plaintiff. However, the plaintiff had hidden all of these facts and merely alleged that, the defendant unlawfully refused and or neglected to release the goods despite the request. This is a material non-disclosure which cannot be taken lightly. It is the settled law that, the party who seeks urgent relief must disclose to the court all matters relevant to the exercise of the court's discretion. If such party misleads the court by not providing the fullest information that ground alone may lead to the setting aside of any relief granted or indeed the denial of relief. It was held in Tate Access Floors Inc. v. Boswell [1991] Ch. 512 that;

"No rule is better established, and few more important, than the rule (the golden rule) that a plaintiff applying for ex parte relief must disclose to the court all matters relevant to the exercise of the court's discretion whether or not to grant relief before giving the defendant an opportunity to be heard. If that duty is not observed by the plaintiff, the court will discharge the ex parte order and may, to mark its displeasure, refuse the plaintiff further inter partes relief even though the circumstances would otherwise justify the grant of such relief." (Emphasis added).

10. G. Winter J, citing a New Zealand and a local case in *Ali's Civil Engineering Ltd v Habib Bank Ltd [2004] FJHC 176; HBC0035.2004 (5 February 2004)* stated that;

*"The need for a plaintiff applying for urgent relief to "make full disclosure to the court" has been stressed in numerous cases. See for example **Douglas and Williams v. Cammock**(unreported NZHC Hamilton: CP48/99: 4/8/99 Penlington J).*

*It has been further noted that where a party misleads the court by not providing the fullest information that ground alone may lead to the setting aside of any relief granted or indeed the denial of relief. The decision of **Votualailai Limited v Capitals FNPF Board and Others** Lautoka Civil Action No. 272 of 1998 is appropriate. Sadal J summarised the effect of material non-disclosure in this way:*

"The non-disclosure of material facts, even if it is innocent or inadvertent, is enough to avoid the injunction. In cases of material non-disclosure as in this case the ex parte injunction is liable to be dissolved on that ground alone, without any enquiry into the merits of the case." (Emphasis added)

11. The most surprising fact is that, the plaintiff filed this action on the following day after receiving the said letter **FRCA 2** from the defendant, because the **FRCA 2** was issued on the plaintiff on 13.06.2017 and he received it on the same day at 10.05 am as evident from the acknowledgment note appearing on it and whereas he filed this action on 14.06.2017 as per the date stamp affixed by the registry on the Writ and the Notice of Motion. The plaintiff not only failed to disclose the material facts, but also untruthfully alleged that, the defendant wrongfully detained his goods despite him paying the duty and making request under the provisions of the Customs Act. These alone suffice to dismiss the Notice of Motion filed by the plaintiff. However, I discuss the law on the particular type of injunction sought by the plaintiff in his Notice of Motion.
12. The injunction is an order that restrains a party from taking a particular action or that requires it to take a particular course of action. It is a remedy originated by the English court of equity when a wrong cannot be adequately remedied by an award of monetary damages. It can be either negative or positive, though the most common form of it falls under first category known as 'prohibitory injunction' that prohibits or restrains the performance of a particular action or restrains any alleged wrongful act. On the other

hand, the second category is the one that directs a party to perform or do a particular act or compels to perform a specific act and commonly known as 'mandatory injunction'. The injunction sought by the plaintiff, in this case, is a mandatory injunction on the defendant to forthwith release all the goods as per the Invoice No. 17/40912. The mandatory injunction is granted very rarely by the courts or in other words, it is significantly harder to get a mandatory injunction at an interlocutory stage than the prohibitory one. It is a jurisdiction to be exercised sparingly and with caution but, in the proper case, unhesitatingly. The test applicable to mandatory injunctions is far more stringent than the test applicable in prohibitory injunction as set out in American Cyanamid (1975) AC 396.

13. **Lord Upjohn** (with whom Lord Reid, Lord Morris of Borth-y-Gest, Lord Hodson, and Lord Diplock agreed) held in Redland Bricks Ltd v Morris and Another [1969] 2 All ER 576 at pages 579 and 580 that;

The grant of a mandatory injunction is, of course, entirely discretionary and unlike a negative injunction can never be "as of course". Every case must depend essentially on its own particular circumstances. Any general principles for its application can only be laid down in the most general terms:

1. *A mandatory injunction can only be granted where the plaintiff shows a very strong probability on the facts that grave damages will accrue to him in the future. As Lord Dunedin said in A-G for the Dominion of Canada v Ritchie Contracting and Supply Co Ltd; [1919] AC 999 at p 1005 it is not sufficient to say "timeo". It is a jurisdiction to be exercised sparingly and with caution but, in the proper case, unhesitatingly.*
2. *Damages will not be a sufficient or adequate remedy if such damages does happen. This is only the application of a general principle of equity; it has nothing to do with Lord Cairns' Act (the Chancery Amendment Act 1858) or Meux's case.*
3. *Unlike the case where a negative injunction is granted to prevent the continuance or recurrence of a wrongful act the question of the cost to the defendant to do works to prevent or lessen the likelihood of a future apprehended wrong must be an element to be taken into account: (a) where the defendant has acted without regard to his neighbour's rights, or has tried to steal a march on him or has tried to evade the jurisdiction of the court or, to sum it up, has acted wantonly and quite unreasonably in relation to his neighbour he may be ordered to repair his wanton and unreasonable acts by doing positive work to restore the status quo even if the expense to him is out of all proportion to the advantage thereby accruing to the plaintiff. As illustrative of this see Woodhouse v Newry Navigation Co; (b) but where the defendant has acted reasonably, although in the event*

wrongly, the cost of remedying by positive action his earlier activities is most important for two reasons. First, because no legal wrong has yet occurred (for which he has not been recompensed at law and in equity) and, in spite of gloomy expert opinion, may never occur or possibly only on a much smaller scale than anticipated. Secondly, because if ultimately heavy damage does occur the plaintiff is in no way prejudicial for he has his action at law and all his consequential remedies in equity.

So the amount to be expended under a mandatory order by the defendant must be balanced with these considerations in mind against the anticipated possible damages to the plaintiff and if, on such balance, it seems unreasonable to inflict such expenditure on one who for this purpose is no more than a potential wrongdoer then the court must exercise its jurisdiction accordingly. Of course, the court does not have to order such works as on the evidence before it will remedy the wrong but may think it proper to impose on the defendant the obligation of doing certain works may on expert opinion merely lessen the likelihood of any further injury to the plaintiff's land. Sargant J pointed this out in effect in the celebrated "Moving Mountain" case, *Kennard v Cory Brothers & Co Ltd* ([1922] 1 Ch 265 at pp 274, 275) (his judgment was affirmed in the Court of Appeal).

4. *If in the exercise of its discretion the court decides that it is a proper case to grant a mandatory injunction, then the court must be careful to see that the defendant knows exactly in fact what he has to do and this means not as a matter of law but as a matter of fact, so that in carrying out an order he can give his contractors the proper instructions.*

14. In order to better apply the principles of mandatory injunction to the instant case, I consider it necessary to briefly outline the operation of the defendant and the duties casted on its employees. The defendant authority is created for the purposes of the Act which regulates the collection of revenue and customs duty that is the cornerstone for the country's economy. For the better administration of collection of revenues, to avoid any possible abuse or evading of duties and taxes that is legally due to the country and to avoid any unlawful imports and exports which endanger the country, the Act provides for vast powers to the defendant, which are to be exercised by the controller or his her subordinate officers. Among those powers, the power to seize or detain the goods is an important one. The provisions as to detention, seizure and forfeiture are contained in section 129 (1) and (2) of the Act which read as follows;

129 (1) An officer or other person, authorized in that behalf by the Comptroller may at any time seize or detain any goods liable to forfeiture under the customs laws or any goods which such officer

or other person has reasonable grounds to believe are liable to forfeiture thereunder.

(2) The following goods are liable to forfeiture and may be seized or detained as aforesaid---

- (a) all goods which are smuggled;*
- (b) all prohibited goods and any restricted goods which are dealt with contrary to any condition regulating their importation, exportation or carriage coastwise;*
- (c) all goods found in any aircraft or ship after arrival in any port and not being specified in the inward manifest or parcel list and not being baggage belonging to the master, crew or passengers and not being satisfactorily accounted for;*
- (d) all uncustomed goods;*
- (e) all goods which, being subject to the control of the Fiji Revenue and Customs Authority, are moved, altered or interfered with except by the authority of and in accordance with the provisions of this Act;*
- (f) all goods in respect of which any entry, invoice, declaration, answer, statement or representation which is false or incorrect in any material particular has been delivered, made or produced;*
- (g) all goods falsely described either in the manifest of the aircraft or ship or other document by which importation is authorized;*
- (h) the cargo of any ship which hovers within Fiji and does not depart after being required by an officer to do so;*
- (i) all goods, not being baggage belonging to the master, crew or passengers, found on an aircraft or ship after clearance and not specified or referred to on the outward manifest and not accounted for to the satisfaction of the Comptroller;*
- (j) all dutiable goods concealed in any manner*
- (k) any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer;*
- (l) save as may be prescribed by the Minister, all dutiable goods found in the possession or the baggage of any person who has landed from any aircraft or ship and has denied that he or she*

has any dutiable goods in his or her possession or who, when questioned by an officer, has not fully disclosed that such goods are in his or her possession or baggage;

(m) any imported goods found, whether before or after delivery, not to correspond with the entry made thereof.

15. Though the power to seize or detain the goods under the above section is a discretionary power, the officer who orders for seizure must have reasonable grounds to believe that such goods are liable to forfeiture. In the instant case, annexure marked as **FRCA 2** attached with the affidavit clearly sets out the reasons for forming such an opinion which led the defendant to order for seizure of the goods imported by the plaintiff. Therefore, the order for seizure is based on reasonable grounds which were formally informed to the plaintiff and was surreptitiously hidden by him when he made the application for mandatory injunction. Apart from the power to seize the goods, the defendant and its officers have additional powers to call for the invoices and other related documents relevant to the imports and exports. This power is provided in section 102 of the Act which reads as follow;

102 (1) If information has been received by the Comptroller to the effect that goods have been or are intended to be smuggled, undeclared, unlawfully entered or illegally dealt with or where any goods have been seized or detained, a person shall, upon being requested to do so by the Comptroller, produce any books, invoices and documents relating to any goods imported or exported and which such person may have had in his or her possession at any time within the period of 5 years immediately preceding the date of such request and shall also produce for the inspection of the Comptroller and permit him or her to make copies of or take extracts from, all books or documents of any kind whatsoever wherein any entry or memorandum appears in any way to relate to any such goods.

(2) The Comptroller may seize and detain any book, invoice or document produced under the provisions of this section, if his or her opinion, such book, invoice or document may afford evidence of the commission of any offence against the customs laws.

(3) A person who –

(a) refuses or neglects to comply with a request of the Comptroller under the provisions of this section;

(b) knowingly produces any false book, invoice or document;

(c) knowingly makes any false representation in regard to the country in which any goods were grown, produced or manufactured; or

(d) Makes any false representation with intent to evade or to contravene the provisions of this section,

is guilty of an offence and is liable to a fine not exceeding \$10,000.00 or to imprisonment for 4 years or to both such fine and imprisonment.

16. The above section not only provides for the powers to call for such additional and relevant documents, but also imposes a statutory duty on the importers to disclose those document and failure to perform such duty is an offence which is to be met with stiff punishment of fine not exceeding \$ 10,000.00 and to an imprisonment for 4 years or both such fine and imprisonment. The plaintiff in this case, after receiving the letter marked **FRCA 2** from the defendant on 13.06.2017, filed this action on the following day without fulfilling his duty imposed on him under the section 102 of the Act. This is a short-circuited application intended to circumvent the duty which warrants penal sanction and imposed by the statute. The plaintiff is trying to use the injunction as cannon to cover up his breach and get the goods released, which are detained in accordance with the provisions of Act. This action of the plaintiff should be denounced not only on the basis of being an abuse of the process, but also on the basis of public policy ground. As I stated above, the injunction is an equitable remedy. As such, it is well established by the courts of equity that one who comes into equity must come with clean hands, that means equity will not permit a party to profit by his own wrong. In *Tinsley v. Milligan* [1993] UKHL 3 The House of Lords held at pages 7 and 8 as follows;

“The reason why the court of equity will not assist the claimant to recover his property or to assert his interest in it has been variously stated. It is sometimes said that it is because he has not come to equity with clean hands. This was the reason given by the Lord Chief Baron in Groves v. Groves (1829) 3 Y. & J. 163, 174, and by Salmon L.J. (with whom Cross L.J. agreed) in Tinker v. Tinker [1970] P. 136, 143. Sometimes it is said that the claimant cannot be heard or allowed to assert his claim to an equitable interest, as in Curtis v. Perry 6 Ves. 739, 746, per Lord Eldon L.C.; Childers v. Childers (1857) 3 K. & J. 310, 315 per Page Wood V.-C.; and Cantor v. Cox (1976) 239 E.G. 121, 122, per Plowman V.-C. But this is, as I see it, another way of saying that the claimant must fail because he has not come to the court with clean hands”.

17. The plaintiff firstly failed to submit the full declaration of the goods consigned to him and secondly tried, by filling this Notice of Motion, to circumvent the duty imposed on his by the statute. Thus, his hands are not clean and therefore, he is disqualified from seeking any equity from the court in the form of injunction. The plaintiff cannot show a

very strong probability on the facts of the case that grave damages will accrue to him in the future as he is in breach of mandatory duties imposed by the statute.

18. As discussed above, the Act provides for the certain powers on the defendant and its employees as the regulators of the imports and exports and collectors of revenue and customs duties. The seizure and detention of goods declared contrary to the provisions of the Act are some of the major statutory duties which should be carried out in accordance with the specific provisions of the Act. The defendant's affidavit is clear that, it had taken all the steps in accordance with the provisions of the Act and required the plaintiff to comply with the statutory requirements to release the goods imported by the plaintiff. The defendant's intention is put in clear terms in *FRCA 2*. Strictly speaking, the defendant never refused to release the goods, but required the compliance of the statute. Therefore, issue of any mandatory injunction, compelling the defendant to release the goods so detained pending the statutory compliance, will defeat the purpose of the Act and cripple the entire regulatory system. In addition, if the court grants mandatory injunction ordering the release of the goods so detained in accordance with the statutory provisions, it will open the floodgates for those who try to circumvent the statutory requirements. The judicial mechanism is available for enforcement and strict implementation of laws and not to encourage the breach.


19. According to the Part 21 of the Act and especially section 157 and 158 mentioned in the preceding paragraph 06 any claimant can institute the proceedings for release of the goods so detained by the defendant only if the latter requires the claimant to institute proceedings under section 158 (1) (a). That request in writing will therefore, be sent only if the defendant decides not to release those goods. If there is no such request in writing, no claimant will have any cause of action against the defendant for the reasons that, there is no denial to release, unless the defendant's action (being the statutory body) is unreasonable, which warrants the intervention of administrative law remedy by way of judicial review. In the instant case too, there was no denial by the defendant, but it decided to follow the statutory procedure for the release and had a meeting with the plaintiff too to facilitate the same. These all show that, the defendant always wanted to release the goods, but subject to the provisions of the Act. As a regulator, the defendant is duty bound to strictly comply with the provisions of the Act. Therefore, the plaintiff lacks the cause of action against the defendant and the claim itself becomes frivolous or vexatious. Thus, the plaintiff cannot invoke the jurisdiction of this court seeking the mandatory injunction as he prayed for in his Notice of Motion. It follows that, this is not a proper case where the court can exercise its jurisdiction to grant mandatory injunction which can only be exercised sparingly and with caution. For the above reasons, I decide that the claim of the plaintiff fails the test applicable for granting a mandatory injunction as articulated by Lord Upjohn in *Redland Bricks Ltd v Morris and Another* (supra) and therefore, should stand dismissed with the reasonable cost to be paid to the defendant.

20. Accordingly, the final orders are;

- a. The Notice of Motion dated 13.06.2017 and filed on 14.06.2017 by the plaintiff is dismissed,
- b. The plaintiff to pay a summarily assessed cost of \$ 300.00 to the defendant within 14 days from today.



**At Lautoka
20/11/2017**


**U.L Mohamed Azhar
Acting Master**