IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC ..949
MC 107/2019

SF HYBRID MOTORS (PTY) LIMITED **Petitioner**
(rep. by Alexandra Madeleine)

And

THE COMMISSIONER GENERAL **1st Respondent**
(rep. by Joshua Revera)

THE ROAD TRANSPORT COMMISSIONER **2nd Respondent**
(rep. by Aaishah Molle)

Neutral Citation	*SF Hybrid Motors (Pty) Limited v The Commissioner General & Anor* (MC107/2019)[2020] SCSC ..949.... Delivered on 10th December 2020
Before:	Vidot J
Summary	Judicial Review; importation of vehicles into Seychelles; Customs Management Act, Road Transport Act, Vehicles Importation Policies; does policy have force of law; appropriate authority to which application is made
Heard:	10 September 2020
Delivered:	10 December 2020

RULING

VIDOT J

1. The Petitioner has filed application seeking judicial review of an order made the 2nd Respondent by means of a letter dated 19th November 2019. The Petitioner, a company established under the Companies Act 1972, is involved in the business, inter alia of importing and selling of vehicles.

2. The Petitioner had in 2019 obtained necessary import permits from Import Permit Division to import into Seychelles 2 vehicles, namely a Nissan Note and a Nissan Serena. Once the vehicle landed in Seychelles, the 1st Respondent would not allow the release of these vehicles to the Petitioner claiming that the year of manufacture did not correspond

with the vehicles being new. The 2nd Respondent claimed that these vehicles did not conform to the Vehicle Importation Policies, which policy he administers. In its attempt to resolve the matter to have the vehicles released the Petitioner engaged in exhaustive negotiations with the Respondents and that involved the writing of numerous letters and appeals pursuant to the Customs Management Act 2011; Customs Management (Appeal against Administrative Decisions) Regulations 2012; S.I 60 of 2012, ("the Regulations") to the 1st Respondent. To date the vehicles have not been released. This has resulted in business detriment to the Petitioner.

3. The Petitioner is therefore seeking that the decision of the Respondents be declared ultra vires, illegal and unreasonable and constitute an abuse of power by the 1st and 2nd Respondents. It is averred that the decision was unjustified. The Petitioner further submits that the Vehicle Import Policies had not been translated in law, therefore making it unenforceable and cannot be applied to infringe on the Petitioner's rights. Furthermore, the policy had not come into force when the Petitioner obtained the necessary import permits for the two vehicles. The Petitioner further submits that the 1st Respondent is under obligation to answer to the appeals that it filed. According to the Petitioner the 1st Respondent had 30 days to pronounce itself on the appeal in conformity with the Regulations. Therefore, the Petitioner prays that the Court make order for writs of certiorari and mandamus to compel the 1st and 2nd Respondents respectively to act according to law and release the vehicles.

Factual Background

The Petition

4. In 2019, the Petitioner obtained necessary import permits to import the vehicles. They were imported from Japan. On the 28th February 2019 and 03rd April 2019, the Seychelles Revenue Commission issued to the Petitioner "Receiving Goods Receipts" for the Nissan Note and the Serena respectively advising the Petitioner that the vehicles were being retained in Government warehouse until permits were amended. The 1st Respondent maintained that there were doubts regarding the date of manufacture of the vehicles. Therefore, the Petitioner obtained from the manufacturer export certificates that was served on Customs Division.

5. However, by letter dated 15th April 2019, the 2nd Respondent wrote to the Petitioner expressing that the vehicles would be retained and not released for the following reasons;

   (i) The vehicles have 12 symbol chassis number instead of 17 symbol chassis number which means that the vehicles were meant for Japanese domestic market only and not to be exported;

(ii) After further analysis of the vehicles were made, it was found that both vehicles were manufactured in 2017 and not 2018 as indicated on the permits.

6. Irrespective, the Petitioner pursued its endeavours to have the vehicles released. That came via letter of 10th May 2019. The Petitioner further filed an appeal on the 17th May 2019, to the 1st Respondent, against the decision not to release the vehicles. However, that Respondent failed to make any determination on the appeal within the prescribed 30 days period.

7. The Petitioner received a further letter dated 04th June 2019, from the Customs Division, informing the Petitioner that the year of manufacture of the vehicle was 2017 and not 2018. The Customs Division nonetheless proposed that the Petitioner applies for an amendment of the import permit "so that customs could facilitate the release of the vehicles without further ado." By further letter dated 09th July 2019, the Director for Trade in the Ministry of Finance, Trade and Economic Planning, informed the Petitioner that the Department of Transfer being the competent authority for the importation of vehicles under the Customs Management (Prohibited and Restricted Goods) Regulations 2019 had not approved the permit for importation of the 2 vehicles as they were not new as defined in the Vehicle Importation Policies. Yet again the Petitioner appealed against that decision. To that an end the Petitioner sent a letter dated 09th July 2019 to the 1st Respondent. Yet again the 1st Respondent failed to make a determination of that appeal within the prescribed 30 days of the appeal. By letter dated 07th October 2019, the Petitioner sought a respond to that appeal from the 1st Respondent.

8. The 1st Respondent responded by letter dated 19th November 2019, which letter was received on 27th November 2019. In that letter the 1st Respondent advised the Petitioner that it can only release the vehicles upon the availability of an import permit. That amended permit had to come from the 2nd Respondent. That letter did not address all the grounds of appeal and suggested that the Petitioner contacts the 2nd Respondent in respect of the Vehicle Importation Policies. Despite attempts by the Petitioner on two occasions to obtain from the 2nd Respondent that policy, such attempts were not fruitful. Therefore, the Petitioner deemed the refusal by the 1st Respondent to determine the issues raised in the appeal as being unjustified, illegal and or unreasonable and that the Respondents acted in procedural impropriety that constitutes an abuse of power for the following reasons;

(a) The Customs Management (Appeal against Administrative Decisions) Regulations 2012, provides that the Revenue Commissioner makes a decision regarding any appeal within 30 days of the lodgement of the appeal. On both occasions that an appeal was filed the reply of the decision was not made within 30 days;

(b) The failure of the 1st Respondent to decide on the Appeal within the time prescribed in the Regulations, denied the Petitioner the right to exhaust other internal appeal procedures and /or in the alternative remedies from custom's retention of the vehicles;

(c) Failure of the 1st Respondent to make a decision on the appeal of the 17th May 2019 and 04th September 2019, is tantamount to an endorsement of the 2nd Respondent refusal to release the vehicles; and an endorsement of the 2nd Respondent refusal to issue amended import permits as confirmed in a letter dated 09th July 2019.

(d) Therefore, the Petitioner considers that failure of the 1st Respondent to deicide on the appeals to be an illegality in that 2 vehicles were lawfully imported into Seychelles on authority of valid import permits from the 1st Respondent. .

9. The Petitioner also considers the 2nd Respondent's refusal to release and issue amended import permits as unreasonable and an abuse of power by the 2nd Respondent and that customs reliance and/or endorsement of the said refusal as being unjustified, illegal and unreasonable. The Petitioner further complained that that the amended import permits were refused on that ground that further to the provisions of the Vehicle Importation Policies, the vehicles were not new, a matter which is disputed by the Petitioner.

10. In fact the Petitioner submits that the Vehicle Importation Policy cannot legally form the basis for retaining the vehicles as the policy lacks the force of law and unless the Policy was translated into law, it cannot be applied to infringe on personal rights. Furthermore, the policy was not in force at the time that Petitioner applied for the import permits for the 2 vehicles and neither was it in force at the time. It also did not have retrospective effect when it came into existence.

11. The Petitioner further avers that the retention of the new Nissan vehicles and refusing to grant amended import permits were unreasonable and unjustified. In has to be remembered that the Petitioner applied and obtained necessary import permits prior to importing the vehicles in Seychelles. The Nissan Note was first registered and released in Japan in March 2018 and the Nissan Serena registered and released in Japan in November 2018. Therefore, since the vehicles were released on the above mentioned dated, the two new vehicles could not have been purchase in 2017.

12. The Petitioner, avers that reliance on the 2nd Respondent's refusal as being the competent authority is wrong in law and unreasonable in all circumstances of the case, because at the time of obtaining the import permits for the vehicles, their arrival in Seychelles and their retention by customs, the Customs Management (Prohibited and Restricted Goods) Regulations 2019, was not in force. These Regulations came into force upon their publication in the supplement to the official gazette of 17th June 2019. That being the

case, the regulations cannot operate retrospectively to the time that the Petitioner obtained import permits in respect of the vehicles.

13. As a result of matters aforesaid, that is failure and refusal to release the vehicles, the Petitioner has been caused serious prejudice and damage as one of the clients who placed the order for the vehicle has cancelled the purchase agreement upon becoming aware of the 2nd Respondent's letter of the 15th April 2019.

14. The Petitioner, therefore, makes the following demands from the Court;

i. That the Court issue an writ of certiorari quashing the decision contained in the 1st Respondent's letter dated 19th November 2019, the 2nd Respondent's letter of 15th April 2019 and the decision conveyed by the Director General for Trade in the Ministry of Finance, Trade, Investment and Economic Planning on the 09th July 2019, refusing to release the two new Nissan vehicles and / or to issue the amended imports permits as endorsed by the 1st Respondent in failing to consider the Petitioner's appeal within the prescribed time limit;

ii. Issue a writ of mandamus compelling the 1st Respondent to make a decision on the Petitioner's appeal dated 17th May 2019 and 06th September 2019 in accordance with the laws and regulations in force at the time that the 2 new Nissan vehicles were imported and/or arrived in Seychelles on the basis of the document provided by the Petitioner;

iii. Make any orders that the Court shall deem fit in the circumstances of this case; and

iv. Order the Respondents to pay cost of this case.

15. Therefore the Petitioner's demand is to declare that the impugned letter of the Seychelles Revenue Commission, Customs Division, is not valid as it did not address the appeal lodged by the Petitioner under Section 6 of the Customs Management Act 2012; Customs Management (Appeal and Administrative Decisions) Regulations 2012.

16. The Petitioner provided all documents pertaining to this case some of which have already been referred to above.

The first Respondent' s objection

(a) Preliminary Objection

17. The 1st Respondent's preliminary objection reads that the Petition is not maintainable in law as the Petitioner has exclusive statutory remedy under the Customs Management Act 2019, SI 40 of 2019

(b) The First Respondent's Answer On the Merits

18. The first Respondent, the Commissioner General does not dispute that the Nissan vehicles were imported into Seychelles and that they have been retained but adds that the retention initially was because investigation needed to be carried out but that after the investigation was carried out, it was concluded that the information obtained was contrary to information provided by the Petitioner. Actually Receiving Goods Receipts issued on the 28th February 2019 and 03rd April 2019 in respect of the Nissan Note and the Nissan Serena respectively shows that the information provided by the Petitioner in respect of these vehicles were incorrect.

19. The 1st Respondent also contended that the appeal of the 17th May 2019 in respect of the Nissan Note was time barred and that the Petitioner did not apply in writing to the 1st Respondent for an extension of time for lodging of the appeal. Counsel for that Respondent also submitted that S.I 50 of 20112 Regulations are descriptive and not mandatory that the 1st Respondent should reply the appeal within 30 days. The 1st Respondent further avers that it did act on the appeal within the 30 days and by letter dated 10th May 2019 varied the earlier decision by allowing the Petitioner possibility to amend the existing import permits so that it reflected the correct manufacturing date to satisfy the Vehicle Importation Policy imposed by the 2nd Respondents.

20. The 1st Respondent also avers that import permits are obtained from the 2nd Respondent and that the Petitioner failed to obtain necessary import permits from the 2nd Respondents. Furthermore, the vehicles were preregistered to its previous owner which translate into the vehicles not being contrary to description in the import permits.

21. It was also averred by the 1st Respondent that under the new vehicle policy, the Nissan vehicles that were imported by the Petition did not satisfy the definition of new vehicle provided by that policy. New vehicles are defined as those manufactured in the current year of importation or one year prior to which they are imported.

The 2nd Respondent Objections

(a) Preliminary Objection

22. The 2nd Respondent raised two Preliminary Objections to the Petition. These are;

    i. That the Petition is not maintainable against the 2nd Respondent as that Respondent is not an adjudicating authority. The 2nd Respondent merely exercises statutory

functions which are administrative in nature and hence not amenable to the supervisory jurisdiction of the Supreme Court;

ii. It is averred that the Petition for judicial review is not maintainable as it has been filed beyond the statutory time limit

The 2nd Respondent's Answer On the merits

23. The 2nd Respondent merely denied most of the averments made in the Petition and placed the Petitioner to proof of the several averments made therein. However, the 2nd Respondent admitted that it is the competent authority who issued letter to the Petitioner after further investigation to determine the year in which the vehicles were manufactured and equally the competent authority for approving vehicles entering Seychelles pursuant to Regulation 3(2) of S.I 43 2014 of the Customs Management (Prohibited and Restricted Goods) Regulations. However, the 2nd Respondent maintains that she acted within the purview of its administrative functions and denies that her action was unjustified, illegal and unreasonable.

24. The 2nd Respondent further averS that the Petitioner is not entitled to the relief of a writ of certiorari or a writ of mandamus against the 2nd Respondent and that the case should be dismissed.

The Respondents Preliminary Objections

25. At the heart of this case is the importation of vehicles in the Seychelles. The Petitioner made a brilliant job in the Petition in providing a succinct overview of the issues involved in this matter.

26. The preliminary objection of the 1st Respondent deals with time limits in filing for objection. Section 2 of the Customs Management Act 2011, (S.I 60 of 2012) Customs Management (Appeal and Administrative Decision) Regulations 2012 provides that a person dissatisfied with a decision of Customs may appeal against that decision within 60 days of the day that person has been served with that decision. The 1st Respondent therefore argues the Petitioner should have lodged an appeal following the letter dated 09th July 2019 from Mr. Ashik Hassan of the Trade Division of the Ministry Finance Trade Investment and Economic Planning.

27. However, it is interesting to note that on the 17th May 2019 the Petitioner filed a detailed appeal further to a letter from Mr. Wilson Denis dated 15th April 2019, in which the Road Commissioner had refused release of the vehicles. The appeal was as required by law, prescribed under S.I 60 of 2012, lodged with the Commissioner General. That was within the 60 days prescriptive period. It does not appear that the Revenue Commissioner gave a reply to that appeal with the 30 days prescriptive period. Prior to that, by letter dated 10th May 2019, the Petitioner had sought to engage with the Commissioner of the Customs

Division to have the vehicles released. By letter dated the 04th June 2019, the Customs Division had requested that the Petitioner amend the import permits. The letter from Mr. Hassan dated 09th July 2019 reiterated the refusal to release the vehicles. The Petitioner filed a further appeal dated 06th September 2019. This appears to have been within the prescribed period. There was another appeal filed on the 07th October 2019 which referred to the previous of the appeal. On the 19th November 2019, Mrs. Veronique Herminie, the Commissioner General responded to that appeal but does not address all the grounds of appeal.

28. Counsel for the 1st Respondent refers to letter of 04th June 2019 to support his averments that the appeal was not filed within time. However, he failed to consider letters that came after that date, such as the letter of the 09th July 2019. If the 1st Respondent was entertaining letters after that date, then that suggests that the 1st Respondent was condoning any late filing of appeal. In that case therefore, they cannot now cry foul.

29. I find that the Petitioner was well aware of the provisions of the Customs Management Act. The Petitioner was using the mechanism available under the Act, be it S.I 60 of 2012 or S.I 43 of 2014, and it was the provisions of these statutes that the Petitioner was seeking to enforce and as a result to find a solution to the problems at hand.

30. I therefore consider that this preliminary objection has no merits and it fails.

31. The first objection of the 2nd Respondent pertains to whether or not that Respondent is an adjudicating authority and amenable to the Jurisdiction of the Supreme Court. I assume that the 2nd Respondent was invoking provisions under the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authority) Rules (1995). Under Article 125(1)(c) the Supreme Court has supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority. So, is the Road Transport Commissioner an authority established by law with power to perform judicial or quasi-judicial function?

32. The Judicial Review Handbook (6th Edition ; Hart Publications) at page 7, Michael Fordham QC state that *"Judicial review is the Court's way of enforcing the rule of law; ensuring that public authorities' functions are undertaken according to law and that they are accountable to law, Ensuring in other words, that public bodies are not "above the law"*

33. The Road Commissioner is appointed under the Road Transport Act. By virtue of section 11(1) of that Act, the Road Commissioner who is appointed by the Minister responsible for road transport has powers and duties to perform under the Act, under the general Directions of the Minister. Under the Customs Management (Prohibited and Restricted Goods) Regulations (2012) application permits to import vehicles is made to the Department of Transport. The same position is repeated in SI 43 of 2019. Following

from Lord Fordman QC's observation, judicial review in essence is about the function or capacity of court to provide remedies to people adversely affected by unlawful government action. The Constitution in its definition of adjudicating authority under Article 125(7) designates an 'adjudicating authority" as including a body or authority established by law which perform a judicial or quasi function.

34. A writ of certiorari is enforceable against legal authorities or bodies that makes decisions affecting the common law statutory rights of others; see **O'Rielly v Mackman [1993] 2 AC 309** (adopted in **Joanneau v SIBA [2011] SLR 62**) and **Timonina v Government of Seychelles and Anor [2008-2009] SCAR 21**. The 2nd Respondent is a body that derives power under Statutes and makes decision that affect the personal rights of persons. Such decisions should in any case be amenable to challenges if the citizen is unsatisfied with decisions taken. As stated in **Trajter v Morgan]2013] SLR 329**;

"The jurisdiction confers by this process determines the legality, as distinct from the substantive merits of the decision of the adjudicating authority, in this case the Minister. Judicial review is a means by which the courts necessarily ensure that administrative bodies act within their powers as laid down by law rather to a whim or fancy."

35. Therefore, in this case it is without question that the 2nd Respondent is making an administrative decision conferred by statutes and under the guidance of a Minister who also assumes administrative power under the Road Transport Act. For all intents and purposes the 2nd Defendant can only be described as an adjudicating authority.

36. Therefore, the objection is dismissed.

37. The second objection of the 2nd Respondent alleges that the Judicial Review is not maintainable in law as it has been filed beyond the statutory time limit. Section 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules provides that a petition under Rule 2 shall be filed within 3 months of an order or decision sought to be canvassed by the Petition is made. The impugned decision was made on the 19th November 2019. The Petition was filed on the 21st November 2019. That is well within the prescribed period. In fact the petition was filed in less than a week of the decision.

38. This objection is devoid of merit and therefore fails.

The Vehicle Importation Policies.

39. This policy deals with the importation of new and used vehicles and of spare parts. It gives the power Road transport Commissioner ("the RTC") the mandate of implementing the policy. It names the RTC as the body responsible to set clear guidelines to be used by the Import Permit Section and Customs Division.

40. The policy also provides that the Customs Division is responsible for the implementation of the Customs Management (Prohibited and Restricted Goods) Regulations. It gives the right to the Customs Division to confiscate vehicles that are not in conformity with the Import Permit Policies, which in this case was issued by the Customs Department. In fact this is exactly what the Respondents were alleging; the Nissan vehicles did not conform to the description on the Import Permits. The issue was about the year of manufacture. The Policy also sets out the process for importation of vehicles. It also provides for specification for vehicles imported into Seychelles, which shall all be new. To that end it requires that all vehicles imported into Seychelles must have the manufacturing date of the vehicle printed on the seat belt and the VIN number, or the vehicle identification number.

41. Be that as it may, the policy only came into being in 2019 and has not been in force at the time that the Petitioner obtained import permits to import the Nissan vehicles. In fact the Petitioner avers that it had only come into force after the case was filed. It was hard to obtain a copy of the policy that even Counsel for the 2nd Respondent expressed difficulty in obtaining a copy. Nonetheless, a policy, though it sets guidelines that are to be observed, does not necessarily have the force of law. The policy has not been translated into law; see **Cable and Wireless Seychelles Limited v Minister of Broadcasting ad Telecommunication MC 42 of 2017 [2018] SCSC 348 (delivered 09th April 2018)** the position was reinforced; see also **Talma v Minister of Land use and Housing (MC 65/2014) [2015] SCSSC 733.**

42. So, unless the Policy is translated into law, though it is persuasive in implementing national guidelines in the respect of importation of vehicles into the Seychelles, it does not have the force of law. So the Respondents cannot rely on such policy to justify their action in refusing the release of the Nissan vehicles which in itself is tantamount to an abuse of power. In any case, the policy did not come into force until 2019, after the Petitioner had obtained and received the import permits and subsequent to the vehicles landing in Seychelles. The Respondents cannot invoke the policy to justify their action. In this instance the policy is not applicable and in fact Counsel for the 1st Respondent agreed with that position.

Illegality, Unjustified and Unreasonable

43. As correctly put forward by Counsel for the 2nd Respondent, judicial review does not strike at whether the decision was right or wrong. At the core of judicial review is whether or not the decision or action taken by the Respondents was legal. Illegality in essence is whether the act is within the law. In making a decision as to whether to grant the prayers of the Petitioner, the Court's consideration is to evaluate whether the Respondents made decisions that fell outside the ambit of the law.

(a) The Import Permits

44. The Customs Management Act of 2011, which was published as S.I 41 of 2019 (after the permits were applied for) provides under section 4(3), that approval for permits is obtained in writing from the Authority specified in the corresponding entry under column 4 of the Schedule. That schedule names the Department of Transport as the Authority from which permit should be obtained. Though the initial application predates S.I 41 of 2019, it will have some relevance when the Court will consider the amended permit. Nonetheless, The Customs Management Act 2011, through S.I 60 of 2012, section 3, provides that the import of vehicles with steering located on the left hand side, should again be made to the Department of Transport. However, the import permits do not indicate on which side the steering of these vehicles was, but it in fact that vehicles imported into Seychelles should have steering that is on the right.

45. The Petitioner made application to import the vehicles to the 1st Respondent and not the 2nd Respondent. Counsel for that Respondent submits that the Petitioner in failing to make application to the 2nd Respondent was acting outside the law. The 1st Respondent with all might wanted to exploit such failure by the Petitioner. However, the Court advices that this is not a horse that the 1st Respondent's Counsel should choose to flog. I think he should not, particularly since the Government authorities concerned and in particular, the 1st Respondent could not convincingly identify the head of the horse from its rear. This is because the Petitioner made application to the Customs Division which application was received and acted upon. The import permit was stamped with an "Import / Export, Ministry Of Finance" stamp. On the import permit there were other vehicles mentioned and it appears that these vehicles were imported into Seychelles. The Customs Division of the SRC issued the Import Permit Receipts. Then the Customs Division and the 1st Respondent engaged in negotiations with the Petitioner for release of the vehicle. Now, the claims that application for permit should have been made to the Land transport Division and not to them is an absurdity and embarrassment to the 1st Respondent. One cannot portray oneself of being the body to which import permits for vehicles are sought and issuing all appropriate documentation, making decisions and to subsequently state that the application should in the first place have been made to another body. This reasoning is totally unreasonable.

(b) Date of manufacture of the vehicles

46. At the crux of this of this dispute between the Petitioner and the Respondents is the year of manufacture of the vehicles. The entries on the import permits shows the vehicles as having been manufactured in 2018. Upon arrival in Seychelles the Respondents argued that they were manufactured in 2017. This is made clear by the letter dated 15th April 2019 from the RTC. According to Customs Division, they verified the VIN number on

the seatbelts and it indicated that the date of manufacture was 2017. It is averred by the Respondents that that was the reason for the non-release of the vehicles.

47. The Petitioner gave explanation for this and produced letters and export certificate from IT Plus Japan Corporation (which were exhibited). The vehicles were manufactured in Japan and in that jurisdiction the release date or the registration date are considered as the manufacturing date. The chassis number of the vehicles which also indicates the release date is equally pertinent. For all intents and purposes the release date of the vehicles was 2018, so the manufacturing date of these vehicles is considered to be the release date. That in this court's view is an acceptable and reasonable conclusion.

48. The 1st Respondents also argued that the vehicles were not new since they were first registered in the name of the initial dealer and thereafter was deregistered to be sold to the Petitioner. This, in this Court's opinion is a feeble excuse. The Petitioner did not buy the vehicles directly from the manufacturer. They were purchased through a dealer. Once the vehicles landed in Seychelles they would have gone through the same process; i.e it goes to the dealer and subsequently to the client. That does not label the vehicle as not being new or second hand. The vehicles have not been used. They are new. Therefore, this Court cannot adopt the Petitioner above argument. That is an unreasonable ground for retaining the vehicle but not sufficient reasons to make the orders that the Petitioner has prayed for.

(c) The Appeals

49. The Petitioner received a letter dated 15th April 2019 from the 2nd Respondent which states that the vehicles were manufactured in 2017 rather than 2018 and therefore would not be released. I do not find a reply to that letter. As was correctly pointed out by Counsel for the 2nd Respondent, there does not appear to have been any action taken directly with the 2nd Respondent in response to that letter. In fact no application for judicial review in answer to that letter was filed. There wasn't any concrete action from the Petitioner to have that letter impugned.

50. On the 17th May 2019 the Petitioner filed a first appeal, setting out clear grounds of appeal. It does not appear that there was a decision given in response to that appeal though the Petitioner and the 2nd Respondent were in communication and the Petitioner was exploring ways of having the problem resolved. By letter dated 09th July 2019 (exhibited), Mr. Hassan from the Trade Division of the Ministry of Finance reminded the Petitioner that the issuance of permit is guided by the Customs Management (Prohibited and Restricted Goods) Regulations 2019. These Regulations came into force after the vehicles were imported. Mr. Hassan also emphasized that *"the Department of Transport, being the competent authority for the importation of transport"* had not approved the request to import the vehicles. A second appeal was filed on the 06th September 2019. A

copy of the appeal is exhibited. On the 19th November 2019, which is more than 2 months after the appeal, the 1st Respondent in answer rejected the appeal.

51. In the impugned letter in answer to the appeal, the Commissioner General noted that it is the Department of Transport that issues import permit and that unless the Customs Division is in receipt of the import permit the vehicles cannot be released. It refers to the SI 43 of 2014 Regulations. However, the letter does not address all the grounds of appeal.

52. The Petitioner alleges that the failure of that 1st Respondent to response to the appeal within a 30 day period as provided by the Customs Management (Appeal against Administrative Decisions) Regulations 2012 is unjustified, unlawful and illegal. As a result of that refusal the vehicles are still being detained. I agree with Counsel for Petitioner. Counsel for the 1st Respondent argued that Section 3 of the above mentioned Regulations which provides that the *"Revenue Commissioner <u>may</u>* (underline mine) *affirm, vary, set aside the decision within 30 days of the lodgement of the application of the appeal"* as being descriptive and not mandatory. It is correct that the wordings of the section do not make it mandatory for the Revenue Commissioner to make a decision within 30 days. I do not believe that it gives the 1st Respondent authority not make determination on the appeal at all. However, one needs to give purpose to that statutory provisions. That provision could not be read as placing an obligation of the Revenue Commissioner which the later may decide to ignore and not follow. I think the intention was not to make the requirement of 30 days rigid, but it does not absolve the Revenue Commissioner from making and communicating a reply to the appeal. I feel that the decision has to be made within a reasonable time. The 1st Respondent needed to give an answer to the appeal and failed to do so. The decision of the 1st Respondent to determine the appeal is unjustified, illegal and unreasonable.

53. Therefore, the failure of the 1st Respondent to make a determination denied the Petitioner the right to exhaust other internal procedures and/or alternative legal remedies from Custom's retention of the two Nissan vehicles. I also find that the failure to make a determination of the appeal as an endorsement of the 2nd Respondent's letter dated 15th April 2019 relied upon by Customs refusing the release of the vehicles. It is also an endorsement of the decision contained in the letter dated 09th July 2019 confirming the 2nd respondent's refusal to issue the amended import permits in respect of the vehicles. I have found above that the decisions of the Respondents not to be convincing, illegal, unjustified and unreasonable.

54. I, therefore proceed the following order;

(a) Issue a writ of certiorari quashing the decision of the 2nd Respondent given on the 15th April 2019 and the decision conveyed by the Director of Trade in the Ministry of Finance and Economic Planning on the 9th July 2019, refusing to release the two Nissan vehicles

and / or to issue amended import permits as endorsed by the 1st Respondent. The amended import permits shall be issued within 2 weeks of this Ruling.

(b) Issue a writ of mandamus against the 1st Respondent, compelling that Respondent to make a decision to the Petitioner's appeal of the 17th May 2019 and 6th September 2019 in accordance with the law in force at time that the Nissan new vehicles were imported and /or arrived in Seychelles not later than a month of this Ruling

(c) That the Respondents pay cost to the Petitioner for the case of this case.

Signed, dated and delivered at Ile du Port on 10th December 2020

M Vidot J