

**IN THE HIGH COURT OF TANZANIA**  
**AT DAR ES SALAAM**

*MISC. CIVIL. CAUSE NO. 108 OF 2003*

TOICO LTD .....APPLICANT

***VERSUS***

TANZANIA REVENUE AUTHORITY.....RESPONDENT

**RULING**

**A.Shangwa,J.**

On the 19<sup>th</sup> December 2003, the applicant TOICO LTD filed an application for leave to apply for the prerogative orders of Certiorari, Mandamus and Prohibition against the respondent's decision to seize his motor vehicles namely a tanker with Registration No. TZF 9351 and a trailer with Registration No. TZF 7776 together with fuel for having been found in possession of uncustomed fuel products contrary to

the Petroleum Marking Regulations (GN 45 of 2001) read together with section 146 of the East African Customs and Transfer Tax Management Act, 1970 and S.47 of the value Added Tax Act, 1997.

On 12<sup>th</sup> July, 2004, learned counsel for the respondent Mr. Primi filed a notice of preliminary objection that the application is bad in law for being time barred.

On 31<sup>st</sup> August, 2005, I ordered that the respondent's preliminary objection to the application should be argued by way of written submissions. Both parties did file their written submissions in accordance with this Court's order.

In his written submissions, learned counsel for the respondent Mr. Primi stated that in terms of section 18(2) and (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance Cap 360, an application for leave to apply for prerogative orders of Certiorari, Mandamus and Prohibition has to be made from the date the decision or act complained of was made and served upon the applicant.

He submitted that the decisions of the commissioner for customs and Excise which the applicant wants to challenge were made on 27<sup>th</sup> January, 2003 and 28<sup>th</sup> January, 2003 and duly served on the applicant's Advocate on 30<sup>th</sup> April, 2003. He said that this application for leave to apply for prerogative orders was filed by the applicant in

this Court on 19<sup>th</sup> December, 2003, about seven and half months from the date when the applicant was served with the decisions complained of. He contended that this application is statutorily time barred and prayed for its dismissal with costs.

In reply, the applicant whose principal officer is known as Wilson K. Chacha contended that the respondent's submission that his application is time barred has no foundation because earlier before, he had lodged his appeal against the decision of the commissioner for customs and Excise to the Tax Revenue Appeals Board which dismissed his appeal on 15<sup>th</sup> September, 2003 and advised him to come to the High Court and apply for prerogative orders.

He said that following the said Board's decision and advise, he filed this application for prerogative orders on 19<sup>th</sup> December, 2003 which was well within the time limit stipulated by law.

In rejoinder, learned counsel for the respondent Mr. Primi submitted that as the applicant wrongly filed the appeal in the Tax Revenue Appeals Board, he should bear the risks of having wasted time in doing so, and that therefore, the time within which he should have filed his application should not be counted to run from 15<sup>th</sup> September, 2003 when the Board made its decision and advised him to lodge this application.

In my opinion the applicant's application is in actual fact time barred as submitted by learned

counsel for the respondent. Time within which to lodge this application cannot be counted to run from 15<sup>th</sup> September, 2003 when the Tax Revenue Appeals Board's Chairman dismissed his appeal. According to section 18(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance Cap. 360, such time starts to run after the decision to be challenged is made.

In this case time starts to run from the dates when the commissioner for Customs and Excise made his decisions which the applicant seeks to challenge, that is on 27/1/2003 and 28/1/2003 respectively when the said commissioner served a demand notice on the applicant for payment of shs 6,500,000/= as fine for being found in possession of uncustomed fuel products and shs 6,426,324/= as tax assessed in

respect of the uncustomed fuel; and when he ordered that the applicant's fuel amounting to 22,000 litres of diesel and his motor vehicles with Reg.Nos TZE 9351 and TZF 7776 be forfeited to the Government of the United Republic.

In the light of section 18(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance Cap.360, time within which the applicant had to file his application cannot start to run from 15/9/2003 when the Tax Revenue Appeals Board made its decision. This is because the decision which the applicant wants to challenge by applying for the prerogative orders of Certiorari, Mandamus and Prohibition is not the decision of the said Board's Chairman but the decisions of the commissioner for

customs and Excise which were made on 27/1/2003 and 28/1/2003 respectively.

For these reasons, I agree with Mr. Primi for the respondent that this application is time barred. Therefore, I uphold his preliminary objection and dismiss this application with costs.



  
**A. Shangwa, J.**

**24/5/2006.**

Delivered in open Court this 24<sup>th</sup> day of May, 2006.

  
**A. Shangwa,**

**JUDGE**

**24/5/2006.**