**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION**
**HELD IN ACCRA ON MONDAY THE 21ST DAY OF JANUARY, 2019**
**BEFORE HIS LORDSHIP GEORGE K. KOOMSON (J)**

**SUIT NO. CM/BDC/0051/2019**

**IVY MORRISON** - **PLAINTIFF**

**VS**

**GHANA REVENUE AUTHORITY** - **DEFENDANT**

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**RULING**

In this application, the Plaintiff/Applicant (herein after called "the Applicant") pray the Court for an order restraining the Defendant/Respondent (hereinafter called "The Respondent") from any preferential import values to any frozen poultry import save the benchmark values, pending the final determination of the suit.

On the 9th November, 2018, the Applicant filed a writ of summons asking for the following reliefs:

1. A declaration that the granting of preferential rates to some traders by the Defendant is discriminatory and undermines fair competition.
2. An order directing the Defendant to apply its benchmark values fairly to all traders.
3. An order directing the Defendant to recover all revenue which has been lost as a result of the application of these preferential rates since the year 2017.

The Applicant contends in her affidavit in support as follows:

3. I am a member of the Frozen Food Importers Association of Ghana, an association of importers of importers of poultry products into the country.

4. The basis of my claim against the Defendant is that, by its own practice and custom, the Defendant has set benchmark values for our imports against which

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it determines the import duty payable by each importer on a consignment of goods.

5. The Defendant, from time to time, reviews the benchmark values and the applicable freight to make it consistent with the world market prices for these products. The latest review by the Defendant was contained in its Notice to Officers, CTBS/NOTICE/035 and CTSB/NOTICE/041, copies of which I hereby attach as Exhibits A and B.

6. By virtue of this practice, the Defendant does not accept the values indicated on the importer/shipper's invoice as actually indicative of the value of these products and thus affords a fair and consistent measure by which import duties are determined and avoid invoice fraud.

7. The above notwithstanding, sometime in March 2017 the Defendant granted preferential values to three companies, namely White Stone Frozen Foods Ltd., M & Jees Company Ltd., and Wegdam Food Link BV, which caused a wide disparity in the market allowing these companies to sell their products below the average cost of the product on the market. This situation caused some members of the association to write to the Defendant in June of 2017 to complain. Please find attached a copy of the said letter dated the 30th June 2017 as Exhibit C.

8. Upon the receipt of Exhibit C, the Defendant responded by reviewing the benchmark values to make it consistent with the world market prices and also assured the members of the association in various meetings that they will stop the grant of preferential rates.

9. However, in October 2017, the Defendants again granted the preferential rates complained of to the same companies aforementioned.

10. Once again, the members of the association caused letters to be written to the Defendant, this time with copies to other authorities, complaining of the conduct. Please find attached a copy of the letter dated 11th October 2017 as Exhibit D.



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11. By virtue of this unfair practice, White Stone Frozen Foods Limited became the top importer of Frozen Poultry products from being one of the lowest, as shown in the attached table exhibited as Exhibit E.

12. This time the Defendant failed to do anything about it, rather in February 2018, it instituted the strange mechanism called "graduated valuation" by which it granted a reduction on the benchmark values to a few selected companies, still keeping to its discriminatory practices.

13. Recently the Defendant issued a memo discontinuing the practice of graduated valuation and granting preferential values (Exhibit F) yet it has gone ahead to grant the values to the said trader again, albeit temporarily (see Exhibit G) allowing the trader to clear as much as 85 2TEUs of Frozen Poultry at the said preferential rates.

14. The action of the Defendant has not only destabilized the Frozen Poultry industry, it has put some traders out of work, caused lay-offs in some, including mine, and led to a loss of government revenue, with the sole aim of creating a monopoly for one trader.

15. The practice is abusive of the Defendant's powers to my detriment and to allow it to continue will cause irreparable damage to my business, by way of loss of market leading to lay-offs and at the same time cause massive loss of revenue to government.

16. In the circumstance, while this Honourable Court considers the merits of the case, I pray that the Court orders the Defendants to stick to its benchmark values and restrains them from granting any preferential values.

17 The grant of this application will not cause any harm or prejudice to the Defendant and will be to the advantage of the country as a whole.

The Respondent also contends in its affidavit in opposition that:

7. That the Customs Division of Ghana Revenue Authority in its effort to minimize valuation fraud (Which negatively affects customs duties and other

taxes to be collected for national development) undertakes benchmarking of transactional values and freight rates presented by importers as an internal risk management tool.

8. That international trade market price of goods and freight rates worldwide are not permanently fixed but fluctuates hence the need to periodically benchmark importers' transactional values in order to ensure importers pay commercially realistic and appropriate duties and taxes.

9. That the primary basis for Customs value under the Word Trade Organisation Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade is the transactional value. Where the value cannot be determined there are other processes for determining same.

10. That per article 17 of the World Trade Organisation Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, Customs as an organisation is not restricted from satisfying itself as to the truth or valuation purposes. This is the basis for benchmark values as an internal risk management tool.

11. That benchmark value is not considered when an importer adduces compelling evidence of transactional value. A declared value of a compliant importer is accepted as the transactional value for valuation purposes and consequently benchmark values are vacated for that particular importer.

12. That the benchmark values are just indicative and reflective of comparative prices actually paid or payable in the various world markets.

13. That Respondent does not grant preferential values or rates to any individual importer.

14. That graduated valuation is not discriminatory but applicable to any importer who falls in the various brackets as outlined in Applicant's Exhibit "G". This is grounded in commercial practice where some specific factors affect prices of goods.



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15. That the Respondent has not indulged in any unfair practice or discriminatory act as regards valuation of imported frozen foods or any other goods.

16. That the Respondent has since October 17, 2018, long before the Applicant issued the writ, discontinued the implementation of the graduated valuation in line with the implementation of the Cargo Tracking Notes (CTN).

17. That the Cargo Tracking Notes (CTN) system is preferred because it ensures much more realistic values leading to which optimization of government revenue.

I have given consideration to the respective statement of case filed by both applicant and respondent in this matter. Consideration has also been given to Order 25 rule 1 of C.I. 47 and the principles governing applications of this nature.

It is observed that the Court in considering matters of this nature is concerned with first, the maintenance of a position that will enable justice to be done when its final orders are made in the matter and secondly, an interim regulation of the acts of the parties, that is, in other respects, the most just and convenient in all the circumstances.

It is noted that where in the course of proceedings for orders directed at Institutions of State mandated by statute to perform certain statutory duties with some element of discretion and it is sought to be restrained by interlocutory injunction the carrying out of particular acts, it is necessary for the Court to analyse carefully the implications of the positive acts that it is sought to have ultimately performed.

The most usual, though by no means the only, basis for the grant of an interlocutory injunction is a need to protect the Applicant by preserving the circumstances that exist at the time of his/her application until the rights of the parties are finally determined. **COTTON L.J** in the case of **PRESTON v LUCK (1884) 27 CH.D 497 @ 505,** therefore referred to such an application for interim injunction as,

> ***"the object of which is to keep things in the status quo, so that if at the hearing the Plaintiffs obtain judgment in their favour, the Defendants***

***will have been prevented from dealing in the meantime with the property in such a way as to make that judgment ineffectual".***

It is noted further that the appropriateness of preserving the status quo in any particular case is dependent on all the circumstances. **TURNER L.J** in the case of **JOHNSON v SHREWSBURY & BIRMINGHAM RAILWAY CO. (1853) 42 ER 358 @ 365,** observed that:

> ***"When this Court is called upon to interfere by way of injunction in such cases, it is upon the ground that its interference is necessary to preserve the property while the legal construction of the contract is being determined by a Court of law. This Court interferes upon the ground that irreparable injury may ensue to the property forming the subject of the contract pending the inquiry at law."***

**Parke B.** in the case of **ATTORNEY-GENERAL v HALLET (1847) 153 ER 1316 @ 1321**, stated that an irreparable injury "is such injury as could not be compensated in damages."

Furthermore, in **McCARTHY v COUNCIL OF THE NORTH SYDNEY MUNICIPALITY [1918] 18 S.R. (N.S.W) 210 @ 125**, it was stated that an irreparable injury "is simply an injury of so serious a character that damages would not be an adequate compensation, and that on this ground a party should not be compelled to submit to it even for a short period and to take his compensation in the shape of damages."

It is to be observed that the concept of unfairness is capable of application in any circumstances in which an obligation has come into existence or has been perfected or modified. In all these circumstances the common element is that rights have been obtained by one of the parties, by reason of a position of advantage, in such circumstances that it would be unjust to refuse him the particular discretionary remedy that is in question, either absolutely or in a limited or qualified form. Whether there has been unfairness is determined by reference to all the circumstances in which the material rights were created or affected; and hence reference must be made to such matters as



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any inequality or inappropriateness of consideration being provided by the Plaintiff, not because they amount in themselves to unfairness; See **BROMLEY v RYAN [1956] 99 C.L.R 362 @ 405.**

It is noted that the same general principles are applicable by Court whether the Plaintiff seeks an interlocutory injunction against a private person or against a public authority or against an officer of the state or against the state itself. The state and its institutions are therefore amenable to injunctive reliefs. However, consideration must be given by the Court regarding any hardship or inconvenience that the making of an order or a failure to make an order may cause either to particular persons who are not parties or to the general public or the state: See **MILLER v JACKSON [1977] Q.B 966.**

It is however to be noted that specific reliefs has not often been refused on this ground, for it is generally found that any hardship or inconvenience to third parties or to the general public is relatively indirect as against the inconvenience or hardship that would be caused to the Plaintiff if the he were denied specific reliefs: See **KENNAWAY v THOMPSON [1988] O.B 88.**

It has also been said that Courts of equality "upon principle, will not ordinarily interfere by injunction, where the injunction will have the effect of very materially injuring the rights of third persons not before the Court'',: See **HARTLEPOOL GAS & WATER Co. v HARTLEPOOL HARBOUR & RY CO. (1865) 12 L.T 366 at 368.**

Regard must therefore be had not only to the dry strict rights of the Plaintiff and the Defendant, but also to the surrounding circumstances, to the rights or interests of others especially the state. So, it is that where the Plaintiff has prima facie, a right to specific relief, the Court will, in accordance with these principles, weigh the disadvantage or hardship that he would suffer if relief were refused against any hardship or disadvantage that might be caused to the state or other third party rights if relief were granted. See **Miller v Jackson (supra).**

Now in the instant case, the Applicant has contended that the preferential treatment which the Respondent has been giving to a particular Company is having the effect of crippling her Company and that of others. The general rule is that a party has the burden

of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting: see section 14 of the Evidence Act, 1975 (NRCD 323). The section 10 (1) of the Evidence Act, 1975 defines the burden of persuasion as meaning "the obligation of a party to establish to a requisite degree of belief, concerning a fact in the mind of the tribunal of fact or the Court".

What evidence did the Applicant offer in this instant application to suggest that her business is collapsing as a result of the acts of the Defendant? None! It is to be noted that merely stating that one's company is being "crippled out of business" is not sufficient.

This requires the establishment of cogent, reliable and credible evidence. I have examined the affidavit evidence tendered by the Applicant and I must say that no serious effort was made by the applicant to demonstrate how she will suffer any injury, not even to talk of irreparable injury, as a result of the conduct of the Respondent in its implementation of tax policies of the Government of Ghana or that her business is suffering under the said tax policy implementation.

It is also on record that as at the time the Applicant filed her application the Defendant had started implementing the CTN and by Exhibit 'F' filed by the Applicant in this matter, it was clear that the Respondent had indicated that all discounts based on Bench mark Values which were granted to some companies have been suspended with immediate effect. This is the status quo.

I must emphasize that a Court of law does not make vain orders. Orders made by a Court must be enforceable. Where the conduct being complained of is non-existing at the time the application was filed, I am of the view that it would be an exercise in futility for a Court to injunct a non-existing act or behaviour. Whether or not the conduct of the Respondent prior to the implementation of the CTN was discriminatory and unfair is a question that would be determined in the substantive Suit. If the Applicant had asked for the restraint of Respondent regarding its implementation of the CTN, then, this court could have been in a position to decide one way or the other. In so far as the implementation of the Bench Mark Values policy is no longer in effect, I do not find it



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relevant, or important, just and necessary to injunct the Respondent for a policy which is no longer being implemented.

For the foregoing reasons, I refuse the application. Same is accordingly dismissed.

**(SGD)**
**GEORGE K. KOOMSON**
**JUSTICE OF THE HIGH COURT**

**COUNSEL:**

**BEN SERVOR FOR PLAINTIFF**

**DORIS AGBEATSISE FOR DEFENDANT**

**REFERENCES**


1. **PRESTON v LUCK (1884) 27 CH.D 497 @ 505**
2. **JOHNSON v SHREWSBURY & BIRMINGHAM RAILWAY CO. (1853) 42 ER 358 @ 365**
3. **ATTORNEY-GENERAL v HALLET (1847) 153 ER 1316 @ 1321**
4. **McCARTHY v COUNCIL OF THE NORTH SYDNEY MUNICIPALITY [1918] 18 S.R. (N.S.W) 210 @ 125**
5. **BROMLEY v RYAN [1956] 99 C.L.R 362 @ 405**
6. **MILLER v JACKSON [1977] Q.B 966**
7. **KENNAWAY v THOMPSON [1988] O.B 88**
8. **HARTELEPOOL GAS & WATER Co. v HARTLEPOOL HARBOUR & RY CO. (1865) 12 L.T 366 at 368**


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