MME NGUI

SUPREME COURT OF CAMEROON

****

ADMINISTRATIVE BENCH

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DIVISION FOR TAX AND FINANCIAL

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Appeal N°s0011and 0012 of 18th December 2017
Case File N°001/A/RG/2018 OF 5th January 2018

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JUDGMENT N°056/FF/2022
of 09 Mars 2022

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IN THE MATTER
BETWEEN

1. Procureur Général of South West Région
2. The State of Cameroon (MINFI)
3. The Directorate of Customs
4. Guy Alain CHEPING

Vs.

LOPHOMBO SARL

COURT DECISION:

The Court:
Art 1: Both appeals are consilidated;
Art 2: Both appeals are admissible in form;
Art 3: On the merits, they are both not founded and accordingly dismissed;
Art 4: Costs of these proceedings to be borne by the public treasury.

PANEL:

Mrs. NKO TONGZOCK IRENE,……. President;
Paul BONNY Judge;
NGOUANA, Judge;
---------- MEMBRES
Mrs. Elyse NANA,……. Avocate General;
Me Clarisse NGUI, Greffier ;

REPUBLIC OF CAMEROON
PEACE – WORK - FATHERLAND

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IN THE NAME OF THE PEOPLE OF CAMEROON

----- In the year Two Thousand twenty Two;

----- And on the nine of the month of March;

----- The Supreme Court, the Administrative Bench, the Division for Tax and Fnancial Litigations In its usual Court Session delivered the judgment which reads as follows;

-------In the matter;

BETWEEN:

1. Procureur Général of South West Région
2. The State of Cameroon (MINFI)
3. The Directorate of Customs
4. Guy Alain CHEPING…….Appellants

ON THE ONE HAND:

Vs.

LOPHOMBO SARL……Respondent.

ON THE OTHER HAND:

-------In the presence of Mme Elyse NANA, Advocate General at the Supreme Court;

------Hearing and determining the appeal lodged on the 18th of December 2017 in the registry of the South West Adminitrative Court in Buea, by the learned Procureur General of the South West Court of Appeal acting for and on behalf of the 1st appellant, appealed against judgment N°014/2017 delivered on the on the 18th December 2017 in the suit n°SWAC/PND/004/2016 by the South West Administrative Court Buea in the matter between LOPHOMBO Sarl against

The State of Cameroon (MINFI), Directorate of Customs and guy Alain Cheping;

-----After hearing the report read out by his Lordship Justice NKO TONGZOCK Irène Rapporteur;

------Mindful of the written submissions filed by the Learned Procureur General at the Supreme Court, Mr. Luc NJODO;

-----Mindful of the memorandum of submissions in support of the Appeals

-filed by the Procureur General of South West Region

-The State of Cameroon (MINFI)

-The Directorate of Customs

- GUY Alain CHEPING

-----And having deliberated on the matter in accordance with the law.

------Mindful of Law n°2006/016 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court, as amended and completed by Law N°2017/014 of 12 July 2017;

------Mindful of Decrees N°s 2006/465 of 20 December 2006, 2010/218 of 08 July 2010, 2012/193 of 18 April 2012, 2014/574 of 18 December 2014 and 2017/277 of 07 June 2017 appointing Judges of the Supreme Court;

------ Mindful of Decision N°527 of 09 August 2017 by the Chief Justice of the Supreme Court, appointing the Presidents of Divisions of the Supreme Court;

------Mindful of Decision N°528 of 09 August 2017 by the Chief Justice of the Supreme Court, appointing Judges of the Judicial, Administrative and Audit Benches of the Supreme Court;

------Mindful of Decision N°60 of 12 September 2017, by the President of the Administrative Bench of the Supreme Court, appointing Judges to the Divisions of the Administrative Bench of the Supreme Court;

---- Considering that Through a notice of appeal filed on the 18th December 2017 in the Registry of the South West Administrative Court in Buea, by the learned Procureur General of the South West Court of Appeal acting for and on behalf of the 1st appellant, appealed against judgment N° 014/2017 delivered on the 18th December 2017 in the suit N°. SWAC/PND/004/2016 by

the South West Administrative Court Buea in the matter between LOPHOMBO SARL against THE STATE OF CAMEROON (MINFI), DIRECTORATE OF CUSTOMS and GUY ALAIN CHEPING;

-----Considering that through another notice of appeal filed on the 28th December 2017 in the same registry, Barrister John H. HALLE of the NICO HALLE & CO Law Firm, acting for and behalf on THE STATE OF CAMEROON (MINFI), DIRECTORATE OF CUSTOMS and GUY ALAIN CHEPING, appealed against the same judgment N°014/2017 Buea in the matter between the same parties;

------That judgment N°.014/2017 DATED THE 18th December 2017; the South West Administrative Court passed the following verdict:

FOR THESE REASONS

Delivering judgment in open court, after full hearing, in an administrative matter, having deliberated in accordance with the law, unanimously and as a court of first and last resort:

DECIDES:

Article 1: Declare the petition admissible in form ;

Article 2: Declare the action founded on its merits ;

Article 3: Declare note de Service N°46/MINFI/DGB/SDSO/BPHC dated 03/09/2015 consequently cancelled ;

Article 4: Declare the action for damages equally justified and consequently condemn the STATE OF CAMEROON to pay the sum of thirty million francs (30.000.000 Frs.CFA) as general damages ;

Article 5: The Costs of these proceedings which is taxed at 45.000 Frs. Shall be borne by the public treasury.

FACTS AND PROCEDURE:

-----That by a petition dated 18/02/2016 and filed at the registry of the South West Administrative Court Buea under Suit N°SWAC/PND/004/2016, the petitioner LOPHOMBO S.AR.L through their counsel Barrister Ernest ATEAWUNG ATONGSANG of ATONGSANG & PARTNERS Law Firm

Buea, prayed the South West Administrative Court for the revocation and cancellation of Service Note N°046/MINFI/DGB/SDSO/BPHC of 03/9/2015 signed by Mr. Guy Alain CHEPING (Chief of Bureau Principal) at the Customs Main House Idenau Beach and for her to pay special and general damages to the tune of 352.000.000 Frs. CFA.

-----That before their suspension, the petitioner was a company licensed by the Ministry of Transport to operate as a Stevedoring Agent and a type 'B' lighterage contractor " (Consignataire de navire transitaire)";

That sometime in February 2015, the petitioner was about exporting some mercantile via the Idenau wharf, to wit: 500 bales of cloth and some tyres. For these goods, he was charged to pay 250.000 FCFA as custom duty, which he did but no receipt was issued to him by the 4th respondent's assistant deputizing for him. In the course of the voyage the goods were intercepted at sea for non-payment of custom duty as he had not been issued any receipt for the payment he made. Meanwhile upon his return the 4th respondent (Guy Alain CHEPING) informed of this development only requested the payment of a further sum of 250.000 FCFA, which the petitioner succumbed to since he wanted the release of his goods held up in the high seas. The 4th respondent through another collaborator-Banvela Bernice this time around issued only a handwritten receipt despite protests from the petitioner that he wanted an official government receipt. As if that was enough, the 4th respondent again demanded another sum of 150.000 FCFA as penalty for late payment of custom duty, which the petitioner again hesitantly and grudgingly paid but again no receipt was issued to him.

That following what he considered ill-treatment in the hands of these custom officials, the petitioner decided to address separate petitions to the Chief of Sector – South West Custom on the 23rd March 2015; To the Director of Personnel-Directorate General of Customs Yaoundé on the 27th April 2015 and to the Director General of Customs on the 11th May 2015 complaining against Madam Banvela Bernice and Mbega Barnabe, both collaborators of the 3rd respondent at the Customs Bureau Idenau for gross extortion, disrespect and

abuse of autorithy. That following these complaints, the Director General of Customs dispatched a team of six members from the Customs head office to carry out investigations regarding contraband goods and the bad service habits exhibited by the Idenau custom bureau workers. That during this mission which took place in August 2016 about 10.000 bags of rice were caught on the highseas without receipts showing proof of payment of custom duty at the Idenau wharf.

-----That the 4th respondent was furious and accused the petitioner of instigating the investigations ordered by his superiors. That it was then that 3rd respondent cooked-up the allegation that the petitioner was involved in trafficking of elephant tusks to Nigeria through his company LOPHOMBO SARL.

That out of bias, Mr. Guy Alain CHEPING- the 4th respondent and head of Idenau Customs Bureau, on the 03/09/2015 issued a decision suspending their activities within the Idenau Customs Wharf;

----That being dissatisfied with the suspension decision, which was considered unjust and an abuse of authority, the petitioner, through his counsel wrote a pre-litigation complaint to the authority concerned and subsequently to his hierarchy (MINFI) praying them to uplift the said suspension Service Note, otherwise he would seek redress in court and claim damages accordingly.

-----That at the expiration of the time limit provided for under section 17 and 18 of Law No.2006/022 on the organization and functioning of the Administrative Courts, the petitioner sought redress from the South West Administrative Court;

That the court heard the matter and found in favour of the petitioner in its Judgment N° · 014/2017 of 18th December 2017;

That it is against this judgment that the 1st to 4th appelants have appealed to the Supreme Court and they have filed Memoranda of Submissions as follows :

That 1st appelant's memorandum of submissions is presented as follows ;-

MEMORANDUM OF APPEAL

« My Lord,

Pursuant to section 116 of Law no. 2006/022 of 29 December 2006 on the Organization and Functioning of Administrative Courts, read with sections 89 to 92 of Law no.2006/016 of 29/12/2006 on the Organization and Functioning of the Supreme Court,

I have the honour to herewith submit a memorandum of appeal against the judgment of the Administrative Court of Buea cited in caption above.

l. EXPLANATORY STATEMENT

----That the suit at the lower court was filed by Barrister Emest ATEAWUNG ATONSANG qua counsel for the plaintiff, LOPHOMBO S.A.R.L, a private limited company represented by its director Mr. NKEMNO Joseph KOHMENJO. It was an action for cancellation with a claim for damages.

----- That the challenged act is "Service note no.46/MINFI/DGD/SDSO/BPHCI portant suspension d'un operateur'' issued on the 3/9/2015 by the Head of the Idenau Customs Bureau (3rd defendant) in the suit. The amount of the claim stood at 352.000.OOO FCFA, broken down as follows: special damages-32.000.000FCFA and general damages 320.000.000FCFA.

---- That the plaintif is a company licensed by the Ministry of Transport, to operate as : shipper (consignataire de navires), forwarding agent (transitaire) and a type B lightrage contractor (acconier de type B). (See Exhibit A).

*-----Briefly summarized, the case of the plaintiff is that out of bias, the 3rd defendant (Head ldenau Customs Bureau), on the **3rd of September 2015** issued a decision suspending her activities company within the precincts of the Idenau Customs Bureau.*

-----That the 3rd defendant falsely alleged that the plaintiff had been caught

illicitly exporting elephant tusks to Nigeria, and used this as a motive to suspend the plaintiff from operating a the Idenau Wharf.

----That the plaintiff contends that the reason why the 3rd defendant developed bias against him is the fact that on the 27th of April 2015, he had addressed a petition to the Director General of Customs in Yaounde against two co-workers of the 3rd defendant wherein he exposed their wanton acts of extortion and abuse of authority against custom 's users in ldenau.

-----That, prior to this, the plaintiff had also written to the Head of the South West Customs Sector (on the 23/3/2015) and to the Director General of Customs in Yaounde (on the 11/5/ 2015). That the second letter was copied to the Governor of the South west Region and to the 3rd defendant, but the latter refused to receive same.

-----That in reaction to his complaints, the Director General of Customs, dispatched six of her collaborators a the South West on the 26th of August 2015 to investigate alleged malpractices at the Idenau Customs bureau. That this mission did uncover malpractices at the Idenau Customs Bureau and in the aftermath, the 3rd defendant angrily accused the plaintiff of orchestrating the investigation.

-----According to the plaintiff it is the acrimony resulting from this incident that led the 3rd defendant to issue the contested act.

The plaintiff concluded that, in riposte to the contested act he made a complaint through counsel to the 3rd defendant on the 2nd of November 2015. That, the 3rd defendant did no answer his complain, whereupon he decided to institute a substantive action before the Administrative Court of Buea.

----The matter first came up on the 3/7 2017 but was adjourned because newly appointed judges of the court had not assumed duty. Following transfers of 7/6/2017 two of the members of the panel were moved to other stations. From 7 /8/2017, the case was adjourned through 2/10/2017, 16/10/2017,6/11/201 to the 20/11/2017 when hearing took place. Meanwhile on the 17 / 11/ 016 the members of the panel and a registrar-in-attendance had effected a visit to the

locus. The Legal Department was never informed or associated to this visit.

-----The Rapporteur proposed in his report that the matter was admissible and that damages be awarded to the plaintiff.

------A contrario, in my submissions I urged the court to declare the action inadmissible in its form reason being that there was no explicit or implicit rejection by the defendant of the plaintiff's pre-litigation complaint. Consequently the plaintiff could not file an action before the Administrative Court. I equally urged the court to nullify the visit to the locus that was carried out on the 17/11/2016 for the irregularities inc1uding the absence of the Legal Department and that the report was not signed by the five (05) persons who were heard at the locus.

On the 18/12/2017, the court delivered a unanimous judgment wherein the action was declared admissible and founded. The contested act was cancelled and an award of 30.000.00 FCFA was made to the plaintiff.

-----The judgment is amenable to cassation on the following grounds laid down in section 35 of Law No. 2006/016 of 29th December 2006 on the Organization and Functioning of the Supreme Court:

A. *Misentinpretation of the facts of the case ;*

B. *Insufficient grounds ;*

C. *Breach of the law ; and*

D. *Non-response to the submissions of the Legal Department.*

II. SUBMISSIONS lN SUPPORT OF THE GROUNDS OF APPEAL:

A. Misinterpretation of the Facts of the Case

'The plaintiff visited the Administrative Court of Buea to seek cancellation of an administrative act and damages for prejudice he alleged were caused by the said act. These two reasons are covered by section 2 (3) (a) and (b) of law n°2006/022 of 29/12/ 2006 on Administrative Courts.

However for the court to entertain an action, the plaintiff had to comply with two mandatory pre-requisites, to wit:

One, make a complaint to the authority who issued the challenged act within 3 months of publication/ servie of the challenged act or within six months of

cognizance of the loss in respect of which damages are claimed: section 17 (1) and (3) of the ore-cited law.

Two, in case the authority seised with a complaint, expressly rejected the complaint or failed to reply within three months (section 17(2) of the same law), the plaintiff had a time-limit of 60 days from the date of the rejection to file his substantive action.

ln this case, the contested act was issued on the 3/9/2015 and on the 2/ 11/2015 a complaint prepared by arrister Cynthia NCHAW on behalf of the plaintiff was served through a bailiff on the issuer of the contested act. At this level the plaintiff complied with the law.

Thirteen thereafter, the authority to who the complaint had been addressed sent a reply to Barrister Cynthia NCHAW, counsel for the plaintiff. The reply was shipped ough a mail delivery company, Messagerie et Tourisme d'Afrique (MTA). An agent of the said company visited Barrister NCHAW on 24/ 11/2 15 serve her with the reply but she refused to collect the same, arguing that it had to be served on her exclusively through a Bailiff.

The plaintiff later justified this incorrect action by raising the following lame arguments in their statement of defence, that "service of any process or legal document is done by Sheriff Bailiff as per the Law and even trite law and we consider 3rd respondents' correspondence a legal one." And further that, MTA agents ''are not sworn in process servers and consequently are not on oath" (see page 69 of the case file).

ln the reply, the authority who issued the challenged act informed the plaintiff that the suspension of her activities had already been revoked by dint of the closure of the customs inquiry into the allegation of illicit transportation of contraband elephant tusks.

This was a positive reply which th plaintiff by his own turpitude - refusal to receive the document - failed to avail of. ln the result, there was no explicit act or implicit act (silence for three months) that the plaintiff could reply on in filing a complaint. ln other words the requirement in section 18 of law n° 2006/022 cited supra was not fulfilled. This was the crux of our submission at the lower court that the action was inadmissible and therefore could not be heard on the merits.

ln arriving at a unanimous judgment, the panel gave the following reasoning found at page 13 of the judgment:

« … it is however clearly borne-out from the case file that both the pre-litigation complaint (recours gracieux) and the court claim (recours contentieux) were filed wit in the prescribed time limits;

While the contested act was taken on the 3/9/2015, the pre- litigation

complaint (exhibit G-G4) dated 29/10/2015 was served on 3[1d] respondent on 2/11/2015 by bailiff act (page 20 casefile) that is within the three months period under section 17(3) (a) of law n°2006/022 cited supra ;

Meanwhile the petition was filed at the registry of this court on the 22/2/2016 which means within 6 days after the expiration of the three months period of silence Under section 17(2) of law n°2006/022. ln other words section 18 of the said law was complied with."

From the facts in the case file, there was a positive reply to the plaintiff's complaint but the plaintiff deliberately refused to receive the reply and instead ambushed the defendants with a substantive court action. This offends section 18 of law no. 2006/02 which lays the rule that an action can only be instituted at the administrative court following rejection of the complaint. There was no rejection in this case and the court woefully misinterpreted the facts in making the statement uriderlined above.

l therefore respectfully urge your Lordships to uphold this ground of appeal.

B. Insufficient Grounds

My lords, I rely on my arguments developed above under the heading of misinterpretation of the facts of the case, to state that the judges of the lower ground did not furnish sufficient reasons in their judgment.

It is clear from the paragraphs cited above culled from page 13 of the judgment that, the judges of the lower court failed to sufficiently establish that section 18 of law no. 2006/022 was complied with. By failing to address the crucial question, of whether or not the plaintiff's complaint was rejected, the judges without reasons jumped into the merits of an inadmissible lawsuit in so doing irregularly arrived at an award which also is not sufficiently justified.

Section 52 (2) of law no. 022/2006 of 29/12/2006 on Administrative Courts provides that:
"The Procureur General shall submit on every issue tabled before the court."

Consequently the request that was made by the Rapporteur for a visit to the locus had to be communicated to the Procureur General for his submissions. Inopportunely, this was not done. For this reason it is a falsehood for the judgment to state at its page 2 that the Legal Department submitted on all the issues raised.

Furthermore, the "court" referred t in section 72 of the law under reference, which has the powers to visit the locus, is composed of a ' Bench and a Legal Department (section 6 of the said law). Therefore any visit by the "court" to a locus has to include the Legal Department, under pain of the court being irregularly composed.

ln addition to the fact that the Procureur General's submission was not sought, the locus was irregularly carried out in the absence of the Legal Department.

Moreover, although the locus report makes mention that five (5) persons were heard, to wit, the 3rd defendant (Guy Alain CHEPING), CHIA Ferderick, one UKA, a certain CHIA, and Mme NGOUNENE Bernice epouse BANVELE, the said report is not signed by these persons as required under section 75 (2) of the law cited above.

These irregularities amount to breaches of the law, and i urge your lordships to hold same against the judgment.

D. Non response to the submissions of the Legal Department

It is interesting to note that the 20 page judgment does not make a single allusion to the submissions of the Legal Department. A reading of the judgment speaks for itself. Even more the representative of the Legal Department was virtually denied audience in court on the day of the hearing.

These arguments and those raised in the preceding are sufficient grounds for cassation, wherefore I pray your lordships of the Administrative Bench of the Supreme Court to entertain this appeal and accordingly quash judgment no.014/2017 of Administrative Court of Buea, delivered on the 18th of December 2017. »

Signed by the Procureur General of South West Court of Appeal M. Emile ESSOMBE, Magistrate.

That the 2nd 3rd and 4th appellants' memorandum of submissions is presented as follows;-

MEMORANDUM AND GROUNDS OF APPEAL OF JUDGMENT No. 014/2017 DELIVERED ON DECEMBER 20, 2017 BY HIS LORDSHIP MBU EDWARD OSOH PRESIDENT OF THE ADMINISTRATIVE COURT OF THE SOUTH WEST REGION.

« This Appeal is against judgment No. 014/2017 delivered on 20, 2017 by the

honourable Lordships of the Administrative Court of the South West Region following a Petition by Respondent to this Appeal.

Dissatisfied with this Judgment, the Appellants throug Counsel filed a Notice of Appeal at the Registry of the Administrative Court of the South West Region on December 28, 2017 (find attached copy of Notice of Appeal herein marked exhibit "A1.") in accordance with section 89 of Law N° 2006/016 of December 29, 2006 laying down the Organization and Functioning of the Supreme Court. Pursuant to this Notice of Appeal, the Registrar-in-chief of the Administrative Court of the South West Region issued a Report of Declaration of Appeal, a Certificate of Appeal, and a Notification of Declaration of Appeal (herein atta ched and marked exhibit "A2", "A3", and "A4" respectively).

Pursuant to section 91(1) of Law N° 2006/016 of December 29, 2006 laying down the Organization and Functioning of the Supreme Court, we are filing this Memorandum of Appeal before your Lordships praying this Honourable Cour to uphold our Appeal and quash the decision of the trial Court on the following Grounds:

GROUND ONE

THAT THE LEARNED TRIAL JUDGES ERRED AT LAW BY FAILING TO OBSERVE, ENSURE AND GUARANTEE A FAIR HEARING AS CONTAINED lN THE PREAMBLE OF THE CAMEROON CONSTITUTION AND ARTICLE 40 (1) OF LAW N° 2006 /022 OF DECEMBER 29, 2006 TO LAY DOWN THE ORGANIZATION OF THE ADMINISTRATIVE COURTS

Please your Lordships:

The concept of fair hearing is at the foundation of our legal system. It is enshrined in the Preamble of the Cameroon Constitution. It is similary contained in Law N° 2006/022 of December 29, 2006 ta lay dawn the Organization of the Administrative Courts. Article 40(1) of this law in providing for this principle states that:

"(W)ithin fifteen (15) days of service of the statement of defence, the Petitioner shall file a reply to which the Respondent may in turn file an answer within the same

time-limit."

The above provision is an endorsement and confirmation of a very major principle underlying fair hearing which is the principle of "Audi alteram partem" ("hear the other party"). ln order for the principle of fair hearing to be effectively met, the other party must be given an opportunity to respond to the evidence against him before the judge reaches his decision. Where this is not the case, the judgment of the learned judge shaIl be bound to be biased, unfair and a travesty of justice. Such a decision cannot and should not be consciously upheld by a superior court on appeal.

Looking at the spirit and letter of article 40(1) of Law N°2006/022 to lay down the Organization of the Administrative Courts (which is one of the immense guarantors of fair hearing in this Law), it is an obligation of the Rapporteur to order service of the petitioner's reply to the respondent's statement of defence. 0n the other hand, it is the respondent's discretion to file his riposte to the reply of the petitioner. This explains why article 40(1) states inter alia that ***" ... the respondent*** *may* ***in turn file a answer ... "*** *within the 15 days' time-limit prescribed by the law.*

Your Lordships will note from the last paragraph of page 9 to last paragraph of page 12 of the judgment that it is the reply of the Respondent to our statement of defence which the AppeIlants were never served with pursuant to section 25, nor were they given an opportunity to reply pursuant to section 40 (1), aIl of Law N°2006/022 to lay down the Organization of the Administrative Courts. This was a violation of the procedure before the Administrative Courts. Also, the non-service of this reply proved utterly prejudicial to our case because fair hearing was fundamentaIly violated. The judgment of the trial judges turned out to be a miscarriage of justice which swayed their decision to the favour of a verse party.

On the basis of the above, we urge your Lordships to take special consideration of this fundamental and sheer breach of procedure as provided for by the preamble of the Constitution of Cameroon, the Law Organizing the Administrative Courts as weIl as the fair hearing principle of "audi aultarem partem"as enshrined in this same law. We accordingly pray your Lordships to quash the decision of the trial

court and dismiss the damages awarded against the Appellants.

GROUND TWO

THAT THE LEARNED TRIAL JUDGES ERRED AT LAW BY ENTERTAINING THE PETITION DESPITE THAT THE APPELANT HAD NOT REJECTED THE PRE-LITIGATION COMPLAINT MADE BY THE RESPONDENT

Article 17(1) of Law No 2006/022 of December 29, 2006 to lay down the Organization of the Administrative Courts provides that:

"Petitions may be made to the Administrative Court following rejection of a complaint made to the authority that issued the challenged act or he authority empowered by a statutory instrument to represent the public body or public establishment concerned."

Article 17(2) provides further that :

'' Failure of the authority to reply within three (03) months of filing the complaint or claim to it shall tantamount to rejection. Such time-limit shall start running from the date of the complaint''.

When the 3rd Appellant issued the "Note de Service" No. 046/MINFI/DGD/SDSO/BPHC on September 03, 2015 "portant la Suspension d'un Operateur" (herein attached and marked exhibit "B"), the Respondents through Counsel serve a complaint via bailiff on the 3rd Appellant on October 29th, 2015 requesting him to uplift the said suspension otherwise he would seek redress in the Court and claim damages accordingly.

The 3rd Appellant replied to this letter with two correspondence: one with reference N° 61 /MINFI / DGD /SDSO/BPHCI dated 16 November, 2015 addressed to then Counsel for the Respondent (Barrister Cynthia Akeuya) and other with reference No 62/ MINFI /DGD /SDSO /BPHCI dated November 20, 20 5 addressed to the Respondent (copies attached and marked exhibit "B1" and"B2" respectively) wherein he informed them that the said "Note de Service" had been revoked immediately the investigations were completed. These correspondence were served

on then Counsel for t e Respondent by the MTA Transport and Logistique (authorized courier agents of the of the 2nd Appellant) who refused to receive same on the ground that they were not Bailiffs (find attached document attesting denial of service by Barrister Cynthia Akeuya issued by MTA Transport and Logistique herein attached and marked exhibit "B3").

His Lordships in the trial Court followed this same reasoning in page 17 paragraph 5 and 6 of their judgment but failed to back this reasoning with a piece of legislation which obliges an administrator to serve administrative correspondence via bailiff. They reasoned frivolously in these paragraphs that, because Counsel for the Appellant had argued in paragraph 8 of their Statement of Defence that they had used a Bailiff to prove how smooth the relationship of the 2nd and 3rd Appellants was with the other consignees and stevedores, in ldenau, it means the 3rd Respondent was in contact with a Bailiff. First of all, this was a strategy of defence used by Counsel and does not necessarily connote that 3rd Appellant was in contact with a Bailiff during his reply to the pre-litigation complaint of the Respondent. Secondly, based on our extensive research, there is no text that obliges administrators to serve official administrative correspondence via Bailiff. Reasoning their judgment as such without justification is ill-advised, misguided and a miscarriage of justice.

On the basis of our arguments and reasoning above,and taking into prime consideration the fact that the pre-litigation complaint made by the Resposdent was not rejected by the 3rd Appellant (who duly replied to same through Counsel), is Lordships at the lower court erred significantly at law in their reasoning in page 13 paragraph 1, 2, 3 and 4 by claiming that the conditions of admissibility pursuant to article 17(2) were satisfied and proceeding to entertain the Petition of the Respondent as well as hearing it on the merits. ln other words, this Petition did not pass the requisite test as provided for in article 17 of Law No 2006/022 of December 29, 2006 to lay down the Organization of the Administrative Courts and should have been dismissed.

GROUND THREE

THAT THE LEARNED TRIAL JUDGE ERRED AT LAW BY FAILING TO GIVE MUCH DESERVED PROBATIVE VALUE TO AN UNCHALLENGED

CUSTOMS WRITTEN REPORT OF SEIZURE (PROCES-VERBAL DE SAISIE)

Please your Lordships:

A customs written report of seizure is like a notarial act. According to article 310 of the CEMAC Customs Code, a written report drawn up by two customs officials is authentic and holds good in law until such time as they are rebutted in relation to material facts which are affirmed therein.

Pursuant to section 312 of the CEMAC Customs Code, a written report of seizure can only be declared invalid by the courts to the extent where such a written report fails to comply with the requirements as contained in articles 299(1), 300 to 306 and 308. Articles 299(1), 300 to 306 and 308 simply lay down the information that must be included in the written report of seizure or written report of findings.

Article 313 of the CEMAC Customs Code provides for the procedure to rebut a customs written report of seizure by the person contesting it as follow :

(1) "any person who wishes to rebut a written report of seizure, is required to lodge a declaration in writing to that effect personally or through his representative specifically appointed for this purpose before a notary public, no later than the date shown in the summons to appear before the court which is to hear the charge''.

(2) "any such person must within three days thereafter, lodge grounds for rebuttal with the names and qualifications of the witnesses he wishes to call, at the court registrar's office, failing which the rebuttal will not be admitted."

(3) "where the written report affirming the fraud is rebutted, if rebuttal is made within the time-limit and in accordance with the foregoing article and in the event that from the evidence in the rebuttal, if such were proved, it should establish that fraud was not in fact committed by the rebutter, the public prosecutor will take suitable steps to see that the findings are made statutory without delays."

Article 315 proceeds to state that where the rebuttal has not been lodged within the time limit or in the manner as laid down in article 313 above, hearing and

sentence are to follow without any further delay.

Article 316 concretizes all of the above by stating that the customs written reports, when they hold good in law until such time as they are rebutted ,are worth title to get, in accordance with the common duties, the authorization to take all preventive measures against the persons criminally and civilly liable to the effect of guaranteeing Customs debts of all type resulting of the written report of seizure.

From the above exposure of the legal provisions that apply, it is important to mention facts surrounding it. Collaborators of the 3rd Appellant in Idenau seized the elephant tusks from the Gideon I in the Idenau Wharf on August 12, 2015. This boat (Gideon I) at the moment did business under the auspices of LOPHOMBO SARL as Stevedores and Consignee. A written report of seizure (herein attached and marked exhibit "C ') was drawn up on August 13, 2015 in accordance with the provisions of article 70, 298, 402, and 403. The representative of LOPHOMBO SARL in the name of Chia Frederick was present during the time of unloading of the elephant tusks from the bags but was absent during the finalization of this written report of seizure to sign. Therefore pursuant to article 302 of the CEMAC Customs Code, it was posted at the Customs Main House in Idenau. This report which was later forwarded to the Legal Department of the Buea Court of First Instance together with other reports of findings and results of investigation impelled the Legal Department to issue a summons to the representative of LOPHOMBO SARL in the name of Nkemno Joseph and two other employees of LOPHOMBO SARL in the name of Chia Frederick and Uka on January 04, 2016 as per the record of the Court of First Instance Buea.

Based on the provision of articles 313, if the Respondents wished to rebut the written report of seizure, they were supposed to lodge a declaration in writing to that effect personally or through representativave/counsel specifically appointed for that purpose before a notary public, not later than the date shown on the summons (04/01/2016) to appear before the Court of First Instance Buea which was the jurisdiction to hear the matter. From that declaration beforethe notary public, they had a statutory period of three days (07/01/2016) to lodge their grounds of rebuttal with the names and qualifications of the witnesses they would have wished to calI

at the court registrar's office or the rebuttal would have not been admitted. From there the court would have heard the rebuttal action and given its judgment.

Unfortunately for the Respondents, they never followed this legal procedure meaning the written report of seizure stands unchallenged, stands valid and holds good in law. It means that they consented to the fact that a boat doing business under their auspices as stevedores and consignees was involved in the trafficking of elephant tusks: And article 352 of the CEMAC Customs Code provides that, in every action relating to seizure, the burden of proof of non- violation lies on the person from whom the goods were seized.

It is worth mentioning here that the responsibility of LOPHOMBO SARL as consignees and stevedores comes in pursuant to article 380 of the CEMAC Customs Code. This article provides that the holder of fraudulent goods is deemed to have committed the fraud relating to the goods. It however proceeds to state that public carriers, their agents or servants will not be treated as offenders where full and sufficient information regarding their principals is supplied by them to the administration and it leads to detection of he real offenders. The Respondent has intentionally failed to identify the fraudsters who were the owners of the elephant tusks thus making them liable under article 380 of the CEMAC Customs Code. The trial judges therefore erred at law when he stated in page 16 paragraph 2 of the judgment that the Respondents were not present at the scene of the alleged offence; and that they were equally neither the owner nor conductor of the boat (Gideon l)

Leaning closely to the above argument my Lords i the fact that the Respondent has never contested being the Consignee/Stevedore of the GIDEON I. Her agents/employees in the name of Chia Frederick and Uka even confirm during the visit to the locus in quo as can be seen in page 16 paragraph 4 that they were charged with loading the boat on 12/08/2015, the day in which the seizure of elephant tusks was made from the boat by the Customs officiaIs. And pursuant to article 352 of the Customs Code, the burden of proof of non-violation in every action of seizure lies on the person from whom the goods were seized. The Respondent has not shown any proof that these elephant tusks were not seize from a boat doing business under their auspices. Instead they have affirmed loading this

same boat on the day of the seizure. The trial judges therefore erred again in law by failing to recognize that employees of an entity are agents of that entity and thus their presence is the presence of the entity. This information is all contained in the unchallenged report of seizure.

The unchallenged written report of seizure which detailed the customs offences that were violated was not given any probative value by the trial judges despite the strength of this piece of evidence as can be seen in the above provisions of the CEMAC Customs Code. It is eminent that the learned trial judges must have erred massively in law because he presumed that a written report of seizure by two or more Custom officers was similar to a written report by normal judicial police officers. As we already suffici ntly demonstrated above pursuant to the CEMAC Customs Code, the written report of seizure of a Custom officer if unchallenged pursuant to the procedure above stated holds good in law against the violator. It is therefore the duty of the learned trial judges to give it the probative value it deserves by taking judicial notice of same and sufficiently directing his mind to the irrefutable presumption that, LOPHOMBO SARL was involved in the trafficking of elephant tusks. Only on the basis of this written report of seizure, the petition was supposed to be thrown out of court.

GROUND FOUR

THE LEARNED TRIAL JUDGES ERRED AT LAW BY FAILING TO SPOT THAT THE ''NOTE DE SERVICE'' ISSUED BY THE 3RD APPELANT WAS GROUNDED IN LAW

Please your Lordships :

Based on the Ministry of Transport Decision N00042 /D/MINT /SG/DAMVN of November 2017, Respondent is a "Consignataire de Navires" (translated in English as Consignee of the Vessel), "Transitaire" (translated in English as Forwarding Agent), and an "Acconier de Type 'B'" (translated in English as Stevedore). These para maritime professions are provided for by the CEMAC Marine Merchant Code.

According to article 622 of the CEMAC Marine Merchant Code of 2012, a

consignee of the vessel acts as the salaried agent of the ship-owner. He carries out, for the purposes and on account of the vessel and the voyage, the operations which the captain does not perform himself. ln the place of the captain, he receives the merchandize during departure and delivers them during arrival. Article 630 of this same Code states that the Consignee of the Vessel is responsible for the goods delivered to him from the moment he takes it to the moment he delivers it. Finally article 624 of this same Code provides that for operations carried out by him within the framework of his mandate, he is liable under ordinary law. Your Lordships will note that by virtue of the profession of the Consignee of the Vessel (which is a profession of the Respondent) he has to always deal with Customs officials for purposes of declaring goods which he has received delivery on behalf of the captain or it will be a first class Customs misdemeanor pursuant to article 403 of the Customs Code. This because every good that passes through the Customs belt must be declared. On this logic, if a vessel with a Consignee is apprehended by CEMAC Customs officials with products which ar prohibited, then the Consignee can be suspended from carrying out his activities in that belt under ordinary law for gross professional misconduct as provided for in article 624. This is what the "Note de Service" effectively did.

A Stevedore whose profession is not previewed b the CEMAC Marine Merchant Code is a person who is charged with the loading and unloading of ships. The Respondents by virtue of their license are authorized to carry out "Type B" stevedoring. This profession implicitly means they have to deal with Customs officials and may be suspended for engaging in gross professional misconduct for failing to report prohibited goods or loading without seeing documents evidencing declaration.

The main issue for consideration by the trial Cour was to determine whether the Note de Service of the 3rd Appellant was not grounded on law and thus ultra vires. The said Note translated into English reads that "(F)rom the date of signature of the present Service Note for grave professional misconduct, LOPHOMBO SARL BP 471 Limbe, Consignee and Stevedore, is suspended from all activities before the Customs M in House and the Commercial Brigade of Idenau, until the closure of

the investigation procedure relating to the seizure of ivory tusks. This suspension excludes any presence in the customs zone, brigade, warehouses and clearance areas",

We have thoroughly shown above that based on the unchaIlenged written report of seizure, the Respondent to this suit was involved in the trafficking of ivory tusks. That as a result of their intentional failure to identify the owners of these highly prohibited contraband pursuant to article 380 of the CEMAC Customs Code makes the liable for this offence. Accordingly, article 316 of the CEMAC Customs Code provides that "(C)ustoms written reports, when they hold good in law until such time as they are rebutted, are worth title to get, in accordance with the common duties, the authorization to take aIl preventive measures against the persons criminally and civilly liable to the effect of guaranteeing Customs debts of aIl type resulting of the written report of seizure",

The Suspension Note fits squarely within the letter a d spirit ofthis article. It was a preventive measure against the Respondents who as have been hown above were and are criminally and civilly liable for involving in the trafficking of elep ant tusks. The note stopped them from continuing to engage in illicit activities until the custom debt arising from breach was established pursuant.

Your Lordship will note from the judgment in page 18 paragraph 2 that the learned trial judges erred at law in presuming that the unrebutted written report of seizure concluded the investigations and even proceed to calI the said witten report of seizure an "investigation report". As per Customs law and practice as weil as common sense, seizures in a case like this only kick-start the investigations. The Customs officiaIs have to determine how the offence was committed and the accomplices of the offender during the commission of the offence to guarantee their debt and liability. The findings are then sent to the Legal Department of the Court of First Instance of the place of commission f the offence. This is exactly what the 3rd Appellant did. The report of findings (proces-verbal de constat) which was drawn by collaborators of the 3rd Appellant in the presence of Mr. Nkemno Joseph (representative of the Respondent); the three reports of interview of employees of the Respondent concerned in the trafficking; and a reconnaissance form of the ivory

tusks drawn jointly by the Customs officials of Idenau and the agents of the Ministry of Forestry and Wildlife of the ivory tusks seized were forwarded on November 16, 2015 to the Legal Department of Buea for commencement of a criminal action. This resulted in a criminal action fo trafficking of ivory tusks against Nkemno Joseph, Chia Frederick and Uka which is still ongoing ince January 2016.

It is equally important to draw the attention of the Court that article 51 of the CEMAC Customs Code provides that for the purpose of the Code, aIl goods whose import or export is prohibited in any capacity whatsoever, or restricted to quality rules or conditioning or sorne special formalities are prohibited. It goes further to provide that if importation and exportation of goods are based on the condition of the presentation of a permit as such, such importation or exportation may only be carried out upon presentation of that permit. ln connection with this article is articles 290(2) and 291(1) CEMAC Custom Code. Article 290 provide that holding of stocks of goods, other than the raw products of the country, which are prohibited or taxed on exportation for which there is no sufficient evidence that they are normal requirements for business, or which are clearly far in excess of family requirements such as it is locally understood is not permitted at the Customs belt. Article 291(1) provides that holders or carriers of goods which are restricted as such must forthwith on demand by Customs officials produce either clearance invoices, manufacturer's delivery orders or other evidence of origin emanating from individuals or firms properly established within the Customs territory. Respondents have still not provided a permit for the exportation of these elephant tusks which are prohibited in absolute terms from international trade.

It is a notorious fact that, trade in ivory is illegal as elephants fall into the category of endangered species of wildlife. Accordingly, Cameroon acceded to the Convention on International Trade in Endangered Species of Wild Fauna and Flora on the 5th of June, 1981 and this Convention came into force on 3th September, 1981. This Convention in its article VIII (1) (a) clearly obliges member states to protect endan ered species by prohibiting trade thereof and penalizing trade or possession of such specimens or both insofar as the perpetrator of said act does not have the valid

permit. Also, Law No. 94 /01 of [anuary 20th, 1994 to lay down the Regulations of Forest, Fisheries and Wild Life follow the spirit of this Convention and prohibits trade in the hides, skins and trophies of animals which have been considered endangered species.

The "note de service" is not ultra vires. It falls wit in the confines of the power of the 3rd Appellant. He did not suspend the license or authorization of the Respondent but merely suspended their activities before his jurisdiction pending the investigation. She is suspendedfrom carrying out activities at the Customs Main House and brigade and warehouses at theIdenau Wharf. ln the license of the Respondents, he can engage other activities like being a forwarding agent whose activities do not need to be carried out in the ports.

Based on the following pieces of legislation, the Respondent committed a serious professional misconduct when he was involved in the trafficking of ivory tusks and the 3rd Appellant in order to uphold the law and do justice suspended her activities temporarily for the period of investigations. Therefore, for the trial judges to turn a blind eye to these serious professional misconducts of the Respondent and proceed to label he Note de Service ultra vires is favouring illegality and punishing administrators and officials and binding their hands from upholding the laws which they were sworn to uphold. Based on the unchallenged report of seizure and the above, it is frivolous and redundant to base the Note de Service on any legislation as was the position of their Lordships in page 15 paragraph 01 ho claimed that the 3rd Appellant did not state the instruments that empowered him to order he suspension. Note the equitable maxim that "equity looks to the intent rather than the form",

GROUND FIVE

THAT THE LEARNED TRIAL JUDGES ERRED AT LAW BY FAILING TO RECOGNIZE THE CRIMINAL RESPONSIBILITY OF THE RESPONDENT PURSUANT TO ARTICLES 380 AND 352 OF THE CEMAC CUSTOMS CODE

Article 380 of the Customs Code provides that the holder of fraudulent goods is

deemed to have committed the fraud relating to the goods. But where they are public carriers, their agents or servants, they will not be treated as offenders where full and sufficient information regarding their principals is supplied by them to the Administration leading to the detection of the offenders engaged in the fraud.

Article 352 provides that in every action relating to a seizure, the burden of proof of non- violation lies on the person whom the goods were seized.

The Respondent by virtue of her profession is a Consignee of a Vessel and a Stevedore. According to article 622 of the CEMAC Marine Merchant Code of 2012 as above stated, a consignee of the vessel acts as the salaried agent of the ship-owner. He carries out, for the purposes and on account of the vessel and the voyage, the operations which the captain does not perform himself. ln the place of the captain, he receives the merchandizes during departure and delivers them during arrival. Article 630 of this same Code states that the Consignee of the Vessel is responsible for the goods delivered to him from the moment he takes it to the moment he delivers it. Finally article 624 of this same Code provides that for operations carried out by him within the framework of his mandate, he is liable under ordinary law.

ln page 16 paragraph 2 of the Judgrnent, the trial Court reasoned that criminal responsibility is personal and that it is difficult to see how the Respondent was connected to the "alleged offence of seizure of the ivory tusks". This reason is ill-advised and erroneous in law. This is firstly because the written report of seizure which portrays that the Respondent was Consignee of the Gideon I holds good in law and was/has never been rebutted following the procedure in article 313 of the Customs Code. Secondly, in the same page 6 paragraph 2 of the judgment, Chia Frederick and Uka, employees of the Respondent confirm that they were charged to load the Gideon I but refused seeing any ivory tusks in it. The reasoning of the judges here is baffling because he tends to believe the statements of suspected smugglers to an unchallenged written report of seizure by sworn Customs officiaIs which olds good in law and is irrebutable now. Thirdly, pursuant to article 352 as above, the burden of proof of non-violation of seizure is on the Respondent who has not brought forth any such proof. Consequently, since this written report has not

been rebutted, criminaI responsibility falls on the Respondent pursuant to article 380 of the CEMAC Customs Code for their failure to identity the captain and operator of the vessel (Gideon I) or the owner of the cargo.

GROUND SIX

THAT THE LEARNED TRIAL JUDGES ERRED lN LAW BY FAILING TO NOTICE THAT A PENALTY WAS FIXED ON THE WRITTEN REPORT OF SEIZURE lN ACCORDANCE WITH ARTICLE 405(1) FOR PAYMENT BY THE RESPONDENT DUE TO HIS ENGAGEMENT lN THE TRAFFICKING OF IVORY TUSK

Please your Lordships:

Article 405(1) of the CEMAC Customs Code provides that smuggling misdemeanours by means of aircraft or by self-propelled or drawn vehicles, by ship or sea going vessels of less than one hundred net tonnage or by river boat. is punishable by forfeiture of the article smuggled, forfeiture of the means of transport, forfeiture of the articles used to cover up the smuggled article, and by a fine equal to four times the value of he articles forfeited and by imprisonment of from six months to three years,

As it has been already exhaustively demonstrated in the unchaIlenged and unrebutted written report of seizure, the Respondents were involved in the smuggling of ivory tusks in their capacity as Consignees and Stevedores of the Gideon I. On this written report of seizure, a fine was fixed on it to the tune of XAF 278,400,000 (two hundred and seventy eight million four hundred thousand francs) representing four times t e prie of the ivory tusks forfeited and XAF 6,000,000 (six million francs) representing four times the price of the Gideon I. Therefore, the reasoning of the panel in page 16 paragraph 3 line 3 stating that: "(O)n the other hand, if there was evidence of attempted export of ivory tusk without payment of customs duty or declaration as later insinuated by third Respondent, that would have been the subject of a penalty or fine since this will amount to contraband as it was notice during the court's visit to the locus in quo at Idenau on the 22/11/2016 when 3rd Respondent explained exhaustively the role of

the litigation service in situations like this ... " was not onl erroneous but was misguided.

GROUND SEVEN

THAT THE LEARNED TRIAL JUDGES ERRED AT LAW BY REASONING lN PAGE 18 PARAGRAPH 4 THAT 3RD RESPONDENT'S SERVICE WAS INVOLVED lN CORRUPT ACTIVITIES BY ISSUING A HANDWRITTEN RECEIPT FOR PROVISIONAL PAYMENT MADE BY THE RESPONDENT FOR A CONSIGNMENT PENDING DECLARATION DESPITE HE FACT THAT A FINAL RECEIPT WAS ISSUED

Please your Lordships:

Pursuant to article 110 of the CEMAC Customs Code, all goods imported or exported are subject to a goods declaration assigning them to specific Customs Procedure.

Article 111(4) proceeds to provide that for the purpose of the application of the CEMAC Customs Code, notably with regard to duties and taxes, prohibitions and other measures, declarations lodged in advance, under the condition provided for in paragraph 3 of this Article, only come into force with all the consequences attached to their lodging on the date on which it is demonstrated that the goods effectively arrived, subject to the fact that the declaration in question satisfies all the conditions required by article 120 CEMAC Customs Code.

Article 120 provides that goods declaration in details shall be prepared in writing. They are to contain all the details necessary for compliance with Customs requirements. They are to be signed by the declarant.

Failure to follow this procedure, then the goods will not be considered to be declared. ln practice and in the spirit of article 111(4), in order not to make the declarant/consignee carry the goods back, the Customs can only hold it as consignment (" consignation) with the issuance of a handwritten receipt with the list of the goods provisionally received and any prepayment provisionally made for the consignment. ln practice, these handwritten receipts always carry the name of

the payer, purpose of payment (in this case consignment of goods), the list of goods and the name and signature of the Customs officer receiving it, as well as the official seal of the 2nd Appellant. This is because, the T6 Revenue Declaration Booklets issued by the 2nd Appellant to its agents are only to be used upon final declaration of all the gcods, after calculation of the custom duties and payment thereof.

Therefore, the learned trial judges in page 18 paragraph 3 of the judgment in considering the handwritten receipt issued by a collaborator of the 3rd Appellant as a consignment ("Consignation") pending declaration (as can be clearly seen in the receipt with the name, amount received and official seal of the 2nd Appellant) as corrupt falls aggressively short in reasoning pursuant to article 111(4) of the CEMAC Customs Code and the practice of the 2nd Respondent as above shown.

GROUND EIGHT

THAT THE LEARNED TRIAL JUDGES ERRED AT LAW BY FAILING TO CONSIDER THAT "HE WHO COMES TO EQUITY MUST COME WITH CLEAN HANDS" AND THAT "HE WHO SEEKS EQUITY MUST DO EQUITY"

Please your Lordships:

There is an equitable maxim that "He who comes into equity must come with clean hands". This maxim bars relief for anyone guilt of improper conduct in the matter at hand. It operates to prevent any affirmative recovery for the person with "unclean hands" no matter how unfairly the person's adversary has treated him or her. The maxim is the basis for clean hands doctrine. Its purpose is to protect the integrity of the court, It does not disapprove only of illegal acts but will deny relief for bad conduct that, as a matter of public policy, ought to be discouraged. It punishes intentional acts and not carelessness. The bad conduct that is condemned by the clean hands doctrine must be a part of the transaction that is the subject of the lawsuit.

Also there is another equitable maxim that "he who seeks equity must do equity".

This maxim is not a moral persuasion but an enforceable rule of law. It does not require every plaintiff to have an unblemished background in order to prevail, but the court should refuse to assist anyone whose cause of action is founded on his or her own misconduct towards the other party.

My Lords, the learned trial judges ignored these two very key equitable maxims and proceeded to hold Appellants liable for doing just their job This was despite evidence such as the unchallenged written report of seizure; as well as evidence in the Statement of Defence during trial which showed that sometimes in March 201 (few months before the seizure of ivory tusk), the Respondent was involved in exportation of goods without declaration and was fined a sum of XAF 200,000 by the 3rd Respondent which he paid and a receipt was issued to him (copy of M44 bis Receipt herein attached and marked ex ibit "D"). The learned trial judges in his judgment turned a blind eye to these two dirty and illegal actions of the Respondent and proceeded to believe the falsehoods of the Respondent who claimed that he was being victimised by the 3rd Appellant and paid customs duties several times. This is purely the art of "defending by attacking" which has corrupted the mind of the trial judges and created room for violators to get away with dreadful criminal actions On false grounds of victimization.

Based on those two maxims, the Respondent cannot come seeking relief from your Lordships. Upholding the judgment of the lower court will bring dishonour and disrepute to this honourable court.

GROUND NINE

THAT THE TRIAL JUDGES ERRED lN LAW lN DECLARING THAT THE DAMAGES CLAIMED BY THE RESPONDENT WERE JUSTIFIED AND AWARDING GENERAL DAMAGES TO THE TUNE OF XAF 30, 000,000

Please your Lordships:

For general damages to be awarded, the claimant must prove to the court on a balance of probability that he suffered loss as a result of a wrong committed by the defendant. The evidence justifying the claim for damages must be probable and

based on law.

The Respondents in their Petition claimed that the Note de Service of the 3rd Appellant was ultra vires but failed to adduce any evidence to support it. They also failed to cite any piece of legislation to justify the ultra vires nature of the Note de Service. Instead, the deck was stacked against them pursuant to an unchallenged written report of seizure showing their involvement in the trafficking of ivory tusks as Consignees and Stevedores. Consequently, the trial judges erred at law despite this evidence against the Respondents to award exorbitant and unjustified general damages to the tune of XAF 30,000,000 to the Respondent. This award was a travesty of justice and an abuse of the discretion given by the law to judges to award general damages. We therefore pray your Lordships to dismiss and quash these general damages.

GROUND TEN

THAT THE JUDGMENT IS ALTOGETHER UNREASONABLE AND UNWARRANTED HAVING REGARD TO THE WEIGHT OF EVIDENCE ADDUCED

Please your Lorships:

We have systematically and thoroughly shown t at the written report of seizure stands unchallenged pursuant to the procedure provided article in 313 of the CEMAC Customs Code. Accordingly, the Respondent in their capacity as Consignee and Stevedores were involved in the trafficking of ivory tusks. They adduced no evidence at trial to show that the Note de Service of the 3rd Respondent was ultra vires. They simply made baseless claims which the trial judges blindly relied upon in reaching their decisions. The judgment was ill-advised and a miscarriage of justice because the evidence pleaded by the Respondent failed to show any wrongdoing by the 3rd Appellant as the Chief of Bureau at the Idenau Customs Main House.

On the other hand, it was shown by the Appellants th t the Respondent was a recalcitrant fellow who had run-ins with Customs officiaIs for violation of law

ranging from exporting without declaration as shown above to actual involvement in he trafficking of ivory tusks as can be seen in the unchallenged written report of seizure.

UPON THESE GROUNDS

We pray your Lordships and this Honourable Court to quash in entirety the Judgment N°14/2017 handed down by his Lordships of the Administrative Court of the South West Region presided over by Justice Mbu Edward Osoh a d dismiss all the damages awarded against the State of Cameroon.

ON THE ADMISSIBILITY OF THE APPELLANTS' APPEAL

It is our humble submissions that all the preliminar formalities for filing an Appeal before the Administrative bench of the Supreme Court have been satisfied. And that this Memorandum of Appeal is filed within the prescribed deadline as provided for by Article 91(1) of Law N° 2006/016 to lay down the Organization and Function of the Supreme Court. »

Signed by counsel for the appelants Mr. John Nico HALLE, Barrister and Solicitor

CONSOLIDATION OF THE APPEALS :

Considering that the appeal of the 1st appellant filed on the 18th December 2017 by the learned Procureur General of the South West Court of Appeal and the appeal of the 2nd, 3rd and 4th Appellants filed on the 28th December 2017 by Barrister John H. HALLE of the NICO HALLE & CO Law Firm, are connected because the parties are the same and they are all appealing against the same judgment; consequently, these two appeals are consolidated;

ADMISSIBILITY OF THE APPEALS:

ON THE FORM

-----That considering Sections 89 and 91 of Law N°' 2006/016 of 29th

December 2016 to lay down the organization and functioning of the Supreme Court: The appeals are admissible having been filed in the form and within the time limit prescribed by law;

ON THE MERITS

In accordance with sections 35 (1) (a) to (i), 104 (3), 92 (1) and 53 (2) of Law No. 2006/016 of 29 December 2006 cited above:

Section 35 (1): "Grounds on which an appeal may be based include:
(a) want of jurisdiction;
(b) misinterpretation of the facts of the case or the exhibits of the proceedings;
(c) default, contradiction or insufficient grounds;
(d) irregularity;
(e) breach of law;
(f) non-response to the submissions of parties or requitisitions of the Legal Department;
(g) abuse of office;
(h) violation of a general principle of law;
(i) non-compliance with the jurisprudence of the Supreme Court which ruled in a panel of joint divisions of Bench or of joint Benches.

Section 104 (3): "*ln appeals to the Supreme Court, the rules concerning hearing and judgment shall be the same as those applicable before the Judicial Bench*".

Section 92 (1): "*The memorandum whose leaflet shall be duly stamped shall contain the full name, occupation and domicile of the appellant, an explanatory statement constituting the grounds for the appeal, the submissions as well as the enumeration of the documents attached thereto*".

That in this regard Section 53 (2) provides: "*The duly stamped memorandum of submissions in support of the appeal shall cite the provision of the law violated and argue the legal grounds of appeal.* "

That from the combination of the above texts, the memorandum must mandatorily contain the summary of the facts and the procedure on the one hand and the grounds of appeal on the other hand; that is to say, it must identify fully and with no errors, the legal provisions or the legal principle alleged to have been violated, and indicate the contents of the said text, and that it must explain how or in what way the said law or legal principle was violated or wrongly applied;

That this implies that the memorandum must indicate the provisions of the law violated or the general legal principle violated or poorly applied, copy out the exact provisions completely and without errors, and precise how the law or the general legal principle has been violated or poorly applied;

That in the case of the 1st Appellant, the Procureur General filed four grounds of appeal as follows: « The judgment is amendable to cassation on the following grounds laid down in section 35 of Law No 2006/016 of 29/12/2006 on the organization and functioning of the Supreme Court:
-Misinterpretation of the facts of the case;
-Insufficient grounds;
-Breach of the law; and
-Non-response to the submissions of the Legal Department."

That in ground 'C', the Learned Procureur General failed to state the law which was violated, and he failed to canvass arguments in support of this ground, therefore it should be considered abandoned consequently, it should be dismissed;
In ground 'A', he alleged that the Administrative Court misinterpreted the facts of the case by holding that there was silence from the administrative authority for a period of three months, therefore section 18 of Law No. 2006/022 of 29/12/2006 was complied with;
The learned Procureur General argued that there was a positive reply to the plaintiff's pre-litigation complaint, but the plaintiff deliberately refused to

receive the reply and instead ambushed the defendants with a substantive court action and this offends section 18 of the above cited law; he concluded by stating that there was no rejection in this case and therefore the court woefully misinterpreted the facts in holding that section 18 of the above cited law was complied with;

This ground of appeal is untenable because there was silence for a period of three months from the administrative authority who issued the service note dated 03/09/2015 suspending the respondent's activities at the ldenau wharf;

Moreover, the alleged reply, which was supposedly addressed to Barrister Cynthia NCHAW and attempted to be served on her on the 24 November 2015, was never brought to the knowledge of the respondent, therefore there was implicit silence as far as the respondent was concerned;

In the light of the foregoing reasoning, the Administrative Court of the South West Region did not in any way misinterprete the facts of the case, therefore ground 'A' falls to the ground and it should be dismissed;

ln ground 'B', he alleged that the Administrative Court failed to furnish sufficient reasons to substantiate their judgment, but he failed to cite the law which sanctions insufficiency of reasoning by a lower court (section 7 of law No. 2006/015 of 29/12/2006 on judicial organization), consequently, this ground of appeal is also incompetent and it should be dismissed;

ln ground ' D', he alleged that the Administrative Court failed to make a reply to the submissions of the Legal Department and that the representative of the Legal Department was virtually denied audience in court on the day of hearing;

This ground of appeal is untenable for the simple reason that the learned Procureur General failed to state the law which was violated by the Administrative Court when it failed to make a reply to the submissions of

the Legal Department;

That this ground should also fails because the allegation of the learned Procureur General is untrue;

That it can be clearly gleaned at page 2, paragraph 2 of the judgment, that the

Administrative Court referred to the written submissions of the learned Procureur General as follows: "*Mindful of the documentary evidence in the case file as well as the written submissions of the Procureur General*"; and also at page 13, paragraph 2 of the judgment, the said Court referred to the averments of the representatives of the State as follows: "Co*nsidering that contrary to the averments of the representatives of the State in their statement of defence concerning the non-respect of time-limits, it is however, clearly borne out from the case file that both the pre-litigation*

complaint (recours gracieux) and the court claim (recours contentieux) were filed within the prescribed time limits";

That in the light of the foregoing reasoning, the Administrative Court of the South West Region did not fail to make a reply to the submissions of the Legal Department and the representative of the Legal Department was given audience in court on the day of hearing: Consequently, ground 'D' fails and it should be dismissed along with their appeal;

That as regards the case of the 2nd, 3rd and 4th Appellants, considering the manner in which the memorandum is presented, the appellants have not stated facts of the case;

Consequently, the memorandum is inadmissible and their appeal should be dismissed;

UPON THESE GROUNDS

----- Delivering this judgment in open Court, after a full hearing, sitting in the Division for Tax And Financial Litigation, of the Administrative Bench and having deliberated in accordance with the law, the Court, unanimously and as a court of last resort;

- D E C I D E S -

------ Article 1: Both Appeals are consilidated;

------ Article 2: Both appeals are admissible in form;

------ Article 3: On the merits, they are both not founded and accordingly dismissed.

------ Article 4: Costs of these proceedings to be borne by the public treasury.

------ It is hereby so decided and pronounced by the Administrative Bench of the Supreme Court sitting in the Division for Tax and Fnancial Litigations, in its ordinary session, on Wednesday nineth March Two thousand and twenty two in the Court hall presided by;

in the Court hall presided by;

----- Mrs: NKO TONGZOCK IRENE, ---------- President;

----- Messrs: Paul BONNY ---------- Judge;

----- NGOUANA, ---------- Judge;

----- In the presence of Mrs Elyse NANA, Advocate General at the Supreme Court, representing the Legal Department;

----- And with the assistance of Mrs. Clarisse NGUI, Registrar;

----- In witness whereof this judgment has been signed by the President, the Judges and the Registrar;

THE PRESIDENT THE JUDGES THE REGISTRAR