

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA**

In the matter of an Application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for Mandates in the nature of Writs of Certiorari and Mandamus.

Ruhunu Lanka Cement (Pvt.) Limited,
558 A, Negombo Road,
Ragama.

PETITIONER

CA (Writ) Application No. 84/2018

Vs.

P. S. M. Charles,
Director General of Customs,
Customs Headquarters,
No. 40, Main Street, Colombo 11.

RESPONDENT

Before: Arjuna Obeyesekere, J

Counsel: Dharshana Weraduwege for the Petitioner

Ms. Anusha Fernando, Deputy Solicitor General with
Suranga Wimalasena, Senior State Counsel for the
Respondent

Written Submissions: Tendered on behalf of the Petitioner and the
Respondent on 16th November 2018

Decided on: 15th October 2019

Arjuna Obeyesekere, J

When this matter was taken up for argument on 17th May 2019, the learned Counsel for the parties moved that this Court pronounce its judgment on the written submissions that have already been tendered by the parties.

The Petitioner has filed this application seeking a Writ of Certiorari to quash the decision of the Sri Lanka Customs by which Sri Lanka Customs, after an inquiry, rejected the value declared by the Petitioner for the goods imported by it and, imposed a forfeiture in a sum of Rs 25 million. The question that arises for the consideration and determination of this Court is whether the said decision of Sri Lanka Customs to reject the value declared by the Petitioner for the said goods is reasonable.

It would perhaps be useful to briefly consider at the outset, the evolution of the methods by which the value of a good was determined for Customs purposes. Starting in the 1950s, customs duties were assessed by many countries according to the Brussels Definition of Value. Under this method, a normal market price, defined as *'the price that a good would fetch in an open market between a buyer and seller independent of each other,'* was determined for each product, according to which the duty was assessed. Factual deviations from this price were only fully taken into account where the declared value was higher than the listed value. Downward variations were only taken into account up to 10 per cent. This method caused widespread dissatisfaction among traders, as price changes and competitive advantages of firms were not reflected until the notional price was adjusted by the customs

office after certain periods of time. New and rare products were often not captured in the lists, which made determination of the “normal price” difficult.

The Tokyo Round Valuation Code, or the Agreement on Implementation of Article VII of the GATT, concluded in 1979, established a positive system of Customs Valuation based on the price actually paid or payable for the imported goods. Based on the “transaction value”, it was intended to provide a fair, uniform and neutral system for the valuation of goods for customs purposes, conforming to commercial realities. This differs from the “notional” value used in the Brussels Definition of Value.

The Tokyo Round Valuation Code was replaced by the WTO ‘Agreement on Implementation of Article VII of the GATT 1994’ following conclusion of the Uruguay Round multilateral trade negotiations which created the World Trade Organisation. This Agreement is essentially the same as the Tokyo Round Valuation Code and applies only to the valuation of imported goods for the purpose of levying *ad valorem*¹ duties on such goods.

The Agreement is intended to provide a single system that is fair, uniform and neutral for the valuation of imported goods for Customs purposes, conforming to commercial realities and outlawing the use of arbitrary or fictitious Customs values. The Agreement, by its positive concept of value, recognizes that Customs valuation should, as far as possible, be based on the actual price of the goods to be valued – i.e. the transaction value, which has

¹ ‘Ad valorem’ means the levying of tax or customs duties) proportionate to the estimated value of the goods or transaction concerned. This is reflected in Section 51 of the Customs Ordinance.

been described in A Handbook on the WTO Customs Valuation Agreement² as follows:

“Transaction Value is the total amount the buyer actually pays for the goods. All payments the buyer makes to obtain the imported goods must be taken into account to find out the total price, whether those payments are made in the past or future, or directly to the seller or to someone else for the benefit of the seller.”

With the majority of World trade valued on the basis of the transaction value method, the Agreement provides more predictability, stability and transparency for trade, thus facilitating international trade while at the same time ensuring compliance with national laws and regulations.

The preamble to the Agreement recognises *‘that the basis for valuation of goods for Customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued’*. The Agreement contains a hierarchy of valuation methods and establishes the transaction value method as the primary method. The General Introductory Commentary to the Agreement states as follows:

“That the primary basis for Customs value under this Agreement is “transaction value” as defined in Article 1.³ Article 1 is to be read together with Article 8 which provides, inter alia, for adjustments to the

² Sheri Rosenow and Biran J. O’Shea; page 31; Cambridge University Press, 2010.

³ Article 1 reads as follows: “The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8 ...”. The note to Article 1 reads as follows: “The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods.”

price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for Customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money.”

The rationale for introducing Article 8 is reflected in the following statement made by the Commission of the European Communities [MTN/NTM/W/126 (21st November 1977)], which has been re-produced in **A Handbook on the WTO Customs Valuation Agreement**⁴:

“We start in Article 1 by stating that the price paid or payable for the imported goods shall be accepted as the basis for determining the customs value provided that the buyer and seller are not related. Here we make an assumption that if the buyer and seller are not related then the price made between them is one which is determined by the market forces and is an acceptable one for valuation purposes. We recognize, of course, that buyers and sellers may be tempted to arrange the transaction so that the price itself reflects only a small element of the value of the goods and that the remainder is transferred between them by some indirect method. We have, therefore, provided, in [Article 8 of the Agreement] of our draft, for certain additions to be made to the price paid or payable if these have not been included in the basic price. But the basic concept is that provided the price paid or payable fully reflects

⁴ Supra; page 41. For the full statement, see https://www.wto.org/gatt_docs/English/SULPDF/91980348.pdf

everything which the buyer has to pay to get the goods then that is accepted as the basis for the customs value."

Articles 2 through 7 which must be used in hierarchical order, provide methods of determining the Customs value whenever the Customs Value cannot be determined under the provisions of Article 1, by using one of the following methods:

- The transaction value of identical goods
- The transaction value of similar goods
- The deductive value method
- The computed value method
- The fall-back method.

As stated above, there are two main components to the transaction value. The first, described in Article 1, is the price actually paid or payable for the goods when sold for export to the country of importation. The second is a series of cost elements not included in the invoice price (known as 'adjustments') which are to be added to the price established under Article 1, where necessary criteria are met, to arrive at the transaction value. These adjustments are described in Article 8.⁵

⁵ See Guide to Customs Valuation and Transfer Pricing (2018) published by the World Customs Organisation. Price actually paid or payable equals total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. This includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller. Adjustments to be made to the price actually paid or payable (in cases where specific elements considered to form part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the goods).

The provisions of the Agreement were given effect to by the Customs (Amendment) Act No. 2 of 2003. While the amendment to Section 51 introduced the form commonly known as the 'Value Declaration Form', a detailed procedure enabling Sri Lanka Customs to amend the value declared by an importer was introduced as Section 51A. The valuation rules contained in the Agreement were introduced to the Customs Ordinance as Schedule 'E'. Thus, provisions dealing with the determination of the value of the goods imported to the Country are now found in Schedule 'E'.

Article 8.2 of the Agreement specifies that, *"in framing its legislation, each Member shall provide for the inclusion in or the exclusion from the Customs value, in whole or in part, of the following: a) the cost of transport of the imported goods to the port or place of importation; b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and c) the cost of insurance,"*. This Court must observe that when introducing the valuation rules to the Customs Ordinance through the Customs (Amendment) Act, No. 2 of 2003, specific provision has been included with regard to the above charges in Article 8(1)(e) of Schedule E. Thus, it is the view of this Court that a conscious decision has been taken that all costs relating to the transport of goods to the port of Sri Lanka, which would include costs incurred on account of freight, shall form part of the price actually paid or payable and therefore, shall be included in the transaction value.

In the above backdrop, this Court will consider the provisions of the Customs Ordinance relating to the declaration of goods imported to the Country, and more specifically with regard to the declaration of the value of such goods.

In terms of Section 47 of the Customs Ordinance, every consignee is required to tender a Bill of Entry, commonly referred to as the Customs Declaration or 'Cus Dec' declaring the goods that are imported to the country. The consignee is required to provide the details that are specified in the said declaration including a proper and truthful description of the goods and the value of the goods that are the subject matter of the said Bill of Entry.

The purpose of providing the correct description and value of the goods is to enable Sri Lanka Customs to charge the correct import duties and taxes on the goods imported into the country. This is reflected in Section 10 of the Customs Ordinance, which reads as follows:

"The several duties of customs, as the same are respectively inserted, described, and set forth in figures in the table of duties (Schedule A) shall be levied and paid upon all goods, wares, and merchandise imported into or exported from Sri Lanka".

The necessity to declare the correct value of the goods that are imported is further demonstrated by the provisions of Section 51 of the Customs Ordinance which reads as follows:

"In all cases when the duties imposed upon the importation of articles are charged according to the value thereof, the respective value of each such article shall be stated in the entry together with the description and quantity of the same, and duly affirmed by a declaration made by the

importer or his agent on a form⁶ ... as may be specified by the Director-General and such value shall be determined in accordance with the provisions of Schedule E, and duties shall be paid on a value so determined."

Section 51A(1) of the Customs Ordinance, introduced by the Customs (Amendment) Act No. 2 of 2003 contain provisions that enable Sri Lanka Customs to request an importer to furnish such other information including documentary or other evidence in proof of the value declared by it, whenever the *"officer of customs has reason to doubt the truth or accuracy of any particulars contained in a bill of entry or a declaration made under Section 51 or the documents presented to him in support of a bill of entry under Section 47."*

Section 51A(2) provides that Sri Lanka Customs has the power to amend the value declared at the time of importation, even after the goods have been cleared by Sri Lanka Customs. Section 51A(2) reads as follows:

"If an officer of Customs is satisfied as a result of an examination or investigation, or an audit carried out under section 128A,⁷ at any time prior to or after the clearance of the goods that the value declared by the importer or his agent under an Article of Schedule E under which the value was initially accepted, is not appropriate the officer of customs may

⁶ This form is known as the 'Value Declaration Form.' It requires an importer to declare costs and services not included in the invoice including the cost of containers and any other proceeds which accrue to the seller.

⁷ In terms of Section 128A, the Director General of Customs or any officer of Customs authorised by the Director General may enter any building or place where records are kept in accordance with Section 51B and *inter alia* audit or examine such records or any matter pertaining to Customs in relation to specific transactions.

amend the value in accordance with the appropriate Article of Schedule E.”⁸

Thus, while an importer who has made a genuine mistake with regard to the declaration of the value does not have to face any sanctions other than paying Customs duties and other taxes and levies on the correct value as determined by Sri Lanka Customs in accordance with the provisions of Schedule ‘E’, where the importer has deliberately declared a lower value than what was actually paid, Sri Lanka Customs can act in terms of Section 52 of the Customs Ordinance. A truthful declaration of the price actually paid or payable for a good is therefore essential for Sri Lanka Customs to determine the value of the import and thereby, for a proper working of the Customs Ordinance.⁹

Having laid down the applicable legal provisions, this Court would now proceed to consider the facts of this application.

The Petitioner is a limited liability company engaged in the importation of cement from India. The Petitioner states that there is intense competition among those supplying cement to the Sri Lankan market and thus, many of them have adopted different strategies to minimise their overall costs, including the cost of storage. Accordingly, the Petitioner claims that it negotiated with their foreign supplier to retain in Sri Lanka for a limited period, the containers in which the cement is supplied, until it is distributed within the country. The Petitioner states that by doing so, it was able to reduce costs that

⁸ This Court must note that in terms of Article 8.2 of Schedule ‘E’, ‘additions to the price actually paid or payable shall be made under this Article [8] only on the basis of objective and quantifiable date.’

⁹ See *Mark Santhakumar Sandanam vs K.A. Chulananda Perera, Director General of Customs and others* [CA(Writ) Application No. 304/2017; CA Minutes of 19th October 2018]. [Special Leave to Appeal has been refused by the Supreme Court in *SC (Spl L/A) Application No. 406/2018; SC Minutes of 8th August 2019*].

it would otherwise have to incur on warehouses. Thus, in the declarations submitted by the Petitioner to the Sri Lanka Customs at the point of importation of the goods, it has only declared the cost of the goods imported by it, the freight cost and the cost of insurance. The Petitioner states that Sri Lanka Customs had accepted the values declared by it, charged *ad valorem* duty on the said goods and released the said goods to the Petitioner.

The Petitioner states that many months after the goods imported by the Petitioner had been cleared, Sri Lanka Customs, acting in terms of Section 51A(2) of the Customs Ordinance initiated a formal inquiry against it on the basis that the value declared by the Petitioner in the commercial invoices presented by the Petitioner to Sri Lanka Customs does not reflect the true transaction value. The bone of contention between the parties is the '*additional payment*' that had allegedly been paid by the Petitioner for the use of the containers in Sri Lanka.

At the inquiry that followed, the Petitioner had taken up the position that the correct transaction value paid by it to its supplier of cement had been declared to Sri Lanka Customs and that the additional payment for using the containers while the goods are in Sri Lanka, which was the sum in dispute, has no relationship to the transaction cost, and that the Petitioner is not liable for the payment of any further duties.

The valuation rules introduced by the Customs (Amendment) Act No. 2 of 2003 are contained in Schedule E of the Customs Ordinance. Article 1 of the said Schedule reads as follows:

"The Customs value of any imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Sri Lanka as adjusted in accordance with the provisions of Article 8..."

The provisions of Article 8 of Schedule E which are relevant to this application, are set out below:

"In determining the Customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods

—

(a) The following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(e) The following costs:

(i) The cost of transport of the imported goods to the Port of Sri Lanka"

Thus, on the face of it, the explanation offered by the Petitioner that the additional payment was not incurred in respect of the imported goods, and therefore the necessity to pay Customs duties and levies thereon does not arise, appears to be acceptable. Sri Lanka Customs however claims that the explanation offered by the Petitioner is false. It is the position of Sri Lanka Customs that the 'additional payment' made by the Petitioner did in fact form part of the freight cost that the Petitioner paid in order to import the goods to Sri Lanka. Material to substantiate this position which transpired at the

Customs Inquiry held with the participation of the Petitioner have been exhaustively set out in the Statement of Objections filed by the Respondent.

According to Sri Lanka Customs, the Petitioner is engaged in the importation of cement from two suppliers, namely M/s My Homes Industries Limited, India and M/s Khan Cement Company Limited, Pakistan on Cost and Freight (C&F / CFR) delivery terms. The shipping has been done through its shipper in India, M/s MSC Shipping, whose agent in India was M/s Radius Value Chain (Pvt) Limited (Radius). The Respondent admits that part of the freight cost incurred by the Petitioner has been declared to Sri Lanka Customs at the point of importation and duty has been paid on such amount. However, Radius had thereafter issued to M/s Clarion Shipping Limited, its shipping agent in Sri Lanka (Clarion), a further invoice for charges described as 'ocean freight', which Sri Lanka Customs claims is in fact part of the cost incurred for transport and handling of the goods in India. Clarion had thereafter issued to the Petitioner an invoice describing the said charges as 'equipment charges' and the sum of money in the said invoice had been paid by the Petitioner to Clarion. Sri Lanka Customs states that Clarion thereafter paid Radius the above sum of money that it received from the Petitioner and/or set off against the fees that Radius was required to pay Clarion.

In other words, at the request of Radius and on its behalf, Clarion had collected an additional sum of money from the Petitioner, and remitted the said sum of money to Radius. The necessity for Clarion to do so does not arise unless the said sum of money is actually payable to Radius for services provided by Radius for the goods shipped to the Petitioner.

In order to illustrate the above position, the Respondent has produced with the Statement of Objections, marked '1R5a' – '1R5g' the set of documents in respect of one shipment of the Petitioner that was the subject matter of the inquiry before Sri Lanka Customs. 'Cus Dec' No. 133195 by which the Petitioner had imported 26880 MT of Ordinary Portland cement in 50kg bags in 48 containers has been marked '1R5a'. The commercial invoice for the said goods in a sum of USD 79,296 has been marked '1R5c'. The Value Declaration Form relevant to the said Cus Dec has been marked '1R5b'. Customs duty has been calculated and paid on the invoice value of USD 79,296. Thus, on the face of it, the Petitioner has paid the duty on the invoice value and secured the release of the goods.

The issue arises with the Invoice issued by Radius in favour of Clarion which has been marked '1R5d' and is re-produced below:

Mohan Meehitiya Clarion Logistics No.88, Level 03, Justice Akbar Mawatha, Colombo 2, Sri Lanka. Sri Lanka		INVOICE 2016170192 001	
		08 August 2016 Payment due by 11 August 2016	
Quantity	Details	Unit Price (\$)	Subtotal (\$)
48	Ocean Freight (USD 154 Ex.Rate - 69.21)	154.00	7,392.00
48	Re-Imbursement for Cleaning Charges (USD 10 Ex.Rate - 69.21)	10.00	480.00
		USD Total	\$7,872.00
PAYMENT DETAILS		OTHER INFORMATION	
CICI Bank		Company Registration Number:	
Account Number:	103005000401	CIN#:U63090MH2008PTC183750	
Payment Reference:	2016170192 001	Contract/PO: 26880 (1344 MT)/RUHUNU	
		BRAND/48X20'/Krishnapatnam/Colombo/MSC	

Upon receipt of the invoice '1R5d' seeking payment in a sum of USD 7392 on account of **ocean freight**, Clarion had issued the Petitioner an invoice for the identical amount that Radius had invoiced it. By the said invoice marked '1R5f', Clarion is claiming as 'equipment charges' a sum of Rs. 1,099,781.76 which is the rupee equivalent of the ocean freight that Radius had claimed in '1R5d' (USD 7392 x Rs. 148.78 per USD).

The Respondent has produced marked '1R5g' an email sent by Clarion to Radius on 11th August 2016, stating as follows:

"The below charges and relevant invoices for your reference to update the accounts. If there is any dispute in particular invoice inform us immediately. Kindly confirm the below charges:

M/BL – MSCUKM519852

Freight payable to Radius (154 – 5.65 x 48) = 7320

Washing payable to Radius (10 x 48) = 480"

The above documents clearly establish the following:

- (a) Radius had invoiced Clarion a sum of USD 7392 on account of **ocean freight** and not on account of any cost involved in keeping the containers in Sri Lanka ('1R5d');
- (b) Clarion had been paid the said sum of money by the Petitioner ('1R5f');

- (c) Clarion has admitted that the said cost was incurred on account of **freight ('1R5g')**.

Thus, very clearly, the said charges formed part of the transaction value between the Petitioner and its seller, and it is the view of this Court that the Sri Lanka Customs was entitled to adjust the transaction value declared by the Petitioner by applying the provisions of Article 8(1)(e)(i) of Schedule 'E' on the basis of the objective and quantifiable data presented to by way of the aforementioned material.¹⁰

During the investigations carried out by Sri Lanka Customs, it had recorded the statement of the Managing Director of Clarion, who had explained the *modus operandi* adopted by the Petitioner in the following manner:¹¹

"We being freight forwarders are not allowed to collect additional charges in addition to documentation fee, washing fee and bank guarantee fee as per gazette notification issued since December 2013. Therefore we need to show a legally valid reason of collecting such a charge from the consignee locally and considering the sums to be recovered per container (previously USD 112/- and presently USD 154 per 20" container) as "equipment charges" we decided to show it as a charge recovered for the time period of retaining containers by the consignee....."

¹⁰ Article 8(2) of Schedule 'E' specifies that, 'additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.'

¹¹ The statement of the Managing Director has been marked '1R3e'

At a later point of the statement the Managing Director of Clarion admits as follows:

"In fact the charge thus collected by us as "Equipment Handling Charge" as instructed by our Principal has no connection with the number of days which the consignee keeping the containers. That charge is part of the cost to be borne by the consignee, which is related to costs of transportation and handling of containers upto the port of Colombo for the cement import shipment. That sum is paid locally by the consignee to us, as agreed by the shipper, our Principal and consignee, under the description of 'equipment handling charge' as indicated in our invoices."

When asked what is meant by "equipment charges, handling charges etc.", the Imports Manager of Clarion in his statement marked as '**1R3(b)**' had replied as follows:

"Those charges mean the costs incurred by the shipping line for the container transport, handling and related costs at the loading country. Shipping line has to bear these charges for the transportation and handling of the containers to and out of the shippers warehouse for the loading of the goods. Cargo loading port agent informs us through e mail correspondence to collect these charges from the consignee locally and send it back to them. Accordingly, we collect those charges from the consignee and remit to the loading port agent."

Although the Managing Director of Clarion had retracted from the above position during his evidence at the inquiry and issued a document dated 21st

March 2016 marked '1R4', this Court is satisfied that the documents marked '1R5d' – '1R5g' corroborate what had been recorded during the investigations.

The Respondents have produced marked '1R2' a table setting out the Cus Decs submitted by the Petitioner. This Court has examined '1R2' and observes that the above *modus operandi* had taken place in respect of all Cus Decs submitted by the Petitioner from 26th August 2014 until 19th September 2016, and that as a result, a sum of Rs. 9,363,552 had not been paid as Customs duties.

The Respondent submits further that in any event, the Petitioner has failed to substantiate its position that the said charges were incurred on account of equipment charges. This Court observes that the serial numbers of the containers inside which the goods are carried are entered on the Cus Dec and that the serial numbers of the containers are thus known, at least to the shipping agent of the Petitioner, and the movement of the said containers can therefore be monitored and traced. Thus, if the version of the Petitioner was true, the Petitioner could very well have submitted, at least to this Court the dates on which each of the said containers was returned to the shipper. However, the Petitioner has not presented any material to support its version that the monies were not paid on account of ocean freight, and were actually incurred on using the said containers for storage.

It is the view of this Court that the charges that Clarion claimed as '*equipment charges*' were in fact charges for '*ocean freight*' as admitted by Radius in '1R5d' as well as by Clarion in '1R5g'. This sum of money has been invoiced to the Petitioner who had paid it to Clarion who in turn had paid Radius. It was a sum of money that formed part of the '*cost of the transport of the imported*

goods to the port of Sri Lanka' as provided for in Article 8(1)(e)(ii) of Schedule E and should have therefore formed part of the transaction value. This payment or charge should have been declared by the Petitioner, as it formed part of the price that it actually paid for the goods. In the said circumstances, this Court is of the view that the decision of Sri Lanka Customs to reject the valuation declared by the Petitioner is reasonable.

This Court must observe that the decision of the Inquiry Officer to impose a forfeiture in a sum of Rs. 25 million has not been challenged in this application. However, for the sake of completeness, this Court would like to consider whether the action of Sri Lanka Customs to impose a forfeiture is in terms of the law. Section 52 of the Customs Ordinance, which is the section under which the Inquiry Officer acted when he imposed the forfeiture, reads as follows:

*"Where it shall appear to the officers of the customs that the value declared in respect of any goods according to section 51 is **a false declaration**, the goods in respect of which such declaration has been made shall be forfeited together with the package in which they are contained. Where such goods are not recoverable, the person making such false declaration shall forfeit either treble the value of such goods or be liable to a penalty of one hundred thousand rupees, at the election of the Collector of Customs."*

Based on the material produced to this Court by the Respondent which has been referred to earlier, it is the view of this Court that the Petitioner has adopted the aforementioned *modus operandi* with the intention of

deliberately suppressing the actual price that the Petitioner has paid for the goods. This Court is therefore satisfied that the Petitioner has acted fraudulently and that the decision of the Inquiry Officer to impose a forfeiture is in terms of the law.

In the above circumstances, this Court is of the view that the Petitioner is not entitled to the relief prayed for. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal