ZILBEX INVESTMENTS
Versus
CBZ Bank

HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION
CHIRAWU-MUGOMBA J
Harare, 11 July 2022

F.N Kambarami, for applicant
T. Sena with *N Chimuka,* for the respondent

URGENT CHAMBER APPLICATION

CHIRAWU-MUGOMBA J:

[1] This matter was placed before me as an urgent chamber application. I have been requested to give reasons for the dismissal of the application. These are they.

[2] The applicant sought relief relating to the freeing by the respondent of the sum of ZWL $34, 700,000(Thirty- Four Million Seven Hundred Thousand Dollars) that the former claimed was due to it and was being unlawfully held by the latter.

[3] The salient facts put before the court by the applicant are as follows. It was approached at the beginning of June 2022 by an entity called Gain Cash and Carry ('GCC') for the purchase of solar related equipment. GCC paid a sum of ZWL$34 700 000 and the good were delivered.

[4] The respondent was instructed to pay out ZWL$32 000 000 due to suppliers on the 29th of June 2022 but this was rejected. The applicant was informed that the funds in its account had been frozen. The manager of respondent failed to give a satisfactory explanation for this freeze.

[5] The applicant was now being threatened with reports to the police by suppliers of the equipment on the basis of fraud. It has made a case for the granting of an interim interdict.

[6] In its notice of opposition, the respondent took the preliminary points that the matter was not urgent. They however abandoned it at the hearing. They also took the point that the interim relief sought was the same as the final relief and the court pointed out to their legal practitioner that if it was inclined to grant the interim relief, the order sought could always be amended.

[7] It is also pertinent to place it on record that one *D. Ndawana* appeared at the hearing representing GCC, who wanted to intervene and be joined in the proceedings. However, the court while taking note of the intervention, was in a position to deal with the matter without GCC intervening.

[8] On the merits the respondent submitted that on the 28th of June 2022, it received a settlement confirmation through the Zimbabwe Electronic Transfer System (ZETSS). This was to the effect that a sum of ZWL$34 700 000 was coming from ZB Bank on behalf of its customer GCC for the crediting of the applicant's account.

[9] On the same day, ZB bank send a recall message of the money based on suspicion of fraud. Upon receipt of this message, the respondent marked the applicant's account as a 'no debit' and also made a report to the Financial Intelligence Unit ('FIU) of the RBZ under a suspicious transaction report ('STR'). This was in accordance with the provisions of the Money Laundering and Proceeds of Crime Act [Chapter *9:24*].

[10] The respondent was also alerted to the fact that GCC had made a report to the Commercial Crimes Unit of the Zimbabwe Republic Police to the effect that the manual transaction instruction to ZB bank was forged and fraudulent and that some applicant's officers had been arrested.

[11] As at the 29th of June 2022, the applicant's account had not yet been credited. This was only done on the 6th of July 2022.

[12] On the 6th of July 2022, the FIU directed the respondent to freeze applicant's account and in terms of s17 of the Banking Act, [Chapter *24:20*], the respondent had no choice but to comply.

[13] On the 8th of July 2022, the respondent was served with a warrant of search and seizure by the ZRP.

[14] The application is therefore incompetent since an interdict cannot be sought against lawful conduct.

[15] In motivating the application, Mr *Kambarami* submitted as follows. There was no communication from the respondent as to why the money was frozen. Money deposited into a bank belongs to an account holder because of the bank-client relationship. The bank holds the money in trust. In the event of fraud or irregularities, the bank should follow due process and inform the client of investigations. This was never done by the respondent.

[16] In countering the arguments and case of the applicant. Mr *Sena* submitted as follows. A bank has a duty to act reasonably and not facilitate fraud. There is on record correspondence from ZB bank on possible fraud having been perpetrated. There is a directive from the FIU and a warrant of arrest and seizure. A court cannot interdict a lawful process - *Moyo* v *Standard Bank of SA*, case no. 2277/20 (Gauteng).

[17] It is trite that money held in a bank is the property of the bank to do as it pleases including to make reversals of credits which are obtained in error – *Standard Chartered Bank Ltd* v *China Shougang*, 2013 (2) ZLR 385 where the Supreme Court held as follows:

> "The general rule relating to deposits made in a bank account by a customer is that the money becomes the property of the bank, which can use such deposit as it pleases, so long as it pays to the depositor, on demand, the equivalent of the amount deposited in the account. In *Standard Bank of South Africa* v *Echo Petroleum CC* 2012 (5) SA 283 (SCA) at para 27 it was said:
> "The general rule is that moneys deposited into a bank account fall into the ownership of the bank. The resulting credit belongs to the customer, the bank having a contractual obligation to pay the customer on demand and to honour cheques validly drawn on the account to the extent that it stands in credit."

[18] See also *Marowa* v *Stewart Bank Limited*, HH 820/17 for the same enunciation of the law.

[19] The law on interdicts is well set. The applicant must first prove a *prima facie* right if they are to succeed in an application for an interim interdict and if they so prove, the court will proceed to look at other requirements. See *Setlogelo* v *Setlogelo* 1914 AD 221 at 227.

[20] In my view, the applicant has failed to prove a *prima facie* right to the money that it claims from the respondent. As in the *Standard Chartered Bank* and *Marowa* cases (supra), the respondent must release the money for value to applicant upon demand but this is provided that there are no other issues surrounding the money. The applicant from a reading of its founding affidavit was aware of the reasons why the money was frozen. Applicant should allow these processes to be concluded.

[21]. I agree with Mr *Sena* that the application has been overtaken by events. There is an extant directive from the FIU to freeze the applicants account and there is also a warrant of search and seizure.

[22] The Banking Act states in s17 as follows:

> **"Conduct of banking and other business**
> Subject to this Act, every banking institution shall conduct its banking business and other operations in accordance with sound administrative and accounting practices and procedures, adhering to proper risk-management policies, and shall comply with the terms and conditions of its registration and with any directions given to it by the Reserve Bank or the Registrar in terms of this Act."

[23] I distinguish the present case from the *Standard Chartered Bank* one on the basis that in the latter, the instruction to the bank was illegal and the Supreme Court held that the customer was entitled to its money.

[24] In *casu*, the directive from the FIU is not illegal. There is a warrant of search and seizure. The entity which is supposed to have sought the transfer of the funds, i.e GCC is denying that they signed for its release. Its signatories are also denying having signed the ZETSS form.

[25] In any event, lawful conduct cannot be interdicted. See *Zimbabwe Revenue Authority* v *Packers International*, SC 28/16.

[26] Once the applicant fails to prove a *prima facie* right, the matter ends there. Accordingly, the application has no merit and it is dismissed with costs.

L.T Muringani Legal Practice, Applicant's Legal Practitioners
Chimuka Mafunga Commercial Attorneys, respondent's legal practitioners