SIMBARASHE ZINGWE
versus
ALFRED MANYETU
and
ZIMBABWE REVENUE AUTHORITY

IN THE HIGH COURT OF ZIMBABWE
MUNANGATI -MANONGWA J
HARARE CIVIL, 13 July 2023 and 8 November 2024

Opposed
Ex Tempore Judgement

Mr. *D C Kufaruwenga*, for the Applicant
Mr. *N M Phiri, for* the Respondents

MUNANGATI – MANONGWA J: On 18 July 2023 I delivered the following *ex tempore* judgment in court. A written judgment has been requested and same is provided hereunder.

The facts of this matter are mostly common cause. The applicant is a returning resident who was entitled to a rebate on duty which was duly granted by the respondent. Among the applicant's belongings which benefited from the rebate is a Landrover Range Rover TDV6 registration number AFE 5268 motor vehicle. It is also not in contention that applicant returned to the United Kingdom before 24 months expired and that he did not return to Zimbabwe for a period in excess of one year. It is common cause that there was follow up by the respondent to check on applicant's vehicle and they discovered that the applicant was not at his home although on two occasions they found the motor vehicle at the applicant's premises. On the last occasion the vehicle was not at the applicant's home. It is common cause that the respondent requested that the vehicle be surrendered at their offices which was not done. The respondents sought to seize the motor vehicle. The applicant approached this court on an urgent basis and was granted interim relief stopping the seizure. The matter is before me for the consideration of the final relief sought which order is being contested.

The applicant seeks a declaration that no import duty is payable in respect of a 2008 Landrover, Rangerover TDV6 motor vehicle. He further seeks that it be declared that the 1st and 2nd respondents' attempts to seize the 2008 Landrover, Rangerover TDV6 motor vehicle is unlawful. The applicant seeks that the first and second respondent jointly and severally pay costs of this application on an attorney client scale. It is the applicant's case that when he left Zimbabwe for the United Kingdom it was to collect some of his remaining stuff and it was not his intention to stay for more than several weeks. However upon landing in the United Kingdom he was then unable to return due to Covid 19 restrictions. He therefore contends that, it was therefore unlawful for Zimra to seek and rely on s 105(8) of the Customs and Excise General regulations which states that he had to seek authority prior to his leaving Zimbabwe or that he ought to have written to the commissioner seeking permission for his goods to remain in Zimbabwe. In particular second respondent had an affidavit done on his behalf by one Tendai Muchuchuti which states as follows on page 36 paragraph 19; "Applicant violated s 105(8) of the Customs and Excise General regulations, applicant went on a continuous extended absence from Zimbabwe by a period of more than 6 months without **prior written permission from the commissioner** to leave his vehicle in Zimbabwe." "Prior written permission from the commissioner" is bold and highlighted which makes it the basis upon which second respondent acted. It is clear that second respondent is relying on that alleged violation given that it further alleges that applicant failed to notify the second respondent that he had been trapped in the United Kingdom for more than 6 months. The second respondent only got to know of the applicant's extended absence from Zimbabwe through redeemed post clearance orders.

Again in opposition, the respondent seeks to rely on s 184 of the Customs and Excise Act [*Chapter* 23.02] which states that any person who damages, destroys or disposes any goods in order to prevent seizure thereof by an officer or any other person authorized to seize such goods shall be guilty of an offence. A look at the facts in comparison with the provisions which the second respondent seeks to rely on proves otherwise. There is no allegation or evidence placed before the court that the applicant damaged or destroyed nor disposed off the motor vehicle.

As regards the respondent's reliance on s 105(8) of the Customs & Excise regulations it is important to consider the provisions thereof.

The section reads as follows:

8. An immigrant who has been granted a rebate of duty in terms of this section, and who emigrates or departs from Zimbabwe for a period of more than six months within twenty-four months from the date on which any effects or other goods imported by him were entered under rebate, shall remove such effects or other goods from Zimbabwe on his departure, unless he has obtained the prior written permission of the Commissioner to leave them in Zimbabwe, or has paid the full duty which would have been payable at the time of entry of the goods but for their entry under rebate.

Any contravention of the provisions of the section would result in seizure of the goods as per s 108(9) which provides:

(9) Any effects or other goods which are left in Zimbabwe in contravention of subsection (8) shall be liable to seizure

An interpretation of s 105(8) clearly envisions someone who emigrates or departs from Zimbabwe for a period of more than 6 months. As rightly indicated by Mr *Kufaruwenga* such person has to do three things: either remove the goods before or at the time of departure Alternatively, the person has to seek or obtain prior written permission of the commissioner to leave the goods in Zimbabwe, or pay duty which would have been payable but for the rebate. It is the court's view that the applicant had no reason to remove the goods at the time of departure because it was never his intention to be out of the country for more than 6 months, equally, he had no reason to request written permission from the Commissioner as he was to be away for just a few weeks neither was there any reason for him to pay duty payable at the time of entry but for the vehicle's entry under rebate. So, given the applicant's travel arrangements the provisions of the stated section where not applicable.

The facts that are before me are such that there was in my view no violation of s 105(8) of the Customs and Excise Regulations. It has not been controverted that the applicant never intended to be away for 6 months. He clearly explained that but for the Covid restrictions which prevented him from coming back, he had an intention to only spend a couple of weeks in the United Kingdom. Mr. Phiri has argued that having seen that his period had exceeded 6 months the applicant should have communicated with the commissioner. There is no provision for that course of action. In fact, I have not been referred to any law or requirement that required the applicant to do that. Equally the reliance by the second respondent on s 184(I) of the Customs and Excise Act is misplaced. There is no evidence that the applicant damaged or destroyed the goods or disposed, of the goods. Given that the goods were not disposed neither were they destroyed nor damaged the allegations

cannot stick. I therefore find that the attempt to seize the motor vehicle on the grounds which have been specifically stated by the second respondent could not have been lawful.

The applicant seeks that the court declares that no import duty is payable in respect of the motor vehicle in question. I note that Zimra has not demanded any import duty. Whilst there has been reference in the affidavits of the applicants and supporting affidavit that the persons who visited his home and spoke to his mother requested for $11 000 United States dollars that remains hearsay evidence. As submitted by *Mr Phiri,* given that no formal written demand was ever made for the payment of USD $11 000 under whatever heading, whether it was *in lieu* of rebate or as duty, there is no such communication from the respondents. I therefore find that in granting the relief sought it is not proper for me to declare that no import duty is payable given that no import duty has been demanded and as Mr Phiri conceded the issue pertained to rebate. Considering the grounds upon which the second respondent sought to rely on regarding the seizure, being contravention of s 184(I) of the Customs and Excise Act and of course s 105(8) of the Customs & Excise (General Regulations: S.I.154 of 2001) I find that the applicant has established his case pertaining to the unlawful attempt to seize his motor vehicle.

On the issue of costs, the applicant has asked for costs on an attorney client scale. This takes the court back to the issue of whether in attempting to seize the motor vehicles there was reasonable suspicion or reasonable grounds to believe that there is an attempt to violate the provisions of the Act as provided in sections 192 and 193 of the Act. Officers had visited the applicant's homestead, three visits were made initially, taking the details of the vehicle and asking the whereabouts of the applicant. On the two visit the officers found the vehicle absent. I find that in the course of doing their work such as making follow ups on those who would have benefited from rebate, the officers had every reason to defend this matter despite the fact that there have not been successful. I do not think this is a matter that demands that respondents be made to pay costs on a client attorney scale.

In that regard the following order is granted.

1. It is hereby declared that the 1st and 2nd respondents' attempt to seize the 2008 Landrover, Range Rover TDV6 motor vehicle Reg No AFE 5268 is unlawful.

2. The first and second respondents jointly and severally the one paying the other to be absolved shall pay the applicant's costs.

MUNANGATI -MANONGWA J:…….

Dzimba Jaravaza and Associates Applicants legal Practitioners
Muvingi and *Mugadza* Legal Practitioners, Respondents' legal Practitioner