

CASTON MATEWU
versus
MINISTER OF FINANCE ECONOMIC PLANNING
AND DEVELOPMENT
and
THE PARLIAMENT OF ZIMBABWE
and
THE ATTORNEY GENERAL OF ZIMBABWE

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 25 September & 6 December 2024

Opposed Application

Mr T Biti, for the applicant
Ms V Munyoro, for the 1st Respondent
Mr S Hoko, for the 2nd Respondent
No appearance for 3rd Respondent

MHURI J: This is an application filed in terms of Rule 107(1) of the High Court Rules 2021 in which the applicant in terms of s 85(1) (d) of the Constitution of Zimbabwe seeks to challenge the validity of the Wealth Tax introduced by first Respondent in the 2024 National Budget promulgated under s 36 O of the Income Tax Act [*Chapter 23:06*] (The Act) whose effect was to introduce a levy of 1% on the market value of an extra residential property with a minimum value of US\$250 000.00.

The grounds upon which applicant bases this application are as follows:

1. That s 36 O of the Act is a breach of the right to equal protection and benefit of the law protected by s 56(1) of the Constitution of Zimbabwe.
2. That the same is a breach of the right to shelter and housing protected by s 81(1)(f), 47 and 51 of the Constitution.
3. That the Wealth Tax and s 36 O of the Act breaches s 2 of the Constitution in that it offends s 298(1)(b)(i) of the Constitution which demands that the burden of taxation must be fairly shared.

On the basis of these grounds, applicant sought an order that s 36 O of the Act as well as s 22 O of the Finance Act [*Chapter 23:04*] be declared constitutionally invalid and be set aside.

At the commencement of this hearing, by consent of all parties, the bar operating against first respondent for failure to timeously file the notice of opposition and opposing affidavit was uplifted. The notice of opposition and opposing affidavit was to that end held to be properly before the court.

Further, the parties also agreed that they do away with the preliminary points raised by first respondents. In respect of this application Mr *Hoko* for second respondent indicated that he will abide by the court's decision hence will not be making any submissions.

To substantiate his grounds, applicants averred:

re: **Breach of the Right to Equal Protection and Benefit of the law.**

that, the Government of the day has the sovereign right to raise taxes, though this is subject to the rule of law of Zimbabwe and any law, practice, custom or conduct that is inconsistent with it is invalid to the extent of its inconsistency.

Section 298(1)(b)(i) is clear that the burden of taxation must be shared fairly. He contended that the Wealth Tax is not fair and is discriminatory and therefore a breach of s 56(1) of the Constitution. The Wealth Tax fails to address the income disparity between the rich and poor. It punishes the middle class and other working people. It discriminates against residential properties as it assumes that wealth is contained in residential properties, yet there are other forms of assets where wealth is contained and these include, commercial buildings owned by big companies such as Old Mutual, First Mutual Life, Pearl Properties etc. Besides commercial properties, companies and individuals, own industrial properties such as factories, mines, estates, farms, shares on the Zimbabwe Stock Exchange and yet no wealth tax is imposed on these.

It was his submission that therefore the Wealth Tax breaches s 298(1)(b)(i) which requires that the burden of taxation be shared fairly. The burden of taxation in this matter is being shared by individual house owners and not by those that own other forms of property. It is a retrogressive tax that treats everyone equal when not everyone is equal in that it imposes a tax on some people who end up having two houses because of inheritance, widows, pensioners, the disabled and orphaned.

On that basis, applicant submitted, the Wealth Tax must be struck down as it is discriminatory, irrational and contrary to the provisions of s 56(1) of the Constitution.

re: **Breach of the Right to Housing, the Right to Life and the Right to Human Dignity.**

that;

the right to shelter is spelt out in s 81(f) of the Constitution in respect of children. The right to life is guaranteed under s 48 and includes the right to shelter as one cannot have life without shelter. The right to shelter is also included under the right to human dignity as guaranteed under s 51 and one cannot have dignity if he does not have shelter.

Therefore, Wealth Tax is a threat to the right to housing as many houses are going to be sold after owners fail to pay the tax.

He contended therefore, that the property tax is an infringement of the right to shelter as shown in ss 48, 51, 81 and which must be recognised as a right under s 47.

re: **Breach of the Doctrine of Legality.**

that:

Wealth Tax is not a fair one and that which is not fair must be set aside for being in breach of s 2(2) of the Constitution.

re: **Wealth Tax not reasonably justified.**

that:

unlike other countries which charge Wealth Tax on certain threshold income namely on individuals with net assets of US\$200 million (Argentina) on people with income above a million dollars (Norway, Belgium, Switzerland, Spain) Zimbabwe tax targets an asset. An asset is discriminatory and is not a fair assessment of wealth. He contended that wealth must be charged on the net worth of an individual as there are extremely rich Zimbabweans whose assets are contained in banking accounts, shares on the Stock Exchange and in shelf companies and yet these individuals are not netted under the Wealth Tax.

On that basis, he submitted that the Wealth Tax was ill thought, has no precedence, is not justified, is disproportionate, is not a reasonable measure and therefore must be struck down.

The first and third respondents are averse to the granting of the application. Third respondent's opposition is basically that it ought not to have been cited as a party to these proceedings as it appears as Counsel for the Government where Government is cited as a party to

the proceedings. It submitted that therefore due to the misjoinder it should be removed from these proceedings.

This point was not strongly opposed and taken further by applicant. To that end third respondent's request that it be removed from these proceedings is granted.

First respondent is strongly opposing the application. It is his submissions that the Wealth Tax as provided in s 36 O of the Act does not breach s 56(1) of the Constitution. Applicant ought to have provided evidence that a certain class of people have been treated differently from other people of the same class.

Sections 81(1)(f) , 47 and 51 of the Constitution do not apply *in casu* as s 81 deals with Children's rights and not right to shelter as alleged .Applicant does not demonstrate how the right to shelter may be taken away, as s 36 O precludes the principal private residence of all individuals and this does not take away the right to shelter. The section pertains to other additional properties with a value exceeding US\$250 000.00.

He submitted further that the dignity provided for in s 51 of the Constitution means worthiness and self-respect, and the imposition of wealth tax does not take away human dignity.

Further, it was submitted that s 36 O of the Act, does not violate s 2 of the Constitution and that the introduction of Wealth Tax is consistent with s 298(1) of the Constitution as it is meant to address the problem of tax incidences following proportionately on the low-income groups resulting in inequality.

He contended that in the exercise of its functions, second respondent debated the measures in the Budget statement and most of the measures sailed through save for the valuation threshold from US\$100 000.00 to US\$250 000.00. Further, it was his contention that a law should not be set aside because other experts have spoken against it. The fact that other jurisdictions do not charge wealth tax does not preclude Zimbabwe from charging it, so contended first respondent.

He submitted finally that applicant failed to prove his case on a balance of probabilities and the application ought to be dismissed with costs.

Applicant filed this application as a result of the introduction of the Wealth Tax by first respondent in his 2024 National Budget. The Budget was tabled before second respondent who debated it resulting in the promulgation of the Finance Act Number 13 of 2023 which amended

the Income Tax [*Chapter 23:06*] by inserting s 36 O and inserting s 22 O in the Finance Act [*Chapter 23:04*].

Section 36 O provides as follows:-

“Wealth Tax

(1) In this section-

“dwelling” means a building which is used wholly or mainly for the purpose of residential accommodation;

“prescribed” means prescribed by regulations referred to in subsection (5);

“value,” in relation to a dwelling, means the value of the dwelling as assessed during the last general valuation made of properties under the terms of the law in force in the local authority concerned;

“principal private dwelling,” in relation to an individual, means-

(a) a dwelling which is that individual's sole or main residence in the year of assessment concerned; and

(b) is on a piece of land registered as a separate entity in a Deeds Registry, which-

(i) is owned by the individual concerned; and

(ii) surrounds or is adjacent to the dwelling referred to in para (a); and

(iii) is used by the individual concerned primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a)

“taxable dwelling” means any dwelling the rateable value of which exceeds two hundred and fifty thousand United States dollars in the year of assessment concerned.

(2) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a Wealth Tax paid by the owner of any taxable dwelling that is to say any dwelling that is not his or her principal private dwelling.

(3)

(4) Payment of Wealth Tax shall be made by the owner of any rateable dwelling at any time during the year of assessment at which he or she pays any rates due upon him or her as the owner of rateable property within the local authority area, in proof of payment of which he or she shall be issued with a separate receipt.

(5)

Section 22 O provides as follows: -

“Wealth Tax

The Wealth Tax chargeable in terms of s 36 O of the Taxes Act shall be calculated at the rate one per centum of the value of a dwelling other than a principal private residence, if such value succeeds two hundred and fifty thousand United States dollars:

Provided that the maximum liability for Wealth Tax on anyone taxable dwelling shall be fifty thousand United States dollars per annum.”

Clear from the above two sections is the fact that the imposition of the Wealth Tax (The Tax) is on residential properties, and which residential properties are not the principal private dwelling of an individual whose value is US\$250 000.00 or more and the charge is 1% of that value.

It is not in dispute that the power to tax vests with the State and in particular first respondent. The exercise of this power is subject to the four corners of the Constitution. In particular s 2(1) thereof is clear that the Constitution is the Supreme law of Zimbabwe and any law, practice, custom or conduct inconstant with it is invalid to the extent of the inconsistency.

In the exercise of his powers, first respondent introduced the Tax which as alluded to above only relates to residential dwellings which are not the principal private dwelling of the individual.

Applicant's contention was that this Tax is in contravention of s 56(1) of the Constitution in that it does not relate to other forms of wealth such as commercial buildings, industrial properties, farms etc. Section 56(1) provides

“all persons are equal before the law and have the right to equal protection and benefit of the law.”

Persons as defined in s 2(2) of the Constitution includes natural or juristic persons. I agree with applicant's submissions that companies are covered by the definition of person. Be that as it may, I am of the view that buildings owned by companies do not fall under the ambit of s 36 O, as it is clear that the section relates to a dwelling which according to the definition in s 36 O is a building or part of a building which is used wholly or mainly for the purpose of residential accommodation. So commercial and industrial buildings are not included. If, however, a company owns a dwelling which falls under this definition, then it follows that it will be liable to pay wealth tax. Similarly, this tax does not apply to farms, shares etc as it specifically mentions a dwelling that is not an individual's principal private dwelling. As submitted by first respondent these other properties referred to by applicant are subject to their own taxes. To that end I do not find that sections 36 O and 22 O contravene s 56(1) of the Constitution. In the case of *VM Syed Mohammad and Company v The State of Andhara* (1954) 03 SC CK 0006 referred to by applicant, the Supreme Court of India when dealing with a similar section as s 56(1) of our Constitution had this to say,

“The appellants grievance is that the impugned Act singles out for taxing purchasers of certain specified commodities only but leaves out purchasers of all other commodities. The principle underlying the equal protection clause of the Constitution has been dealt with and explained....

It is well settled that the guarantee of equal protection of laws does not require that the same law should be made applicable to all persons.

Article (4) it has been said, does forbid classification for legislature purposes provided that such classification is based on some differentia having a reasonable relation to the object and purpose of the law in question.....there is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all

doubt that the legislation arbitrarily discriminates between different persons similarly circumstanced”

In this jurisdiction, it has equally been pronounced that for one to successfully allege a contravention of his right under s56 (1) he must prove that others who were in his situation were treated differently from him.

See-: *Nkomo v Minister of Local Government Rural & Urban Development & others* CCZ 6/16 at page 8.

Mupungu v Minister of Justice, Legal and Parliamentary Affairs & ors CCZ 7/21 at page 54.

Gonese v The President of the Senate and ors CCZ 2/23 at page 28

The principle as established in these precedents apply with equal force in this case.

Applicant also averred that section 36 O breaches the right to shelter and housing protected by s 81 (1) (f),s 47 and s 51 of the Constitution.

Section 81(1) (f) provides: -

“Rights of Children

- (1) Every child, that is to say every boy and girl under the age of eighteen years has the right
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f) To education, health care services, nutrition and shelter”

I do not see how s 36 O infringes the child’s right to shelter. It has not been shown how a child will be deprived of his or her shelter by s 36 O. Without keeping repeating myself, s 36 O targets those individuals who own more than one dwelling and whose value is more than US \$250 000.00 and does not include the principal private residence in which the individual resides. Therefore s 36 O will not leave the child shelterless. That was not the intention of the legislature when it promulgated this provision. Equally, I do not see how section 36 O infringes upon section 47 and section 51 of the Constitution.

I tend to agree with the observation by first Respondent that applicant threw these sections in his application in bid to found constitutional jurisdiction

Section 47 provides:

“Chapter 4 does not preclude existence of other rights

This chapter does not preclude the existence of other rights and freedoms that may be recognized or conferred by law, to the extent that they are consistent with this Constitution.”

Section 51

“Right to human dignity.
Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected.”

The question is, how does s 36 O infringe upon this right? Human dignity, as submitted by first Respondent is one’s worthiness and self-respect, the right of a person to be valued and respected. Applicant did not show how this worthiness and self-respect is taken away by s 36 O. The imposition of a tax on an individual’s additional properties, leaving out his principal private dwelling does not in my view infringe on a person’s inherent human dignity. It may be harsh on a person whose other dwelling is occupied by a relative, a child for example who does not pay any rentals and is not generating any income. This however cannot be taken to infringe on one’s dignity.

Applicant also contended that s 36 O offends s 298 (i)(b)(i) of the Constitution which demands that the burden of taxation must be fairly shared.

Section 298 (i) provides-:

“298 Principles of public financial management

(1) the following principles must guide all aspects of public finance in Zimbabwe

- (a)
- (b) the public finance systems must be directed towards national development and in particular
 - (i) The burden of taxation must be shared fairly,
 - (ii)
 - (iii)
 - (c)
 - (d)
 - (e)
 - (f)”

Read in context, wealth tax targets those individuals who own more than one dwelling and which are valued at US\$250 000.00 or more, the principal private dwelling being exempted. The tax does not apply to each and every person who owns a dwelling. These are exempted from the application of s 36 O. The burden of taxation is shared fairly on the individuals who are similarly situated and this tax according to s 36 O is to be channeled to the Consolidated Revenue Fund for national development.

In my view, applicant took a machine gun approach by citing all these constitutional provisions with the hope that one of them will be found to be applicable to his cause. Unfortunately, none of them supports his cause and to that end I find that the application is ill-conceived and cannot be granted.

In the result, it is ordered that, the application be and is hereby dismissed with no order as to costs.

MHURI J:

Tendai Biti Law, applicant's legal practitioners
Civil Division of the Attorney General office, first and third respondent's legal practitioners
Chihambakwe Mutizwa & Partners, second respondent's legal practitioners