

**RANCALO MOTOR SPARES (PVT) LTD**

**Versus**

**DETECTIVE INSPECTOR MOYO & 4 OTHERS**

IN THE HIGH COURT OF ZIMBABWE  
CHIWESHE J  
BULAWAYO 25 AUGUST & 30 SEPTEMBER 2004

*Adv. S K M Sibanda* for applicant  
*C Dube* for respondents

Judgment

**CHIWESHE J:** In this matter the applicant seeks directions in the following terms:

- “1. That the order that the matter should proceed by way of trial be and is hereby set aside.
2. That the matter be and is hereby ordered to proceed by way of argument in chambers as originally initiated.
3. The defendants or/and respondents be and are hereby ordered to release and surrender the sum of \$4 769 000,00 to the plaintiff and or applicant forthwith.
4. The defendants and/or respondents be and are hereby ordered to pay interest on the said sum *a tempore morae* at the prescribed rate with effect from the date of seizure.
5. The defendants and/or respondents be and are hereby ordered to pay the costs of these proceedings at an attorney client scale, jointly and severally the one paying the others to be absolved.”

Mr *Dube* for the respondents indicated from the outset that he was not opposed to paragraphs 1, 2 and 3 of the order sought. Further with regards paragraph 5 he was not in principle opposed to the order for costs. What he objected to was the award of such costs on the higher scale. As for interest in terms of paragraph 4, Mr *Dube* was unable to advance any cogent reason why interest should not be payable. He avers that the respondents had not deposited the money in an interest bearing account and since no interest had been realised as a result, the respondents should not be asked to pay interest. That contention is obviously erroneous. I do not think that it is one that is seriously made. The point is that had the respondents not seized the monies concerned, the applicant would have invested the same in a manner that enhanced the well being of its business, including the accrual of interest. In any event it is accepted that money borrowed or illegally seized from its rightful owner attracts interest by operation of law. The respondents have no valid basis upon which to contest the applicant's claim for interest.

The only outstanding issue is whether the respondents should be visited with an order for costs on the higher scale. I agree with the submissions made by *Advocate Sibanda* (for the applicant) that the facts of this matter did not warrant the action taken by the respondents. The applicant's monies were seized on the grounds that it was suspected such would be used in illegal foreign currency deals. The basis for that suspicion was that the applicant's director had been seen moving in the company of white robed women commonly referred to as "osiphatheleni" and known to deal in foreign currency in the "World Bank" area of Bulawayo. The director who was carrying cash at the time was followed to the applicant's business premises where the cash was seized. No foreign currency was found in that cash or elsewhere on the

HB 123/04

premises. Therefore there was no basis upon which a reasonable suspicion could have arisen that the applicant had dealt in foreign currency. The matter should have ended there and the cash released then.

The applicant was unnecessarily taken through the criminal courts. Needless to say the prosecution advised the respondents that there was no case to be preferred for lack of evidence. The respondents delayed in releasing the cash and generally acted as if motivated by malice. Indeed other vexatious charges were preferred despite the views of the prosecution which had clearly exonerated the applicant from any wrongdoing.

In the circumstances of this case an order for costs on the higher scale would be appropriate.

It was for these reasons that the application was granted as prayed.

*Adv. S K M Sibanda & Partners* applicant's legal practitioners  
*Dube & Partners* respondents' legal practitioners