

ZIMBABWE REVENUE AUTHORITY
versus
MONTSUN INVESTMENTS (PVT) LTD

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 3 December 2015

Civil Appeal

S Bhebhe, for the applicant
R Muchengeti, for the respondent

MWAYERA J: The appellant approached the court raising discontent with the court *a quo*'s decision granting an interdict barring the appellant from seizure of respondent's fleet liner truck and ordering release of the same truck. In grounds of appeal the appellant alluded to the fact that court *a quo* did not have jurisdiction to deal with the application given the value of the fleet liner horse and trailer exceeding the monetary jurisdiction of the Magistrate as provided by the Magistrate Court Act, monetary jurisdiction of US\$10 000-00. The appellant further argued that the respondent's vehicle was liable for seizure in terms of the Customs and Exercise (General Regulations 2001) as read with the Customs and Exercise Act [*Chapter 23:02*].

The respondent presented argument that there was no misdirection on the part of the court *a quo* warranting interference with the decision of the court *a quo* and as such argued that the appeal ought to be dismissed.

Upon considering papers filed of record and hearing both the appellant and respondent counsel it was apparent the issue of jurisdiction of the Magistrate Court was looming large. Mr *Muchengeti* conceded that the issue of jurisdiction had not been determined by the court *a quo*. He however, averred that the order sought by the respondent in the court *a quo* was to the exclusion of a trailer so as to bring the matter into the ambit of the Magistrate Court's jurisdiction. Such an averment is not supported by evidence, firstly the respondent's founding

affidavit in the court *a quo* and secondly by the notice of seizure annexure 'A'. Both documents refer to a freightliner Horse and Trailer. There is no stage when the court *a quo* was beset with an application for release of a horse only. The fact, however, remains jurisdiction was not determined or delved into by the court *a quo*.

It is trite the issue of the court's jurisdiction is a point of law and it is quite central for the determination of the matter. In this case the issue of jurisdiction goes to the root of the matter. The cases in point *Zimsco (Pvt) Ltd v Mhaka*, SC 130/11, *Mutukwa v National Dent Co-operative* 1996 ZLR 341. A question of jurisdiction is one that the court may raise *mero motu* for parties cannot confer jurisdiction on the court. That is also trite and it emanates from the cases referred to above. It follows therefore, that decision of the magistrate is null and void for want of jurisdiction.

That being the case the fact that the Magistrate Court did not make a determination on the issue of jurisdiction on its own is a misdirection which goes to the root of the matter or which is quite central and pivotal to the matter. A suggestion of remittal in the circumstances would be inappropriate as the point *in limine* which is central, that of jurisdiction has been sustained. Accordingly it is ordered that:

- (1) the appeal be and is hereby upheld.
- (2) The decision of the court *a quo* is set aside in its entirety and it is substituted with the following:

“The application be and is hereby dismissed with costs.”

MAKONI J: agrees.....

Kantor And Immerman, applicant's legal practitioners
Muchengeti And Company, respondent's legal practitioners