

RAMATEX SA

versus

AFRICAN CENTURY LIMITED

HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION
MANZUNZU J
HARARE, 20 June 2023 & 12 March 2024

CIVIL ACTION

T S Mjungwa, for the plaintiff
A Moyo with N Chidembo, for the defendant

MANZUNZU J

INTRODUCTION

There is a banker and client contractual relationship between the parties. The plaintiff (Ramatex) sued the defendant (ACL) for general damages in the sum of US\$998 960.00. The circumstances giving rise to the claim are partly common cause.

- (1) Ramatex has a collection account with ACL in which an amount of US\$998 960.00 is deposited. The money was supposed to be transmitted to Ramatex's Swiss United States Dollar bank account.
- (2) In 2019 ACL was hand capped to transfer the money, as was initially intended, because the Reserve Bank of Zimbabwe (RBZ), as the monetary authority, classified the money as 'blocked funds' for which registration with RBZ as a 'legacy debt' was required to enable its transmission to a foreign bank.
- (3) On 15 March 2019, Ramatex instructed ACL to register the amount of US\$998 960.00 as a legacy debt with the RBZ before the deadline date of 30 April 2019 in line with Exchange Control Directive RU 28/2019.
- (4) By then, ACL was not an Authorised Dealer to enable it to do the registration. It sought the assistance of NMB Bank Limited (NMB), which was an Authorized Dealer, to do the application for registration for it.

- (5) It is common cause that the application for the registration of the funds as a legacy debt was unsuccessful.
- (6) Ramatex's contention which gives rise to its claim is that the application was unsuccessful because ACL failed to apply for registration within the time stipulated by the RBZ, that is, before 30 April 2019. Ramatex therefore holds ACL liable for its loss to the tune of US\$998 960.00.
- (7) On the other hand, ACL maintained that the application for registration of the funds as a legacy debt was filed with RBZ timeously before the deadline of 30 April 2019, but was rejected because it did not have the support of the necessary documents stipulated by the RBZ. The duty to avail the required documents was that of Ramatex which failed to do so on time despite the request.

ISSUES

There are 3 issues identified and agreed to by the parties for determination at this trial. These are;

- (a) Whether or not ACL submitted the application for the registration of Ramatex's blocked funds on or before the 30 April 2019 deadline;
- (b) Whether the registration of the legacy debt failed as a result of the late submission of the application of the legacy debt or due to the failure to meet the RBZ's registration criteria; and
- (c) Whether ACL is liable to pay damages in the sum of **US\$998,960.00**.

THE EVIDENCE

The Plaintiff's Case

Ramatex relied on the evidence of a single witness, its director, Oliver Haggemuller. The material and relevant part of his evidence can be summarized as follows:

- (1) Ramatex is a foreign company, based in Switzerland. It sold and supplied some of its products on credit to a Zimbabwean company, Turnall Holdings Limited for a total sum of US\$998,960.00. It took court process to recover the money, though the parties amicably settled through a Deed of Settlement signed in February 2018.
- (2) The recovered money was ultimately deposited with ACL in the collection account but could not be transmitted to Switzerland because of a shortage of foreign currency in Zimbabwe.
- (3) In the meantime, in February 2019, a new law came into effect in Zimbabwe that converted foreign currency held in Foreign Currency Accounts into RTGS dollar that amounts. The RBZ issued a directive [RU 28/2019] in terms of which funds that banks were holding and had failed to transfer to foreign companies due to foreign currency shortages, were to be registered with the RBZ as legacy debt and to be paid at the rate of 1:1 to the United States Dollar.
- (4) In light of the Directive RU 28/2019, Ramatex immediately instructed ACL to register funds held in its account with RBZ. This instruction was given to ACL in March 2019 ahead of the stipulated deadline of 30 April 2019. ACL, in turn, undertook to submit the application as per instruction.
- (5) The witness further stated that ACL did not file an application for the registration of the funds as a legacy debt on or before the deadline date of 30 April 2019, as a consequence thereof, Ramatex suffered a loss to the tune of US\$998 960.00. While acknowledging that the application for registration did not succeed, he attributes such failure to ACL's failure to do the application before 30 April 2019.

The Defendant's case

ACL relied on the evidence of 2 witnesses, Stanley Matiza, (Stanley) its managing director and Jacqueline Murandu, an International Banking Officer with NMB.

Stanley stated in his evidence that;

- (1) Ramatex opened a collection account with ACL in which US\$998 960.00 was deposited. This was before RBZ introduced new monetary policies regulating the transmission of forex to foreign banks.
- (2) ACL accepts that it was given instructions by Ramatex to register the blocked funds as a legacy debt. The instruction came in March 2019 before the deadline date of 30 April 2019.
- (3) ACL was not an Authorized Dealer at the time instructions were given, so it asked NMB to carry out Ramatex's instructions on its behalf.
- (4) Specific documents were required by RBZ to support the application for registration, being invoices, statements and bills of entry which documents were to be availed by Ramatex. The application was done online.
- (5) ACL, through NMB, attended to the registration process on 30 March 2019. Bills of entry were not attached as Ramatex had not supplied the same despite the request.
- (6) ACL received confirmation from the Authorised Dealer (NMB) on 14 June 2019 confirming the submission of the registration application on 30 March 2019. An RBZ reference number was supplied.
- (7) In the meantime, on 24 July 2019 RBZ introduced a new Directive, the Exchange Control Circular No. 8 of 2019 with stringent criteria and an extension for the deadline for submission of applications to 30 August 2019.
- (8) A decision was made to re-submit the application before the revised deadline date, which was done but without the Bills of Entry (BOE) as Ramatex could not provide the same.

- (9) ACL received communication from the Authorised Dealer that the Ramatex's application was unsuccessful on the basis that it did not meet all the criteria under the blocked funds framework and this was subsequently communicated to Ramatex.

Jacqueline Murandu (Jacqueline) testified that:

- (1) She is an International Banking Officer with NMB responsible for the exchange control desk. She outlined the directives given by RBZ on the registration of the legacy debts.
- (2) On 27 March 2019, NMB received an instruction from ACL for the registration of Ramatex's legacy debt. As a result, she started the process on 28 March 2019 when she did a covering letter which required validation by two signatories, which process was completed on 29 March 2019.
- (3) On 30 March 2019, NMB submitted the application on the RBZ's DMS System and they received a reference number and waited for a substantive response. However, there were no Bills of Entry attached.
- (4) In June 2019 RBZ responded and asked for more information although a new Directive was said to be on its way. When the new Directive came in July 2019 it had more stringent requirements and revised the cut-off date to 30 August 2019.
- (5) ACL gave NMB further instructions on 29 August 2019 to re-lodge the application but with no Bills of Entry yet that had become a strict requirement. Nevertheless, the application was lodged, although its validation at bank level showed that there were no Bills of Entry.
- (6) ACL availed some of the Bills of Entry in December 2019 and January 2020 way out of the deadline of 30 August 2019. The application was rejected for failure to comply with all the requirements under the blocked funds framework.

Analysis of Evidence and Submissions by Counsels

The court does not lose focus of the 3 issues to be determined in this trial. The plaintiff has the onus to prove the three issues on a balance of probabilities. It is trite that the court must not fall astray of the issues it is to determine. In *Machine v The Sheriff of Zimbabwe & Ors*, CCZ 08/23 the court had this to say, “*It is the settled position that any failure to determine the issue or issues arising from the dispute between the parties is a misdirection gross enough to vitiate the order made at the end of the hearing. The Supreme Court has held that it is improper for any court to either stray from the issues arising from the pleadings or to pick up an issue for the parties and determine the dispute on the basis of the issue so created by it. This is the standard that the Supreme Court, as the apex court in all common law matters, has since time immemorial, set and enforced upon the procedures and decisions of lower courts. It is therefore the standard against which its own procedures and decisions must in turn be measured.*”

Ramatex relied mainly on 3 documents which were produced as exhibits P5, P11 and P13 to prove that ACL failed to submit the application for registration of the legacy debt to RBZ before 30 April 2019 deadline and that the application failed for that reason.

Exhibit P5 is a letter from RBZ (authored by the Governor) dated 18 November 2020 addressed to Mr O Haggemuller as a reply to Ramatex’s letter of 13 October 2020. The letter reads in part; “*Please kindly be advised that this matter was submitted by a local banking institution, NMB Bank, to Exchange Control for consideration consistent with the framework for registration of blocked funds. The application, however, did not qualify for registration under the blocked funds framework as it was submitted outside the stipulated timeline, as the process for registration of blocked funds closed on 30 April 2020” (emphasis added).*

This is the letter relied upon by Ramatex to prove that the application was filed outside the stipulated timeline. The letter does not say when the application was submitted. But the same letter says the deadline was 30 April 2020 and yet the pleaded deadline is 30 April 2019. Counsel for Ramatex, recited part of the letter in the heads and deliberately

omitted the part that reads, “... as the process for registration of blocked funds closed on 30 April 2020” The letter of 13 October 2020 being responded to is also not discovered. This pick and chose approach in litigation not encouraged.

Despite what may appear as an obvious disparity in dates, the author of the letter was not called to give evidence.

There was reliance on exhibit P11 a letter from RBZ to NMB dated 25 June 2019 which says “*Date Submitted : 14 June 2019*”. This was a letter under the authorship of a Deputy Director, Exchange Control Unit of RBZ. In this letter, the RBZ quoted a specific reference number, that is, IMP/NMBLZWHX/2019/006183. This reference matched the reference number identified under the letter from NMB to ACL dated 14 June 2019 in which NMB was saying the application was lodged on 30 March 2019. The match in reference numbers gives credence to the contents of the letter from NMB to ACL dated 14 June 2019 as NMB, logically, would have had no reason to give an accurate reference but an inaccurate submission date.

The author of the letter was not called to give evidence in order to explain the perspective under which this letter was written. This is more so in this situation where ACL says the application was submitted on 30 March 2019 and the letter by the Governor says the deadline was on 30 April 2020.

Exhibit P13 is a letter from RBZ to NMB dated 24 August 2020. It says “*Date Submitted: 22 June 2020*” a date different from Exhibit P11. The letter deals with the results of the appeal made to this application. Ramatex’s reliance on exhibit P13 is that it clearly indicates the reason for the rejection of the application, that there was late submission on 11 February 2020, a date, well after the submission deadline. I do not think this is within the context of the pleadings and the evidence by Jacqueline. It cannot possibly be true that the application was submitted on 11 February 2020. This is because in a letter from NMB to ACL of 14 June 2019 it reads in part, “...*The application was submitted on 30 March 2019 under reference IMP/NMBLZWHX/2019/0006183.*” This is the same reference number quoted in a letter from RBZ of 25 June 2019 to NMB requesting for information on the same

application. The letter from RBZ dated 24 August 2020 which is exhibit P13 also quotes this same reference number under the heading “Previous Exchange Control Ref.” This demonstrates that the application could not have been submitted on 11 February 2020. In fact, Jacqueline said what was submitted in February 2020 was additional information in the form of bills of entry.

Jacqueline’s evidence explains well the date of 11 February 2020. She said the application had to be resubmitted, as it were, in line with the new directive on 29 August 2019 but without bills of entry as was required. Part of the bills of entry came in December 2019 and January 2020 way out of the deadline of 30 August 2019 but they nevertheless submitted them. All this is of no consequence to this case because that is not what Ramatex pleaded in its case.

Mr Moyo for ACL argued the matter be dismissed on the basis of the principles governing mootness. This is because of the extension of the deadline date from 30 April 2019 to 30 August 2019. Mr Mjungwa for Ramatex argued that if one applies the Golden Rule of statutory interpretation the conclusion is that the Exchange Control Circular 8/19 came into effect only from 24 July 2019 onwards. Such an interpretation is said to accord with the presumption against retrospectivity. On the strength of the above, it is submitted that reference to the second call and to the second deadline (August 2019) is nothing more than a red-herring. I do no more than agree with him on this point. I do not think the plaintiff’s case should be defeated by the principles of mootness in the work of what the parties agreed are the issues for determination.

The whatsapp communication between Oliver and Stanley demonstrates the growing bad relations between the parties. This is because Oliver wanted to do things his own way. When Stanley asked for bills of entry, Oliver did not believe they were necessary in the presence of a Deed of Settlement. Mistrust grew between the parties with one labelling the other a liar in the process. It is unfortunate, but that does not assist the court in the resolution of the dispute between the parties.

It was submitted for Ramatex that Stanley was not being forthright with Oliver on the issue whether the legacy debt had been registered. On that basis the court was urged to draw conclusions that he was lying for the sole reason that ACL applied for registration outside the deadline date. Given the evidence of Jacqueline, I do not think such an inference is safe to draw. Stanley was forthright in his evidence giving the impression of how difficult Oliver as a client had become to be. Oliver displayed such characteristics as he at one point or the other, as he gave evidence, resorted to discourteous language.

While ACL maintained the position that it submitted the application through the Authorized Dealer before 30 April 2019, relied on the letter ACL wrote to NMB dated 27 March 2019. The letter headed, “Registrartion of Legacy Debt – Ramattex SA’ reads in part, “...we submit herewith the following documents to enable registration of outstanding foreign remittances in respect of Ramatex SA, ... We kindly request you to register the debt with Exchange Control Division at Reserve Bank of Zimbabwe.” This request dove tails with Jacqueline’s evidence which the court found informative, useful, and shed necessary light on registration mechanics of legacy debts. This letter was acknowledged by NMB through a stamp dated 28 March 2019. Jacqueline confirmed this position in her evidence. She was instrumental in the application for registration process. The process, according to the witness’s evidence was completed on 30 March 2019 when they got the reference number and had to wait for the substantive response. The authenticity and credibility of Jacqueline’s evidence cannot be compared to the letters produced by Ramatex in the absence of the authors to explain, not only the context in which they were written, but also, the glaring discrepancies.

Jacqueline is the author of the letter of 14 June 2019 in which NMB duly confirmed the submission of Ramatex’s application for registration of its legacy debt on 30 March 2019. The letter is validated by the signature of the Head – International Banking.

In the final analysis ACL’s version is more probable than that of Ramatex. The plaintiff failed to discharge the onus placed on it. The evidence before the Court demonstrates, on a balance of probabilities, that the application for registration of plaintiff’s legacy debt was submitted before the 30 April 2019 deadline. Furthermore, registration did

not fail due to late submission, but because the debt did not meet the registration criteria, more particularly in that the application for registration was not supported by the required bills of entry. The last issue on quantum, logically, falls away in the absence of liability on the part of ACL.

DISPOSITION

The plaintiff's claim be and is hereby dismissed with costs.

Tavenhave & Machingauta, plaintiff's legal practitioners.
Kantor and Immerman, defendant's legal practitioners.