

CHECKMORE MAZONDE
and
HARDLIFE MAZONDE
versus
ZIMBABWE REVENUE AUTHORITY
and
MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE; 13 June & 2 December 2024

Opposed Application-*Declaratur* and forfeiture of goods

Mr *L Madhuku*, for the applicants
Mr *T Kamema*, for the 1st respondent
Ms *T Tembo*, for the 2nd respondent

MUSITHU J: The applicants approached this court for a *declaratur* and consequential relief. The relief sought is set out in the draft order as follows:

“IT IS ORDERD THAT: -

1. That the decision of the 1st Respondent declaring forfeited to the State property belonging to the Applicant, the property in question being one motor vehicle namely Nissan UD, Registration Number 3228, Chasis Number ADDE 0500000000480, Engine Number GH 13602726 of silver white in colour, be and is hereby declared null and void and of no force or effect.

AS CONSEQUENTIAL ORDER, IT IS ORDERED

2. That following the declaration of nullity, the applicant’s property being one motor vehicle namely NISSAN UD TRUCK, REGISTRATION 3228, CHASIS ADDE 0500000000480, ENGINE NUMBER GH 13602726 of silver white in colour be returned to the applicant forthwith.
3. That 1st Respondent pays costs of this application on an attorney and client scale, if it opposes the application.”

The application was opposed by the first respondent. The second respondent did not oppose and opted to abide by the decision of the court. The first respondent shall hereafter be referred to as the respondent.

Factual background and the applicant's case

The founding affidavit was deposed to by the first applicant, with the second applicant deposing to a supporting affidavit. The applicants are involved in a family transport business. The first applicant was hired by a clearing agent known as Bezel Chikomwe to transport goods from Dulibadzimu in Beitbridge to Masvingo. He claimed that their vehicle did not cross the border into South Africa, and he assumed that the goods had been properly imported into the country.

The first applicant also averred that he was not issued with customs clearance documents since they had just been hired to move the goods inland. He therefore assumed that the goods had entered the country legally. After loading the goods into a Nissan UD rigid truck bearing registration numbers AFJ 3228 (hereafter referred to as the vehicle or the truck), the applicant's driver went to buy some food, and on his return, he found members of the Zimbabwe Republic Police surrounding the vehicle. The police requested him to produce the customs clearance documents for the goods, which he did not have since the goods had been loaded locally. The truck and the goods were placed under seizure.

The first applicant claimed to be a victim of the fraudulent activities of the clearing agent, who subsequently absconded without producing the customs clearance documents. By letter dated 11 October 2022, the applicant was advised that the vehicle had been forfeited to the State. That decision was made by the first respondent's Regional Manager for Beitbridge. The applicants appealed the decision to the first respondent's Commissioner for Customs and Excise. The appeal was dismissed, and the applicants were advised to approach the courts of law, if they still felt aggrieved.

The applicants contend that from a proper reading of s 193 of the Customs and Excise Act¹ (the Act), only the Commissioner General could declare goods to be forfeited. The declaration of forfeiture made by the Regional Manager was therefore null and void. The Regional Manager was not acting on behalf of the Commissioner General. That this was the position was confirmed by the wording of the letter from the Regional Manager, which directed

¹ [Chapter 23:02]

that any appeal against the decision of the Regional Manager, must be made to the Commissioner Customs and Excise.

It was further averred that there was no provision in the Act providing for an appeal to the Commissioner of Customs and Excise nor any further appeal to the Commissioner General. All these processes were therefore contrary to the provisions of the Act. It was argued that by granting non-existent powers to State officials who were unknown under the provisions of the Act, the respondent acted contrary to the peremptory provisions of the legislation. The applicants argued that their vehicle had not been forfeited to the State, but rather it was being held illegally by the State. It was further argued that in terms of sections 3 and 71 of the Constitution, it was unlawful for the State to compulsorily deprive the applicant of its property without legal authority.

It was further averred that the applicants had been gravely prejudiced by the unlawfulness of the purported forfeiture. The applicants were deprived of business because of the respondent's conduct, and the court was accordingly petitioned to put an end to this lawlessness through the granting of the *declaratur*.

The Respondent's Case

The first respondent's opposing affidavit was deposed to by Batsirai Denford Chadzingwa in his capacity as the Commissioner for Customs and Excise. He narrated the events leading to the seizure of the applicants' truck as follows. On 17 September 2022, the truck was intercepted by the police at a local car park in Beitbridge after it was suspected to be carrying uncustomed goods. The truck was subjected to a physical examination which revealed that it was carrying an assortment of undeclared goods. The applicants' driver failed to produce any clearance documents upon request. The truck was resultantly seized under Notice of Seizure number 016740 of 17 September 2022 and the uncustomed goods were seized under Notice of Seizure number 016741 of 17 September 2022.

On 19 September 2022, the applicants made representations to the Regional Manager for the release of the truck from seizure. The Regional Manager responded through a letter of 11 October 2022 advising that the truck would be declared forfeit to the State. The Regional

Manager's decision was confirmed by the deponent as the Commissioner for Customs and Excise.

The deponent argued that in terms of s 193 of the Act, he was permitted to delegate his functions to the Regional Manager. That delegation was effectuated through internal administrative procedures, which permitted the Regional Manager to either release the vehicle with or without conditions, or to declare it forfeited to the State. The Regional Manager made the decision to forfeit the vehicle while exercising the powers delegated to him under the Act. Any delegated function performed by an officer was deemed to have been performed by the Commissioner himself, unless it was set aside. It was also submitted that the Act defined the term Commissioner to mean a Commissioner in charge of a Department or the Commissioner General. In any event, the provision that permitted the Commissioner to forfeit goods referred to the Commissioner and not the Commissioner General.

The deponent further averred that the applicants were repeat offenders. On 27 April 2022, a Hino truck with registration number AEG 6399, belonging to the applicants was intercepted carrying smuggled goods. A Notice of Seizure number 034666L was issued to the applicants, and they were advised that the conveyancing of smuggled goods was an offence which rendered the vehicle used liable to seizure and forfeiture. The applicants therefore ought to have been more diligent instead of just relying on their client's assurances. It was also averred that at any rate, the applicants did not deny that the vehicle was carrying uncustomed goods. It was also alleged that the applicants had two other trucks that were seized under Notice of Seizure number 007878L of 7 June 2023 for a similar case of smuggling.

The Submissions

At the commencement of oral submissions, Mr *Madhuku* for the applicants applied to amend the draft order by abandoning para 2 thereof which sought the immediate release of the truck to the applicants if their application was successful. It followed that if the court found the forfeiture unlawful, then the vehicle would remain under seizure. Counsel submitted that this matter was almost similar to the *Twotap Logistics (Private) Limited v ZIMRA*², matter which distinguished seizure from forfeiture.

² SC 3/23

It was further submitted that the respondent's submission that there was a delegation of functions was not correct. An act of delegation was supposed to be evidenced by a legal instrument. In the absence of a legal instrument, then such delegation had to be done on a case by case basis. Mr *Madhuku* further submitted that s 193(17) of the Act only permitted delegating of functions. However, there was no a separate instrument or a specific act of delegation. It was further submitted that what the deponent had done was tantamount to a complete abdication of his responsibilities.

Mr *Madhuku* dismissed the respondent's internal administrative procedures arguing that they constituted a breach of the law. Such procedures had to reside in an Act of Parliament. The law confined the forfeiture powers to the respondent's Commissioner General as the highest official of the first respondent.

In her reply Ms *Kamema* submitted that the proof of delegation of the commissioner's functions was in the first respondent's procedures. There was nothing wrong with the Regional Manager's decision to forfeit the vehicle. Counsel further submitted that if the court determined that the forfeiture was irregular, then the seizure ought to stand.

The Analysis

The issue that arises for determination herein is the validity of the respondent's decision to forfeit the applicants' vehicle. The applicants' contention is that the forfeiture of goods was not done at the appropriate level of authority within the respondent's structures. In determining this issue, it behoves the court to navigate through two related legal issues that also arise from the parties' submissions herein. The first is whether the responsibility to forfeit goods under the Act is solely reposed in the respondent's Commissioner General as argued on behalf of the applicants, or whether such function can be delegated to other officials of the respondent as argued on behalf of the respondent. The second issue is dependent on the conclusion that the court reaches on the first issue. It is that assuming the officials of the respondent enjoy forfeiture powers based on delegated authority, was the delegation properly done under the circumstances. I will proceed to deal with the two issues hereunder.

The appropriate level of authority at which forfeiture must be exercised

Forfeiture is one of the several penalties available to the respondent following the seizure of goods. To fully interrogate this issue, it is critical to evaluate the relevant provisions of the law that pertain to the forfeiture of goods and the functions of the respondent's officials at different tiers of the organisation. Section 193(6) of the Act deals with forfeiture of goods as follows:

—
“Subject to subs (9), where an officer has reported in terms of subs (5), the Commissioner may

- (a) either unconditionally or subject to such conditions, whether as to the payment of a fine imposed in terms of subs (1) of section *two hundred* or otherwise, as he may fix, order all or any of the articles to be released from seizure; or
- (b) **declare all or any of the articles to be forfeited;** or
- (c) if the articles could not be found or recovered, declare that the person from whom the articles would have been seized shall pay to the Commissioner an amount equal to the duty-paid value of such articles:”

Subsection 5 of s 193 provides that an officer who seizes goods or a vehicle in terms of s 193(1), shall report to the Commissioner, giving reasons why he considers that such goods or vehicle are liable to seizure. In terms s 193(9), the Commissioner shall not forfeit goods where proceedings have been instituted in connection with such goods.

The delegation of the Commissioner's functions is provided for in subsections 17, 18, 19 and 20 of s 193 of the Act as follows:

- “(17) Subject to the Revenue Authority Act [*Chapter 23:11*], the Commissioner may delegate to an officer in the Department any of the functions conferred or imposed upon him by this section.
- (18) A delegation of functions in terms of subsection (17)—
 - (a) may be revoked or modified by the Commissioner at any time; and
 - (b) shall not preclude the exercise by the Commissioner of the function so delegated.
- (19) Anything done by an officer in the exercise of a function delegated to him by the Commissioner in terms of subsection (1)—
 - (a) may be set aside or revised, subject to this Act, by the Commissioner; and
 - (b) shall be deemed, until set aside, to have been done by the Commissioner.
- (20) Subsection (17) shall be construed as being additional to, and not as derogating from, the Commissioner's powers of delegation under any other law.”

The Act defines the word Commissioner as follows:

- “Commissioner” means—
 - (a) the Commissioner in charge of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of duties in terms of this Act; or
 - (b) the Commissioner-General of the Zimbabwe Revenue Authority, in relation to any function which he has been authorised under the Revenue Authority Act [*Chapter 23:11*] to exercise;”

Section 193 does not delineate which functions may or may not be delegated to an officer by the Commissioner. What is critical to note is that in terms of s 193(19)(a), the Commissioner retains powers to set aside or revise any function performed by the officer in the exercise of the powers delegated to such officer. In terms of s 193(19)(b), the officer's decision is deemed to be that of the Commissioner, unless it is set aside. The respondent's procedure, which permits an aggrieved party to appeal the Regional Manager's decision to the Commissioner, therefore gives the Commissioner an opportunity to evaluate the correctness of the officer's decision, and where circumstances so demand, have it set aside or corrected.

I therefore find nothing amiss about a procedure that permits an aggrieved party to approach the Commissioner by way of an internal appeal since that route is already implied in s 193(19)(a) of the Act, which allows the Commissioner to set aside or correct the decision of an officer. The mere fact that the Act does not expressly refer to an internal appeal to the Commissioner does not make that procedure unlawful because the Commissioner already enjoys the power to evaluate or review the officer's decision under the Act.

In terms of s 193(6), one of the functions that the Commissioner performs is to make a declaration of forfeiture on seized goods. It follows that one of the functions that may be delegated by the Commissioner is the function to make an order of forfeiture of seized goods. From my reading of the definition of Commissioner above, it appears to me that the intention of the legislature was to allow the Commissioner to perform the same functions that the Commissioner General would also perform for the efficient administration of the Act. For that reason, a forfeiture decision made by the Commissioner is just as valid and effective as if it had been performed by the Commissioner General. The sheer volume of decisions that must be made on behalf of the respondent would certainly militate against arrogating decision-making functions in just one person. It is in this context that the delegation of functions to officials of the respondent must be understood.

Section 193(17) makes the provisions of s 193 of the Act subject to the Revenue Authority Act³. The Revenue Authority Act is the primary law that establishes the respondent and provides the legal framework for the performance of those activities for which it was created. Section 21A of that Act deals with the delegation of functions as follows:

“21A Control of officers and delegation of functions under this Act and Scheduled Acts

³ [Chapter 23:11]

- (1) The Commissioner-General shall, subject to this Act, have the charge of the all departments and divisions of the Authority and of all officers employed in them in carrying out the provisions of this Act and any of the Acts specified in the First Schedule (“the Scheduled Acts”);
- (2) The Commissioner-General may—
 - (a) delegate to any officer referred to in subsection (1); or
 - (b);
any function which by this Act or any Scheduled Act is conferred or imposed upon him or her, other than such power of delegation.
- (3) An officer or other person to whom a power has been delegated in terms of subsection (2) shall exercise the power subject to the directions of the Commissioner-General.
- (4) A delegation of power to which subsection (2) relates—
 - (a) may be revoked or modified by the Commissioner-General at any time; and
 - (b) shall not preclude the exercise or the performance by the Commissioner-General of the function delegated.
- (5) Anything done by an officer or other person in the exercise of a function delegated to the officer or person by the Commissioner-General in terms of subsection (2)—
 - (a) may, subject to this Act or the Scheduled Act concerned, be set aside or revised by the officer or the Commissioner General; and
 - (b) shall, until set aside, be deemed to have been done by the Commissioner-General.”

In terms of s 19(4)(a) and (b) of the Revenue Authority Act, the Commissioner General exercises his functions subject to the control of the Authority’s Board. He is responsible for supervising and managing the staff, activities, funds and property. He may also perform any other functions as may be assigned to him by the Board or as may be conferred upon him under the Revenue Authority Act or any other enactment.

In my view, s 21A of the Revenue Authority Act is in sync with the provisions of s 193 of the Act that deal with the delegation of functions in the Authority. From a reading of both s 21A of the Revenue Authority Act and s 193(17)(18)(19) and (20), the power to forfeit goods is not just the preserve of the Commissioner or the Commissioner General. Section 193(17) permits the Commissioner to delegate to an officer, any of the functions that are reposed in him under that section. One of those functions is the power to forfeit goods. The applicants’ submission that the power to forfeit goods is only reposed in the Commissioner General alone is therefore without merit.

Whether the delegation of the obligation to forfeit goods was properly done

Both the Revenue Authority Act and the Act do not outline the way the Commissioner General, or the Commissioner’s functions must be delegated. Mr *Madhuku* argued that the act of delegation was supposed to be evidenced or supported by a legal instrument which ought to have

been placed before the court. Ms *Kamema* on the other hand submitted that the evidence of such delegation was in the procedures that were attached to the respondent's opposing affidavit.

Attached to the respondent's opposing affidavit was a document labelled "ZWS ISO 9001:2008 QUALITY MANAGEMENT SYSTEM". At the foot of the document are inscribed the words "CEP0092 CUSTOMS & EXCISE Issue No.1 Version:1 Issue Date: 01/08/2016". The title of the document is stated as "Procedure on Seizure and Forfeiture". That document sets out procedure for forfeiture of goods in greater detail. It also provides for those circumstances that justify the placement of goods under seizure, and resultantly their forfeiture. Clause 3.5 states as follows:

- "3.5 The Regional Manager may:-
 - 3.4.1 order all or any goods to be released from seizure
 - 3.4.2 declare all or any of the goods to be forfeited
 - 3.4.3

The court's view is that while the law stipulates the legal basis for the forfeiture of goods, it is the procedures that provide the details of how forfeiture must be done and the circumstances under which goods are forfeited. The mere fact that the procedures on seizure and forfeiture are not in the form of a legal instrument does not in my view make them invalid. The respondent is an administrative authority. It has the authority to make decisions as well as take certain actions in the fulfilment of its mandate. The nature of its operations require that decisions must be made promptly to attain the highest level of operational efficiency and excellence. Because of the many decisions that must be made at any given time, the respondent cannot be expected to create a legal instrument for every decision or action that it must undertake as an administrative authority.

The fact that the law provided the legal framework for forfeiture, but made no provision for the procedures was in my view, intended to give the respondent some latitude in coming up with procedures that best suits its operating environment as the national primary revenue collector. There are of course legal safeguards that subject the activities of the respondent to legal scrutiny. Section 68 of the Constitution provides for the right to administrative justice. Section 68(3) requires an Act of Parliament to give effect to the right to administrative justice. The Administrative Justice Act⁴ is one such law that seeks to provide for the right to

⁴ [Chapter 10:28]

administrative action and decisions that are lawful, reasonable and procedurally fair. The court finds nothing unlawful about the respondent's procedures to the extent that they seek to give efficacy to the provisions of the law that permit it to seize and forfeit goods. The delegation of the Commissioner's functions, which include the forfeiture of goods by the respondent's Regional Manager was therefore properly made in terms of the respondent's procedures on seizure and forfeiture of goods.

It is for the foregoing reasons that the court determines that the application lacks merit, and it must be dismissed. The application before the court was one for a *declaratur*, it being contended that the official who forfeited the applicants' truck did not have such authority under the Act. The appropriateness of the penalty of forfeiture, in the event of the court finding against the applicant, was not made an issue. For that reason, it shall not be necessary for the court to interrogate whether under the circumstances obtaining, forfeiture was the most appropriate penalty.

Costs

The court's view is that the matter raised important legal issues on the seizure and forfeiture of goods by the officials of the respondent. It is therefore appropriate that each party be ordered to bear its own costs of suit.

Resultantly, it is ordered that:

1. The application for a declaratory order is hereby dismissed.
2. Each party shall bear its own costs of suit.

E Gijima Attorneys, applicant's legal practitioners
Zimbabwe Revenue Authority Legal Services Division, first respondent's legal practitioners
Civil Division of the Attorney General's Office, second respondent's legal practitioners