

Judgment No. S.C. 42/85
Civ. Appeal No. 89/85

Z.T. SONGORE v THE COMMISSIONER OF TAXES

SUPREME COURT OF ZIMBABWE,
BECK, JA, GUBBAY, JA & McNALLY, JA,
HARARE, MAY 16, 1985.

J.P. Haxen, for the appellant

G.E. Mandizha, for the respondent

BECK, JA; In the court a quo summary judgment was applied for and was granted by the magistrate in respect of the plaintiff's claim for assessed tax in terms of the Sales Tax Act /Cap 184/. The defendant has appealed against that judgment.

In the respondent's Heads of Argument in this Court the point was taken for the first time that in terms of s 32 of the Sales Tax Act a person who is dissatisfied with any assessment may lodge with the Controlling Officer an objection in writing, such objection to reach the office of the Controlling Officer not later than thirty days after the person making the objection has been notified of the assessment, but (and this is accepted by the appellant) no such objection was ever lodged to the assessments upon which summary judgment was applied for. It was contended that, the appellant not having availed himself of the provisions of that section and of s 12 of the Fiscal Appeal Court Act /Cap 180/, he was not entitled to circumvent those procedures by resisting an application for summary judgment in the magistrate's court, thereby seeking in effect to make the Controlling Officer's decision subject to an appeal to the magistrate's court.

Mr Haxen, who appears for the appellant, has accepted the correctness of this point and has conceded that the appeal must therefore be dismissed.

Both parties are also ad idem that, in consequence of the point having, been raised for the first time before this Court, an adjustment to the order of costs that was made in the court a quo must be made.

Accordingly we order that the appeal be dismissed with costs, save that the order of the court a quo is to be varied by directing that the costs awarded to the plaintiff are not to include any costs relating to the replying affidavit that was filed by the plaintiff.

GUBBAY, JA: I agree.

McNALLY, JA: I agree.

Scanlen & Holderness, appellant's legal representatives Civil Division of the Attorney-General's Office, respondent's legal representatives