

**SLICE THROUGH INVESTMENTS (PVT) LTD**

**Versus**

**NIRGEL TRUCKING AND PLANT HIRE (PVT) LTD**

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J

BULAWAYO 17 March 2023 & 23 March 2023

**Special plea**

*M. Tshuma*, for the plaintiff

*D. Kufaruwenga*, for the defendant

**DUBE-BANDA J**

[1] This is a special plea. The defendant objects to the jurisdiction of the General Division of the High Court to hear this matter. It contends that the dispute between the parties is a commercial dispute as defined in the High Court (Commercial Division) Rules, S.I. 123/20, and therefore the plaintiff's claim ought to have been filed at the Commercial Division of the High Court. The objection is that the General Division of the High Court has no jurisdiction to hear a commercial matter.

[2] The defendant contends that the matter between the parties is a commercial dispute as defined in r 3(1) (c) of the High Court (Commercial Division) Rules, 2020. And in terms of section 46 A (4) of the High Court Act [Chapter 7:06], upon acceptance of the summons in this matter the Registrar of High Court was enjoined to set down the matter before a judge of the Commercial Division of the High Court, and not any other judge. It is contended further that the General Division of the High Court has no jurisdiction over this matter, and that the special plea ought to be upheld and that plaintiff's claim be dismissed with costs on an attorney and client scale.

[3] The plaintiff contends that the Civil Division of the High Court has jurisdiction to entertain this matter. That the jurisdiction is determined by the Constitution as read with the High Court Act, and not by the Rules of Court. It is argued that in terms of s 13 of the High Court Act, the High Court shall have full civil jurisdiction over all persons and over all matters within

Zimbabwe. It is contended further that Civil Division of the High Court has inherent jurisdiction and can hear all matters unless specifically prohibited by law.

[4] In this matter it has been made common cause between the parties that the matter between them is a commercial dispute. The matter turns on whether the Civil Division of the High Court has jurisdiction to hear a commercial matter.

[5] Jurisdiction means the competence of a court to entertain a case between the parties. Section 171 (1) (a) of the Constitution of Zimbabwe says: “The High Court has original jurisdiction over all civil and criminal matters throughout Zimbabwe.” This empowering provision makes no distinction between the General Division and the Commercial Division. The General Division, the Commercial Division and other divisions all constitute the High Court of Zimbabwe. It is this High Court that has original jurisdiction over all civil matters throughout Zimbabwe.

[6] Section 171(3) of the Constitution says:

“An Act of Parliament may provide for the High Court to be divided into specialized divisions, but every such division must be able to exercise the general jurisdiction of the High Court in any matter brought before it.” (My emphasis).

[7] The constitution in clear and unambiguous terms confers on every specialized division to exercise the general jurisdiction of the High Court in any matter brought before it. The general jurisdiction of the High Court is the “original jurisdiction” referred to in s 171 (1) (a) of the Constitution. The General Division of the High Court has original jurisdiction over all civil matters, which include commercial matters. The General Division of the High Court cannot decline jurisdiction to hear a matter solely because it is a commercial matter.

[8] Further s 13 of the High Court Act says the High Court shall have original jurisdiction over all persons and over all matters within Zimbabwe. Section 171(1) (a) of the Constitution as read with s 13 of the High Court Act confers upon the High Court “original jurisdiction over all persons and over all matters within Zimbabwe.” The High court has full original jurisdiction over all matters within Zimbabwe. Its original jurisdiction is unlimited, it may deal with any nature of claim. It has inherent jurisdiction, meaning that unless prohibited by some law from

exercising jurisdiction, it is deemed to have jurisdiction. The empowering provisions do not say the Commercial Division shall have exclusive jurisdiction in commercial matters.

[9] In answer to this Mr. *Kufaruwenga* argued that s 13 of the High Court starts with the phrase “subject to this Act and any other law” therefore it is subject to s 46 A of the Act. S 46 A (4) of the High Court Act says whenever the Registrar of the High Court issues out a summons in any matter falling within the jurisdiction of a specialized division of a High Court, shall set the matter down for determination by a judge in the division concerned. My view is that this does not oust the jurisdiction of the General Division of the High Court. It does not say “no division of the High Court, other than the Commercial Division shall have jurisdiction to hear and determine any commercial matter.”

[10] The Commercial Court Rules cannot oust the jurisdiction of the General Division of the High Court to hear a commercial matter. In fact, rules cannot oust the jurisdiction of the General Division for the elementary reason that subsidiary legislation cannot undermine or alter substantive law. See: *Shah v Kingdom Merchant Bank Limited* SC 4/2017.

[11] The Commercial Division is not separate from the High Court. It is a specialized division of the High Court created to specialize in the adjudication of commercial matters and to facilitate justice delivery, thereby promoting ease of access to justice. It is presided over by judges appointed to the High Court and working under the administrative supervision of the Judge President. If Parliament intended to oust the jurisdiction of the General Division of the High Court from dealing with commercial litigation, it would have said so in no uncertain terms. It has not.

[12] Mr. *Kufaruwenga* for the defendant appreciated that there is no specific provision that ousts the jurisdiction of the General Division of the High Court to hear a commercial matter, counsel however argued that such jurisdiction is ousted by inference. I do not agree. The jurisdiction of the General Division of the High Court has not been ousted. It is trite that Parliament is at large, subject to the Constitution, to curtail or oust the jurisdiction of any court or division of a court. However, it is equally trite that such ouster must be effected in clear and unambiguous terms. I am unable to discern anything in the language of the s 171 (3) of the Constitution, s 46 A of the High Court Act and r 3(1) (c) of the High Court (Commercial Division) Rules, 2020 that might be construed, whether expressly or by necessary implication

to curtail or oust the jurisdiction of the General Division of the High Court to hear commercial matters.

[13] I do not agree that in terms of the law the Commercial Division of the High Court has exclusive jurisdiction to deal with commercial matters. Where Parliament confers exclusive jurisdiction on any court it says so expressly, e.g., the Constitutional Court has exclusive jurisdiction in certain matters. This is expressly stated in s 167 (2) of the Constitution, and the phrase “only the Constitutional Court” is used. Exclusive jurisdiction of a division of the High Court cannot be relegated to inferential reasoning.

[14] That it is convenient to file commercial matters at the Commercial Division of the High Court is not the inquiry. It is of no moment in the resolution of this matter. It is of no consequence. It is for the above reasons that the special plea of absence of jurisdiction must fail.

[15] What remains to be considered is the question of costs. The general rule is that in the ordinary course, costs follow the result. I am unable to find any circumstances which persuade me to depart from this rule. Accordingly, the defendant must pay the plaintiff’s costs.

In the result, it is ordered as follows:

The defendant’s special plea be and is hereby dismissed with costs.

*Webb, Low & Barry Incorporating Ben Baron & Partners*, plaintiff’s legal practitioners  
*Kufaruwenga & Associates*, defendants’ legal practitioners