

GARIKAYI NYONI

Versus

**REGIONAL MANAGER
CUSTOMS AND EXCISE (NO)**

And

**COMMISSIONER GENERAL ZIMBABWE
REVENUE AUTHORITY (NO)**

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 8 NOVEMBER 2022 AND 20 APRIL 2023

Opposed Application

L. Mcijo, for the applicant
E. Mukucha, for the respondents

MOYO J: This is an application wherein the applicant seeks an order as follows:

1. The decisions of the 1st and 2nd respondents with regards to the seizure of the applicant's motor vehicle Registration No. AEA 5210 and the goods therein be and is hereby set aside.
2. The respondents be and are hereby directed to release applicant's motor vehicle and the seized goods upon payment of the relevant import duty.
3. That respondents pay costs of suit on an attorney and client scale.

The background to this matter is that applicant's vehicle together with goods in it were allegedly impounded and seized by the Zimbabwe Revenue Authority officials at the Plumtree border post for failure to comply with customs requirements and regulations. Applicant

appealed to the Commissioner General of the Zimbabwe Revenue Authority but found no joy causing him to then approach this Honourable Court.

The applicant is seeking a review of the decision to impound and seize the vehicle together with the goods he was carrying.

Respondents' counsel raised points *in limine* at the hearing of the application.

1. That the application for review should have been made within 8 weeks prior to initiating the review and that failing that it should have been preceded by an application for condonation as it is presumably out of time.

That it is also fatally defective as the wrong respondents were cited and that the claim has prescribed.

I will only deal with 1 of these 3 points *in limine* as I believe they are the one most relevant in this case.

Respondents argue that it is the Zimbabwe Revenue Authority that can sue and be sued for all actions performed by its officials as they represent the authority. They cite section 3 of the Revenue Authority Act which provides that:-

“There is hereby established an authority to be known as the Zimbabwe Revenue Authority, which shall be a body corporate capable of suing and being sued in its own name, subject to this Act, of performing all acts that bodies corporate may by law perform.”

Section 4 (1) (a) of the same Act provides that:-

“The function of the authority shall be to act as an agent of the state in assessing, collecting and enforcing payment of all revenues....”

Respondents argue therefore that citation of the Regional Manager and the Commissioner General renders the application fatally defective.

The applicant responded to the preliminary points by stating that the cases that respondents cited are not applications for review and therefore are not applicable since in applications for review it is the particular official whose decision is being challenged who should be cited. The applicant's counsel also submitted that in terms of the rules of this court, non joinder cannot be a ground for the dismissal of a matter.

Section 3 of the Zimbabwe Revenue Authority Act Chapter (23:11) provides that:-

“There is hereby established an authority to be known as the Zimbabwe Revenue Authority which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.”

Section 4 (1) (a) of the same act provides that:-

“The functions of the Authority shall be

- (a) to act as an agent of the state in assessing, collecting, and enforcing the payment of all revenues....”

The meaning of the quoted sections is that in essence it is the authority through its employees, that assesses, collects and enforces the revenue collection measures. What that then means is that it is the authority that acts in the performance of any of these duties and therefore the rightful party to any proceedings where the revenue collection process is brought into question. What it then means is that section 4 (1) (a) (*supra*) as read with section 3 of the Zimbabwe Revenue Authority Act (*supra*) mean that the appropriate respondent is the authority. It therefore follows that citation of the two respondents in this matter is fatally defective as wrong parties have been brought to court and the correct party is not before court. Such was the reasoning in the case of *TNM Ltd v The Commissioner General of the Zimbabwe Revenue Authority* HH 14-21 a matter wherein this same issue was dealt with.

Applicant’s counsel has argued that a non-joinder of a party is not a ground for dismissal in terms of the rules of this court. It is indeed a correct submission to the extent that the court does not delve into the merits of a matter where there is a fatal non joinder of a party. The correct decision is to strike the matter off the roll as a wrong party is before the court and the correct party is not there. What it means is that the case is limping, it cannot take off. No issues can be determined between wrong parties as there is no substance to resolve when the correct parties are not before it. Refer to the decision of the Supreme Court in the case of *Marange Resources Pvt Ltd v Core Mining & Minerals Pvt Ltd (In liquidation) & 3 Others* SC 37-16 wherein the Supreme Court stated that

“Thus the fate of an application where a wrong party is cited is clear, the proceedings cannot be sustained.”

I will not proceed to deal with the rest of the preliminary points, on failure to give notice and whether or not the application was made in time since those points would only become relevant if the correct parties were before me. Once I have made a finding that the wrong respondents are before me, the application suffers a fatal blow on that point alone, I would only proceed to assess the other preliminary points if the correct parties were before me.

It is for these reasons that the preliminary point of citing the wrong respondents is upheld and the application is accordingly struck off the roll with costs.

Liberty Mcijo & Associates, applicant's legal practitioners