

MAXMORE NJANJI
and
CHITA ONE LOGISTICS (PVT) LTD
and
SQUARE FAMILY TRUST
versus
PROSECUTOR GENERAL
and
REGISTRAR OF DEEDS
and
REGISTRAR OF MOTOR VEHICLES

HIGH COURT OF HARARE
CHIKOWERO J
HARARE, 22 March and 6 April 2023

Opposed Application

R Mabwe & J T Sande, for the applicants
M Mutamangira & T Zhuwarara, for the 1st respondent
No appearance for the 2nd & 3rd respondents

CHIKOWERO J:

INTRODUCTION

[1] This is a court application brought in terms of r 29(1)(a) of the High Court Rules 2021. The applicants have prayed for the rescission of the order granted by this court on 18 October 2022 under case number HACC 28/22, per KWENDA J. They contend that the order was erroneously granted in their absence.

THE BACKGROUND

[2] On a date not material to this matter, the Prosecutor-General (PG) filed an *ex parte* chamber application for a property seizure order. The respondents were the present applicants and the Registrars of Deeds and Motor vehicles. This was under case number HACC 28/22.

[3] The basis of the application was that Maxmore Njanji (Njanji) was under criminal investigations on allegations of fraud, money laundering and corruptly concealing from a principal a personal interest in a transaction all of which involved huge sums of money.

[4] Njanji was said to have beneficial ownership in Chita One Logistics (Private) Limited (Chita One), a trucking company. Further, he was said to be a trustee in Square Family Trust (Square Family).

[5] Reasonably believing that Njanji acquired a fleet of motor vehicles and an array of immovable property using funds obtained from the offences aforesaid, proceeded to register the property in the names of Chita One and Square Family and that he was likely to dissipate or alienate them unless a property seizure order was granted, what the Prosecutor General did was this. It filed an *ex parte* chamber application praying for the granting of a property seizure order.

[6] The order was granted. The founding papers reflect that the application was made in terms of s 47(1)(b) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (the Act). That provision provides that, among other things, the Prosecutor General may apply for a property seizure order sanctioning the search and seizure of specified property where he reasonably believes that the property is tainted and that there is a likelihood of dissipation or alienation of the property if the order is not granted. Because the court was so satisfied, it granted the order in question.

[7] Section 47 of the Act falls under Chapter IV. This chapter deals with conviction based confiscation and benefit recovery orders and investigative powers appurtenant thereto. The papers indicate that the Prosecutor General proceeded in terms of s 47. The proceeding was criminal in nature. So was the order granted pursuant thereto. I say the proceeding was a criminal one because para. 12 of the Founding Affidavit makes the point that apart from preserving the property and hence further dissipation and alienation (which would be further acts of money laundering) the order was also sought for the purpose of affording evidence of the commission of the offences with which Njanji was charged. Simply put, the Prosecutor General intended to use the property as exhibits in the envisaged criminal trial. However, the Prosecutor General also mentioned in the same founding papers that his alternative cause of action was predicated on the provisions of s 83 of the Act. This section falls under Chapter V. The Chapter deals with civil forfeiture of tainted and terrorist property. Part 1, which includes s 83, makes provision for civil forfeiture orders, property freezing orders and property seizure orders. Accordingly, the entire Chapter makes provision for the civil regime of proceeding against property reasonably believed to be either tainted or terrorist property.

[9] Looking at the legislative framework in Chapters IV and V, the intention of the lawmaker was therefore to provide, to my mind, for property seizure orders in both criminal and civil proceedings. In other words, the Prosecutor General could elect to go the civil or criminal law route in applying for an order.

[10] In my view, it was unnecessary, nay inconsequential, for the Prosecutor General to advert to the alternative of a civil property seizure as a cause of action in an application for a property seizure order under s 47.

THIS APPLICATION

[11] Section 29 of the High Court Rules, 2021 is a re-enactment, with one addition, of Order 49 r 449 of the repealed High Court Rules, 1971. Section 29(1)(a), under which this application was brought, is a civil law provision. It provides for the procedure of correcting, rescinding or varying of civil judgments and orders erroneously sought or erroneously granted in the absence of any party affected thereby.

[12] The present application is for rescission of the order on the premise that it was erroneously sought or granted in the absence of the parties affected thereby. Such parties are Njanji, Chita One and Square Family.

THE ARGUMENTS

[13] Ms *Mabwe* filed heads of argument and made oral submissions in an endeavour to persuade me that the order was erroneously sought or erroneously granted in the absence of the applicants. Case law on the r 449 (now) s 29 of the High Court Rules, 2021 include *Grantully (Pvt) Ltd and Anor v UDC Ltd* 2000(1) ZLR 399(S); *Matambanadzo v Goven* 2004(1) ZLR 470(H); *Sibanda v Gwasira & Ors* SC 14/21; *Mufundisi v Rusere* 2008(2) ZLR 264(H). Counsel referred me to these and other decisions on rescission of judgments and orders erroneously sought or erroneously granted in the absence of any party affected thereby.

[14] I enquired of Ms *Mabwe* whether the order sought to be rescinded was granted in civil proceedings. I understand her response to be that although the application in question appeared to be borderline, it is in fact civil.

[15] Ms *Mutamangira*, in vigorously opposing the application for the Prosecutor General, argued that the order was not erroneously sought or erroneously granted and that the law allows the Prosecutor General to have made the application without notice to the then respondents.

[16] She argued that the Prosecutor General applied for and was granted a conviction – based property seizure order in terms of s 47(1)(b) of the Act.

DISPOSITION

[17] Section 29(1)(a) of the High Court Rules, 2021 applies to applications for rescission of civil judgments and orders erroneously sought or erroneously granted in the absence of any party affected thereby.

[18] Since the rules of procedures for the Anti-Corruption Court are yet to be promulgated, the High Court Rules, 2021, to the extent that they regulate civil procedure in the High Court, are the default rules for anti-corruption matters, civil in nature, placed before this court.

[19] My view is that what was placed before KWENDA J was a criminal proceeding. It was a conviction based application for a property seizure order, brought in terms of s 47(1)(b) of the Act.

[20] That the application mentioned civil based property seizure as an alternative cause of action was clumsy on the part of the drafter of the application. At the end of the day, it did not, and could not, change the substance of the application that was before the court.

[21] I must also record that it would be remiss of me to interrogate the application placed before Kwenda J for the purpose of satisfying myself that a case was made for the order granted by him. Although he determined the application in Chambers, he was exercising jurisdiction as the High Court of Zimbabwe. This court, even though it is exercising jurisdiction in a civil application, cannot review its own decision rendered while exercising jurisdiction in a criminal matter.

[22] For the same reason, resort to s 29(1)(a) cannot be had by the applicants for the purpose of opening a door to enquire whether the terms of the property seizure order granted coincide with the statutory requirements.

[23] I make the foregoing remarks to underline the fact that once I determine, as I do, that this application is not properly before me, then that is the end of the matter. I cannot circumvent my own conclusion by going into the merits of that which is not properly before this court.

[24] In the result, **IT IS ORDERED THAT:**

The application be and is struck off the roll.

Tarugarira-Sande Attorneys, applicant's legal practitioners
The National Prosecuting Authority, first respondent's legal practitioners