

BENJAMIN CHAKANETSA MANYONGA  
and  
LAINA MAGORE  
versus  
PROSECUTOR GENERAL  
and  
ROSELYN DUNGA  
and  
LOCADIA CHIMUKOSI

HIGHCOURT OF ZIMBABWE  
CHIKOWERO J  
HARARE; 23 & 31 May 2023

### **Opposed Application**

*R Mabwe with T Marufu*, for the applicants  
*H Kahuni with T Zhuwarara*, for the 1<sup>st</sup> respondent  
No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents

#### **CHIKOWERO J:**

1. This is a court application made in terms of s 29(1)(a) of the High Court Rules, 2021.
2. The remedy sought is rescission of part of the order granted by this court on 12 April 2022 in the matter of *Prosecutor General v Roselyn Dunga, Locadia Chimukosi, Edmore Chipiso, Sharon Kasaru and Edson Allan Zunzanyika* HACC 06/22.
3. Case number HACC 06/22 was *an ex parte* chamber application for an interdict brought in terms of s 40 as read with s 41 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (the Act).
4. The court granted the interdict after perusing the papers in chambers.
5. An application for an interdict brought in terms of s 40 as read with s 41 of the Act is a criminal proceeding. Section 40 of the Act reads as follows:  
“40 Application for interdict  
(1) Where a person has been convicted of a serious offence, has been charged with a serious offence or is the subject of an investigation for a serious offence (referred to hereafter in this Part as “the relevant person”) the Prosecutor General may make application to the court for an interdict under subsection (2)

restraining any relevant person or other specified person from dealing with either or both of the following kinds of property.

- (a) Specified property that is reasonably believed to be tainted property or terrorist property;
  - (b) Specified tainted property or terrorist property in which the relevant person has an interest.
- (2) An application for an interdict against property reasonably believed to be tainted or terrorist property may be made to secure property for the purposes of an application for a confiscation order pursuant to s 50.
  - (3) An application for an interdict against specified tainted property or terrorist property in which the relevant person has an interest may be made to secure property for the purposes of a benefit recovery order pursuant to s 59.”

The application may be made where a person has been convicted of a serious offence, has been charged with a serious offence or is the subject of an investigation for a serious offence. The purpose of the application would be to restrain that person or other specified person from, for example, dealing with specified property that is reasonably believed to be tainted property. Having been satisfied that two of the respondents under case number HACC 06/22 were charged with serious offences and the other three were subject of a criminal investigation, the common thread being that they were reasonably believed to have used proceeds of crime to acquire certain property, the court interdicted them from dealing in the property. There can be no doubt that the whole of Chapter IV of the Act, which includes ss 40 and 41, pertains to conviction-based forfeiture of illicitly obtained property or proceeds thereof.

6. In the circumstances, Ms *Mabwe*'s submissions that the proceedings under HACC 6/22, brought in terms of ss 40 and 41 of the Act, were civil in nature, are unsound. Nor is there any substance in the alternative submission that the proceedings were *sui generis*. I have already set out the relevant provisions of s 40 of the Act. They are clear and unambiguous. They do not require any interpretation. The proceedings contemplated therein are criminal in nature.
7. The whole of Chapter V of the Act is dedicated to the civil forfeiture of tainted and terrorist property. This is non-conviction based forfeiture. In matters not under this regime that criminal proceedings of persons connected to the tainted property have either not been instituted at all, withdrawn or have not been successful. In terms of the civil regime of asset forfeiture, s 81 provides for an application by the Prosecutor General for a property

freezing order in respect of property reasonably believed to be tainted. The order granted in case number HACC 6/22 was not made in terms of s 81 of the Act. For this reason also, the application leading to the granting of the order was not a civil proceeding.

8. Section 29 of the High Court Rules, 2021 provides for the correction, variation and rescission of judgments and orders. It is the equivalent of r 499 of the repealed High Court Rules, 1971.

9. Section 29(1)(a) reads:

“The Court or a judge may, in addition to any other powers it or he or she may have, on its own initiative or upon the application of any affected party, correct, rescind or vary-

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby.”

10. The High Court Rules, 2021 govern the procedure in the High Court in civil and criminal matters. However, s 29(1)(a) relates to the rescission, correction or variation by this court of orders or judgments erroneously sought or erroneously granted by it in the absence of any party affected thereby in civil proceedings. It does not relate to judgments or orders granted by this court in criminal proceedings. This puts the applicants out of court. The application is not properly before me.

11. In light of this conclusion the need to set out and deal with the preliminary point raised by the first respondent, as well as the merits of the application, fall away.

12. In the result, IT IS ORDERED THAT:

1. The application be and is struck off the roll.
2. The applicants shall jointly and severally the one paying the other to be absolved pay the first respondent’s costs of suit.

*Marufu Attorneys At Law*, applicant’s legal practitioners  
*The National Prosecuting Authority*, first respondent’s legal practitioners