MAYOR LOGISTICS (PRIVATE) LTD
and
JUSTICE MAYOR WADYAJENA
versus
PROSECUTOR GENERAL OF ZIMBABWE
and
ZIMBABWE ANTI-CORRUPTION COMMISSION

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 22 May 2024, 4 June 2024 & 16 August 2024

Urgent Court Application for leave to Execute Pending Appeal –
Rule 59(6) High Court Rules 2021

T L Mapuranga, for the applicants
C Mutangadura, for the 1st respondent
N M Phiri with *N B Munyuru,* for the 2nd respondent

CHITAPI J: The parties are named as per the heading to this judgment. They are not strangers. They litigated in case number HCH 4400/23. I presided over that case. The parties were cited therein as they are in this application. I determined application HCH 4400/23 in favour of the applicant. The full judgment in the matter was delivered on 8 May 2024 as judgment number HH 165/24. That judgment sets out the background to the dispute between the parties. The facts remain so and I will therefore only give a brief outline. It suffices before I give the brief summary of the facts to mention that both the first and second respondents noted appeals to the Supreme Court against judgment number HH 165/24. The applicant has filed this urgent court application for leave to execute judgment number HH 165/24 pending the appeals filed by the first and second respondents. The appeals are pending in the Supreme Court under case number SC 250/24 filed by the first respondent and case number SC 254/24 filed by the second respondents. The appeals were filed respectively on 10 May 2024 for SC 250/24 and on 14 May 2024 for SC 254/24.

Characteristically with counsel generally where urgent applications are concerned, the respondents challenged the urgency of the application. It was agreed that the parties engage the urgency objection and the merits at the same time and the court determines the matter in one judgment. This implies that if the urgency objection is upheld, the matter ends there and the application is struck off the roll. If it fails, the judgment then proceeds to the merit.

The first respondent did not specifically raise urgency as a stand-alone issue but indicated that the issue was relevant to the determination of whether or not there would be irreparable harm to be suffered by the applicants were this application to be dismissed. It follows that the court did not have to deal with urgency *per se* as far as the first respondents' opposition was concerned. The first respondent raised another point regarding the procedure for hearing court applications on urgent basis. Counsel submitted that there was no rule which provided for urgent court applications and that the applications should be filed as urgent chamber applications. There was however no formal objection to the propriety of the application. The arguments become academic and will properly be answered in a case where formal objection to the propriety of an urgent court application is taken.

The second respondent in attacking the urgency of the application averred that the applicants did not state how they would suffer irreparable or the nature of the harm if the application was not heard urgently. The second respondent also raised the issue of the failure by the applicants to attach the notice of appeal. The applicants responded that the matter was urgent because the property was being held without legal sanction and that the continued deprivation of the property deprived the applicants of their right to enjoyment of the property. They averred that the trucks were wasting because of adverse climatic conditions. Further they averred that the applicants continued to suffer financial prejudice from the non-usage of the trucks. In relation to the failure to attach the notice of appeal, the applicants averred that such omission was not fatal because the grounds of appeal were singularly dealt with in the founding affidavit.

After careful thought I took the view that the matter is urgent. It appeared to me that there was sound argument to hold that the continued seizure and retention of the trucks was not supported by any legal entitlement. The continued retention was more like leaving the respondents

to take the law into their own hands so to speak. Such a situation is dangerous to constitutionality and the rule of law. It is a situation which requires urgent redress.

In relation to irreparable harm, it does seem to me that where the retention has become unlawful, the issue of what harm is being suffered if the unlawfulness is continued to be perpetrated unabated is a matter of waning significance. Unlawfulness cannot be justified on the basis of prejudice. It is a situation that must not be allowed to be perpetuated. Even if I am wrong in so reasoning, there is little doubt that the applicants suffer financial prejudice because of the continued retention of the trucks. Trucks are meant to be mobile and not be parked. It is accepted that a risk of great financial prejudice grounds urgency depending on the circumstances of each case. The objections stood to be dismissed and they were so dismissed.

The brief background facts are that the applicants were arrested and arraigned before the magistrates' court on three charges of Money Laundering as defined in s 8(3) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] and three counts of Fraud as defined in s 136 of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*].

The applicants together with six others were alleged to have acted in common purpose in unlawfully generating false invoices for payment for the supply of bale ties to Cottco Company and causing Cottco to pay out substantial amounts of money which were laundered through various companies in which the applicants and accomplices had interests. The prejudice to Cottco was alleged to have run into several millions of American dollars. Again the intricate details of the facts which grounded the charges do not require resolution. It suffices that the applicants appeared before the magistrates' court and were placed on remand on or about 17 August 2022. On 6 February 2023, the magistrates' courts refused a further remand of the applicants for want of prosecution. The first respondent did not challenge the decision.

The effect of the removal of the applicants from remand was that they were no longer before a court on any criminal allegations. The matter against them was therefore withdrawn from the court's roll and list of pending cases. If the case still existed it did so in the books of the prosecution and the investigators. They remained free to bring the applicants to trial when ready to prosecute them but would do so on summons. This issue is not really what the application which

the court determined was. The application relates to the disputed release of the applicant's trucks which had been placed under seizure following the arrest of the applicants and their appearance in court when they were placed in remand.

On 19 August 2022 the first respondent applied to the court *ex-parte* under the case number HACC 18/22 for a property seizure order in terms of s 47 of the Money Laundering and Proceeds of Crime Act. The application was successful with KWENDA J issuing an order on 22 August 2022 as follows:

> "**IT IS ORDERED THAT**:
> 1. Victoria Masimba, an Investigating Officer in the employ of the Zimbabwe Anti-Corruption and or other law enforcement Officers of the law proper to the execution of warrants be and are hereby authorized to enter into the business and residential precincts of 1st & 2nd respondents for the purpose of identifying, seizing and securing the following property;
>   i. A Lamborghini (SUV) vehicle registration number "Mayor"
>   ii. A Freightliner (Horse) Vehicle registration number AEZ 6137
>   iii. A Freightliner (Horse) Vehicle registration Number AEZ 6136
>   iv. A Freightliner (Horse) Vehicle registration number AEZ 9244
>   v. A Freightliner (Road Tractor) Vehicle registration number AEZ 6255
>   vi. A Freightliner (Road Tractor) Vehicle registration number AEZ 6256
>   vii. A Freightliner (Horse) Vehicle registration number AEZ 6139
>   viii. A Freightliner (Horse) Vehicle registration number AEZ 6138
>   ix. A Freightliner (Horse) Vehicle registration number AEZ 6116
>   x. A Freightliner (Horse) Vehicle registration number AEZ 6114
>   xi. A Freightliner (Road Tractor) Vehicle registration number AEZ 6134
>   xii. A Freightliner (Horse) Vehicle registration number AEZ 9247
>   xiii. A Freightliner (Road Tractor) Vehicle registration number AEZ 6254
>   xiv. A Freightliner (Horse) Vehicle registration number AEZ 9245
>   xv. A Freightliner (Horse) Vehicle registration number AEZ 9246
>   xvi. A Freightliner (Horse) Vehicle registration number AEZ 9243
>   xvii. A Freightliner (Horse) Vehicle registration number AEZ 6115
>   xviii. A Freightliner (Horse) Vehicle registration number AEZ 6121
>   xix. A Freightliner (Horse) Vehicle registration number AEZ 6125
>   xx. A Freightliner (Horse) Vehicle registration number AEZ 6126
>   xxi. A Freightliner (Road Tractor) Vehicle registration number AEZ 6133
>   xxii. A Freightliner (Horse) Vehicle registration number AEZ 6135
>   xxiii. A Freightliner (Road Tractor) Vehicle registration number AEZ 6134
>
> 2. The purpose of this property seizure order is to preserve the said property from dissipation or alienation pending investigations into allegations of fraud and money laundering as defined in terms of section 136 of the Criminal Law (Codification & Reform) Act and Section 8 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

3. The property seizure order shall be executed between 0800 hours and 1600 hours.
4. This order shall remain in force for thirty days during which period this seizure order must be executed and thereafter any such property needed for future criminal proceedings or liable for confiscation in terms of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] may further be dealt with in accordance of the law.
5. There shall be no order as to costs."

It was clear that the application made under s 47 of the Money Laundering and Proceeds of Crime Act was linked to the offences on which the applicants were placed on remand. The first respondent made it clear in that application that he sought seizure of the property of the applicants on the basis that it would afford evidence of the offences of fraud and money laundering and that it was therefore necessary to preserve the property from "dissipation and alienation." In the magistrates' court proceedings, the remand form 242 showed that the station investigating the alleged Fraud and Money Laundering was the second respondent. An analysis of the form 242 in regard to outlining evidence on which the applicant were connected to the offence, it was *inter-alia* alleged that there were bills of entry showing that a foreign company Grant Equipment, USA had generated Bills of Entry showing that the company exported trucks into Zimbabwe as opposed to bale ties.

Consequent on the refusal of remand, the applicants then applied for the release of the trucks. The grounds pleaded by the applicants to justify the release was firstly that they were not before the courts since the further remand was refused. They averred that as they were not facing criminal proceedings before the court for which the attachment or seizure of their trucks could be justified, the trucks should be released to them.

The applicants also pleaded that the order which the court had granted sanctioning the seizure of the trucks had prescribed or was no longer of any force. In specific terms, the applicants sought an order as follows:

"WHEREUPON after reading documents filed of record and hearing counsel:
IT IS ORDERED THAT:
1) Applicant's property seized from them by virtue of and in terms of the property seizure order given on the 22nd August 2022 in HACC 18/22 shall with immediate effect be returned to them.
2) There shall be no order as to costs."

Following a fully-fledged hearing of the application the applicant's prayer was granted. The following order given therein disposed of the application as set out in judgment in HH 165/24:

> "IT BE AND IS HEREBY ORDERED THAT:
> 1) The continued seizure of any of the applicant's trucks as listed in the order of KWENDA J dated 22 August 2022 in case number HACC 18/22 is declared to be unlawful.
> 2) The respondent or whoever retains under seizure any of the trucks as aforesaid shall release them to the applicants upon seizure of this order.
> 3) There is no order of costs."

Although the application HCH 4400/23 was hotly contested the critical issue was really whether or not the first and second respondents retained a legal right to retain the applicant's trucks in the light of the terms of the order of KWENDA J and the applicant's assertions that the right to retain the trucks lapsed.

The first and second respondent noted appeals as already stated. The second respondent was the first to note his appeal. The appeal is directed at paragraphs 1 and 2 of the order in case number HH 165/24. The grounds of appeal are stated as follows:

> "**GROUNDS OF APPEAL**
> 1) The court *a quo* erred at law when it misconstrued the tenor of the High Court of Zimbabwe's earlier/previous order granted in case number HACC 18/22 as read with section 47(4) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] as regards the tenure of retention of seized articles being evidence of specified crimes.
> 2) Having found that property that the articles/property seizure order under case number HACC 18/22 was granted for purposes of preserving the said property from dissipation or alienation under section 47 of the Money Laundering and Proceeds of Crime Act, the court *a quo* erred at law when it ordered release of the said articles /property unconditionally to the 1st and 2nd Respondents.
> 3) In granting the application for the release of the seized property/articles unconditionally to the 1st and 2nd Respondent, the court *a quo* made an error of fact as any confiscation proceedings against the said property/articles or prosecution of the second Respondent for fraud and money laundering would be affectively defected by potential dissipation or deprecation in value of the released articles/property.

The second respondent prayed that the appeal be allowed and that the order in judgment number HH 165/24 be altered to read that the application is dismissed with costs.

I must state that the grounds of appeal are intended for the Supreme Court. That court announces on their validity and sustainability. However, this court can express an opinion on the prospects of the grounds of appeal succeeding.

In my view the first ground of appeal the ground is meaningless. It amounts to a statement that simply says that the court misconstrued the purport of the order granted by KWENDA J on the tenure of the retention of the seized property. There is nothing akin to any indication on the nature of the misconstruction of the order. The ground does not inform the court or the reader of the nature of the error allegedly committed by the first instance court nor whether or not the mistake is one of law or fact.

The second ground of appeal faults the court for ordering an unconditional release of the attached trucks and thereby negating or defeating the purpose of the seizure order. The court on p 19 of the cyclostyled judgment stated:

> "It is the court's finding that on the facts and circumstances of this case the continued seizure of the applicant's property is unlawful. In consequence thereof the seized property must be released to the applicants. An order to that effect will ensue …"

The problem with this ground of appeal is that it is not the function of the court to aid a party in the interpretation of its order and of a statute unless application is made for the court to do so. The court's interpretation of its order in particular that the order only operated to hold the property under seizure for thirty days was not challenged nor that the continued retention of the property under seizure was subject to conditions being met. Notably the continued retention would have been justified on establishing that the retention was required as evidence of other crime(s). The retention could also have been extended by the second respondent applying for an interdict. Besides the first respondent was not advised to compromise and plead for conditional release of the seized property in the event that the first respondent's opposition failed. There is no legal requirement alleged in the grounds of appeal which the court breached by not ordering a conditional release in as much as the court simply made a declaration that its order no longer supported the continued seizure.

The third ground of appeal alleges an error of fact by the court in unconditionally releasing the property from seizure as this would defeat any prosecution or confiscation proceedings which could be brought against the applicants subsequently as the applicants would likely dissipate the property upon its release. Again this ground of appeal is difficult to appreciate it being grounded

in an alleged error of fact. An error of fact exists where the court has misconstrued a fact. The second respondent did not in any event put up the argument being raised in this ground of appeal. It was up to the first respondent to have in opposing the application left room that should its opposition fail, its position remains protected. The applicant could have pleaded in the alternative that in the event that the court is inclined to grant the application then the release of the trucks be conditional and conditions suggested. This was not done. It is my view that the grounds of appeal raised by the second respondent do not enjoy reasonable prospects of success.

In relation to the second respondent the grounds of appeal were as follows:

> "1. The court *a quo* erred in law in its interpretation of section 47(4) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] in failing to find that the seized property fell under the purview of property that could be retained for more than 30 days as specified in the afore mentioned section."

The ground of appeal is not clear or concise. It ought to have alleged that the court made an error of fact and law in not finding that the property fell within an exception that ought to have been clearly pleaded. To just state the property "fell under the provision of property that could be retained for more than 30 days as specified in the aforementioned section is so generalized as to be meaningless. The first respondent would have been expected to specify the exception or "purview" alleged.

> "2. The court *a quo* erred at law in granting a declarator despite the fact that 1st and 2nd Respondents had solely sought the release of their seized property."

It is clear the first respondent seeks to play around with semantics. Firstly a draft order does not bind the court and this is trite. The court if it grants an order other than in the terms asked for should not grant an order which does not derive from the proven facts. Secondly, the order granted must relate to the facts. The applicant's complaint was that the respondents' withholding of the property had become unlawful in the light of the lapse of KWENDA J's order. If as the court found for the applicants that no legal justification still existed for the continued seizure of the property, then it was semantically for the court to issue an order in the nature of a declaration or pronouncement that the continued seizure of the applicant's property was now unlawful. In my considered view there is really no substance factual or legal alleged by the first respondent to seek

an upset of the judgement appealed against. It is clearly stated in the judgment that the court stated that the relief sought by the applicant was in the nature of a declaration which it was.

> "3. The court *a quo* erred in law and misdirected itself in fact finding that the appellant had failed to discharge the onus to justify the continued seizure on the basis that there are other crimes being investigated disregarding sufficient evidence of evidence of extra-terrestrial (sic) investigations before it."

This alleged ground touches on a critical aspect of the judgment appealed against. The issue was more than adequately dealt with. There is no need to go into unnecessary detail on the issue. The evidence was clear that the deponent to the first respondents opposing affidavit did not give any details of the so called other crimes nor of the extra-territorial investigations being carried. One cannot help but with sigh at the reference in the ground of appeal to (extra-terrestrial investigations). These investigations would have to be done outside the earth or the earth's atmosphere for them to be "terrestrial".

The good thing about facts is that one searches for them and establishes them. The first respondent is being dishonest in alleging that there was sufficient evidence of "extra-terrestrial investigations before it." The allegations is clearly just made for the sake of it and no wonder the alleged ground of appeal does not refer to the evidence or its nature. The facts of the matter show that the first respondent made a bare allegation in the letter by its Manager Ms Tongogara that the first respondent was – "conducting parallel financial investigation s which are different from the criminal investigations being carried out for which your clients (the applicants) were removed from remand."

The court *a quo* stated as follows in relation to the first respondent's justification for the seizure.

> "The above quote (that is letter by Ms Tongogara) does not state what other crimes the first respondent is investigating. There is also no mention of the evidence which the trucks will provide. For posterity, where reliance is sought upon the provisions of s 47(4) the respondent should be guided by what the section says. The crimes for which investigations are said to be continuing must be named as well as the alleged connection between the seized property and the crime. Short of that the onus to justify the continued seizure on the basis that there are other crimes being investigated for which the seized property affords evidence will not have been discharged. That is the situation *in casu*. The first respondent made a bold assertion that there are parallel investigations different "from criminal investigations". The Money Laundering and Proceeds of Crime Act deals with criminal investigations. The continued seizure of the property based on the section 47(4) cannot apply to investigations other than related to a recognized crime."

It was clearly mischievious for the first respondent to allege in the ground of appeal that the court disregarded evidence of crimes under investigation and the investigations being done extra-territorially. If the first respondent had such evidence to hand then it dug its own grave by withholding it from the court. It is however certainly unacceptable to make an allegation that the court was improperly directed not to consider evidence placed before it yet such evidence is non-existent. It also means that the Supreme Court's time is wasted when it has to hunt for the non-existent evidence when perusing the record on appeal. This ground of appeal is therefore totally devoid of merit.

The fourth ground of appeal was worded that:

> "4. The court *a quo* erred at law on dismissing the preliminary objection by the appellant challenging the validity of the first respondents founding affidavit which backed authorization in the form of a company resolution."

Again it is a pity that a comment must be made that the first respondent or its counsel are not being candid with the truth of how the matter progressed. It will be clear from the judgment that the first respondents counsel. Mr *Phiri* raised the issue of a company resolution over the bar. The judgment dealt with this aspect and even quoted the Supreme Court judgment of GARWE JA (as then he was) in *Zimasco* v *Maynard Fari Farikano* SC 06/14 when it is made clear that although a point of law can be raised at any stage of proceedings even on appeal, it must be arise from the pleadings. There must be facts alleged in the pleadings from which the point of law can derive. The first respondent did not advert to the issue of authority of the second respondent to represent the first respondent. Mr *Phiri* was offside on procedure in raising the issue over the bar and would have been advised to make an application to revisit the opposing affidavit. He did not do such.

In addition, the judgment will show that the applicant's counsel Mr *Mapuranga* also noted and submitted over the bar that the first respondent resolution to authorize Miss Tongogara to purport to represent the first respondent was not attached. It became a situation wherein both counsel were then inclined to raise the issue of resolutions over the bar. The court commented on this issue at length. What however is not understandable is that Mr *Phiri* abandoned the challenge.

The judgment recorded this and the court commended Mr *Phiri* for abandoning the improperly sought to be introduced challenge. How the first respondent then takes the issue on appeal behoves the mind. It follows that this ground of appeal is totally without foundation and is in fact embarrassing as it raises an issue which the appellant abandoned.

The fifth ground of appeal was couched as follows:

> "5. The court *a quo* at law in finding that the criminal charges against the 1st and 2nd respondents had been withdrawn thereby justifying the release of the seized property despite no such assertion from either party and 1st and 2nd Respondents only having been removed from remand."

This ground of appeal can only be described as a red herring meant to mislead or confuse a situation. On p 15 of the cyclostyled judgment:

> "…the first respondent in the opposing affidavit in paragraph 22 stated that the applicants are currently facing criminal proceedings of money laundering and fraud and have not been acquitted. This of course is not true because the charges against the applicants were struck off and a further remand refused. The implication of the withdrawal of the criminal charges was and is that the applicants do not have a pending case before the court. Investigations may well be going on in the background. However that would not derail from the fact that they are no longer before the courts for the charges for which they were brought before the courts, being the same charges which informed the basis of the application for seizure of the trucks which are the subject of this application."

It is clear that the word withdrawal is being misconstrued and being read out of contest. The refusal of further remand implies that the matter is withdrawn from the roll of pending cases by the court not by the second respondent. The second respondent may withdraw charges against an accused at any time before judgment. The court did not relate to a withdrawal in the sense that the appellant conveniently seeks to construe. The quoted part of the judgment says it all. The ground of appeal is aimed at an allegation relating to something that the court did not do. It is without doubt a ground that absolutely has no prospects of success.

The last ground of appeal was couched as:

> "6. The court *a quo* erred at law and misdirected itself in fact in concluding that the 1st and 2nd respondents draft order was defective in circumstances where it failed to identify the property sought to be released when same was not particularly pleaded in the 1st and 2nd respondent's founding papers."

This issue was adequately addressed in the judgment. The applicant's draft order was just a draft. It is the facts which inform the nature of the order which the court may grant. The application before the court was not treated or read in isolation. It was borne out of the seizure order which was issued by KWENDA J. The order authorised the seizure of listed trucks therein. The order of the court in the case on appeal was that the property seized as per KWENDA J's order should be released to the applicants. The issue of identity of the trucks is hair splitting. In the opposing papers the applicants alleged that their trucks were seized as per the order of KWENDA J. The applicants wanted the trucks released to them. The respondents did not in turn indicate that the trucks or any of them was not seized. If any one of the listed trucks was not seized and the applicants insist that the respondents should release them, then that issue can be dealt with, when it arises. The judgment of the court would not be set aside on such a ground. The court was entitled to issue the order as it considered disposed of the application.

Having made a finding that none of the grounds of appeal alleged by both the first and second respondents enjoy any reasonable prospects of success, this finding on its own does not mean that leave to execute pending appeal is automatically granted. The enquiry is much more involved. In the case of *Masimba* v *Masimba* 1995 (2) ZLR 31 (S) at 36F – 37B, the Supreme Court stated:

> "The principle to be applied where a party applies for leave to have an order of court enforced notwithstanding the pending of an appeal were set out by CORBETT JA (as he then was) in *South Cape Corp (Pty) Ltd* v *Eng Mgnt SVCS (Pty) Ltd* 1973 (3) SA 534 (A) at 545 as follows:
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> 'The court to which application for have to execute is made has a wide discretion to grant or refuse leave …. In exercising this discretion the court should in my view determine what is just and equitable in all the circumstances and in doing so would normally have regard *inter-alia* to the following factors:
>
> (i) The potentiality of irreparable harm or prejudice being sustainable by the appellant on appeal if leave to execute were granted;
> (ii) The potentiality of irreparable harm or prejudice being sustained by the respondent on appeal (applicant in the application) if leave to execute were to be refused;
> (iii) The prospects of success on appeal, including more particularly whether the appeal is frivolous or vexatious or has not been noted with the *bonna fide* intention of seeking to reverse the judgment but for some indirect purpose, e.g. to gain time or harass the other party; and

(iv) Where there is the potentiality of irreparable harm or prejudice to both appellant and respondent, the balance of convenience as the case may be.

See also *Econet* v *Telecel Zimbabwe (Pvt) Ltd* 1998 (1) ZLK 149 H at 154 F; *Rensburg* v *Kennedy Ngunu* HMT 12/21.

Riding on the quoted principles, it has been determined that the grounds of appeal have no prospects of success. It is my view that there is potentiality for irreparable harm being suffered by the applicants. The continued retention of the trucks without demonstrated legal cause or sanction is prejudicial not just to the applicant's commercial interest but as an affront to the rule of law and the administration of justice. The trucks were seized following legal sanction granted by order of this court. The order had a life span and/or conditions to be met by the respondents to justify the continued withholding of the trucks. The second respondent in its wisdom decided not to place the court into its confidence and failed to establish a legal basis or to allege any facts to show that the trucks were evidence of other crimes under investigation. The best it did which best was not good enough was to allege that it was carrying out parallel investigations extra-territorially. No further details of the investigations were given to the court.

The first respondent did not mount any meaningful opposition to the application whose judgment is under appeal. Regrettably, the first respondent in opposition to this application stresses the need to combat crime and a whole lot of matters which are argumentative. In fact a close reading of the affidavit shows that the opposing affidavit does not deal with facts at hand. It is argumentative and full of interpretations of s 47 of the Money Laundering and Proceeds of Crime Act. The opposing affidavit is almost a lecture presentation of the Money Laundering Act and its application. It seems to me that the notice of opposition was prepared without reference to the position and facts alleged in the initial opposition in the case whose judgment is on appeal. Indeed during argument the court occasionally reminded Mr *Mutangadura* not to create a new opposition for the first respondent different from the stance taken in the main application.

The issues at play in the main application were simple. The seizure of the trucks was done consequent to a court order. The court order gave conditions to be met. The seizure was to hold good for 30 days. Thereafter any such property as "needed for future criminal proceedings or liable

for confiscation in terms of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] could further be dealt with in accordance with the law". Thirty days passed and the property was not released. The second respondents did not state what it did in accordance with the law to justify the continued retention. It stated that it was conducting parallel investigations. What are parallel investigations? For which crime? How does the retention of the trucks aid the investigation? The second respondent did not give details of these crucial issues. The court could not be expected to assist the respondents and build a case to justify continued retention of the applicant's trucks.

The appeal is frivolous and vexatious. This is so because the respondents seek to cover up their shortcomings in how they handled the matter after being granted the seizure order. They simple sat on their laurels and took no steps to comply with s 47(4) of the Money Laundering and Proceeds of Crime. The respondents even in this application have not been candid with the court to state the nature of the investigations under way and the crimes for which they justify the continued retention. The respondents in the main application had an easy task. They simply needed to be candid with the court and give details of the other crimes for which the trucks should continue to be held. The respondent did not in any event seek an interdict to continue holding the trucks. The court can only aid a litigant who has followed the provision of the law.

In relation to potentiality for irreparable harm to both parties, the applicants stand to suffer irreparable harm compared to the respondents because of the continued withholding of the trucks which are a wasting asset and needs to be operating. The balance of convenience favours the applicants because there is no legal sanction to deprive the applicants of the right to their property. The release of the trucks would not step investigations from continuing to be carried and the applicants' prosecuted. There has to be finality to litigation. The right to appeal should not be abused.

The applicants have prayed for punitive costs on the scale of legal practitioner and client. Costs on the higher scale are granted in special circumstances which must be specially pleaded and established. The applicants did not plead for this level of costs in the founding affidavit. Costs will therefore follow the event and will be granted on the court scale.

The application succeeds and the following order ensues:

IT IS ORDERED THAT:

1) The applicants are granted leave to execute the judgment HH 165/24 granted in case number HCH 4400/23 pending the determination of appeal numbers SC 250/24 and SC 254/24.
2) The first and second respondents pay costs of the application jointly and severally the one paying the other to be absolved.

Tabana & Marwa, applicants' legal practitioners
National Prosecuting Authority of Zimbabwe, first respondent's legal practitioners
Muvingi & Mugadza, second respondent's legal practitioners