

AK LOGSTICS SOCIADE UNIPESOAL LDA
versus
ZIMBABWE REVENUE AUTHORITY

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 6 March 2023

Opposed Application

K.G. Muraicho, for the applicant
E. Mukucha, for the respondent

MUZENDA J: On 20 June 2021 applicant brought an application praying for the following:

“IT IS HEREBY ORDERED THAT:

- 1. The Commissioner General’s decision for the forfeiture of the truck being 1 box container Registration Number MNBU 3747360; freightliner Columbia road tractor Registration Number ADM594MC and trailer Registration Number MB4014 be and is hereby set aside.*
- 2. The respondent be and is hereby ordered to release the truck being 1 box container Registration Number MNBU 3747360; freightliner Columbia road tractor Registration Number ADM594MC and trailer Registration Number MB4014 to the applicant within seven (7) days from the date of this order, without any conditions.*
- 3. The respondent be and is hereby ordered to pay costs of suit on attorney client scale.”*

The respondent filed its opposing papers on 27 June 2021.

Factual Background

Applicant company is duly registered in terms of the laws of Mozambique and is in the business of providing transport services. Applicant was hired by Fungai Makombote, a Zimbabwean, to transport fresh garlic from Beira to Harare via Forbes Border Post. Fungai Makombote had imported the garlic from China. Fungai Makombote also contracted a clearing agent at Forbes Border Post called Afrologistics Private Limited to handle the clearance of the goods in transit. The agent committed fraudulent declarations of the goods culminating in the seizure of both the garlic and the carrier, applicant’s truck.

After the seizure, applicant made representations to officials of respondent to have the truck released and the respondent’s Commissioner General subsequently dismissed the appeal. Applicant then resolved to approach this court for relief amplified in the draft order *supra*. Applicant in its correspondence and appeals to the respondent contends that it was innocent of

any wrongdoing done by the clearing agent. It denies committing any offence which is in breach of Zimbabwean laws. The agent, Afrologistics, the offender advised respondent that it was responsible for the misrepresentations and pleaded with respondent to release the truck to the applicant. To the applicant the forfeiture of its truck is shocking and unreasonable more so where the clearing agent admitted to the fraud and also that respondent erringly visits applicant basing on the acts of the clearing agent. Applicant prays for the release of the truck.

The respondent in opposing the application raises the defence of prescription. Respondent contends that the cause of action arose on the date of seizure, that is on 3 December 2021 and the application was only instituted on 9 June 2022 (respondent on p 39 alludes to 3 March 2021 as the date the application was issued by the Deputy Registrar). As such the application was not in compliance with s 193(12) which stipulates a period of 3 months from the date of seizure, an aggrieved person is bound to institute proceedings, else he or she is barred.

On the merits of the application, respondent avers that the duty to lodge the manifest reposes on the applicant transporter and any fault in the lodging is placed on the transporter. Applicant's agent was clearly contracted to transport fresh garlic but lodged two manifests one for garlic and the other for machinery which was never there. To respondent, this pointed to collusion between applicant's agent and the clearing agent applicant's driver lodged an electronic manifest 82047 of 9 November 2021 to register fresh garlic and then manifest 8305 of 13 November 2021, clearing garlic processing machine and among these two manifests one was a misrepresentation by applicant's driver. In addition, respondent contends that a transporter has a duty in terms of s 26 of the Act to report goods in his charge prior to arriving at the port of entry and applicant's employee made a false declaration regarding the consignment and the truck thus comes under the auspices of s 188(2) of the Act and becomes liable for forfeiture and it was forfeited.

It is also further argued by respondent in its papers that it is the responsibility of the transporter to make a declaration in relation to goods in transit distinct from that reposed on the clearing agent at the port of entry. The forfeiture of applicant's truck is therefore as a result of a false manifest lodged by applicant's driver in its capacity as the transporter and applicant cannot rely on innocence. Respondent also impugns the relief sought by applicant as being incompetent because this court cannot order release of the truck in dispute, the court can either set aside respondent's decision or confirm the forfeiture but cannot refer the matter back to the authority for reconsideration. It applies for the dismissal of the application with costs.

Point in limine

The respondent contends that applicant's application has prescribed if one takes the date of seizure, 3 December 2021, 3 months have since been exceeded. In response to the preliminary point, applicant submitted that the cause of action is 27 January 2022 when the Commissioner-General declared the Freightliner truck, trailer and container forfeited and in terms of s 196(2) prescription began to run from that date and by June 2022 applicant was totally within the 8 months prescribed by s 196(2). The law has since been clarified in the case of *Twotap Logistics (Private) Limited v Zimbabwe Revenue Authority*¹ which stipulates that s 193(12) and s 196(2) are not at war. Cause of action by applicant is based on the forfeiture of its vehicle and container and not on the seizure and as such the point *in limine* is misplaced and is dismissed.

On Merits

As clearly outlined on the factual background above herein, applicant piles all the blame on the clearing agent Afrologistics Private Limited who made misrepresentations to respondent. However as correctly captured by the respondent in its opposing papers and heads, applicant had an equal duty to verify its load and also declare correctly such at the point of entry. Fresh garlic is not a problem in this matter, it is the garlic processing machine which was not in the container that led to the forfeiture of the offensive truck. Manifest 83405 dated 13 November 2021 which was completed for clearing garlic processing machine is the problem. Applicant's driver loaded the fresh garlic at the point of collection and did not clearly see a garlic processing machine. At the time the transporter got to the port of entry, it had a legal obligation to alert customs using its private account number and even the designated clearing agent that on its truck there was no garlic processing machine, it did not. That was fraudulent. The intention on the part of the transporter is even more glaring because right from the onset it was aware that there was no machine on the truck nor in the container and yet it declared its very presence. I am persuaded by the respondent to apportion fault on the applicant taking into account the obligations reposed on the transport to correctly declare its load at the port of entry and am satisfied that applicant's motor vehicle and container comes squarely under the provisions of s 188 of the Customs and Excise Act [*Chapter 23:02*].

¹ SC 3/23 per CHIWESHE JP on p 6 of the cyclostyled judgment

This application was brought in terms of s 4 of The Administrative Justice Act [*Chapter 10:28*] and as per the case of *U-Tow Trailers (Private) Limited v City of Harare and Another*² “*is an application for the setting aside of an administrative decision on the basis that it was not arrived at fairly and this at law, contravenes the Act.*”

I am satisfied that this court can adjudge the fairness or otherwise of the respondent’s decision on the aspect of forfeiture.

It is not clear on paper the value of prejudice to the state, however looking at the value of fresh garlic compared to the truck and container, applicant stands to suffer a lot. In my view, a penalty of a fine would meet the justice of the matter. It appears this is the first time applicant’s motor vehicle was involved in such an offence and the fine would work as a deterrent to the applicant. I also conclude that the applicant should be given an opportunity to properly comply with the laws of this country in as far as the importation of goods are concerned.

As a result I order as follows:

- “1. *The respondent’s decisions to forfeit applicant’s truck being 1 box container Registration Number MNBU 3747360; freightliner Columbia road tractor Registration Number ADM594MC and trailer Registration Number MB4014 be and is hereby set aside.*
2. *Respondent is ordered to assess a fine to be paid by the applicant and upon payment of such a fine, respondent be and is hereby ordered to release the subject truck and container particularized in paragraph 1 above to the applicant forthwith.*
3. *Applicant to pay storage charges from date of seizure to date of collection.*
4. *Each party to pay its own costs.*”

Mugadza Chinzamba & Partners, applicant’s legal practitioners.
Zimra Legal Services for Division, respondent’s legal practitioners.

² HH 103/2009 per MAKARAU J (as she then was) cited by applicant in its heads