

MOHAMED YUSUF MATHER  
and  
RUNGS INVESTMENTS (PVT) LTD  
versus  
PROSECUTOR GENERAL

HIGH COURT OF ZIMBABWE  
KWENDA J  
HARARE, 14 January & 20 July 2022

### **Court Application**

*Advocate K Kachambwa*, for the applicant  
*C Mutangadura*, for the respondent

**KWENDA J:** Section 47(1)(b) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] empowers this court to order seizure of property which is the subject of an interdict or which, on reasonable grounds, the court believes is either tainted or terrorist property and there is a reasonable likelihood that the property may be dissipated or alienated if not seized.

This is an application wherein the applicants seek rescission of a seizure order granted by this court *ex parte* on the 12<sup>th</sup> November 2021 following an application by the respondent made in terms of s 47 (1) (b) as read with s 47(7) (b) of the Act. The applicants are also seeking a mandatory interdict compelling the respondent to give them access to the property seized pursuant to the seizure order and return same to the applicants within five days of the order sought.

The impugned order which the applicants would like rescinded reads as follows: -

1. “.....
2. Victor Masimba, an investigating officer in the employ of the Zimbabwe Anti-Corruption Commission and or other law enforcement officers of the law proper to the execution of warrants be and are hereby authorised to enter into mining precincts of Rungs Investments(Pvt) (Ltd) in Gandamasango, Hwedza for the purpose of identifying, seizing and securing a gold mining plant and its accessories if disassembled or dismantled from the main plant.
3. Victor Masimba, an investigating officer in the employ of the Zimbabwe Anti-Corruption Commission and or other law enforcement officers of the law proper to the execution of warrants be and are hereby authorised to enter No 35 Pailey Road Corner Stirling Road Workington Harare for the purpose of identifying, seizing and securing an eight tonne Crusher and a generator belonging to Ahmed Ashraf Mohamed Ravat.
4. The purpose of this property seizure order is to preserve the said property from dissipation or alienation pending investigations into allegations of theft and money laundering as defined in section 113(2) of the Criminal Law (Codification and Reform) Act and s 8 of the Money Laundering Act [*Chapter 9.24*]

5. The property seizure order shall be executed between 0800 and 1600hrs.
6. This order shall cease to have effect upon the expiry of 30 working days (excluding Saturdays, Sundays and public holidays) unless earlier by order of this Honourable Court.
7. There shall be no order as to costs.”

The order was served on the applicants on the 1<sup>st</sup> December 2021 thereby placing the property identified in the order under seizure. The applicants then filed this application on the 13<sup>th</sup> December 2021 on a certificate of urgency relying on rules 59(6) and 65 (8) of the High Court rules, 2021. Rule 59 (6) of the High Court Rules, 1971, provides that the time within which a respondent in a court application may be required to file a notice of opposition and opposing affidavits can validly be shorter than the prescribed ten days where the matter is urgent and the court, on good cause shown, has agreed to such shorter period. In terms of r 65(8) where a legal practitioner has certified, in writing, that a matter is urgent, giving reasons for its urgency, the court or a judge may direct that the matter be set down for hearing at any time without adherence to the usual timeframes and additionally, or alternatively, may hear the matter at any time or place, subject to modifications as the court or judge may direct.

Rule 66(8) of the High Court rules provide as follows: -

“(8) Where a legal practitioner has certified in writing that a matter is urgent, giving reasons for its urgency, the court or a judge may direct that the matter should set down for hearing at any time and additionally, or alternatively, may hear the matter at any time or place, and in such event this Part shall not apply or shall apply with such modifications as the court or judge may direct.”

The parties agreed before me that this matter is urgent as contemplated in rr 59(6) and 65 (8) of the High Court rules, 2021 and should be treated as such mainly because the impugned seizure order was bound to expire by effluxion of time after a period of 30 working days from the date of issue and any contestation thereafter was bound to be pointless. This application was filed on the 31<sup>st</sup> calendar day after the date on which the impugned order was granted. I therefore, with the agreement of the parties, issued a structured order giving directions on truncated timeframes within which the parties were to file their papers up to heads of argument and setting the date of hearing.

The application for rescission was made in terms of r 29(1)(a) of the rules of this court on the grounds that the respondent obtained the impugned order without effecting service of its chamber application on the applicants and failed to disclose to the court that the property had been cleared as untainted in earlier litigation involving AGM Mining and Engineering (Pty) Ltd and the applicants under case No. HC 1247/20. According to the applicants, this

Court was not likely to grant the impugned order had it become aware of the judgment in case No HC 1247/20. The requirements of r 29(1)(a) of the rules of this court are present in this case. They are that the contested order was granted in the absence of the applicants and in addition to that it was erroneously sought and granted because some important information was not brought to the attention of the court which granted the order.

I have perused the judgment in case No HC 1247/20 and note the following. The respondent was not a party to the case. The case was essentially an ownership dispute between AGM Mining and Engineering (Pty) Ltd and the applicants. It was not concerned with seizure of property in terms of the Money Laundering and Proceeds of Crime Act. The subject matter was in fact an application by AGM Mining and Engineering (Pty) Ltd to be declared the owner of the Gold Refinery Plant as well as an interdict against the applicants. Both claims were dismissed. The operative part of the judgment reads as follows:

“It be and is hereby ordered that the application and it is hereby dismissed”

The contested seizure order which is the subject of this case was issued in terms of the legal framework for the confiscation of proceeds of crime under the Money Laundering and Proceeds of Crime Act [*Chapter 9.24*]. In granting the order this court must have been satisfied, on the facts placed before it, that the requirements of s 47(1) (b) had been met. In other words, the respondent managed to show there were reasonable grounds for believing that the property targeted for seizure was tainted and there was a likelihood that it would be dissipated or alienated if the order was not granted. Paragraphs 4 and 6 of the order are self-explanatory in that the purpose of the property seizure order is stated as: -

Paragraph 3

“to preserve the said property from dissipation or alienation pending investigations into allegations of theft and money laundering as defined in section 113(2) of the Criminal Law (Codification and Reform) Act and s 8 of the Money Laundering Act [*Chapter 9.24*]”

and paragraph 4 that the order

“...shall cease to have effect upon the expiry of 30 working days (excluding Saturdays, Sundays and public holidays) unless earlier by order of this Honourable Court’. The order has nothing to do with the ownership dispute.”

The outcome of case No HC 1247/20 had no relevance to the application and granting of the impugned seizure order. The property was liable for seizure in terms of the Money Laundering and Proceeds of Crime Act by order of court irrespective of who the owner is as

long as the requirements of the Act were met. The seizure order was therefore not erroneously sought and granted.

In applying for an interdict the applicants made the following averments.

“Mr Ravat and the people he brought with him to the mine, ...acted clearly illegally and unlawfully by removing all mining equipment and items from the mine, contrary to what is stated in the order **see annexure 3 and s3, affidavit of Brilliance Ndhlovu and attached list.** The mining equipment and items have been removed and loaded onto trucks without any written inventory of the mining equipment and items being removed and without any disclosure of where the mining equipment and items are being taken to. In addition, the 2<sup>nd</sup> applicant also purchased certain earth moving equipment in Zimbabwe from a Zimbabwean company **see Annexure 14 invoice.** Mr Ravat has also taken this earth moving equipment which was not part of the order. The respondent in this matter has clearly acted contrary to the Court order and has removed all the mining equipment and items from the mine, which mining equipment and items are not part of the alleged theft and money laundering allegations.

Once the order is rescinded, there will no longer be any reason to continue to hold on to such components and equipment.

Furthermore, I am advised that property seized under a property seizure order may only be retained by or on behalf of the respondent for thirty days. The thirty days might expire before this application is heard

I pray that a mandatory interdict be issued compelling the respondent and his agents to return or provide access to the components or equipment they took so that applicants may collect it.”

The above complaint is made against a Mr Ravat who is not a party to this case. The property was seized in execution. The respondent does not execute judgments.

The requirements for a final interdict are now settled. See HERBSTEIN AND VAN WINSEN *The Civil Practice of the High Courts of South Africa*, Vol 2 at p 1456 and the cases cited therein. Also see *Setlogelo v Setlogelo* 1914 AD 221. The applicants were required to aver and prove:

- i. a clear right
- ii. an injury actually committed or reasonably apprehended; and
- iii. the absence of similar or adequate protection by any other ordinary remedy.

In *Walter Magaya v Zimbabwe Gender Commission* SC 105/21 the Supreme court made it clear that: -

“The right claimed by the applicants must be one which can lawfully be protected. The order granted by this court on 12 November 2021 which is now contested by the applicants is clear in the sense that it clearly spells out its purpose. The applicants may not seek protection from a lawful investigation. It is trite that while this court may regulate execution of its orders it may not interdict a lawful procedure. The view I take is that the lawfulness of the intended investigation is established by the General Notice. It is a legislative instrument with the force and effect of law. As noted above, a General Notice has the force and effect of law, therefore, there is always a presumption of validity

on that Notice and the validity thereof cannot be questioned through an application for an interdict. The appellant cannot seek to interdict lawful conduct.”

“In my view, the concession that the General Notice has the force of law is dispositive of the appeal. A General Notice is a legal instrument that has the force and effect of law. And like any other law, there is a presumption of validity upon it until it has been validly set aside through the appropriate legal procedures. Therefore, a litigant cannot through an application for an interdict seek to police lawful conduct given that the validity of the General Notice has not yet been determined by a court. As far as the law is concerned the Notice is law. It, therefore, stands to reason that an interdict cannot lie against lawful conduct.”

The applicants have not pleaded any clear right. What they have pleaded is a perceived right contingent upon anticipated rescission of the seizure order. A party who succeeds in an application for rescission of judgment does not enforce the judgment through an interdict. The application for an interdict is ill conceived because an interdict will fly in the face of a lawful process.

In the result I order as follows:

The application is dismissed with costs.

*Amed and Ziyambi*, applicants’ legal practitioners  
*Prosecutor General*, respondent’s legal practitioners