

PAARLWEB (PRIVATE) LIMITED  
versus  
AMAZON TOBACCO (PRIVATE) LIMITED  
and  
SMART CHIRERU  
and  
TAKWANA CHITIMA

HIGH COURT OF ZIMBABWE  
TSANGA J  
HARARE, 24 May 2019

**Ex Parte Chamber Application**

*A A Debwe*, for the applicant

TSANGA J: The application has been brought as an *ex parte* application to found jurisdiction. According to the founding affidavit by the applicant's director, the first respondent Amazon Tobacco (Private) Limited (Amazon Tobacco), is a company duly registered in Zimbabwe. Its address for service is provided and is in Mandara, Harare. The second and third respondents, Smart Chireru and Takwana Chitima, are its directors. They are stated to have said they are now resident in South Africa.

Sometime in April 2019, the applicant paid a total sum of RTGS 302 000.00 to Amazon Tobacco for the purpose of purchase of some farm equipment which remains undelivered despite a promise that it could be delivered within one week. Proof of transfer to Amazon Tobacco's account here in Zimbabwe is provided.

Applicant seeks to attach specified assets being cars as well as office and household goods at Amazon Tobacco's registered address. Applicant avers that there is fear is that the directors who are stated as having said they are resident in South Africa, may come and remove their assets from Zimbabwe. The source of this communication where they state as much is not provided. Applicant also asserts that they said that they intend to send a representative to come and collect their movable goods which they left in Zimbabwe.

Materially, and this is the critical issue, a reading of the *ex parte* application reveals that the cause of action arose here in Zimbabwe. Applicant distinctly acknowledges as much. Applicant also acknowledges that it has a claim against the respondents. As such, if the cause of action arose here, there is no need to make an application to found jurisdiction as our courts clearly have jurisdiction over the cause of action. The application is therefore miscounted in so far as the director of applicant describes its nature as “an *ex parte* application for an order attaching the respondents’ property in order to **found** jurisdiction in terms of s 15 of the High Court Act, [Chapter 7:07].

There is a fundamental distinction between an application to found jurisdiction and an application to confirm jurisdiction. An application to found jurisdiction is only necessary where the court has no jurisdiction over both the cause of action and the person of the defendant. An application to confirm is necessary where the court has jurisdiction over the cause but lacks such jurisdiction over the person of the defendant.<sup>1</sup> The discussion of relevant case law is captured in *Memory Tembo v PCJ Motors* HH 224 /17.

In this instance, there is no need to confirm jurisdiction. A company is a separate entity from its directors. Amazon Tobacco, the company to whom the money was sent is registered here in Zimbabwe. Our courts have jurisdiction over it. The money for the undelivered equipment was given to a corporate entity which is a separate legal entity and that is required by law to have at least one of its director’s resident here. Section 169 of the Companies’ Act provides that every company is required to have at least two directors, at least one of whom shall be ordinarily resident in Zimbabwe. No proof is attached of their permanent residency on South Africa or that they are the only directors of that company. If they are the only two and neither are resident here that would be a violation of the Company’s Act. Nothing pertaining to the company’s directors has been attached.

In the final analysis this is an application which has not been properly made whether to found or confirm jurisdiction as neither are necessary in this instance. Summons can be issued of this court against the respondents for the repayment of the said amount.

Accordingly, the application to found jurisdiction is dismissed.

---

<sup>1</sup> See D Harms, “Civil Procedure in the Superior Courts (LexisNexis South Africa, 1996) at page A-29 paragraph A4-20”

*Debwe & Partners*, applicant's legal practitioners