

CAPITAL RADIO (PRIVATE) LIMITED v
THE MINISTER OF INFORMATION, POSTS AND
TELECOMMUNICATIONS

SUPREME COURT OF ZIMBABWE
GUBBAY CJ, McNALLY JA, EBRAHIM JA, MUCHECHETERE JA &
SANDURA JA
HARARE, SEPTEMBER 22, 2000

A P de Bourbon SC, for the applicant

L Moyo, for the respondent

GUBBAY CJ: At the hearing of an application brought in terms of s 24(1) of the Constitution of Zimbabwe, this Court, having listened to counsel for the parties, issued the following order:

“IT IS HEREBY DECLARED THAT:

- A.
1. The monopoly on broadcasting services created by section 27 of the Broadcasting Act [*Chapter 12:01*] is inconsistent with section 20(1) of the Constitution of Zimbabwe and is therefore invalid insofar as it vests in the Zimbabwe Broadcasting Corporation the exclusive privilege of carrying on a broadcasting service in Zimbabwe;
 2. Sections 14(1) and 14(2) of the Radiocommunication Services Act [*Chapter 12:04*] are inconsistent with section 20(1) of the Constitution of Zimbabwe and are, therefore, invalid insofar as those provisions prohibit any person, other than the Zimbabwe Broadcasting Corporation, from possessing or working a radio station for the purpose of carrying on a broadcasting service in Zimbabwe.
- B. In the premises and for the sake of clarity, it follows that:

- (a) The applicant is entitled under the law to operate and provide a broadcast service from within Zimbabwe.
 - (b) The applicant is entitled under the law to import into Zimbabwe all radio and other equipment to operate a commercial radio station and to broadcast within and outside Zimbabwe, subject to the payment of all customs dues and import taxes lawfully levied in terms of the law, and to possess and utilize such broadcast equipment.
- C. It is ordered that:

Each party shall bear its own costs of this application.”

The reasons for our decision are these:

The applicant, a company incorporated with limited liability in accordance with the laws of Zimbabwe, wishes to establish and operate within Zimbabwe a radio transmitting station for the purpose of carrying on a broadcasting service for reception by members of the general public. It is disabled by legislation from doing so. By virtue of s 27 of the Broadcasting Act [*Chapter 12:01*] the Zimbabwe Broadcasting Corporation has an exclusive monopoly over broadcasting services in Zimbabwe. And ss 14(1) and (2) of the Radio Communications Services Act [*Chapter 12:04*] specifically prohibit any person, other than the said broadcasting corporation, from possessing or working a radio station for the purpose of carrying on a broadcasting service in Zimbabwe.

The applicant’s contention was that the aforementioned provisions in both Acts are inconsistent with s 20(1) of the Constitution of Zimbabwe and therefore invalid. Section 20(1) reads, in relevant part:

“... no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference ...”.

Reliance was correctly placed by the applicant on the judgments of this Court in *Retrofit (Pvt) Ltd & Anor v PTC & Anor* 1995 (2) ZLR 199 (S), as read with *Retrofit (Pvt) Ltd v Minister of Information, Posts & Telecommunications* 1995 (2) ZLR 422 (S). In that matter the applicant challenged the constitutionality of the monopoly vested in the PTC in respect of public telecommunications services. It argued successfully that the monopoly, and consequent inability under the law to licence it to become a provider of a public mobile cellular telephone service, infringed s 20(1) of the Constitution. It interfered with the applicant’s freedom of expression and, more particularly, its right to receive and impart ideas and information.

The respondent accepted, in an opposing affidavit deposed to by his senior secretary, Mr Willard Chiwewe, that the legislation under attack offends against s 20(1) of the Constitution. It was stated by Mr Chiwewe that:

“As I see it, the solution in this matter is for me to be required to amend the Broadcasting Act and the Radio Communications Services Act [*Chapter 12:04*] so as to establish a regulatory authority to consider and grant applications for broadcasting licences and applications for permission to operate diffusion services in Zimbabwe.

The present law does not give me the power nor authority to licence an operator and therefore the order sought by (the applicant) is impossible.

In the premises, I submit that we await the enactment of a regulatory framework to provide for licensing of broadcasting and diffusion services by other service providers.”

It is unfortunate that the parties have failed to agree upon a reasonable time limit within which “a regulatory framework to provide for licensing of

broadcasting and diffusion services by other service providers” could be put in place. What the respondent subsequently proposed was that he be given not later than the end of the second session of the Fifth Parliament to pass legislation relating to broadcasting which is consistent with the Constitution; after which the applicant would submit its application in conformity with such legislation.

Not surprisingly the length of the delay implicit in this proposal was totally unacceptable to the applicant. It had filed the application on 27 April 2000. The opposing affidavit was filed on 5 May 2000. Four months have since passed without the setting up of a regulatory authority.

In the circumstances, it was considered that the applicant was entitled to the grant of an order in the terms sought.

Having thus declared the legislation invalid, there is at the present time (as indicated in para B of the order) nothing to prevent the applicant from proceeding with immediate effect to operate and provide a broadcasting service from within Zimbabwe.

McNALLY JA: I agree.

MUCHECHETERE JA: I agree.

EBRAHIM JA: I agree.

SANDURA JA: I agree.

Honey & Blanckenberg, applicant's legal practitioners

Civil Division of the Attorney-General's Office, respondent's legal practitioners