

TAURAI MARAVA

Versus

ZIMBABWE PARKS & WILDLIFE MANAGEMENT AUTHORITY

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
BULAWAYO 26 March 2024 & 25 April 2024

Special plea

H. Shenje for the plaintiff
W. Zhangazha for the defendant

DUBE-BANDA J:

Introduction

[1] This judgment deals with the special plea. The plaintiff issued summons against the defendant on 7 March 2019 seeking payment in the sum of US\$193 784 as damages for loss of income caused by the impounding of plaintiff's fishing rigs; special damages in the sum of US\$16 956.17 for the costs of the repairs of the two fishing rigs, labour and transport costs; and interests at the prescribed rate.

[2] The defendant filed a special plea and pleaded over on the merits. For purposes of completion and clarity I shall reproduce the special plea. It is this:

- i. There is no legal entity known as Zimbabwe Parks and Wildlife Management Authority.
- ii. At all material times, plaintiff never had a fishing permit. Accordingly, if he was fishing, he was doing so illegally. Therefore, even if the rigs had been in his custody, he would not have been able to fish legally. Accordingly, the summons and declaration are excipiable in that regard. His claim is legally incompetent.
- iii. Even if plaintiff had a fishing permit, the same would have been automatically cancelled when his operators were found fishing in prohibited waters and paid the requisite deposit fines for it. Effectively, plaintiff would not have lost any business consequent to such automatic cancellation, of "the permit."

[3] The special plea was answered by the following replication:

i. Ad paragraph 1

Plaintiff insists that the defendant has been correctly cited. The defendant has previously, on numerous occasions, referred to itself in the manner cited by plaintiff in summons as evidenced by correspondence dated 17 September 2017 concerning the arrest and impounding of the plaintiff's vessels. (See Annexure "A" hereto).

ii. Ad paragraph 2

Denied. Plaintiff never acted illegally and challenges the defendant to prove the same. The plaintiff's summons shows a cause of action sustainable at law.

iii. Ad paragraph 3

Plaintiff has no knowledge of this, and denies in particular that his operators were fishing in prohibited areas to warrant automatic cancellation of a permit.

[4] At the pre-trial conference minute, the special plea was referred to trial and framed as follows: whether or not there is an entity known as Zimbabwe Parks & Wildlife management Authority? At the hearing of this matter, I directed that it was necessary to deal first with the special plea. See *Moyo v Moyo* 1999 (2) ZLR 265 (HC). I directed so because the purpose of a special plea is to prevent the waste of time and resources hearing a trial where it should not have started from the beginning. Hence the importance of determining the legal position prior to the matter proceeding on trial. Mr. *Zhangazha* counsel for the defendant abandoned the second and third grounds and persisted with the contention that there is no legal entity known as Zimbabwe Parks and Wildlife Management Authority.

The submissions by the parties

[5] Mr. *Zhangazha* submitted that there is no entity at law answering to the name of Zimbabwe Parks and Wildlife Management Authority. Counsel submitted that in terms of s 3 of the Section 3 of the Parks and Wild Life Act [Chapter 20:14] ("the Act") which establishes the defendant does not have the word "Zimbabwe." The defendant is called Parks and Wildlife Management Authority. Counsel submitted that a suit against a non-existent entity is a law a nullity. In support of this proposition counsel cited the case of *Gariya Safaris (Pvt) Ltd v Van Wyk* 1996 (2) ZLR 246 (H). Counsel sought that the special plea be upheld and the matter be struck off the roll.

[6] *Per contra* Mr *Shenje* counsel for the plaintiff submitted that the defendant has been correctly cited. Counsel further submitted that the defendant refers to itself as Zimbabwe Parks and Wildlife Management Authority, and referred to two letters from the defendant whose letter heads are marked “Zimbabwe Parks and Wildlife Management Authority.” Counsel further submitted that the plaintiff previously sued the defendant for the release of the two fishing rigs, and the respondent did not dispute that it was at law “Zimbabwe Parks and Wildlife Management Authority” and a judgment was granted citing respondent as “Zimbabwe Parks and Wildlife Management Authority.” Counsel submitted that the respondent must be estopped from contesting that it is “Zimbabwe Parks and Wildlife Management Authority.” In support of this proposition counsel cited the case of *Galante v Galante* 2002(1) ZLR 144. Counsel contended that the special plea has no merit and must be dismissed.

The law and the facts

[8] Section 3 of the Parks and Wild Life Act [Chapter 20:14] provides for the establishment of the Parks and Wild Life Management Authority in the following manner:

There is hereby established a body corporate, to be known as the Parks and Wild Life Management Authority, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

[9] By legislative decree the defendant is called “Parks and Wild Life Management Authority,” and this is the corporate name upon which it shall sue and be sued. The plaintiff sued the “Zimbabwe Parks and Wild Life Management Authority,” which name does not appear in the Act establishing the defendant. See *MGZ (Pvt) Ltd v The Commissioner General ZIMRA* (HH 269 of 2021; ITC 1 of 2016) [2021] ZWHHC 269 (1 June 2021); *G (Pvt) Ltd v The Commissioner General Zimbabwe Revenue Authority* HH347/20. In *Gariya Safaris (Pvt) Ltd v van Wyk* 1996 (2) ZLR 246 (H) it was stated as follows:

“A summons has legal force and effect when it is issued by the plaintiff against an existing legal or natural person. If there is no legal or natural person answering to the names written in the summons as being those of the defendant, the summons is null and void *ab initio*.”

[10] In *Marange Resources (Private) Limited v Core Mining & Minerals (Private) Limited (in liquidation) & Ors* SC 37/16 the appellant had wrongly cited the first respondent as “Core

Mining and Minerals (Pvt) Ltd” instead of “Core Mining and Mineral Resources (Pty) Ltd”. The omission of the word “Resources” and the use of “Pvt” as opposed to “Pty” was found to have altered the legal personality of the respondent.

[11] This matter turns on whether there is a legal entity answering to the name Zimbabwe Parks and Wildlife Management Authority. There is no such legal entity. There is however a legal person called “Parks and Wild Life Management Authority,”. The inclusion of the word “Zimbabwe” altered the legal identity of the defendant. The name of the defendant is decreed by statute.

[12] Can the plea of estoppel cannot rescue the plaintiff’s case? Estoppel is traditionally understood to be a rule of evidence that estops (prevents) the representor from denying the truth of the representation that she previously made to the representee, where the latter relied on the representation to her detriment. This rule precludes the representor from going back on her representation. See *Galante v Galante* 2002(1) ZLR 144. Estoppel cannot rescue the plaintiff’s case; I say so because it is not about what the defendant might choose to call itself in correspondence. It is about the name ascribed to it by legislation. Section 3 is clear that the defendant is a body corporate known as the Parks and Wild Life Management Authority, which is capable of suing and being sued in its corporate name. Its corporate name is “Parks and Wild Life Management Authority” and no other. Therefore, the defendant cannot lawfully be sued in any other name except the name its corporate name decreed in s 3 of the Act. Thus the defence of estoppel has no relevancy in this case and cannot succeed.

13] At law there is no legal entity answering to the name “Zimbabwe Parks and Wild Life Management Authority.” The plaintiff therefore sued a non-existent defendant. The consequences of suing a non-existent defendant are trite. The summons is a nullity. See *CT Bolts (Pvt) Ltd v Workers’ Committee* 2012 (1) ZLR 363 (S), *Gariya Safaris (Pvt) Ltd v van Wyk* 1996 (2) ZLR 246 (H); *Marange Resources (Private) Limited v Core Mining & Minerals (Private) Limited (in liquidation) & Ors* SC 37/16; *Stewart Scott Kennedy v Mazongororo Syringes (Pvt) Ltd* 1996 (2) ZLR 565 (S). A departure from the already stated position will not enjoy the support of the law. The above cited cases show that Supreme Court has spoken on this issue of wrong citation of a party in litigation, and on the basis of doctrine of *stare decisis*,

this court is bound these propositions of law. It is for these reasons that the special plea has merit and must succeed.

Costs

[14] The general rule in matters of costs is that the successful party should be given its costs, and this rule should not be departed from except where there are good grounds for doing so. I can think of no reason why I should deviate from this general rule. Moreso the special plea was raised as far back as 3 May 2019, and the plaintiff persisted defending a non-defendable position. In the circumstances, the defendant is entitled to its costs.

Disposition

In the result, I order as follows:

- i. The special plea is upheld.
- ii. The matter is accordingly struck off with costs.

Shenje & Company, plaintiff's legal practitioners
Chinogwenya and Zhangazha, defendant legal practitioners