

UNITED EXPORTS LIMITED
versus
THE SHERIFF OF ZIMBABWE
and
JEANETTE FLORENCE MITCHELL
and
FIRST CAPITAL BANK LIMITED

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE; 4 and 9 April 2025

APPLICATION FOR LEAVE TO FILE A SUPPLEMENTARY AFFIDAVIT

T Zhuwarara, for the applicant.
B Mahuni, for the 3rd respondent

MAMBARA J:

[1] This matter came before me as a Chamber Application by the Applicant seeking leave to file a Supplementary Affidavit in interpleader proceedings currently pending under Case No. HCH 53/25. The application was opposed by the third Respondent.

FACTUAL BACKGROUND

[2] On 9 January 2025, the Sheriff (first Respondent) initiated an interpleader process following the attachment of blueberry plants in execution of a judgment obtained by the third Respondent against Nhimbe Fresh Exports Private Limited under Case No. HCH 184/23.

[3] The Applicant, asserting ownership of the attached plants, filed a skeletal affidavit on 23 January 2025, citing insufficient time to collate necessary evidence due to late awareness of the proceedings. Applicant notified parties of its intention to file supplementary evidence subsequently.

SUBMISSIONS OF THE APPLICANT

[4] Counsel for the Applicant, Mr *T Zhuwarara*, submitted that the Supplementary Affidavit sought to introduce corroborative evidence essential for adjudicating the ownership dispute. Reliance was placed on the precedent established in *United Refineries Ltd v Mining Industries Pension Fund & Others* SC 63/14, emphasizing the discretionary power of the Court to allow supplementary affidavits to achieve substantial justice.

[5] The Applicant further averred that the supplementary affidavit would clarify previously stated positions, introduce crucial licensing agreements predating litigation, and import permits demonstrating legitimate ownership and importation of the plants. Counsel highlighted the inquisitorial nature of interpleader proceedings as articulated in *United Refineries Ltd (supra)* and *City of Harare v Gibson Investments (Private) Limited* HH 506-19.

[6] It was argued that the filing would occasion no prejudice to other parties beyond what could be remedied by costs. Reference was also made to *Associated Newspapers of Zimbabwe v Media Information Commission* HC 3744/05, stressing the justice-oriented flexibility in allowing additional affidavits.

SUBMISSIONS OF THE THIRD RESPONDENT

[7] Mr *Mahuni*, representing the third Respondent, contended that the application was procedurally defective, highlighting strict adherence to procedural rules as outlined in *Diocesan Trustees v Church of the Province of Central Africa* 2010 ZWHHC 40 and *Associated Newspapers (supra)*.

[8] It was argued that the Applicant's delay could not be justified by mere inconvenience or alleged negligence of legal practitioners, citing *Beit Bridge Rural District Council v Russel Construction* 1998 (2) ZLR 190, asserting that a detailed affidavit from the Applicant's legal representatives explaining the delay was necessary.

ISSUE FOR DETERMINATION

[9] Whether Applicant has provided sufficient justification and shown adequate grounds to allow the filing of a supplementary affidavit.

ANALYSIS

[10] The Court has discretion in applications of this nature, balancing procedural rigor with substantive justice (*United Refineries Ltd v Mining Industries Pension Fund & Others* SC 63/14). As CHAREWA J clarified in *City of Harare v Gibson Investments* HH 506-19, the Court must prioritize the revelation of all material facts, especially in inquisitorial contexts such as interpleader proceedings.

[11] Applicant provided a plausible explanation for initial inadequacies, attributing delays to limited time for document collation, clearly indicated to opposing parties. The supplementary affidavit significantly illuminates the contested ownership through comprehensive evidence, pre-dating litigation, refuting allegations of recent fabrication.

[12] Notably, the procedural rules were established to foster justice, not frustrate it (*Associated Newspapers v Media Information Commission* HC 3744/05). No prejudice beyond compensatory costs was demonstrated by Respondents.

CONCLUSION

[13] Given the interests of justice and the imperative for comprehensive evidence in resolving ownership disputes inherent to interpleader proceedings, this Court finds the application meritorious. Adequate explanation was provided for the delay, and substantial prejudice to the respondents is absent.

Accordingly, I order as follows:

1. The Applicant's application for leave to file a supplementary affidavit is granted.
2. The applicant shall file the supplementary affidavit in case HCH 53/25 within 5 days from the date of his order.
3. Costs shall be in the cause.

Gill, Godlonton & Gerrans, legal practitioners for the Applicant
Scanlen & Holderness, legal practitioners for the third Respondent