HH 481-21
ITC 8/21

C S E (PVT) LTD
versus
ZIMBABWE REVENUE AUTHORITY

SPECIAL COURT FOR INCOME TAX APPEALS
MAFUSIRE J
HARARE, 20 July 2021

Application for leave to appeal

Date of written judgment: 13 September 2021

Mr *T. Shadreck*, for the applicant
Ms *L. Chipateni*, for the respondent

MAFUSIRE J

[1] The applicant seeks leave to appeal. This is in respect of the judgment of this court on 1 June 2021 under the reference no HH 270-21, *per* MTSHIYA AJ. That judgment dismissed an appeal by the applicant. The appeal had been noted against certain decisions by the respondent in respect of some objections by the applicant over the tax assessments on it for the period 2010 to 2014. In its judgment, this court distilled the applicant's numerous objections into one issue: which of the applicant's expenses and claims were, in law, allowable deductibles for the purposes of determining the income tax due and payable by the applicant, a registered taxpayer.

[2] Paraphrased, the issue before the court related to the question whether or not the respondent had made errors of computation in respect of the ultimate tax due and payable by the applicant for the period in question. This stemmed from some decisions by the respondent in respect of certain transactions by the applicant, particularly in regards to:

- whether or not certain deposits in a bank account operated by the applicant, and certain debts owed to it, had all been gross income;
- whether or not the respondent had been wrong in disallowing certain alleged capital allowances and whether or not it had used an incorrect rate;

- whether or not the respondent had erred in levying on the applicant withholding tax in respect of a certain individual; and

- whether or not the respondent had incorrectly disallowed certain expenses claimed by the applicant.

[3] Also before the court was a preliminary objection by the respondent. It was over a certain reply and documents filed by the applicant, purportedly in answer to the respondent's case. The respondent charged that the conduct of the applicant in filing that reply had been unprocedural because the rules of procedure governing the operations of this court, as set out in the Twelfth Schedule to the Income Tax Act [*Chapter 23:11*], have no room for the filing of a reply. For that reason, the respondent prayed that the reply be expunged from the record.

[4] The court heard argument on both the point *in limine* and the merits. It reserved judgment. Afterwards it then delivered one composite judgment on both aspects as aforesaid. It found in favour of the respondent on all the issues. On the point *in limine*, the court held that the applicant had been wrong to invoke the High Court Rules to support its conduct in filing a reply to the respondent's case. The High Court Rules would only be adopted where the Rules of this court, as spelt out in the Twelfth Schedule, did not deal with a particular procedure or practice. On that basis, the court expunged the applicant's reply from the record. On the merits, and in a nutshell, the court held that the applicant had failed to discharge the onus resting upon it to prove that the respondent had erred in the manner in which it had treated each of the impugned transactions.

[5] It is upon the decision of the court as aforesaid that the applicant now seeks leave to appeal to the Supreme Court. The applicant attaches a draft notice of appeal which incorporates the intended grounds of appeal. There are twelve of them. They straddle over four pages. Some are split into sub-paragraphs. So all in all, they exceed twelve. On the point *in limine*, the applicant wants to appeal against the decision of the court for having reserved its judgment, only giving a ruling at the same time as the merits. It is argued that, given that the decision of the court was to expunge its reply from the record, the applicant was prejudiced in that it was deprived of the opportunity to submit certain evidence that it considered pertinent.

[6] On the merits, the leave to appeal is sought so as to present before the Supreme Court the argument that in dismissing its appeal, this court misdirected itself by holding that the applicant had failed to prove its case when in actual fact it had. A number of specific findings by the court are impugned. The court is said to have misdirected itself for having refused to accept as income of a capital nature, certain loans and sale proceeds, and some rebates granted to the applicant by some parastatal. The court is also said to have misdirected itself by allegedly failing to recognise as fake a certain letter that the respondent had relied upon in levying on the applicant withholding tax in respect of a certain individual. At the end of argument, I dismissed the application with costs for lack of merit. I gave my reasons *ex tempore*. Here now are the details.

[7] In line with cases such as *Pichanick NO v Paterson* 1993 (2) ZLR 163 (H), in an application for leave to appeal, the court considers the following factors, cumulatively:

- whether there are any reasonable prospects of success;
- whether the amount in dispute is not trifling;
- whether the matter is of substantial importance to one or both of the parties, and
- where does the balance of convenience lie as between allowing an appeal, or refusing it to ensure finality in litigation?

[8] In the present case, the application for leave to appeal falls on all fronts, and more. There is everything wrong with the application. The one defect is the sheer size of the grounds of appeal. They are convoluted. They are repetitive. They are argumentative. They are not concise as required by r 44(1) of the Supreme Court Rules, 2018. Grounds of appeal must be stated clearly and concisely: see *Econet Wireless (Pvt) Ltd v Trustco Mobile (Pty) Ltd & Anor* 2013 (2) ZLR 309 (S). 'Concise' means brief but comprehensive in expression: see *Master of the High Court v Turner* SC 77-93. It is not the business of the court to sift through a morass of verbal matter to identify what valid grounds may be lying submerged: see *Chikura N.O. & Anor v Al Shams Global BVI Ltd* 2017 (1) ZLR 181 (S) and *Songono v Minister of Law and Order* 1996 (4) SA 384 [E].

[9] Grounds of appeal that do not comply with the rules are invalid. If they are invalid the appeal will be struck off the roll. Therefore, the invalidity of any proposed grounds of appeal

speaks to the prospects of success of the appeal. It means that if the appeal is more likely to be struck off the roll, then it has no prospects of success.

[10] On the issues in contention, this application forces the courts into a merry-go-round, like a dog chasing its tail. The appeal is doomed to fail. The grounds of appeal do not go outside the precincts of that judgment. The application goes no further than merely disputing the court's ultimate conclusion. It is replete with the rhetoric that the court should have advised the manner in which the applicant should have proved its case. Courts do not advise litigants the manner in which they have to prove their cases. In some instances, the application seems to imply that the onus had been on the respondent to prove the points in issue. There was no such onus on the respondent. Demonstrably, the applicant is ill-advised.

[11] The judgment of this court which the applicant wants to appeal against devoted generous attention and treatment to all the issues in dispute. It gave detailed reasons on why the applicant's appeal failed. In a nutshell, the court held that on none of the issues in contention did the applicant, at the relevant time, present any credible evidence to support its claims. For example, no evidence of income of a capital nature was presented. There was no evidence of loan monies. In some cases, such as in relation to the issue of the withholding tax, the evidence that was there was actually at war with the applicant's claim.

[12] To argue that the court should not have reserved the point *in limine* for disposal together with the merits but that it ought to have determined it first and given the applicant the opportunity to patch up its case is, with all due deference, puerile. There was nothing irregular in the manner the court disposed of the point *in limine*. An appeal court is unlikely to find fault with that procedure. It is happens all the time in the adjudication of cases. The intended appeal raises no novel or important points of law. The appeal will just overburden the Supreme Court with frivolous and ill-conceived arguments. It intends to turn the Supreme Court into a platform for a trial *de novo*. No court can allow that.

[13] The amount in issue is RTGS $24 167-13. That is meagre. That is trifling. But Mr *Shadreck*, for the applicant, argues that it may be trifling to the respondent, but not to the applicant, allegedly a small to medium business. That is hollow. The assessments of whether or not a sum of money in any given situation is trifling, or of whether or not the matter is of

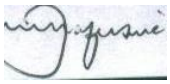
importance to the parties, are not based on the subjective value of the money to the claimant or the subjective interest of the applicant in its own case. They are based on objective parameters. On this aspect, Ms *Chipateni*, for the respondent, lashed out with what was probably a speculative and exploratory punch. She argued that the applicant's legal practitioners' own fees exceeded the amount in dispute. Incredibly, she was right! Mr *Shadreck* conceded the point!

[14] Looking at all the factors cumulatively, the balance of convenience favours leave being refused. In matters like this, no single factor is exclusively decisive. Some factors may be more relevant in some cases than they may be in others. For example, the existence of strong prospects of success may compensate for any inadequacy in the other factors. But in this matter, a consideration of all the factors, whether individually or collectively, return one result, namely that the application lacks merit. The fact that the appeal is moribund and the amount in dispute so trifling, means that, objectively, the matter cannot be that important to the applicant. Therefore, the balance of convenience weighs in favour of dismissing the application. Balance of convenience includes the convenience of the courts as well, not just the parties. It encompasses the whole administration of justice. There ought to be finality in litigation.

[15] It was for the above reasons that the application for leave to appeal was refused and the following order issued:

The application be and is hereby dismissed with costs.

13 September 2021



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