

CUSTOMS EXCELLENCE (PVT) LTD
versus
ZIMBABWE REVENUE AUTHORITY
and
COMMISSIONER GENERAL OF ZIMBABWE REVENUE AUTHORITY, MS F. MAZANI
N.O.
and
B.D. CHADZINGWA N.O. (in his capacity as Commissioner Customs & Excise)

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 15 March 2024 & 10 March 2025

Court Applicant for a Declaratory Order

TS MAWONGERA, for the applicant
TL MARANGE, for the 1st respondent

TAKUVA J:

This is a court application for a declaratory order in terms of section 14 of the High court Act [*Chapter 7:06*].

BACKGROUND FACTS

Applicant is into the business of offering customs and excise consultancy services to importers and exporters in Zimbabwe. It has been so doing for years. Applicant has also represented importers and exporters in line with the provisions of s 219 of the CUSTOMS & EXERCISE ACT [*Chapter 23:02*] (THE ACT). Applicant has been doing this upon being given written authority by persons intending to be represented and presenting such written authority to the respondents who have at all material times been allowing applicant to so act.

On 5th day of July 2019, applicant received a letter from third respondent barring it from acting on behalf of exporters and importers until it was registered as a Clearing Agent.

Respondents opposed the application on two grounds namely;

(a) that the applicant has instituted civil proceedings without notifying the first Respondent as required by section 196 of the Act.

(b) that section 219 should be read subject to section 216A of the Act.

In respect of the 1st point, applicant relies on section 196 (1) of the Act. The section provides:-

“196

(1) No civil proceedings shall be instituted against The State, The Commissioner or an officer for anything done or omitted to be done by The Commissioner or an officer under this Act or any other law relating to customs and excise until sixty days after notice has been given in terms of the State Liabilities Act [*Chapter 8:15*].”

Section 6(1) of The State Liabilities Act provides:-

“Subject to this Act, no legal proceedings in respect of any claim for –

- a. money, whether arising out of contract, delict or otherwise, ; or
- b. the delivery or release of any goods; and whether or not joined with or made as an alternative to any other claim, shall be instituted against –
- c. (i) The State; or
(ii) The President, Vice President or any Minister of Deputy Minister in his official capacity; or
(iii) any officer or employee of the State in his official capacity; unless notice in writing of the intention to bring the claim has been served in accordance with subsection (2) at least sixty days before the institution of the proceedings.”

Whether or not section 196(1) applies to an action for a declaratory application depends on whether or not such proceedings are civil in nature. The difficulty is that the term “civil proceedings” is not defined in the Act. In *Quest Motor Manufacturing (Pvt) Ltd v Zimbabwe Revenue Authority & 2 Ors* (57/2024) [2024] the Supreme Court stated that;

“The term “civil proceedings”, is however not defined in Customs and Excise Act. It is needless to emphasise that the essence of the preliminary point in the court below was dependent on a positive finding that the proceedings in question were indeed “civil proceedings” within the context of s 196(1).

Therefore it follows that once the nature of proceedings became a sticking point in the determination of the preliminary point. The court *a quo* was obliged to make a finding on the issue raised by the appellant.

Given that the characterisation of legal proceedings as civil, criminal or otherwise is not always clear out, a court hearing a dispute involving a question as to whether or not proceedings are civil in nature must make the necessary findings based on the circumstances of the case. It is not possible for a court to characterise proceedings as civil without having sufficient regard to several criteria from which that conclusion can be made. While a reading of s 196(1) of the Customs and Excise

Act on its own does not reveal any ambiguity, it is s 6(1) of the State Liabilities Act that triggers the need to interrogate the nature of civil proceedings referred to in s 196(1).” (emphases added)

In *Quest’s* case *supra* the issue was whether or not “review proceedings” were “civil proceedings” within the context of s 196(1) of the Act? The Supreme Court allowed the appeal and remitted the matter to the court *a quo* for a hearing afresh before a different judge. The reason for remittal was to enable a proper consideration of the preliminary point raised and of the authorities relied upon by the parties with respect to the point.

In *casu*, the issue is whether or not an application for a declaratur amounts to “civil proceedings” within the meaning of section 196(1) of the Act as read with s 6(1) of the State Liabilities Act? As was pointed out *supra* section 196(1) is clear. However s 6(1) of the State Liabilities Act brings in the need to interrogate its meaning especially s 6(1)(a) thereof. The relevant portion reads as;

“__ No legal proceedings in respect of any claim for;
(a) money, whether arising out of contract, delict or otherwise or __” (my emphasis)

In *casu*, it is necessary to explore the effect of the declaratur to the parties. Applicant has been operating with respondent over sometime. Applicant would enter into contracts with importers and exporters to provide consultancy services for monetary benefits. The applicant and respondent would engage and deal with each other until the 8th of July 2019 when the respondent wrote to the applicant in the following terms *inter alia*;

“__ With immediate effect, ZIMRA will not be dealing with your company or deal with any letters from your company on any business you may want to conduct on behalf of importers or exporters.” (the underlining is mine)

In light of the dispute in *casu*, if the declaratur is granted as prayed, its effect would be to allow the applicant to continue practicing by representing exporters and importers for monetary benefit.

In my view these proceedings fall under civil proceedings within the context of s 196(1) as read with section 6(1)(a) of the State Liabilities Act. For this kind of a declaratur, applicant is required to give notice to the respondent. See also *Betty Dube v Zimbabwe Revenue Authority* HB 4/14 where it was held that the fact that one intends to seek a declaratur does not entitle him or her to disregard the peremptory provisions of the Customs & Excise Act.

In the present matter I find that, the requisite notice is required and it was not given. The matter is not properly before me. I therefore order that –

1. The matter be and is hereby struck off the roll with costs.

TAKUVA J:

Mawonera Attorneys, applicant's legal practitioners

Zimra Legal Division, first respondent's practitioners