

SANDRA MAZVITA GONAH

And

ZIMBABWE REVENUE AUTHORITY

And

THE COMMISSIONER GENERAL ZIMBABWE REVENUE AUTHORITY

IN THE HIGH COURT OF ZIMBABWE
NDUNA J
BULAWAYO 07 APRIL 2025

Opposed Application

J. Dubiwa for the applicant
T. L Marange for the Respondent

NDUNA J:

This matter comes before the court as an application for declaratory relief wherein the applicant seeks a declaration that the respondent Zimbabwe Revenue Authority's (ZIMRA) conduct specifically the post-clearance audit conducted without a requisite certificate, is unlawful. Respondent raises a preliminary objection, contending that the application is fatally defective due to the applicant's failure to comply with the 60 day notice requirement stipulated under Section 196(1) of the Customs and Excise Act [*Chapter 23:02*] (Hereinafter, referred to as the Act).

FACTUAL BACKGROUND

The applicant in this matter, imported a 2018 Toyota Fortuner into Zimbabwe through the Beitbridge Border Post in March 2018. The vehicle was cleared under an immigration rebate (reference number ZWBB/MT/IMM/REB/66/03/18), which permits returning residents to import vehicles duty-free, provided they comply with certain conditions. These conditions included retaining ownership of the vehicle for at least two years, not leaving Zimbabwe for more than six

months without notifying the respondent, and producing the vehicle and relevant documents for verification if requested.

In February 2019, the Respondent initiated a post-clearance verification audit, requesting applicant to present her current passport, the vehicle registration book, and the physical vehicle for inspection and she did not comply with this request. A subsequent request was made in March 2022, wherein the respondent explicitly cited Section 223A of the Act as the legal basis for the audit. Applicant, through her legal representatives, responded by demanding written authorization from the Commissioner General, as required under Section 223A (5) of the Act, and a copy of the immigration rebate form. The Respondent refused to provide the requested authorization, arguing that the audit was conducted under the general powers granted to its officers by Section 9 of the Customs and Excise Act, which does not require such authorization.

After the respondent refused to comply with her request for authorization, the applicant filed an application in the High Court of Zimbabwe seeking a declaratory order to nullify the post-clearance audit. Her application was grounded on the argument that the audit was conducted unlawfully, as the respondent failed to produce the Commissioner's written authorization as mandated by Section 223A(5) of the Act. She further sought an order setting aside all actions taken by the respondent under the audit and the lifting of any restrictions placed on the vehicle.

SUBMISSIONS FROM THE PARTIES

RESPONDENT'S POINTS IN LIMINE

Failure to give notice in terms of Section 196 of the Act.

First, the respondent emphasized the plain wording of Section 196(1), which states in unequivocal terms that "*no civil proceedings shall be instituted... until 60 days after notice has been given.*" The respondent argued that the present application clearly constitutes civil proceedings as defined in the Civil Evidence Act [*Chapter 8:01*], and thus the notice requirement is binding. The fact that the matter is before the High Court, a civil jurisdiction where strict rules of evidence apply, further reinforced this interpretation.

The Respondent referred to cases where it was held that institution of proceedings without the requisite notice are null and void. In the case of *Betty Dube v ZIMRA* HB 2/2014, the High Court ruled that even declaratory relief requires prior notice under Section 196(1) of the Act. The respondent also invoked the long-standing principle from *Schierhout v Minister of Justice* (1926 AD 99), which held that failure to comply with mandatory statutory preconditions renders proceedings fundamentally void.

Wrong basis for waiving notice requirement

Secondly, the applicant has relied on Section 196(2) as a basis for waiving the notice requirement. The respondent clarifies that this subsection pertains only to prescription periods for instituting claims, not the notice requirement itself. It therefore argues that the applicant's argument that the court can dispense with the notice due to an absence of prejudice is legally untenable.

In light of these arguments, the respondent moves for the matter to be struck off the roll with costs, as the proceedings were instituted in contravention of a mandatory statutory provision.

The applicant in countering respondent's preliminary objection averred that Section 196(1) must be read harmoniously with Section 6 of the State Liabilities Act, which governs proceedings against the state. Crucially, Section 6(1) stipulates that notice is only required for proceedings involving "the payment of money or the delivery or release of goods." The applicant contends that the present matter does not fall within this category, as it seeks purely declaratory relief specifically, a declaration that ZIMRA's post-clearance audit without a certificate is unlawful. Since no monetary compensation or release of goods is sought, the notice requirement is inapplicable.

The applicant further argued that even if the court finds the notice requirement applicable, no conceivable prejudice arises from its omission in this case. Unlike claims for financial compensation or the release of seized goods where the state requires time to assess liability this application raises a pure legal question about the lawfulness of ZIMRA's actions. The absence of any financial implication for the state justifies the court's discretion to waive strict compliance under Section 196(2).

Additionally, the applicant distinguished the authorities cited by respondent. The cases of *K International* and *Betty Dube*, *supra*, while affirming the notice requirement, involved claims that directly implicated state finances or goods unlike the present declaratory proceedings. The applicant thus submits that these precedents are not on point and should not bar the court from adjudicating the substantive issues raised.

ISSUE FOR DETERMINATION

The issue that falls for determination is whether the applicant's failure to provide the mandatory 60 day notice prior to instituting these proceedings renders the application fatally defective, notwithstanding that the relief sought is declaratory in nature.

APPLICATION OF THE LAW

Section 196(1) of the Customs and Excise Act [*Chapter 23:02*] provides as follows:

"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 [*Chapter 8:14*] reaffirms this position as follows:

"No legal proceedings in respect of any claim for the payment of money or the delivery or release of any goods... shall be instituted against the State or any officer thereof unless notice in writing of the intention to institute the proceedings has been given..."

ANALYSIS

The applicant contends that the notice requirement under Section 196(1) of the Act is inapplicable to the present matter as the relief sought is purely declaratory and does not involve any claim for monetary compensation or the release of goods. The applicant further argues that, even if the notice requirement were applicable, the absence of prejudice to ZIMRA should allow the court to exercise its discretion and waive the requirement.

However, the courts have consistently interpreted Section 196(1) as a peremptory provision that applies to all civil proceedings, including those seeking declaratory relief. In *Sithole v ZIMRA* HH 248-22, the court emphasized that the requirement to give notice is mandatory and non-compliance renders the proceedings a nullity where it held on pp 4 that,

“S196(1) of the Act does not grant immunity but is a necessary provision for the proper administration of justice when dealing with State institutions. I agree with Mr *Marange* on this observation. The applicant failed to comply with the mandatory provision to give notice”.

Similarly, in *Gutusa and 34 Others v ZIMRA* HH 203 - 24 at pp9, the court reiterated that failure to comply with Section 196(1) renders an application a nullity, regardless of the nature of the relief sought.

“Section 196 refers to any civil proceedings and spoliation proceedings are civil proceedings. In my view this is undeniable. *In casu* whether or not the nature of the cause of action is steeped in common law is neither here nor there because essentially the relief is for the recovery of motor vehicles seized by the respondent in terms of the provisions of the CEA. Further section 6 (a) of the State Liabilities Act refers to claims arising out of contract, delict or otherwise. Paragraph (b)a1 of the same section clearly shows that claims for delivery or release of any goods are covered as those proceedings that are restricted. I take the view that as long as the court proceeding are against the Commissioner or his officers and involves their conduct in terms of CEA, it becomes immaterial that the cause of action is delictual, contract, common law or otherwise”.

The applicant's reliance on Section 196 (2) as a basis for waiving the notice requirement is misplaced. Section 196(2) pertains to the prescription period for instituting claims and does not provide the court with discretion to waive the notice requirement under Section 196(1).

This position was affirmed in *Mapisa v ZIMRA* HMA 03-22 pp3 where the court stated:

"The provisions of s 196(1) of the Act are evidently peremptory. There is nothing in s 196(1) suggestive of any discretionary powers on the part of the court to dispense with the giving of notice. They admit of no doubt that the giving of notice is a condition precedent to the institution of any claim against either the State or any officer of the 1st respondent".

The applicant's argument that Section 6 of the State Liabilities Act limits the notice requirement to claims involving money or goods is also unpersuasive. Section 196(1) of the Customs and Excise Act specifically references the State Liabilities Act but does so to incorporate the procedural requirement of notice, not to limit its application. The specificity of Section 196(1) in requiring notice for "anything done or omitted to be done by the Commissioner or an officer under this Act" indicates a legislative intent to encompass all civil proceedings arising under the Customs and Excise Act, including those seeking declaratory relief.

DISPOSITION

In light of the foregoing, the applicant's failure to comply with the mandatory 60-day notice requirement under Section 196(1) of the Customs and Excise Act renders the application fatally defective. The court is bound by precedent to uphold the peremptory nature of this provision, and as such, the application cannot be entertained. In the result, it is ordered as follows:

1. The preliminary objection raised by the respondent is upheld.
2. The application is hereby struck off the roll with costs.

Mashayamombe & Company Attorneys, applicant's legal practitioners
ZIMRA Legal Department, respondent's legal practitioners