TWOTAP LOGISTICS (PVT) LTD
versus
ZIMBABWE REVENUE AUTHORITY
and
MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 28 June 2024 & 26 February 2025

Court Application For A Declaratory Order

L. Machauku, for the applicant
H. Muromba, for the first respondents
A. Magunde, for the second respondent

TAKUVA J:

This is a court application for a declaratory order made in terms of s 14 of the High Court Act [*Chapter 7:06*]. The application seeks to ensure that anything done contrary to the peremptory provisions of legislation is declared null and void and is of no force or effect.

BACKGROUND FACTS

On 18th August 2020, first respondent's Regional manager, Forbes & Environs Region declared forfeited applicant's property being a vehicle and its trailer REGAEZ 740.

APPLICANT'S CASE

It is contended by applicant that the purported forfeiture was done contrary to the provisions of the Customs and Excise Act (the Act). Further applicant submitted it has an interest in an existing legal right and that it is in the interests of justice for the court to exercise its discretion in favour of the declaratory order sought.

RESPONDENT'S CASE

Respondent raised prescription as a point *in limine*. This argument is premised on the provisions of s 196(1) of the Act. The section provides;

> "1. No civil proceedings shall be instituted against the State, the Commissioner General or an officer for anything done or omitted to be done by the Commissioner General or an officer under this Act or any other law relating to customs and exercise until 60 days after notice has been given in terms of the State Liabilities Act [*Chapter 8:14*].
> 2. Subject to subsection (12) of s 193, any proceedings referred to in subsection 1 shall be brought within 8 months after the cause thereof arose, and_ _ _ _"

The prescriptive provisions set out under the Act were interpreted by the Supreme Court in *TwoTap Logistics (Pvt) Ltd* v *Zimbabwe Revenue Authority* SC 3/23 wherein the court held that;

> "Connected to the above is the fact that the cause of action contemplated under s. 193(12) is the seizure of the appellant's truck trailer and its contents. Under s 196(2) the cause of action is different and wider than just seizure of property.
>
> S 196(1) provides for the 60 day notice required to be given to the respondent and the officer before any civil proceedings arising from their actions or omissions under the Act are instituted. S 196(2) provides that for such civil proceedings (other than against seizure) the period of prescription shall run for 8 months reckoned from the date that the cause of action arose. (own brackets)
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> As the term "civil proceedings" is all embrasive it must include proceedings against forfeiture of property as opposed to seizure of the same. In *casu* the cause of action is not seizure but forfeiture of property. The period of prescription is thus the eight months provided for under s 196(2)."

In *casu*, the applicant is challenging the propriety of the first respondent's Regional Manager's conduct. It argues he had no authority to declare forfeiture of the property. This challenge is done via civil proceedings, making the application fall squarely within the ambit of s 196(2) of the Act. It matters not in my view that the application has been couched as an application for a declaratory order. The term "civil proceedings" is wide and all embracing – Two Tap *supra*. The prescriptive periods set out in s 196 of the Act apply to the applicant's application.

It is common cause in *casu* that forfeiture was communicated to the applicant on 18 August 2020. Any civil proceedings challenging it (including by way of an application for a declaratory order such as the present) ought therefore to have been launched within eight (8) months, that is on or before 18 April 2020. By failing to do so, applicant's cause prescribed and became unrecoverable at law.

Extensive reliance was placed on the authority of *Ndlovu* v *Ndlovu* 2013 (1) ZLR 110 (H) in support of the proposition that the remedy of a declaratory order cannot prescribe. In my view such reliance is misplaced and misleading. In the present matter, the court is concerned with the Customs & Excise Act where as in Ndlovu the court was interpreting provisions of the

PRESCRIPTION ACT [*Chapter 8:11*] and whether the remedy sought there under fell within the narrow scope of a "debt".

In all the circumstances, I take the view that applicant's cause has prescribed in terms of s 196(2) of the Customs and Excise Act.

DISPOSITION

It is therefore ordered that;

1. The application be and is hereby dismissed.
2. The applicant be and is hereby ordered to pay first respondent's costs.

TAKUVA J: ……

Tembani Gomo Law Practice, applicant's legal practitioners
Kantor and Immerman Legal Practitioners, first respondent's legal practitioners
Civil Division of The Attorney General, second respondent's legal practitioners