

BRIAN MUNYARADZI  
versus  
ZIMBABWE REVENUE AUTHORITY

HIGH COURT OF ZIMBABWE  
**WAMAMBO J**  
HARARE; 5 May 2024 and 4 March 2025

**Opposed Matter**

*T Mawere and R P Kashiri*, for the applicant  
*T L Marange*, for the respondent

WAMAMBO J: The applicant prays for a review of the matter and an order that the penalty conditions imposed by the Commissioner General under REF HQ 10/50/180/2023 be set aside and the motor vehicle a Toyota Fortuner be released unconditionally to him.

The background of the matter is that applicant entered Zimbabwe via the Beitbridge Border Post in a Toyota Fortuner which he alleges was driven by one Simbarashe Ngoshi and which he had been given and authorised to drive by the owner Tongesai Chigwamba. Notably this version of events in its detail is impugned by the respondent through documentation and analysis thereof.

The bottom line is the said Fortuner motor vehicle was seized by respondent. According to the applicant the reasons he was given for the seizure initially were changed as time went on.

The dispute went through the channels of respondent's institution culminating in the matter being placed before the Commissioner General as an appeal. The appeal was dismissed on the basis that the submission of incorrect information was a serious offence. The Commissioner upheld the Regional Manager's decision.

The applicant impugns the decision of the Commissioner on various grounds. The details thereof are contained in paragraphs 3.14 to 4 of applicant's founding affidavit.

Respondent is opposed to the application. Her version of what transpired at Beitbridge Border Post are different from the version given by the applicant.

Respondent avers as follows:-

On 15 July 2023 applicant arrived at Beitbridge Border Post driving a 2016 Toyota Fortuner. The officer manning the desk discovered that applicant was driving a vehicle which had recently changed ownership in South Africa. It was discovered that applicant was in the company of a passenger he had picked up at Musina. It was revealed that the passenger Simbarashe Ngoshi is the owner of the motor vehicle. Simbarashe himself revealed that he bought the motor vehicle in South Africa and registered it in the name of T Chigwamba since he did not have the requisite documentation to register the vehicle in South Africa.

The investigations by respondent unearthed a can of worms Tongesai Chigwamba the registered owner of the motor vehicle has an expired permit and his passport was not stamped since 2019.

The Commissioner, Customs upheld the Regional Manager's decision requiring applicant to pay USD 15 622.08 and payment of storage charges since seizure.

It is submitted that respondent's decision is supported by law and can not be set aside. However, the court can refer the matter back for a reconsideration since it cannot substitute the respondent's decision by its own.

The applicant raise a appoint *in limine* to the effect that the opposing affidavit filed on behalf of the respondent (ZIMRA) is fatally defective on account of the deponent thereto not being authorised to depose to such affidavit.

Section 211 of the Customs and Excise Act [*Chapter 23:02*] is relevant. It provides that each officer designated by the Commissioner General.

“Shall have and is hereby vested with power and authority to administer an oath or to attest an affidavit in every case in which by this Act or by any other law relating to customs and excise on oath or affidavit is permitted or required.”

To that end every designated officer is clothed with vested authority in terms of the Customs and Excise Act.

In this case it is demonstrated that the deponent to the opposing affidavit is a designated officer of the respondent as a Regional Manager, Beitbridge Region.

Also see ss 21A and 238 of the Customs and Excise Act [*Chapter 23.02*]. To that end I find that the preliminary point has no merit and it is dismissed.

In para 12(c) of the opposing affidavits respondent says:

“(c) There cannot be an unconditional release of the vehicle based on a review application because the court can only refer the matter back for a consideration since it cannot substitute the respondent’s decision by its own.”

In the case of *Affretair (PVT) Ltd v M K Airlmes (Pvt) Ltd*

1996(2) ZLR 15 AT page 21 E-F it is said thus

“The duty of the courts is not to dismiss the authority and take over its functions, but to ensure, as far as humanly and legally possible that it carries out its functions fairly and transparently. If we are satisfied it has been done that we cannot interfere just because we do not approve of its conclusion. But at the other end of the scale if the conclusion is hopelessly wrong, the courts may say that it could only have been arrived at by reference to improper considerations or by failure to refer to proper considerations. In these cases we reason backwards from the effect to the cause. We say the result is so bizarre that the process by which it was reached must have been unfair or lacking in transparency.”

It is important to emphasize the role of the respondent as an administrative authority.

MUSITHU J in *PCBUL Investments v Zimbabwe Revenue Authority* HH 532/24 at p 13 to 14 put it thus-

“It brings to the fore the respondent’s role as an administrative authority for purposes of the Administration of Justice Act (the AJA). The AJA seeks to provide for the right to administrative action and decisions that are lawful reasonable and procedurally fair. The AJA seeks to entrench and operationalise the right to administrative justice which is enshrined in s 68 of the Constitution. Section 68(1) of the Constitution provides that every person has a right to administrative conduct that is lawful, prompt efficient, reasonable, proportionate impartial and both substantively and procedurally fair.”

In the circumstances the Commissioner’s decisions, whether by himself or through a delegated authority are bound to be scrutinised with reference to the Administration of Justice Act [*Chapter 10:28*].

In the circumstances of this case the Regional Manager Beitbridge Region made the following decision.

“RE: IMPORTATION OF MOTOR VEHICLE: T.I.P VIOLATION: NOTICE OF SEIZURE NUMBER 034529L OF 15 JULY 2023: BRIAN MUNYARADZI: TOYOTA FORTUNER CHSH AHTJA3GS30023842  
Reference is made to the above.”

The facts of the matter are that you allowed your vehicle which was cleared under TIP to be driven to Zimbabwe by another person who is a resident of Zimbabwe. This is an offence in terms of s 182 of the Customs and Excise Act [*Chapter 23:02*] and s 104 of the S.I 154 of 2001. This rendered the vehicle liable to forfeiture and hence were seized. However, I am prepared to release the motor vehicle from seizure subject to the following terms and conditions.

- a) Payment of a duties amounting to USD 15622.08.
- b) Payment of penalty amounting to USD 14 059.87.

c) Payment of storage charges from date of seizure.

If you wish to recover the motor vehicle on these terms you should submit your payment of the above amounts to the Regional Manager of the Zimbabwe Revenue Authority at Beitbridge.....”

This letter is dated 1 August 2013. Surprising another letter (see p 19 of the record) is generated by the same officer dated 04 August 2023. The terms and conditions have been changed to delete the payment of a penalty of US14 059.87

It is unclear what the duty is for, considering that the violation alleged are the terms of the T.I.P. It is unclear how the figures are arrived at and why they were changed only 3 days apart.

The Commissioner General’s decision is based on applicant’s infraction of s 174(4)(1)(e) of the Customs and Excise Act. The reference to the T.I.P violation is placed as a red herring. It simply states “Your client also violated T.I.P regulations. The bulk of the decision by the Commissioner however, relates to an infraction of s 174(4)(1)(e) which issue was not covered by the Regional Manager in her decision. There is a discord in the Regional Manager’s findings and the Commissioner’s findings.

It becomes unclear why the motor vehicle was seized. The penalty arrived at is also not justified as it is said to be duty payable. There is no clear nexus between duty payable and a violation of the T.I.P or an infraction of s 174(4)(1)(e).

In the circumstances the full facts upon which the decisions were made are not explained. This court is left to guess which facts gave rise to the decisions, in the light of the paucity of information or clarity thereof.

In the circumstances I find that there is need for the respondent to revisit his decision in the light of the challenges as propounded above. This court can not however, order that the motor vehicle be returned to the applicant as this would amount to substituting respondent’s decision by its own.

I find that respondent’s decision was not reasonable proportionate, impartial and substantively, fair in the circumstances.

None of the parties is the victor in this case and the matter is also of public interest. I will order that each party pays its own costs.

Accordingly, it is ordered as follows;

1. The decision and penalty imposed by the Commissioner under REF: HQ/10/50/180/2023 be and is hereby set aside.

2. Each party shall bear its own costs.

**WAMAMBO J:.....**

*Zimbabwe Revenue Authority, applicants' legal practitioners*  
*Gumbo & Associates, respondents' legal practitioners*