PROSECUTOR GENERAL
versus
NOTIFY ENTERPRISES PRIVATE LIMITED
and
TWALUMBA CIVILS PRIVATE LIMITED
and
TRANSTAR ENTERPRISES PRIVATE LIMITED
and
MASTER OF THE HIGH COURT
and
MIRIAM SIBANDA
and
MIRIAM SIBANDA N.O
and
REGISTRAR OF DEEDS

HIGHCOURT OF ZIMBABWE
CHIKOWERO J
HARARE; 12 October 2024, 12 November 2024 & 15 January 2025

**Judgment**

*C Mutangadura,* for the plaintiff
*L Madhuku,* for the 1st, 2nd, 3rd, 4th, 6th and 7th defendants
5th and 8th defendants in default

**CHIKOWERO J:**

[1] This judgment deals with a point of law that I raised when the matter was referred to me for trial.

[2] With the consent of both counsel I issued a structured order setting out timeframes within which the parties were to file heads of argument dealing with that preliminary point. The matter was then adjourned to 12 November 2024 for argument.

[3] On 5 January 2024 the plaintiff issued summons together with a declaration against the defendants. In relevant part, the summons reads as follows:

"To the Defendants named above;

1. The following property to be declared tainted and therefore liable to forfeiture to the State on the basis that property acquired after 28 June 2013 is forfeited under s 79 as read with s 80 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] whereas property acquired when the Serious Offences (Confiscation o Profits) Act was in force be and is hereby forfeited under s 24 of the same Act:
    a. (a)…(ii)…"
    Underlining is mine for emphasis)

[4] In para(s) 1(a)-(c) and (f) – (g) of the summons the plaintiff lists property sought to be forfeited in terms of ss 79 and 80 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (the Money Laundering Act). The point that I deal with in this judgment does not relate to this property.

[5] What is of concern to me is what the plaintiff, in para(s) 1(d), (e), (h) – (o), (p) – (ii) of the summons lists property acquired in 2009 and 2010. She relies on s 24 of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] (the Serious Offences Act) to seek an order for the civil forfeiture of the property in issue.

[6] All except the fifth and eighth defendants entered notices of appearance to defend, filed and served their pleas, their Pre Trial Conference papers and, in due course, appeared at the Pre Trial Conference held before a judge of this Cour. At no point did the defendants take issue with the competence of that portion of the cause of action founded on s 24 of the Serious Offences Act. A perusal of the record indicates that the plaintiff will call ten witnesses at the trial with a great deal of their evidence dealing with the claim which is based on s 24 of the Serious Offences Act. In light of the position that the said statute had already been repealed by the time that summons was issued, in the exercise of this court's powers to regulate its own processes, I took the view that it was prudent to intervene in the manner already indicated.

[7] Section 24 of the Serious Offences Act reads:

"24. Forfeiture where person cannot be brought before Court.

(1) Where the Attorney General suspects on reasonable grounds that any person has acquired, holds or is dealing with tainted property and it is not possible-

(a) for any reason to bring the person before a court on a charge for any serious offence; or

(b)…

he may apply to the High Court for an order declaring the property forfeited to the State.

> (2) The High Court may, on an application in terms of subsection (1), if it is satisfied that the property concerned is tainted property and that it is in the interests of justice that the property be forfeited to the State, order accordingly."

[8] This matter was argued on the assumption that s 24 of the Serious Offences Act dealt with an application for an order for civil based, not criminal, forfeiture of tainted property. I am prepared to proceed on that basis.

[9] The Money Laundering Act came into force on 28 June 2013. Its purpose is set out as being:

> "An Act to suppress the abuse of the financial system and enable the unlawful proceeds of all serious crime and terrorists acts to be identified, traced, frozen, seized and eventually confiscated; to repeal the serious offences (Confiscation of Profits) Act [*Chapter 9:17*]; to amend the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*], the Bank Use Promotion and Suppression of Money Laundering Act [*Chapter 24:24*], the Building Societies Act [*Chapter 24:02*] and the Asset Management Act [*Chapter 24:26*]; and to provide for matters connected therewith or incidental thereto." (underlined for emphasis).

[10] In the circumstances, there can be no doubt that the Serious Offences Act was repealed by the Money Laundering Act on 28 June 2013.

[11] Section 2 of the Interpretation Act [*Chapter 1:01*] (the Interpretation Act) defines repeal to include "rescind, revoke and cancel." A repeated statute is rescinded or evoked or cancelled. It cannot be used as it is non existent.

[12] Mr Mutangadura submitted that the plaintiff can competently found a cause of action on s 24 of the Serious Offences Act. He relied on s 17 of the Interpretation Act. That section reads:

> "17. Effect of repeal of enactment.
>
> (1) Where an enactment repeals another enactment, the repeal shall not-
>  (a) Revive anything not in force or existing at the time at which the repeal takes effect; or
>  (b) Affect the previous operation of any enactment repealed or anything duly done or suffered under the enactment so repealed; or
>  (c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed; or
>  (d) …
>  (e) Affect any…legal proceedings or remedy in respect of any such right, privilege, obligation … and any such…legal proceeding or remedy shall be exercisable, continued or enforced…as if the enactment had not been so repealed."

[13] The meaning of s 17 of the Interpretation Act was rendered in *Chigovera* v *Minister of Energy and Power Development and Anor* SC 115/21. There, the court said at pp 18 – 19:

> "A disannulled enactment is for all intents and purposes dead. In my estimation, it cannot even be revived by the continuing effects preserved by s 17(1)(c) of the Interpretation Act. Those continuing effects may, however, be disannulled on proof that they were rights or obligations acquired or accrued from the repealed enactment."

At pp 19 – 20 the Court concluded:

> "The case of Ranger, supra, properly defines the stage at which a right or obligation accrues under s 17(1)(c) of the Interpretation Act. It accrues only when the beneficiary takes active steps to assert the right or obligation before the repeal of the Act and is preserved if the repealing Act does not in context oust the provisions of s 17(1)(c) of the Interpretation Act."

[14] In short, in line with Chigovera, supra, the plaintiff cannot found a cause of action on a repealed statute in circumstances where she issued the summons when that statute had already been repealed. This is not a case where the plaintiff issued summons before the repeal of the Serious Offences Act and is seeking to continue with such legal proceeding after the repeal of the said statute.

[15] The Money Laundering Act does not save any provisions of the repealed Serious Offences Act, s 24 included. This means that the law applicable to applications for orders for civil forfeiture at the time of the issuance of summons was and remains the Money Laundering Act. It cannot be both ss 79 and 80 of the Money Laundering Act and s 24 of the Serious Offences Act. There are no parallel pieces of legislation on this subject.

[16] Section 79(2) of the Money Laundering Act reads as follows:

> "(2) Orders for civil forfeiture may not be granted with respect to property acquired or used before this Act came into force."

In *Prosecutor General* v *Chiba, Sikwila* v *The Prosecutor General & Ors, Manitho & Anor* v *The Prosecutor General and Ors, MTU Family Trust* v *The Prosecutor General, Chidemo* v *The Prosecutor General* SC 19/24 the court said of this provision, at p 39 para 149:

> "Section 79(2) prohibits the granting of civil forfeiture orders in respect of property acquired or used before the Act came into force on 28 June 2013. The court *a quo* therefore correctly held that a civil forfeiture order could not be granted in this case because the property was bought and used before the Act came into effect."

There can be no clearer statement of the law. By relying on two causes of action in one summons (the one based on ss 79 and 80 of the Money Laundering Act and the other on s 24 of the repealed Serious Offences Act) the plaintiff is attempting to defeat the intention of the Legislature as expressed in s 79(2) of the Money Laundering Act and endorsed by the Supreme Court. Indeed, the plaintiff is taking the mantle of the Legislature and, in one fell swoop, repealing s 79(2) of the Money Laundering Act and re-enacting the repealed Serious Offences Act. She is also effectively urging this court to overturn a judgment of the Supreme Court. All this demonstrates that the concerned cause of action is incompetent.

[17] In somewhat different circumstances, the Supreme Court has recently found no merit in submissions falling back on the repealed Serious Offences Act in a spirited bid to circumvent the intention of the Legislature as codified in s 79(2) of the Money Laundering Act. In *Chitukutuku and Ors* v *The Prosecutor General and Ors* SC 103/24 the following appears at pp 17 – 18:

> "THE FIRST RESPONDENT'S SUBMISSIONS ON APPEAL
>
> Per contra, Mr Mutangadura, counsel for the first respondent submitted that civil forfeiture was not introduced through the Money Laundering and Proceeds of Crime Act but had always been there as far back as 1990 under the Serious Offence (Confiscation of Profits) Act [*Chapter 9:17*]. It was his submission that the principle of retrospectivity applied to the taking away of substantive rights. He submitted that property acquired before the coming into operation of the Money Laundering and Proceeds of Crime Act was liable to forfeiture if it can be proved that it is tainted."

The court dealt with this argument at p 28. It said:

> "There is no doubt that a civil forfeiture order cannot be applied retrospectively. This is by virtue of s 79(2) of the Money Laundering and Proceeds of Crime Act which provides that :
>
> 'Orders for civil forfeiture may not be granted with respect to property acquired or used before this Act came into force.'
>
> Therefore, counsel for the first respondent was not correct to submit that forfeiture could be justified on the basis of the repealed Serious Offences (Confiscation of Profits) Act. The Money Laundering and Proceeds of Crime Act makes no provision for saving of acts done when the Serious Offences (Confiscation of Profits) Act was in operation."

In my judgment, what the plaintiff is seeking to do in the present matter is to get round the "no retrospectivity" hurdle by directly relying on the Serious Offences Act itself. This the plaintiff cannot do. That Statute is no more. There is a new piece of legislation, as pointed out in Chitukutuku, supra. The current enactment has no savings clause.

[18] The plaintiff's claim, in the respects pointed out at para 5 of this judgment, is incompetent.

[19] The issue of costs does not arise. The parties did not pray for costs.

[20] In the result, IT IS ORDERED THAT:

1. Para(s) 1(d), (e), (h) – (o), (p) – (ii) of the prayer to the plaintiff's summons issued on 5 January 2024 under case number HCH 51/24 and the corresponding paragraphs of the prayer to the plaintiff's declaration be and are struck out.

2. Each party shall bear its own costs.

**CHIKOWERO J**:……..

*The National Prosecuting Authority*, plaintiff's legal practitioners
*Mundia and Mudhara*, first, second, third, fourth, sixth and seventh, defendant's legal practitioners