RAINBOW TOURISM GROUP LIMITED
versus
DENNIS MANGOSI N.O
and
CRISPEN KABAZA N.O
and
H CHAPWANYA N.O
and
ZIMUNHU N.O
and
ZIMBABWE ANTI-CORRUPTION COMMISSION

HIGH COURT OF ZIMBABWE
DEME J
HARARE, 17 September 2024 and 15 January 2025.

Opposed Application

T Magwaliba, for the applicant.
N B Munyuru, for the 2nd-5th respondents.
No appearance for the 1st respondent.

DEME J: The Applicant in this matter is a company registered as such in terms of the company law of Zimbabwe. The first Respondent is the presiding officer who granted the warrant of search and seizure which is under review. The second to fourth Respondents are employees of the fifth Respondent. The fifth Respondent is a constitutional and public entity charged with the responsibility of investigating corruption.

The Applicant approached this court seeking a review of a decision made by the first Respondent who granted a search and seizure warrant against the Applicant. The application for review is based on ss 26, 27 and 29 of the High Court Act [*Chapter 7:06*]. The Applicant, in its draft order, prayed for the following relief:

1. "The application for review be and is hereby granted.
2. The decision of the 1st Respondent to issue a warrant of search and seizure dated 11th January 2024 under reference WSS-ZACC Number 3477/24 be and is hereby declared null and void and is hereby set aside.
3. The warrant of search and seizure issued by the 1st Respondent under reference WSS-ZACC Number 3477/24 and dated 11th January 2024 be and is hereby quashed and set aside.
4. The Respondents shall bear the costs of this application, on the Legal Practitioner and client scale, only if they oppose this application."

The relief on the face of the court application is worded differently. On the face of the court application, the Applicant sought the relief couched in the following manner:

1. "The decision by the 1st Respondent to issue the warrant of search and seizure number WSS-ZACC3477/24 was grossly irregular.
2. The warrant of search and seizure number WSS-ZACC3477/24 be and is hereby set aside.
3. The 1st, 2nd,3rd and 4th Respondent (sic) shall bear the costs of this application on the higher scale of attorney and client."

The present application is based on the following grounds for review:

1.1 "The 1st Respondent grossly misdirected himself in granting a warrant that does not state the name of the accused person who allegedly committed acts consisting the alleged offence of money laundering or illegal dealings in foreign currency. The decision of the 1st Respondent to issue the warrant was therefore grossly irregular.

1.2 The 1st Respondent further misdirected himself in issuing a warrant of search and seizure which does not disclose what acts of money laundering or illegal dealings in foreign currency are alleged which form the basis of investigation. The lack of sufficient accuracy at the time of the issuance of the warrant of search and seizure shows that the 1st Respondent did not apply himself when he issued the defective warrant.

1.3 The warrant is based on the contravention of a non-existent section of the Exchange Control Act, which is section 4 (1) (a) (ii) of the Exchange Control Act (Chapter 22:05). This can only mean that the 1st Respondent did not apply his mind to the application for the warrant and is so unreasonable in its defiance of logic that no reasonable person in the position of the 1st Respondent would have arrived at it.

1.4 The 1st Respondent exhibited bias and/or grossly misdirected himself in that he granted a warrant that seeks to seize a payroll, employment contracts as well as all payments by the Applicant to its executives where the allegation is that there was money laundering as defined in s 8 (2) of the Money Laundering and Proceeds of Crime Act (Chapter 9:24). However, that section prescribes use of proceeds of crime in transactions and it is unreasonable to suggest that salaries to executives are proceeds of crime. The decision to grant the warrant is so unreasonable in its defiance of logic that the only conclusion is that 1st Respondent must have taken leave of his senses in arriving at such conclusion.

1.5 The 1st Respondent further misdirected himself in issuing a warrant against a non-existent entity being "Rainbow Tourism Group" as opposed to the listed entity "Rainbow Tourism Group Ltd" which makes the warrant fatally defective, vague and embarrassing leaving the state to search and seize articles belonging to anyone on the mere allegation that they form part of this group or association. The decision to issue the warrant was grossly irregular.

1.6 The warrant is the product of bias on the part of the 1st and 2nd Respondents wherein the 1st Respondent sat as a magistrate and issued a similarly defective warrant in favour of the 2nd Respondent and against the applicant in September 2023 claiming to be investigating fraud. That warrant was challenged under HC6066/23 and an urgent chamber application was granted staying execution of the same under HCH6081/23"

On 11 January 2024, the first Respondent issued the warrant of search and seizure upon application made by the second to fourth Respondents. In particular, the relevant portion for the warrant for search and seizure is as follows:

"Whereas, from information taken upon oath before myself, there are reasonable grounds for believing that the Chief Executive Officer or any other person in authority at Rainbow Tourism Group Head Office situated at No. 1 Pennefather Avenue, Harare are in possession or in control of the following documents, records which are required as exhibits in the criminal docket and that are necessary for the purpose of investigating or detecting a case of money laundering as defined in Section 8(2) of the Money Laundering and Proceeds of Crime Act Chapter 09:24 and or illegal dealings in foreign currency as defined in section 4(1)(a)(ii) of the Exchange Control Act [*Chapter 22:05*] *to examine the documents and make extracts from the copies of all such document.*

It is therefore directed that the Chief Executive Officer or some other person in the authority at Rainbow Tourism Group Head Office situated at No. 1 Pennefather Avenue, Harare provide the following documents, records and articles to the officers of the law who are bearers of this warrant;

- Certified documents of:
  i. Rainbow Tourism Group payrolls in respect of Napoleon Kudakwashe Mtukwa, Tapiwa Mari, MacGerald Tendai Madzivanyika, Tichaona Gabriel Hwingwiri, Laurence Dhemba and Shupikai Marware for the period extending from January 2022 to date.
  ii. Rainbow Tourism Group contracts of employment in respect of the abovementioned individuals.
  iii. Any other payments made by Rainbow Tourism Group to the above mentioned individuals including the supporting paperwork for such payments."

Armed with the warrant for search and seizure, the second to the fourth Respondents visited the Applicant's office where they sought to execute the warrant. The search and seizure warrant specified that persons in authority at Rainbow Tourism Group were to hand over to second to fifth Respondents certified documents of payrolls of the Rainbow Tourism Group top executive officers, their employment contracts and any other supporting paperwork for any payments made. The allegations by the second to fifth Respondents were that the documents were to be used as exhibits in a criminal docket and investigation of a case of money laundering or illegal dealings in foreign currency.

According to the Applicant, the named top officials in the employ of the Applicant were not part of any criminal investigations nor were they aware of any money laundering charges laid against them. The Applicant further claimed that the warrant did not name any suspects. The Applicant additionally contended that it is a corporate entity that is expected to comply with corporate governance requirements which include the auditing of financial statements by external auditors and hence the allegations are unfounded. The Applicant's counsel argued that the actions of the Respondents amount to a witch hunt. The Applicant strongly believes that

the second Respondents did not have any evidence to prove any of the alleged offences and therefore the decision taken by the first Respondent was unprocedural and unfair.

The Applicant also averred that a similar warrant had been issued by the first Respondent, under WWS-ZACC3376/23 dated 1 September 2023, authorising the second to fifth Respondents to search and seize documents from the Applicant's offices. In that situation the Applicant had been left with no option but to approach the court on an urgent basis in an application for stay of execution. An interim order was granted in this court by Honourable MAXWELL J in case number HCH6081/23. The terms of the interim order granted by this court are as follows:

> "1. INTERIM RELIEF GRANTED
>
> Pending determination of this matter under HC6077/23, the applicant is granted the following relief; the execution of the warrant under reference WSS; ZACC Number 3376/23 dated 01st September 2023 be and is hereby stayed."

The Applicant prayed for an order in terms of the draft with an order of costs against the Respondents on a higher scale as it is of the firm view that the Respondents' actions amount to abuse of court process. The Applicant believes that the first Respondent should be particularly censured for failure to apply his mind in a just and fair manner.

The application was opposed by the second to fifth Respondents. The second to the fifth Respondents averred that the Applicant failed to set out the basis for the setting aside of the decision by the first Respondent and subsequently the quashing of the said search and seizure warrant. They vehemently denied that the warrant is a fishing expedition. Rather, they insisted that the required documents are for assisting in investigations related to money laundering activities allegedly taking place at the Applicant's premises. The second to fifth Respondents affirmed that it is not a requirement for a warrant to state names of a suspect or accused person for it to constitute a lawful warrant. According to the second to the fifth Respondents the warrant needs only to specify the items to be seized and the place at which such items are to be seized from.

It is the case of the second to the fifth Respondents that the fifth Respondent has a constitutional mandate to ensure that cases of money laundering and corruption are investigated. According to the second to the fifth Respondents, the fact that the Applicant regularly carries out audits does not mean that the Applicant cannot be a potential suspect of a

financial crime. The 2nd to the 5th Respondents further asserted that if the Applicant has nothing to hide it should not resist a lawful search and seizure.

The second to the fifth Respondents maintained that the required documents would provide a paper trail of all monies paid out to the Applicant's named officials. They further claimed that there is a correlation between the alleged offences and the required documents.

With respect to the citation of a non-existent section, namely s 4 (1) (a) (ii) of the Exchange Control Act, the second to fifth Respondents argued that this does not render the warrant defective as the alternative charge of money laundering remains correct. In response to the allegation that the warrant was broad in its scope and could result in a search being sanctioned anywhere in Zimbabwe, the second to fifth Respondents alleged that the warrant cited the Applicant's office address in Harare. Hence, according to the second to the fifth Respondents, the search is limited to a place specified in the warrant.

The second to fifth Respondents asserted that proceedings in HCH6081/23 were not connected to the present ones as this is a new warrant related to money laundering activities and not fraud. Therefore, it is the second to fifth Respondents' case that the Applicant is not being candid with the court.

The second to the fifth Respondents maintained that most of the grounds for review are based on a misunderstanding of the requirements of a valid warrant, and the rest are simply based on "falsehoods". They asserted that the present application is an act by the Applicant to derail ongoing investigations and an attempt to seek the court's help to do so. The Respondents prayed for a dismissal of the application with costs on a legal practitioner and client scale.

In its answering affidavit, the Applicant insisted on its grounds of review. The Applicant maintained that the warrant amounts to a mere fishing expedition wherein the Respondents hope the Applicant incriminates itself as they lack any evidence to prove their allegations.

According to the Applicant, the opposing affidavit seeks to introduce a new offence of corruption which is not alluded to in the warrant in question. The Applicant further averred that the Respondents are on a witch hunt mission. It further argued that the second to fifth Respondents are not exactly sure about the offence they are investigating.

The Applicant claimed that the admission by the fifth Respondent in its opposing affidavit that one of the offences does not exist is further proof that the first Respondent did not apply his mind when deliberating on the issuing of the warrant. The factors that the first Respondent relied upon in deciding to grant the warrant are unclear and thus further proof that

the first Respondent did not fully apply his mind but instead merely issued the warrant upon the request of the fifth Respondent.

The Applicant maintained that the warrant states that "…the CEO or any other person employed at Rainbow Tourism Group..." which is very broad and does not restrict the search to one province. The Applicant therefore affirmed that the warrant is defective and irregular and should be set aside.

The sole issue that exercises my mind is whether the decision of the first Respondent may be set aside based on one or more of the grounds specified in the present application.

The relevant law regulating the issuance of the warrant for search and seizure is s 50 of the Criminal Procedure and Evidence Act [*Chapter 9:07] (*hereinafter called "the Criminal Procedure and Evidence Act"*)* which provides as follows:

> "**50 Article to be seized under warrant**
> (1) Subject to sections fifty-one, fifty-two and fifty-three, an article referred to in section forty-nine shall be seized only by virtue of a warrant issued—
> (a) by a magistrate or justice (other than a police officer), if it appears to the magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of any person, or upon or in any premises or area, within his area of jurisdiction; or
> (b) by a judge or magistrate presiding at criminal proceedings, if it appears to the judge or magistrate that any such article in the possession or under the control of any person or upon or in any premises is required in evidence in the proceedings.
> (2) A warrant issued in terms of subsection (1) shall require a police officer to seize the article in question and shall to that end authorize such police officer, where necessary—
> (a) to search any person identified in the warrant or any premises within an area identified in the warrant; or
> (b) to enter and search any premises identified in the warrant, and to search any person found upon or in those premises.
> (3) A warrant—
> (a) may be issued on any day and shall be of force until it is executed or it is cancelled by the person who issued it or, if that person is not available, by a person with like authority; and
> (b) shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.
> (4) A police officer executing a warrant in terms of this section shall, before or after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant."

The State is empowered to seize articles in terms of s 49 of the Criminal Procedure and Evidence act which provides as follows:

> **"49 State may seize certain articles**
> (1) The State may, in accordance with this Part, seize any article—
> (a) which is concerned in or is on reasonable grounds believed to be concerned in, the commission or suspected commission of an offence, whether within Zimbabwe or elsewhere; or

(b) which it is on reasonable grounds believed may afford evidence of the commission or suspected commission of an offence, whether within Zimbabwe or elsewhere; or
(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.
(2) A police officer who seizes and removes any article in accordance with this Part, whether under or without a warrant, must make a full receipt in duplicate for the article so seized and removed, and—
(a) give a copy of it to the owner or possessor thereof (unless the owner or possessor of the article is arrested in connection with an offence involving the article, in which case paragraphs (b), (c) and (d) following apply); or
(b) in the absence of the owner or possessor, or if the owner or possessor of the article is arrested in connection with an offence involving the article, or if the owner or possessor is unknown or cannot be ascertained by the police officer after due inquiry, give a copy of it to (as the case may be)—
(i) the person apparently in charge or control of or in lawful occupation of the land, premises upon or in which the article is seized; or
(ii) the person apparently in charge or control of the vehicle, vessel or aircraft from which the article is seized;
or
(c) in the absence of the persons referred to in paragraph (b), give a copy of it to (as the case may be—
(i) an apparently responsible person present upon or in the land or premises from which the article
is seized; or
(ii) an apparently responsible person present as a passenger within the vehicle, vessel or aircraft from which the article is seized and removed;
or
(d) in the absence of all of the persons referred to in paragraph (a), (b) and (c), attach or leave a copy of the receipt in any part of the premises, land, vehicle, vessel or aircraft from which the article to which the receipt relates was seized and removed.
(3) If an owner or possessor from whom any article is seized in accordance with this Part did not receive a full receipt therefor by reason having been arrested in connection with an offence involving the article, he or she shall have the right to demand and receive such a receipt immediately upon being released on bail or upon being conditionally released, and thereupon he or she becomes entitled to all the rights provided under this Part to holders of such receipts.
(4) Any police officer responsible for the seizure of an article under this Part who—
(a) fails to comply with subsection (2);
(b) fails, upon a demand being made by an owner or possessor of the article pursuant to subsection (3), to furnish a full receipt in respect of that article;
shall, unless the article or articles in question are articles whose possession is intrinsically unlawful, be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment."

It is clear from the provisions of the Zimbabwe Anti- Corruption Commission Act [*Chapter 9:*22] (hereinafter called "the Zimbabwe Anti-Corruption Commission Act") that the fifth Respondent can perform certain police functions as are conferred upon by the Act. Section 13(2)-(5) of the Zimbabwe Anti-Corruption Commission Act provides as follows:

"(2) The Commission shall exercise its powers concurrently with those of the police.

(3) In exercising its powers, the Commission shall be governed by the relevant provisions of the Criminal Procedure and Evidence Act [*Chapter 9:07*] which govern the police.

(4) An officer who intends to make any search, entry or seizure for the purposes of this section shall—

(a) notify the officer commanding the police district in which the officer intends to make the search, entry or seizure; and

(b) be accompanied by a police officer assigned to him or her by the police officer referred to in paragraph (a):

Provided that where an officer has reason for believing that any delay involved in obtaining accompaniment of a police officer would defeat the object of the search, entry or seizure, he or she may make such search, entry or seizure without such police officer.

(5) In the event of any conflict arising in the exercise of their powers between the Commission and the Zimbabwe Republic Police, the Prosecutor-General shall have the power to intervene and direct the parties to do anything that in his or her opinion must be done to resolve the conflict."

In its first ground, the Applicant is impugning the warrant for search and seizure for its failure to mention the accused. According to the Applicant, the first Respondent committed an act of gross misdirection by failing to appreciate this defect. The Applicant drew the court's attention to the requirements and form of a valid warrant of search and seizure as elucidated by **B Crozier** in Criminal Procedure in Zimbabwe as read with Criminal Procedure in Zimbabwe by John Reid-Rowland, some of which are that:

"A warrant should also specify the alleged crime that gives rise to its issue, and the alleged offender; failure to do so will invalidate it."

Section 50(2) of the Criminal Procedure and Evidence Act provides the essential requirements of the warrant. According to this provision, the person and area to be searched are to be identified. Section 50(2) of the Criminal Procedure and Evidence Act provides as follows:

"(2) A warrant issued in terms of subsection (1) shall require a police officer to seize the article in question and shall to that end authorize such police officer, where necessary—

(a) to search any person identified in the warrant or any premises within an area identified in the warrant; or

(b) to enter and search any premises identified in the warrant, and to search any person found upon or in those premises."

The need to identify the accused has not been singled out as one of the key requirements in terms of Section 50(2) of the Criminal Procedure and Evidence Act. Once the person and area to be searched, are sufficiently identified, the object of search and seizure may be fulfilled without any difficulty. Mr *Munyuru* correctly submitted that the warrant meets all the essential statutory requirements. Mr *Munyuru* further submitted that a distinction must be drawn between the requirements of the warrant and the requirements of the charge sheet. He referred the court to the cases of *Minister of Safety and Security* v *Van der Merwe and Ors*[1] and *Elliot* v *Commissioner of Police*[2] which outlined other requirements of the warrant which include the following:

- Name of the searcher;
- The authority of the searcher;
- The person to be searched;
- The container or premises to be searched;
- Items to be seized.

Where the scholarly view is in conflict with the statute, the latter prevails. Thus, the provisions of s 50(2) of the Criminal Procedure and Evidence Act which is not in harmony with the scholarly view of Crozier, must prevail. In my view, the first ground for review lacks merit and must fail on this basis.

The second ground for review seeks to attack the warrant on the basis that it fails to disclose the alleged acts of money laundering or illegal dealings in foreign currency. Adv Magwaliba contended that the warrant must specify the essential elements of money laundering alleged to have been committed for the warrant to be valid. By failing to appreciate this defect, Adv *Magwaliba* submitted that the first Respondent misdirected himself.

It is my firm conviction that the statute is clear. Section 50 (2) of the Criminal Procedure and Evidence Act does not provide for the requirement specified by the Applicant in its second ground of review. The relevant portion of the warrant is as follows:

> "Whereas, from information taken upon oath before myself, there are reasonable grounds for believing that the Chief Executive Officer or any other person in authority at Rainbow Tourism Group Head Office situated at No. 1 Pennefather Avenue, Harare are in possession or in control of the following documents, records which are required as exhibits in the criminal docket and that are necessary for the purpose of investigating or detecting a case of money laundering as

[1] CCT/10
[2] 1986 (1) ZLR 228 (H).

> defined in Section 8(2) of the Money Laundering and Proceeds of Crime Act Chapter 09:24 and or illegal dealings in foreign currency as defined in section 4(1)(a)(ii) of the Exchange Control Act [*Chapter 22:05*] to examine the documents and make extracts from the copies of all such documents."

The first Respondent, in my view, was convinced by evidence placed before him that certain documents are possessed by individuals identified and that such documents may assist in the investigations of the offences alleged. It is apparent that investigations are a delicate process which should be conscientiously executed to avoid the jeopardising of evidence. Disclosing further details of alleged acts would defeat the course of justice. Accordingly, the second ground is unmerited.

In its third ground for review, the Applicant alleged that the first Respondent misdirected himself by approving the warrant which is based on a non-existent section, i.e. Section 4(1)(a)(ii) of the Exchange Control Act [*Chapter22:05*]. Adv *Magwaliba* argued that the act by the first Respondent of granting the warrant which provides for the non-existent provision of the law is a sign that the first Respondent did not apply his mind to the issues outlined in the warrant. He further argued that no-one can be charged with the non-existent offence.

It is common cause that the alternative charge arising from s 8(2) of the Money Laundering and Proceeds of Crime Act [*Chapter 09:24*] is founded on a correct provision. As correctly argued by the counsel for the second to fifth Respondents, where the alternative charge is correctly cited, the ground for review lacks merit. Adv *Magwaliba*'s arguments would have made sense in the absence of alternative charge. Consequently, this ground must fail.

In the fourth ground for review, the Applicant argued that the first Respondent misdirected himself by approving the warrant which authorised the seizure of a payroll, employment contracts as well as all payments by the Applicant to its executives. According to the Applicant, the items sought to be seized are not relevant for purposes of money laundering. Mr. *Munyuru* submitted that the money laundering involves movement of funds. He further argued that the documents sought will assist the fifth Respondent with the investigations.

The Applicant's assumption that the documents sought by the fifth Respondent are not relevant for purposes of investigating money laundering may be only an exercise of wild imagination. What is clear is that wherever monies exchange hands, money laundering cannot be ruled out. The Applicant's fourth ground of review, in the absence of further substantiation,

is failing the realities of the various dimensions of money laundering which are capable of being committed even at the workplace. Resultantly, this ground is baseless.

In the fifth ground of review, the Applicant averred that its name was not correctly cited and hence the warrant is invalid. Adv *Magwaliba* argued that the wrong citation of the Applicant cannot be described as a miscitation. It is not disputed that the Applicant's head office is based at No. 1 Pennefather Avenue, Harare, the address specified in the warrant. It is not disputed that the individuals identified in the warrant are employees of the Applicant. No allegation has been made that there is a certain juristic person claiming the same name specified in the warrant. Mr. *Munyuru* also referred the court to the case of *Mapondera and 55 Ors* v *Freda Rebecca Gold Mine Holdings Limited*[3], where, in paragraph 32, the Supreme Court held that:

> "[32]The learned judge beautifully articulates the law in circumstances that are on all fours with the case at hand. In the same vein, in *Masuku* v *Delt Beverages*[4] the same court held that:
> "… generally, proceedings against a non-existent entity are void *ab initio* and thus a nullity. However, where there is an entity which through some error or omission is not cited accurately, but where the entity is pointed out with sufficient accuracy, the summons would not be defective."'

Adv *Magwaliba* maintained that the case of *Mapondera* (*supra)* is inapplicable to the present circumstances as it only relates to the case of misdescription. In my view, the Applicant's name as specified in the warrant is a case of misdescription. It is common cause that the Applicant is identified by the name "Rainbow Tourism Group Limited." In the warrant, the Applicant is identified as "Rainbow Tourism Group". There is a misdescription of the Applicant's name in the warrant where the word "Limited" is missing from the Applicant's name. This is a clear case of misdescription otherwise called miscitation.

In my view, requiring that the warrant must, with striking exactness, specify the name of the juristic person to be searched will not be ideal at the stage of investigations where information may be scarce and scanty. In my view, the description of the Applicant is sufficient for one to be able to identify the correct juristic person.

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[3] SC81/22.
[4] 2012 (2) Z LR 112 (H)

Pursuant to the fifth ground for review, the Applicant's counsel argued that the warrant is wide in its scope. Mr. *Munyuru* submitted that the warrant is narrow in its scope as it is only restricted to the head office of the Applicant.

I do agree with Mr. *Munyuru*'s submissions. The warrant specifies that:

> "It is therefore directed that the Chief Executive Officer or some other person in the authority at Rainbow Tourism Group Head Office situated at No. 1 Pennefather Avenue, Harare provide the following documents, records and articles to the officers of the law who are bearers of this warrant;
>
> - Certified documents of:
>
> iv. Rainbow Tourism Group payrolls in respect of Napoleon Kudakwashe Mtukwa, Tapiwa Mari, MacGerald Tendai Madzivanyika, Tichaona Gabriel Hwingwiri, Laurence Dhemba and Shupikai Marware for the period extending from January 2022 to date.
>
> v. Rainbow Tourism Group contracts of employment in respect of the above-mentioned individuals.
>
> vi. Any other payments made by Rainbow Tourism Group to the above-mentioned individuals including the supporting paperwork for such payments."

From the warrant, it is clear that the search and seizure will be restricted to the head office of the Applicant at the address specified in the warrant. This address has not been disputed. The names of the persons to be searched have been clearly identified. It has not been disputed that they are the employees of the Applicant. To this end, the argument that the warrant is wide in its scope lacks any foundation. Accordingly, the fifth ground for review is baseless.

In its last ground of review, the Applicant affirmed that the first and second Respondents misdirected themselves by recrafting a new offence after the execution of the warrant based on fraud which was stayed by this court. In my opinion, the issue of the previous warrant is irrelevant at this stage. The Applicant must concentrate on the merits or otherwise of the warrant which is before me. In the absence of further evidence of the previous warrant, I see no merit in this argument especially in light of the fact that the offences in the two warrants are different.

Additionally, the counsel for the Applicant argued that naming the Chief Executive Officer of the Applicant as the person to be searched is incompetent. Adv *Magwaliba* referred the court to the case of *JDM Agro Consult Marketing (Pvt) Ltd* v *The Editor of the Herald Newspapers and Anor*[5]. In this case, the court held that the Plaintiff cannot sue the Editor of

[5] HH61/07.

the newspaper as this person is neither a natural nor a legal person. The court beautifully commented as follows:

> "The editor of a newspaper is the person responsible for the editorial content of such newspaper. It is a position that is occupied for the appropriate period by such individual employed in that capacity. It is therefore an occupation wherein the occupant can change from time to time. It is not a natural or legal person and there is no person identified by that name. The citation of the first defendant in that form is therefore irregular. It matters not, in my view, that the two defendants entered appearance to defend and proceeded to file a plea. The process of filing pleadings under those names would not have imbued the summons with any form of legality. There was no summons for them to plead to given that there were no persons answering to the names on the summons. They cannot be identified as such."

Having perused the grounds for review before me, I am failing to establish the ground which was being motivated by this argument. Assuming that I may have missed this ground for review, it is my opinion that the case of *JDM Agro Consult Marketing (Pvt) Ltd* (*supra)* was focusing on civil procedure where the judgment would have to be enforced against certain persons. If the individual is wrongly identified, it may be difficult if not impossible to enforce the judgment against the officer of an entity who may change from time to time. The rule, in my view, can be relaxed in the criminal justice system where information ought to be obtained for purposes of administering justice. Employing the same principles would jeopardise investigations, in my view. The role of the Applicant's Chief Executive Officer is very simple. He is supposed to surrender the documents specified in the warrant. If the Chief Executive Officer is not available, according to the warrant, any other person in authority at the Applicant's premises may furnish the fifth Respondents with such documents. Accordingly, the argument raised by Adv *Magwaliba* is without merit.

It is an established principle in our jurisdiction that superior courts must be reluctant to act where it is invited to interfere with unterminated proceedings at the inferior courts where exceptional circumstances have not been demonstrated. In the case of *Machipisa* v *Nduna No and Anor,* the Supreme Court beautifully propounded as follows:

> "It is now trite that superior courts will not lightly interfere with unterminated proceedings brought on review before them. They can only do so in exceptional circumstances where the trial court's proceedings will have been affected by gross irregularities which irredeemably vitiates the proceedings. Unterminated proceedings can also be reviewed and set aside if the interlocutory order of the trial court is clearly wrong."

Further, the superior courts can only interfere with unfinished proceedings from the lower courts where the superior court has detected gross miscarriage of justice which cannot

be corrected by any other means. In the case of *Attorney General* v *Makamba*[6], MALABA JA (as he then was) said:

> "The general rule is that a superior court should intervene in uncompleted proceedings in the lower courts only in exceptional circumstances of proven gross irregularity vitiating the proceedings and giving rise to a miscarriage of justice which cannot be redressed by any other means or where the interlocutory decision is clearly wrong as to seriously prejudice the rights of the litigant."

The reasoning behind the superior court's reluctance to interfere with uncompleted matters from the lower courts is to encourage finality to litigation. Entertaining applications based on unterminated proceedings in the absence of exceptional circumstances would militate against the speedy conclusion of the criminal justice system. The favoured approach, in the absence of compelling reasons, which has been adopted by our superior courts is to wait for the finalisation of the proceedings. In the case of *Prosecutor General of Zimbabwe* v *Intratek Zimbabwe (Pvt) Ltd*, *Wicknell Munodaani Chivayo and L Ncube*[7], MAKARAU JA (as she then was) dealing with the same issue at p 8 of the cyclostyled judgment said:

> "Thus, put conversely, the general rule is that superior courts must wait for the completion of the proceedings in the lower court before interfering with any interlocutory decision made during the proceedings. The exception to the rule is that only in rare or exceptional circumstances where the gross irregularity complained of goes to the root of the proceedings, vitiating the proceedings irreparably, may superior courts interfere with on-going proceedings.
>
> The rationale for the general rule may not be hard to find. If superior courts were to review and interfere with each and every interlocutory ruling made during proceedings in lower courts, finality in litigation will be severely jeopardised and the efficacy of the entire court system seriously compromised.
> Further, it is not every irregular and adverse interlocutory ruling or decision that amounts to an irreparable miscarriage of justice. Some such lapses get corrected or lose import during the course of the proceedings. And in any event, as observed by STEYN CJ in *Ishamel & Ors v Additional Magistrate Wynberg & Anor* (*supra)*, it is not every failure of justice which amounts to a gross irregularity justifying intervention before completion of trial. Most can wait to be addressed on appeal or review after final judgment."

The present application has failed to establish the justification for this court's intervention with the court *a quo's* decision. On this basis, the present application lacks merit.

Let me mention in passing that, after the hearing of this matter, as I was perusing the present application, it came to my mind that the grounds for review in the present application fail to comply with the provisions of Rule 62(2) of the High Court Rules, 2021 which provides as follows:

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[6] 2005 (2) ZLR 54 (S) at 648D
[7] SC 67/20

> "(2) The court application shall state shortly and clearly the ground upon which the applicant seeks to have the proceedings set aside or corrected and the exact relief prayed for all of which shall appear on the face of the court application."

The grounds for review are argumentative and unnecessarily long and winding. Given that I did not put this to the legal practitioners at the time of hearing of this matter, I will not proceed to determine the effect of Applicant's non-compliance with the rules.

With respect to costs, I am of the view that there is no reason to punish the Applicant for exercising its constitutional right. In the result, it is ordered as follows:

The Application be and is hereby dismissed with no order as to costs.

Mushoriwa Pasi Corporate Attorneys, applicant's legal practitioners.
Muvingi and Mugadza, second to fifth respondents' legal practitioners.