

CNBM INTERNATIONAL COMPANY ZIMBABWE (PRIVATE) LIMITED
versus
WASHINGTON KUSEMAMURIWO
and
UNIGOLD SOLAR INSTALLATIONS (PRIVATE) LIMITED
and
KINGSTONE NHIRA

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE, 15 & 20 August 2024

Opposed Application

C Chabvepi, for the plaintiff
P Mapiye, for 2nd and 3rd defendants

MAMBARA J: This matter is brought before the High Court of Zimbabwe by the plaintiff, CNBM International Company Zimbabwe (Private) Limited, under the common law remedy of *condictio furtiva*. The plaintiff seeks to recover the value of solar electrical equipment, totalling US\$37 578, allegedly stolen by the defendants. The legal framework of this case revolves around the plaintiff's right to reclaim stolen property or its value and the defendants' contention is that the High Court lacks jurisdiction to entertain this matter.

The defendants, have raised a special plea. They argue that the proper forum for this case is either the magistrates court, due to its monetary jurisdiction, or the Commercial Division of the High Court, due to the commercial nature of the dispute. The defendants' challenge is based on the provisions of the magistrates court (Civil Jurisdiction) (Monetary Limits) Rules, 2023, as well as the High Court (Commercial Division) Rules, 2020.

The core issue in this matter is whether the High Court, sitting in its Civil Division, possesses the jurisdiction to adjudicate this dispute. The resolution of this issue is crucial for determining the appropriate forum for this matter.

The plaintiff, CNBM International Company Zimbabwe (Private) Limited, is a company duly incorporated in Zimbabwe. The plaintiff alleges that between November 2022 and April 2023, the defendants unlawfully removed various solar electrical equipment from its

premises. These goods were taken without payment and with the intent to permanently deprive the plaintiff of its property. The stolen items include solar panels, batteries, and inverters, all of which are crucial to the plaintiff's business operations.

The plaintiff initiated legal proceedings in the High Court, seeking relief under the doctrine of *condictio furtiva*, which is a remedy available under Zimbabwean common law for the recovery of the value of stolen property. The plaintiff's claim is for US\$37 578, which represents the total value of the stolen equipment.

In response, the defendants filed a special plea, contesting the jurisdiction of the High Court. They argue that the case should have been brought before the magistrates court, as the value of the claim falls within the monetary limits prescribed by SI 45 of 2023. Alternatively, the defendants contend that the matter should have been instituted in the Commercial Division of the High Court, as the dispute is commercial in nature.

The plaintiff, however, maintains that the High Court has original and inherent jurisdiction over all civil matters in Zimbabwe, including this one. The plaintiff argues that the defendants' special plea is without merit and should be dismissed.

The jurisdiction of the High Court of Zimbabwe is established under s 13 of the High Court Act [*Chapter 7:06*], which provides that the High Court shall have "full original civil jurisdiction over all persons and over all matters within Zimbabwe." This provision grants the High Court comprehensive authority to hear and determine any civil matter, regardless of the nature of the claim or the value involved.

Furthermore, s 171 of the Constitution of Zimbabwe Amendment No. 20 Act 2013 reaffirms the High Court's jurisdiction, stating that the High Court "has original jurisdiction over all civil and criminal matters throughout Zimbabwe." This Constitutional provision underscores the High Court's role as the primary judicial forum for resolving civil disputes in the country.

In addition to these statutory and constitutional provisions, the High Court's inherent jurisdiction is a well-established principle in common law. In the landmark case of *Rutsate v Ndaveni Wedzerai*, SC 22/2020, the Supreme Court of Zimbabwe held that the High Court's jurisdiction is unlimited, allowing it to adjudicate any civil dispute, regardless of the claim's nature or value. This principle has been consistently upheld in Zimbabwean jurisprudence, reinforcing the High Court's authority to hear cases that might otherwise fall within the jurisdiction of lower courts.

The defendants' special plea is grounded in the provisions of the magistrates court (Civil Jurisdiction) (Monetary Limits) Rules, 2023, as set out in SI 45 of 2023. These rules prescribe that the magistrates court has jurisdiction to hear civil matters where the value of the claim does not exceed US\$50 000. The defendants argue that since the plaintiff's claim is for US\$37 578, it falls within the monetary jurisdiction of the magistrates court, and therefore, the High Court should not entertain the matter.

However, this argument overlooks a critical aspect of Zimbabwean law: the jurisdiction of the magistrates court does not preclude the High Court from hearing matters that fall within the lower court's monetary limits. Section 53 of the High Court Act [*Chapter 7:06*] provides that if a matter that could have been brought in the magistrates court is instituted in the High Court, the High Court may still preside over the case, but the costs recoverable by the successful party shall not exceed those that would have been recoverable in the magistrates court.

This statutory provision clarifies that the High Court's jurisdiction is not ousted by the monetary limits applicable to the magistrates court. Instead, it allows for the concurrent jurisdiction of both courts, with the only consequence being a limitation on the costs recoverable in the High Court. This principle ensures that litigants have the option to bring their claims before the High Court, even if the value of the claim falls within the monetary limits of the magistrates court.

The establishment of the Commercial Division of the High Court has been a significant development in the administration of justice in Zimbabwe. The Commercial Division provides a specialized forum for resolving commercial disputes, with a focus on efficiency, expertise, and the timely resolution of complex business matters. The rules governing the Commercial Division, as set out in the High Court (Commercial Division) Rules, 2020, are designed to streamline the adjudication of commercial cases and to provide a forum that is tailored to the needs of the business community.

However, it is important to note that the creation of the Commercial Division does not diminish the jurisdiction of the Civil Division of the High Court. Both divisions are integral parts of the High Court, and they share concurrent jurisdiction over civil and commercial matters. The allocation of cases between the divisions is primarily an administrative function, aimed at ensuring that cases are heard in the most appropriate forum.

While the establishment of the Commercial Division has undoubtedly enhanced the efficiency and expertise in handling commercial disputes, it does not create an exclusive jurisdiction over such matters. The High Court, sitting in its Civil Division, retains the authority

to hear commercial disputes. This position was confirmed in the case of *Angel Hill Mining Company v Rumgold Trading (Pvt) Ltd* HH 69-23, where the court held that the establishment of the Commercial Division does not oust the jurisdiction of the Civil Division of the High Court. The court emphasized that both divisions are part of the same High Court, and judges can hear any matter allocated to them, regardless of its commercial nature.

Moreover, in the case of *Slice Through Investments (Pvt) Ltd v Nirgel Trucking and Plant Hire (Pvt) Ltd* HB 45/23, the court further clarified that the rules governing the Commercial Division cannot oust the jurisdiction of the General Division of the High Court. The court held that subsidiary legislation, such as the rules establishing the Commercial Division, cannot alter or undermine the substantive law that grants the High Court its jurisdiction.

These cases reinforce the principle that the High Court's jurisdiction is broad and encompasses both civil and commercial disputes. The plaintiff's decision to bring this matter before the Civil Division of the High Court is therefore legally sound, and the defendants' contention that the case should have been heard in the Commercial Division is without merit.

The concept of inherent jurisdiction is fundamental to the functioning of superior courts, such as the High Court of Zimbabwe. Inherent jurisdiction refers to the power of a court to regulate its own processes and to hear any matter that falls within its purview, even in the absence of explicit statutory authority. This power is essential for maintaining the court's ability to administer justice effectively and to address any gaps in the statutory framework.

In the context of this case, the High Court's inherent jurisdiction allows it to entertain the plaintiff's claim under *condictio furtiva*. The doctrine of *condictio furtiva* is a common law remedy that enables a party to recover the value of stolen property from the thief or any person who has wrongfully benefited from the theft. This remedy is rooted in principles of equity and justice, aiming to restore the victim to the position they would have been in had the theft not occurred.

The plaintiff's decision to invoke *condictio furtiva* before the High Court is consistent with the court's inherent jurisdiction to hear civil matters of this nature. The plaintiff's claim involves complex issues of law and fact, including the determination of liability for the theft and the calculation of damages. The High Court, with its broad jurisdiction and expertise, is well-equipped to adjudicate these issues and to ensure that justice is done.

The defendants' special plea, which seeks to limit the High Court's jurisdiction based on the value of the claim, fails to appreciate the significance of the court's inherent jurisdiction.

The High Court's authority to hear this case is not constrained by the monetary limits applicable to the magistrates court. Instead, the court's inherent jurisdiction allows it to consider the merits of the case and to render a decision that is fair and just, regardless of the value involved.

The monetary jurisdiction of the magistrates court, as prescribed by SI 45 of 2023, serves as a guideline for determining the appropriate forum for civil claims based on their value. However, it is important to recognize that these monetary limits are not intended to restrict the High Court's jurisdiction. Instead, they provide a framework for allocating cases between the High Court and the magistrates court, with the aim of promoting judicial efficiency and ensuring that cases are heard in the most appropriate forum.

The decision to bring a case before the High Court, even when it falls within the monetary limits of the magistrates court, is ultimately a matter of judicial discretion. Litigants may choose to file their claims in the High Court for various reasons, including the complexity of the legal issues involved, the need for a more thorough examination of the evidence, or the desire to have the case heard by a higher court with broader jurisdiction.

In exercising its discretion to hear such cases, the High Court must consider the interests of justice and the specific circumstances of each case. In this matter, the plaintiff's claim involves allegations of theft, fraudulent conduct, and significant financial losses. These issues are of sufficient complexity and importance to warrant the attention of the High Court. The court's inherent jurisdiction allows it to hear the case, even if it could have been brought before the magistrates court, and to ensure that the plaintiff's claim is fully and fairly adjudicated.

Moreover, the High Court's discretion to hear cases within the monetary limits of the magistrates court is further supported by s 53 of the High Court Act. This provision ensures that the High Court can preside over such cases, with the only limitation being on the costs recoverable by the successful party. This approach strikes a balance between maintaining the High Court's broad jurisdiction and encouraging the efficient use of judicial resources by directing lower-value claims to the magistrates court.

The defendants' special plea is further weakened by the contradictory nature of their arguments. On the one hand, the defendants argue that the magistrates court is the proper forum for this case due to its monetary jurisdiction. On the other hand, they contend that the matter should have been brought before the Commercial Division of the High Court, based on the commercial nature of the dispute.

These arguments are inherently contradictory and reflect a lack of a coherent legal position. The defendants cannot simultaneously argue that the magistrates court is the only

forum with jurisdiction while also asserting that the High Court's Commercial Division has exclusive jurisdiction. This inconsistency undermines the credibility of the special plea and suggests that the defendants are attempting to delay the proceedings by raising spurious jurisdictional challenges.

In legal proceedings, it is essential for parties to present clear and consistent arguments that are grounded in the law. The defendants' failure to do so in this case indicates that their special plea is not based on a genuine legal issue, but rather on an attempt to avoid the merits of the case. The High Court cannot allow such tactics to succeed, as they would undermine the administration of justice and delay the resolution of the dispute.

In light of the foregoing analysis, it is evident that the High Court of Zimbabwe, sitting in its Civil Division, has the jurisdiction to hear and determine this matter. The defendants' special plea, which challenges the court's jurisdiction based on the monetary limits of the magistrates court and the existence of the Commercial Division, is without merit. The High Court's original and inherent jurisdiction, as well as its broad authority under Zimbabwean law, clearly empower it to adjudicate this dispute.

Accordingly, the special plea raised by the defendants is dismissed with costs and it is ordered as follows:

- 1) The special plea raised by the second and third defendants is dismissed with costs.
- 2) The matter shall proceed in terms of the rules.

MAMBARA J:.....

Cyprian Law, plaintiff's legal practitioners

Tembani Gomo Law Practice, second and third defendants' legal practitioners