

MAIN ROAD MOTORS
versus
COMMISSIONER – GENERAL, ZIMRA

Case 1

SYLVIA CHORUWA
versus
COMMISSIONER – GENERAL, ZIMRA

Case 2

HIGH COURT OF ZIMBABWE
MAFUSIRE J
MASVINGO, 6 February 2017 & 17 March 2017

Urgent chamber application

Mr *L. Mudisi*, for the applicants
Mr *K. Chuma*, for the respondent

MAFUSIRE J: These two cases were urgent chamber applications for an interdict *pendente lite*. Both were prepared and launched at about the same time. Counsel agreed I should consider them together even though in Case 2, *Sylvia Choruwa v The Commissioner – General, ZIMRA*, there was no formal hearing as such.

The applicants were unrelated. But the respondent was the same person in both cases. The applicants were represented by the same Counsel. So was the respondent. The dispute was almost identical; the relief sought almost identical, and the background facts almost similar. So Counsel wisely urged that a decision on the one case would automatically apply to the other. I agreed. It seemed the most expedient way to proceed.

In both cases, the applicants sought an interdict to restrain the respondent from seizing certain second-hand motor vehicles that they had imported from South Africa. The respondent is practically the chief executive of the Zimbabwe Revenue Authority [“*ZIMRA*”]. *ZIMRA* is the central collector of revenue for Government, established as such by the Revenue Authority Act, *Cap 23:11*.

The interdicts were sought pending the determination of certain review proceedings that the applicants were contemplating against the respondent, and in respect of which they had already given due notice.

The facts were these. The applicants, at different times, and using their agents and relatives, had bought the motor vehicles from South Africa and imported them into Zimbabwe. They said the vehicles were for personal use. In Case 1 the vehicle was a 2012 Toyota Fortuner. The applicant said it had bought it for ZAR112 500. According to the respondent, that would translate to US\$7 920 at the then prevailing rate of exchange. The vehicle was imported on 25 November 2015. The proper officer assessed the duty at US\$5 121-07. A proper officer is the designated officer at a port of entry. His assessment was based on the applicant's declared value, namely the purchase price.

In Case 2 the vehicle was a 2015 Toyota Land Cruiser Prado. It was imported on 21 March 2016. The applicant said she had bought it for ZAR469 000. That would translate to US\$28 615. The duty would be US\$17 000. However, the proper officer rejected the applicant's value as being too low. He re-assessed the duty at US\$20 800. Only after the applicant had paid the higher amount was the vehicle cleared.

After customs clearances, the applicants said they went on to enjoy the use of their vehicles. In Case 2 the applicant went on to register it in her name. However, the enjoyment was short lived. The respondent was soon after them, and several others who had imported vehicles between January 2014 and June 2016. He first published a public notice in all national print media on 27 July 2016. In it he announced that he was carrying out a post clearance audit in respect of motor vehicles imported during that period. He then said he was requesting all owners of vehicles imported during that period to approach ZIMRA to get confirmation of proper clearances, and to regularise the clearances if they were found to be contrary to the applicable laws.

After the public notice, the respondent went on to write to the applicants individually: on 28 November 2016 in respect of Case 1, and on 29 November in respect of Case 2. The respondent insisted that the post clearance audits had revealed that the vehicles had been under-declared and that therefore the duty on them under-paid. The applicants had to top up the duty or else risk having their vehicles seized. The vehicles would be embargoed until the correct amount of duty was paid.

In Case 1 the top up required was US\$5 600-63 to which a penalty in the same amount was levied. That brought the total to US\$11 201-26. Interest would run on the total amount at 10% per annum from the date of importation.

In Case 2 the top up was assessed at US\$6 353-24 and the penalty at US\$1 588-31. Interest would also run at 10% per annum from the date of importation.

The respondent said post clearance audits are authorised by s 223A of the Customs and Excise Act, *Cap 23:02*. In subsection [4] ZIMRA is empowered to undertake a post-clearance audit of goods cleared at entry in order to satisfy itself of the accuracy of any declarations made on them.

In terms of subsection [1], a declaration made for the purposes of clearance of goods at ports of entry which contains any omission, inconsistency, error or misrepresentation shall be invalid whether or not such declaration has been accepted by an officer.

Subsection [3] says that any goods not properly declared shall be deemed to be uncustomed goods. Uncustomed goods, among others, are dutiable goods on which the full amount of duty has not been paid.

In terms of s 192 of the same Act, ZIMRA is empowered to seize or embargo goods in respect of which the correct amount of duty has not been paid. That power can be exercised at whatever place, and from whomsoever those goods are found, within a period of six years from the date of importation.

The respondent explained that owing to the large number of goods that pass through the borders requiring customs clearances, ZIMRA has an enormous task to check, scrutinise, assess and collect duty. Mistakes are sometimes made. It was in appreciation of the difficult circumstances that its officers operate under that the Legislature, in s 223A and others, clothed ZIMRA with powers to conduct post clearance audits and to recover any underpayments of duty.

The applicants' case, on the advice of their lawyers, was that ZIMRA did not have such powers to conduct post clearance audits. It turned out that the lawyers had not kept themselves abreast with legislative changes. Section 223A of the Customs and Excise Act was an addition to the Act in 2014. When they first challenged ZIMRA's intention to embargo the vehicles, the lawyers had been unaware of that amendment. When it was brought to their attention, they challenged ZIMRA's conduct on the basis that once it had assessed and had received the duty on any imported non-merchandise goods, and the owner had assumed ownership of such goods, it was illegal for ZIMRA to start interfering with such ownership. They argued that the owner would have acquired a right over those goods under s 71 of the Constitution. It was also argued that s 223A does not apply to goods imported for private use.

The respondent said the applicants were ill-advised. It repeated its arguments on the provisions and import of s 223A, as read with s 192 of the Act. It also argued that s 223A made no distinction between brand new goods or second hand imports; or between goods for re-sale and those for private use.

In both cases the respondent submitted that during the post clearance audit the investigations by his officers had revealed that the applicants had bought the vehicles for much more than they had declared. He said despite several requests, the applicants had failed or neglected or refused to submit the actual bills of lading or some such other documents as would have proved the actual purchase prices. At any rate, he said, his officers had confirmed with their South African counterparts that the applicants had paid much more for the vehicles than the amounts they had declared. Furthermore, he had made comparisons, as he was entitled to do, with vehicles of the same make, type, model and condition as the applicants', either through the internet or from his records of imports by others, and had discovered that the applicants' vehicles had been grossly undervalued.

In Case 1, the respondent made the point that contrary to its declaration that the vehicle was for personal use, the applicant had already sold it to someone else by the time the respondent was recalling it.

In Case 2, as proof that the declared value for the vehicle was false, the respondent stressed that even in the founding affidavit, the applicant had in several paragraphs, unwittingly given two conflicting figures as being the purchase price for the vehicle: ZAR469 000 [or US\$28 615] in one instance, and US\$70 000 [or ZAR1 147 540-98] in another.

But before a decision on the merits could be made, the respondent took four points *in limine*. The first was that the applicants had used the wrong Form for their urgent chamber applications. It was argued that r 241[1] of Order 32 of the Rules of this Court had not been complied with. Among other things this rule directs, peremptorily, that an urgent chamber application shall be accompanied by Form 29B. The proviso to the rule says that where the chamber application is to be served it shall be in Form 29, with appropriate modifications.

As I said in *Marick Trading [Pvt] Ltd v Old Mutual Life Assurance Company Zimbabwe Ltd & Anor*¹, Form 29 is for use in ordinary court applications, or those chamber applications that require to be served. One of its most important features is that it sets out a

¹ 2015 [2] ZLR 343 [H]

plethora of procedural rights. It alerts the respondent to those rights. For example, in notifying the respondent of the court application, the form also notifies the respondent of his right to oppose the application, and warns him of the consequences of the failure to file opposing papers timeously.

On the other hand, Form 29B, for simple chamber applications, requires that the substantive grounds for the application be stated, in summary fashion, on the face of that form.

As I also said in *Base Minerals Zimbabwe [Private] Limited & Anor v Chiroswa Minerals [Private] Limited & Ors*² one major difference between Form 29, for ordinary court applications, and Form 29B, for chamber applications, is that with Form 29, unless it is an application for review in terms of Order 33, the reasons for the application need not be stated on the face of the application. But with Form 29B they have to, albeit in summary fashion.

I also noted in the *Base Minerals* case above that the proviso to r 241[1] permits the modification of Form 29 where the chamber application is one to be served, but that what would constitute “appropriate modifications” is not defined. I said in my view, the “appropriate modifications” should include a fusion of the contents of Form 29 and those of Form 29B. In other words, the form to be used becomes a hybrid, containing both “... *the plethora of procedural rights....*”³ of Form No. 29, including the *dies induciae*, and a summary of the grounds of application of Form No. 29B.

In casu, the type of form accompanying the applicants’ chamber applications was undoubtedly 29B, i.e. the one for ordinary chamber applications, and not 29, i.e. for ordinary court applications. Among other things, the applicants stated in some detail the grounds for the applications on the face of the Forms.

Mr *Chuma*, for the respondent, did not quite explain in what way the applications violated r 241[1]. Being ones to be served, they had to be accompanied by Form 29, with appropriate modifications.

I dismissed the respondent’s first point *in limine*. I was not about to entertain and be bogged down by “... *a sterile dispute about forms...*”⁴, or to let form override substance. The applicants’ Forms were unlike any of those condemned in *Marick Trading* and the other cases referred to therein, all of which were alien to the Rules. *In casu*, the applicants may not have

² HH 559-14

³ See *Zimbabwe Open University v Mazombwe* 2009 [1] ZLR 101 [H]

⁴ *Mazombwe’s case, supra*, at p 103C - E

modified Form 29 as required by the proviso to r 241[1]. The requirement for modification, unlike the direction to use Form 29, is not couched in peremptory terms. That is not to suggest it can be disobeyed wantonly. But where a party has made effort to use one or other of the forms prescribed, but only fails to modify it as required, especially where the nature that modification should take is not prescribed, it becomes, in my view, too drastic and injudicious to nonsuit the party. It is a fundamental principle of justice delivery that whenever possible, the real dispute between the parties should be solved without being over fastidious about forms and formalities.

The second point *in limine* taken by the respondent was in respect of Case 1. He said the authority of the applicant's deponent to represent it in the proceedings had not been produced or demonstrated.

In Case 1 the founding affidavit for the applicant, a company, was deposed to by one Patrick Muguti [**"Muguti"**]. He said he was the director; that he was duly authorised to depose to the affidavit and that the facts stated therein were true and correct to the best of his knowledge and belief. As his authority to institute the proceedings and to speak on behalf of the applicant, Muguti attached an alleged company resolution. There lay the problem. Mr *Chuma* tore into it.

A company does not function on its own but through an authorised agent. So where there is nothing before the court to show that the agent has been authorised by the company to institute the legal proceedings, a respondent may take objection: see *Air Zimbabwe Corporation & Ors v ZIMRA*⁵; *Madzivire & Ors v Zvarivadza & Ors*⁶ and *Mall [Cape] [Pvt] Ltd v Merino Ko-operasie Bpk*⁷.

There are no hard and fast rules as to the form or nature the agent's authority should take. It may be in the form of a company resolution. It may be by affidavit or affidavits. In all situations where the authority is required, there must be some evidence placed before the court to show that the person purporting to represent the company is duly authorised. Each case depends on its own merits.

Mr *Mudisi*, for the applicants, accused the respondents, in my own words as I understood him, of trying to escalate the technicalities game to ridiculous proportions. He said

⁵ 2003 [2] ZLR 11 [H]

⁶ 2006 [1] ZLR 514 [S]

⁷ 1957 [2] SA 347 [C]

it was Muguti who, through his South African-based relative, had arranged the purchase of the Toyota Fortuner motor vehicle; that it was Muguti who, through his agents, had facilitated the customs clearance for the vehicle at the border; and that it was him who had arranged the payment of duty. It was Muguti who ZIMRA had at all times dealt with when they came after the vehicle. It was him who ZIMRA's officials had held meetings with. At no stage had ZIMRA challenged his authority. Under such circumstances, it was insincere for ZIMRA to purport not to recognise Muguti's authority to represent the applicant.

Mr *Chuma* countered by saying that ZIMRA had dealt with Muguti as no more than a mere agent of the applicant. That did not translate to clothing him with the requisite authority to represent the applicant in court proceedings.

Plainly, Muguti's alleged authority to represent the applicant was not a company resolution. It was an open letter addressed to no one in particular, but "*To Whom it May Concern*". It was not even on letter-head, but on a plain sheet of paper. It said:

“Re: APPOINTMENT OF PATRICK MUGUTI TO REPRESENT MAIN ROAD MOTORS

At a meeting held by MAIN ROAD MOTORS, it was unanimously agreed that Patrick Muguti be appointed to represent Main Road Motors in all Legal Proceedings.”

Thus, the document did not say who had met; when and where they had met. To cap it all, it was Muguti himself who signed the document!

Lawyers should advise their clients properly. Sometimes the courts easily see through it when the discharge of a mandate by a legal practitioner has just been perfunctory. Documents should not just be cobbled up for presentation in court without regard to their efficacy. Mr *Mudisi* knew, or must have known, that the dud document above was far from being the resolution that is recognised as the authority for a company representative to bring legal proceedings in the High Court.

However, in spite of all that, I was not prepared to non-suit the applicant on account of Muguti's nebulous authority, or lack of it. Where the authority of a company's representative has not been produced, or has been challenged, the court has discretion to stand down the matter and allow it to be submitted: see the cases of *Air Zimbabwe Corporation* and *Madzivire* above. I stood down the point and allowed the rest of the points *in limine* to be argued.

The respondent's third point *in limine* was that he had been wrongly cited. He was no more than a mere employee of ZIMRA. ZIMRA, through its enabling Act, was a body corporate capable of suing or being sued in its own name and in its own right. All the actions of the respondent and those of officers under him, are carried out on behalf of ZIMRA. It was ZIMRA, not the respondent, that the applicants ought to have cited. Such misjoinder and non-joinder were so incurably defective as to be fatal.

The applicants denied any misjoinder or non-joinder. They argued that all the officers of ZIMRA carry out their functions under the direction or control of the respondent. The threat to impound the vehicles was issued by the respondent. Stopping the respondent would effectively stop ZIMRA.

I agreed with Mr *Chuma*. Of the Revenue Authority Act, ZIMRA and the respondent, GARWE JP, as he then was, said in *Tregers Industries [Private] Limited v Zimbabwe Revenue Authority*⁸:

“It is the Authority which in terms of s 4 is charged with the responsibility of, *inter alia*, collecting and enforcing the payment of all revenues. As already noted, s 5 of the Revenue Authority Act provides that the operations of the Authority shall be controlled and managed by the Revenue Authority Board and s 19[4] makes it clear that the Commissioner-General's position is akin to that of a chief executive in a company. He is appointed by the Board of [the] Authority, which Board also appoints commissioners and other officers and members of staff. At the end of the day, it is the Authority that is specifically given the power to sue or be sued.”

In that case the applicant had sought the return of moneys garnisheed by ZIMRA, being value added tax on goods sold. The applicants had cited the Commissioner of ZIMRA as the respondent. The court held that there was no basis for citing the Commissioner personally as a party in a matter handled by employees of the Authority and that the Authority itself should have been cited. The application was dismissed, albeit for that reason and several others.

Tregers case, save that the Act under consideration therein was the Value Added Tax Act, [*Cap 23: 12*] as opposed to the Customs and Excise Act as herein, is almost on all fours.

In the circumstances I upheld the respondent's third point *in limine*.

The respondent's fourth and last point *in limine* was that the matter was not urgent. By July 2016 when it published the public notice aforesaid the applicants had become aware of

⁸ 2006 [2] ZLR 62[H], at p 67B - D

the respondent's intention to seize the vehicles if they did not regularise their importation of them by 30 September 2016. The last paragraph of that public notice read:

“Please utilise this opportunity to get the clearance for your motor vehicle[s] regularised urgently, before 30 September 2016. If you fall into the category of importers of motor vehicles which were imported within the period in which ZIMRA wants to check as mentioned above, and you fail to comply within the period provided for in this notice, you risk having your motor vehicle seized wherever it is found.”

The respondent went on to engage the applicants personally in correspondence dated 28 and 29 November 2016; 11 and 19 January 2017. In all of them the respondent had been unequivocal about ZIMRA's powers to carry out post clearance audits and its threat to seize the vehicles unless the outstanding duties were paid. In addition, in Case 1, one of the officers had actually held a meeting with Muguti on 14 September 2016 during which, among other things, the import of s 223A was fully explained. It was at that meeting that Muguti revealed that the vehicle had already been sold to a third party.

The respondent argued that for the applicants to have waited until 1 February 2017 to launch their urgent chamber applications did not show that they had treated their matters with the urgency that they claimed they deserved.

The applicants maintained that their matters were urgent. They argued that the respondent's last correspondence was only dated 19 January 2017, i.e. some twelve days before they filed the applications. Such a delay was not inordinate. On 23 January 2017 the applicants had given due notice of their intention to sue for the review of the respondent's decision on post clearance audits. Section 196 of the Act, among other things, requires that sixty days' notice for any civil proceedings against the State or the Commissioner or any officer for anything done, or omitted to be done, be given before action is taken. Section 119 provides that one may appeal to this court against any determination of the Commissioner after payment of any duty or tax demanded by the Commissioner.

The respondent's point was that it was incompetent for the applicants to proceed on an urgent basis because by law, they were obliged to pay first and sue later, and that as such they were in fact seeking the assistance of the court for their continued violation of the law, as they continued to resist payment.

During the hearing, I drew attention to the applicants' certificates of urgency. There is a plethora of authorities to the effect that in urgent chamber applications, the legal practitioner

certifying the matter as urgent, must, at the very least, state why in his or her opinion it should be treated as urgent.

In *UZ – UCSF Collaborative Research Programme v Husaiwevhu and Ors*⁹ I said that a certificate of urgency in terms of r 244 is a condition precedent to an urgent chamber application being heard on an urgent basis. A legal practitioner, as an officer of the court, certifies the matter to be one of urgency. He or she does so from an informed position having carefully applied his or her mind to the matter. Even though the judge dealing with the matter will still decide whether or not the matter is urgent, he or she is entitled to rely on the opinion of the legal practitioner who certifies the matter to be one of urgency. It is unethical and an abuse of the privilege bestowed on them as legal practitioners in this regard to mechanically certify matters as urgent without having properly applied their minds.

In *General Transport & Engineering [Pvt] Ltd & Ors v Zimbabwe Banking Corporation [Pvt] Ltd*¹⁰ GILLESPIE J stated that the reason behind requiring a legal practitioner to apply his or her own mind and judgment, and to make a conscientious submission as to the urgency of the matter, is because the court is only prepared to act urgently on a matter the legal practitioner himself or herself is prepared to give his assurance that such treatment is required.

In *Chidawu & Ors v Shah & Ors*¹¹ GOWORA JA stated:

“In certifying the matter as urgent, the legal practitioner is required to apply his or her own mind to the circumstances of the case and reach an independent judgment as to the urgency of the matter. He or she is not supposed to take verbatim what his or her client says regarding perceived urgency and put it in the certificate of urgency. I accept the contention by the first respondent that it is a condition precedent to the validity of a certificate of urgency that a legal practitioner applies his mind to the facts.

.....

In order for a certificate of urgency to pass the test of validity, it must be clear *ex facie* the certificate itself that the legal practitioner who signed it actually applied his or her mind to the facts and the circumstances surrounding the dispute.”

In casu, the certificates of urgency were issued by the same legal practitioner. They were practically identical in form, content and substance. That was not the problem. What was

⁹ HH 260-14

¹⁰ 1998 [2] ZLR 301 [H]

¹¹ 2013 [1] ZLR 260 [S]

the problem was the manifest violation of r 242[2], as read with r 244, and the disregard of the principles enunciated by case law as demonstrated above. Among other things, the certificates of urgency were substantially a regurgitation of the facts alleged in the founding affidavits. In Case 1, out of about eight or nine paragraphs, only one attempted to address the grounds for urgency. But it did not. The paragraph read:

“It is my considered view therefore that the matter cannot wait. There are apparent reasons for urgency to protect an impending violation of the Applicant’s constitutional rights not to be arbitrarily deprived of its property.”

Except for substituting “*its*” with “*her*” before “*property*”, it was exactly the same wording in Case 2.

Thus, the certificates of urgency were incurably defective for want of information on which the opinion of the legal practitioner on urgency had been based. Among other things, there was no mention at all of what irreparable harm would befall the applicants if they were not allowed to jump the queue, and why it should be presumed that they had no other remedies available to them. A valid certificate of urgency in an urgent chamber application is what a password is to a computer, or a key is to a door. It unlocks the rest of the application for the judge to read and consider.

Therefore, there was no application before me.

Furthermore, and at any rate, in substance, the applications were not urgent in the sense that the applicants themselves had not treated them as such. As early as July 2016, the respondents had evinced unequivocally his desire to seize and embargo the vehicles if the top up duties remained unpaid. In all correspondence and engagements with the applicants, the respondent had been steadfast in wanting the outstanding duties paid or else he would cause the vehicles to be impounded. Therefore, the clock did not start to tick for the applicants only from 19 January 2017 when the respondent addressed the last correspondence to them. It had always been ticking since July 2016. There was no reason why the notice to sue that the applicants eventually dispatched on 23 January 2017 was not dispatched any time from July 2016.

In *Kuvarega v Registrar-General & Anor*¹² CHATIKOBO J said, at p 193 F -G:

¹² 1998 [1] ZLR 188 [H]

“What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the dead-line draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been any delay.”

“... [T]he need to act ...” timeously, is not just to take any type of action. The action must be one that is effectual in protecting one’s rights or averting impending peril. *In casu*, and out of ignorance of the law, the applicants’ lawyers wasted time mounting a challenge that was manifestly misconceived. In the face of s 223A of the Customs and Excise Act, it was futile to argue that ZIMRA did not have the power to carry out post clearance audits on goods previously cleared by it. Furthermore, the suit the applicants have given the respondent notice of, is not one to challenge the constitutionality of s 223A and/or others complement it in giving ZIMRA such wide-ranging powers. Rather the suit is to argue that ZIMRA’s powers interfere with one’s rights of enjoyment of one’s property under s 71 of the Constitution. The point is: if ZIMRA’s powers under s 223A of the Customs and Excise Act remained unchallenged, then the real dispute between the parties will remain unsolved. Thus, any such proceedings as the applicants might have contemplated, or may be contemplating, against the respondent would be, or seem to be, an exercise in futility.

Recently, in the case of *Cawood v Madzingira & Anor*¹³ I said:

“Justice delivery requires that in every case the real or main dispute between the parties be determined finally. It is like surgery. The main dispute is the cyst or boil or ulcer that is threatening the social harmony that must exist between people. That ulcer must be opened up and treated. Until the ulcer is removed, the pain may remain.

It often happens that pending the determination of the main dispute, i.e. the treatment of the ulcer by surgery, other side issues or disputes may develop. But these are mere symptoms of the main problem. They may not require elaborate surgery. A simple prescription may be all that is necessary to provide interim relief. That simple pain killer is the provisional order that may be granted in an urgent chamber application. But it is granted on the understanding that the main surgery to deal with the real problem is awaiting determination.”

So in these two cases, quite apart from the fact that in substance the urgency was manifestly self-created, there was also the additional problem that nowhere was, or is, the resolution of the main dispute between ZIMRA and the applicants pending.

¹³ HMA 12-17

It was for the above reasons that I removed the matters from the roll for urgent matters.

The respondent sought to be paid its costs, albeit on the ordinary scale. His argument was that the applicants had dragged him to court on a matter that was manifestly not urgent.

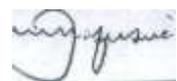
On the other hand, the applicants refused to tender any costs and resisted any order of costs against them. They pressed that each party should bear their own costs. The applicants' justification for this stance was that by the respondent's own admission, ZIMRA's officers are continuously overwhelmed by customs clearances of goods to such an extent that sometimes incorrect amounts of duty are paid. As such, it would be unfair to penalise the applicants for what is routinely an in-house problem for ZIMRA, even despite the statutory protection.

The general rule is that costs follow the event. The loser bears the winner's costs. However, it is also the rule that costs are entirely in the court's discretion. The discretion is exercised judiciously and not whimsically.

In these two cases, I felt ZIMRA should not have its cake and eat it. The Legislature granted it wide ranging powers that, on the face of it, enables it to interfere with people's rights to property. As such, it must be expected that legal suits will continuously pour down on its desk as people try to cushion themselves against the effects of its draconian powers. I felt that it was fair that each party should bear their own costs.

In the end I removed the matter from the roll with no order as to costs.

17 March 2017



Mutendi, Mudisi & Shumba, legal practitioners for the applicants
Chuma, Gurajena & Partners, legal practitioners for the respondent