

MUTUMWA DZIVA MAWERE
versus
THE MINISTER OF JUSTICE, LEGAL
AND PARLIAMENTARY AFFAIRS

HIGH COURT OF ZIMBABWE
UCHENA J
HARARE, 15 February 2004 and 11 May 2005

Opposed Application

Mr *A.P. De Bourbon SC*, for the applicant
Mrs *Mudenda*, for the respondent

UCHENA J: The applicant is a businessman with interests in businesses in Zimbabwe and South Africa. The respondent is the Minister of Justice, Legal and Parliamentary Affairs. He is the Minister responsible for the Administration of the Prevention of Corruption Act [*Chapter 9:16*] (hereinafter called the Act). On 9 July 2004 he specified the applicant in terms of section 6(1) of the Act. The specification was in terms of section 6(1) gazetted in the Government Gazette of the 9th July 2004. The applicant was therefore declared a specified person from that date.

The applicant has now applied for the condonation of his late noting of review proceedings and the review of his specification. He seeks the following orders:-

1. That condonation be and is hereby granted for the late filing of the application for judicial review.
2. The decision of the respondent declaring the applicant to be a specified person in terms of section 6 of the Prevention of Corruption Act [*Chapter 9:16*] published in General Notice 345A of 2004 in the Government Gazette Extraordinary of 9 July 2004 be reviewed and is hereby set aside.
3. The respondent shall pay the costs of this application.
alternatively
4. It is declared that the respondent exceeded his powers in terms of section 6 of the Prevention of Corruption Act [*Chapter 9:16*] when he issued a notice published in General Notice 345A of 2004 in the Government Gazette Extraordinary of 9 July 2004 declaring the applicant to be a specified person for the purposes of the Prevention of Corruption Act [*Chapter 9:16*].
5. It is declared that the applicant is under no lawful impediment in respect of his property in Zimbabwe.
6. The respondent shall pay the costs of this application.

The applicant seeks the alternative of a declaratory order in the event of condonation not being granted. The applicant's counsel relied on the case of *Kadir & Sons (Pvt) Ltd v Panganai & Anor* 1996 (1) ZLR 598(SC) at p 600 for that submission.

In terms of section 6(1) the respondent should give the specified person notice by publishing the specification in the Government Gazette. The applicant in his application for condonation states that because he lives in South Africa which he left after the 29th June 2004 for the United States of America on business he did not learn of his specification until mid September. He argues that his application was made within 8 weeks of mid September 2004 therefore there is no need for condonation.

In terms of Order 33 Rule 259 of the 1971 High Court Rules:-

“Any proceedings by way of review shall be instituted within eight weeks of the termination of the suit, action, or proceedings in which the irregularity or illegality complained of is alleged to have occurred.

Provided that the court may for good cause shown extend the time.”

In the present case the Minister's action of specifying the applicant was terminated on 9 July 2004. The eight weeks period therefore started ticking on that date. The applicant can however show good cause for his delay enabling this court to extend the time limit of eight weeks.

The declaratory order

I will first consider whether the alternative of a declaratory order is applicable in the event of condonation not being granted. In my view this is not possible in view of this court's decision in the case of *Marasha vs Old Mutual Life Assurance Co. Ltd* 2000(2) ZLR 197(H) at p 199 where ADAM J said:-

“In the heads of argument filed on behalf of the applicant, reference was made to the judgment of this court in the case of *Musara vs Zimbabwe National Traditional Healers Association (ZINATHA)* 1992(1) ZLR 9(H). But since that judgment a number of judgments have been given by this court as well as by the Supreme Court. This court has held that a declaratory order is merely one of a species of relief available and that a party should not be able to get around the time limits for review proceedings by instituting for a declaratory order – *Kwete v Africa Community Publishing and Development Trust* HH 216/98. This was approved by the Supreme Court in *Mutare City Council v Madzime* 1999(2) ZLR

140 (s). In my view, even if this were an application for a declaratory order the applicant would be required to provide an explanation as to why such an application for a declaratory order has not been brought within a reasonable period of time i.e. two months or eight weeks, otherwise applications for declaratory orders can be made many months or years after the offending proceedings had been finished.”

An application for a declaratory order can therefore not provide relief where review proceedings cannot due to applicant's failure to satisfactorily explain his delay. The application for a declaratory order would in the circumstances meet the same fate.

In the case of *Mutare City Council v Madzime* 1999 (2) ZLR 140(SC) at p 43D MUCHECHETERE JA after quoting the case of *Kwete v Africa Community & Publishing Trust & Ors* HH 216-98 agreed with the sentiments expressed by SMITH J in that judgment.

In the *Kwete case supra* SMITH J had at p 3 said:-

"It seems to me anomalous that one should be permitted to file an application for review well out of time, without seeking condonation as long as a declaratory order is sought. A declaratory order is after all merely one species of relief available on review, one can imagine the case of a litigant who institutes an application for review and reinstatement well out of time. He applies for condonation which is refused. All then he has to do is to institute a fresh application for review but instead of seeking reinstatement, he wants a declaratory order. Should he be able to get round the provisions of order 33 of the High Court Rules 1971 that easily? I think not."

I entirely agree with SMITH J's sentiments. In the present case the applicant is not even seeking to re-apply. He is saying if I fail to get condonation for the late noting of my review application then grant me a declaratory order in spite of that failure.

If the applicant fails to get condonation he should not by-pass this court's rules by seeking a declaratory order. I will therefore proceed on the basis that the consideration of the applicant's explanation for the delay will affect both the review and declaratory orders sought.

Explanation of the Delay

The applicant's explanation for the delay is based on:-

1. His not being a resident of Zimbabwe and therefore his not being able to learn of his specification through his being gazetted in terms of section 6(1) of the Act.
2. He also said soon after the Zimbabwean Government's attempt to extradite him from South Africa to Zimbabwe failed on 29th June 2004 he was released from bail and he traveled to the United States of America on business.

He only learnt of his specification in mid September 2004 as he was away from South Africa on business for two months.

He came back to South Africa at the end of September. A friend then told him of his specification and he then sought legal advice on the issue and instituted these proceedings when the specification started affecting him and his businesses in Zimbabwe.

The respondent pointed out that the applicant contradicted himself in explaining the delay. He urged the court to draw an adverse inference from that contradiction.

In paragraph 6 of his founding affidavit the applicant contradicted himself on his explanation of the delay. He first said he did not learn of his specification until mid September as he was overseas on business for two months. I understand that to mean his absence from South Africa prevented him from hearing of his specification. He later in the same paragraph said he returned to South Africa in late September when a friend told him of his specification. This means he did not learn of the specification until a friend told him about it in South Africa at the end of September. There is a difference between mid September and late September. Why is the applicant tripping over his own evidence. Did he learn of the specification in mid September or late September. If this was the only explanation given I would have drawn an adverse inference against the applicant.

The applicant also said when he was specified he was not in Zimbabwe therefore he could not have learnt of it through the Government Gazette. This is common cause. The applicant was known to be in South Africa before he was specified. That is why attempts had to be made to extradite him from there. His explanation that he does not receive the Government Gazette could be true. The respondent did not say he does. The possibility of his not having been informed of the specification by the Government Gazette is probably true.

The applicant also says he after the 29th June 2004 left South Africa for the United States of America. The respondent did not dispute this. In fact the supporting affidavit by Assistant Commissioner Samson Mangoma confirms that the applicant was at some stage in America. He in paragraph 9 said:

“The specified person was to be interviewed in Zimbabwe had the extradition been successful. At one time he was said to be in the United State of America and it still became even more difficult to interview him.”

This supports the applicant's assertion that he was not in Zimbabwe nor South Africa at the time of his specification making it impossible for him to timeously learn of his specification.

The respondent's response to this was applicant should have been advised of his specification by his Zimbabwean companies. This was a possible means through which applicant could have learnt of his specification. However there is no conclusive evidence that this happened. It remains speculative and cannot be used to diminish the applicant's explanation of his delay.

The applicant's explanation for the delay remains unchallenged and is supported by common cause evidence.

In the case of *Vrystaat (Pvt) Ltd v President, Administrative Court & Ors 1991(1) ZLR 323(SC) at 330B McNALLY JA* said:-

"No authority is necessary for the proposition that eight weeks cannot possibly apply to an applicant who does not even know of the decision for far longer than eight weeks after it was made, precisely because he was not informed of the proceedings as he should have been. Indeed it seems to me to be artificial to seek to apply the eight weeks rule as from the date the appellant became aware of the proceedings.....

I do not think the rule applies at all. In my view the case should have been decided on the simple test – has the appellant shown a reasonable explanation for his delay, bearing in mind the strength of his case and the question of prejudice to others." (emphasis added)

In this case I appreciate the respondent did what the law requires him to do that is giving notice of the specification through the Government Gazette. The applicant has however demonstrated his absence from Zimbabwe where notice in the Government Gazette is deemed to be notice of what is contained therein. The applicant cannot therefore be blamed for the delay which took place while he was ignorant of his specification. This to me is an appropriate case for extending the time limit imposed by rule 259 subject to the strength of the applicant's case.

I now proceed to consider the appellant's grounds for review.

Mr *De Bourn* the appellant's counsel based the review on the following grounds:

1. the respondent breached the rules of natural justice in failing to afford the applicant a hearing prior to declaring him to be a specified person.
2. the respondent had ulterior motives for the declaration.

3. the respondent did not have the jurisdictional facts to entitle him to exercise his discretionary power to declare the applicant to be a specified person.
4. the Prevention of Corruption Act does not have extra-territorial application and creates no crime or conduct that has extra-territorial effect.

Hearing before Specification

The applicant's complaint is that he was not heard before he was specified. He says in terms of Section 18 of the Constitution he had a right to be heard before his rights were interfered with by his specification.

On the other hand the respondent says the Prevention of Corruption Act does not require him to hear a person before he specifies him.

Applicant's counsel relied on the case of *Holland & Ors v Minister of the Public Service, Labour, Social Welfare* 1997(1) ZLR 186(S). In that case the Supreme Court struck down section 21(1) of the Private Voluntary Organisations Act [*Chapter 17:05*] for being *ultra vires* section 18(9) of the Constitution as it provided for the suspension of the national council without a hearing.

The issue in the present case is whether this court can review the respondent's decision in spite of his complying with the provisions of section 6(1) of the Act which do not provide for a hearing. In my view a review court's powers are limited to checking the procedural proprieties of the proceedings. In the case of *Holland supra* GUBBAY CJ at p 194D said:-

"A review court is concerned to set aright procedural improprieties committed by the decision maker. It cannot order a hearing where, under the particular legislation, the public official or body is not required to hold one." (emphasis added)

In the present case section 6(1) of the Act does not provide for a hearing before specification. If that is believed to be in contravention of section 18(9) of the constitution it is not for this court to determine. In a review I am confined to the procedure provided in section 6(1) of the Act and the rules of natural justice. In my view the procedure provided by section 6(1) of the Act was correctly followed. The respondent's decision cannot be reviewed for not doing what the Act does not require him to do.

The respondent relied on the case of *Motsi v Attorney General & Ors* 1995(2) ZLR, 278 (H) where specification was held not to offend against the right to be heard. In that case MUBAKO J at p 292E commenting on the Act said:-

“The principal objective of the Act is stated in its preamble as “to provide for the prevention of corruption and the investigation of claims arising from dishonesty and corruption”The intention of the legislature was to provide powers which enable society to combat corruption more effectively than before. Corruption is perceived as a pressing social need which called for extraordinary powers to meet the tasks of combating crime. The measures adopted are appropriate and safeguards are provided. I conclude therefore, that the Act is reasonably justifiable in a democratic society.”

I agree with the learned Judge’s conclusion. I am satisfied that the powers exercised by the Minister though extraordinary when viewed from the natural justice angle are permitted by the Act and were found by this court to be reasonably justifiable in a democratic society. The review can therefore not succeed on this ground.

Ulterior Motives

The applicant alleges the respondent had ulterior motives which motivated the specification. He based his view on the fact that the specification followed the failure to extradite him from South Africa. He also alleges that the respondent intended to facilitate the taking over of his companies by Government without paying appropriate compensation.

The respondent denies any ulterior motive. He says he specified the applicant on the basis of information he had received.

In paragraph 16 of his opposing affidavit the respondent said:-

“Whilst it is true in principle that companies in Zimbabwe should ideally be run by a board of directors appointed in terms of their respective Articles of Association. It has become reasonable for me to believe that the applicant as the sponsor of a chain of companies including those born in Zimbabwe, has had an influence in the operations of the said companies which is why I specified applicant.”

In paragraph 16.2 the respondent said:-

“The applicant’s South African Company S.A.S. failed for a long time to remit to A.A. Mines a division of S.M.M. Holdings its export proceeds thereby prejudicing the mines of the necessary working capital and in addition failing to meet its obligations.”

In paragraph 20 the respondent went on to say:-

“The applicant is alleged to have externalized foreign currency from Zimbabwe using S.M.M. (Pvt) Ltd. It is on this basis that the specification came about.”

In paragraph 27 the respondent also said:-

“The applicant is required by the police on charges of foreign currency externalisation. See supporting affidavit by Assistant Commissioner Mangoma.”

It is clear from the above that the respondent explained why he specified the applicant. The applicant agrees the police wanted him and attempted to extradite him. Though the extradition failed this court was not told why it failed. It could have failed on a technicality which does not prevent specification or impute ulterior motives to it.

Assistant Commissioner Mangoma in his supporting affidavit at paragraphs 3-4 said:-

- “(3) I am the leader of a team investigating a case of externalization of foreign currency in which the specified person and his former chairman of S.M.M. Holdings Mr William Hamadziripi Mudekunya are being jointly charged.
- (4) Allegations are that the accused persons acted in connivance and externalized US \$18.5 million, Canadian \$628 071.84 and South African Rand \$4 515 367.48, the money realized through the export of proceeds of asbestos fibre from Shabani Gathsemine. The money was supposed to have been remitted to the Reserve Bank of Zimbabwe.”

These details fully explain the basis for the specification. This cannot be said to be a specification for ulterior motives. The details given in the respondent’s opposing affidavit and Mangomas supporting affidavit clearly explain that the specification was based on information which gave the respondent reasonable suspicion that the applicant had committed offences which warranted specification. The applicant in para 35.5 of his founding affidavit says authorities in Zimbabwe attempted to get evidence against him in South Africa before his specification. This means the specification was based on information received and not for ulterior motives.

The applicant also complained that the alleged offences were committed by companies and that he should not have been specified for company offences. The respondent said he pierced the corporate veil because of the alleged criminal offences as he believed applicant was interfering with the operations of his Zimbabwean companies.

In general a company is a separate persona from its sponsors or shareholders and it should be personally held accountable for its actions. However in the case of *Van Niekerk v Van Niekerk & Ors* 1999(1) ZLR 421(S) at page 427 D-E SANDURA JA said:-

“Whilst it is true that if Homefield should have been registered in the name of Franklin Trading, as alleged by Iona, Franklin Trading would be the “person aggrieved” for the purposes of S 52(9)(1) of the Act, in reality the “person aggrieved” is Iona. In saying this I am mindful to the fact that it is of cardinal importance, that the property of a company be kept separate and distinct from those of its shareholders. However there are exceptions to the principle, enunciated in *Solomon v Solomon & Co* (1897) AC 22(H), that a company is a separate entity from its members.

In *US v Milirankee Refrigerator Transit Co* 42Fed 247(1905) SANBORN J after stating that a company should be seen as a separate entity from its shareholders, said the following at 255:-

“.....but when the notion of a legal entity is used to defeat public convenience justify wrong, protect fraud and defend crime, the law will regard it as an association.”

That approach was mentioned with approval in *Lakegan & Anor NNO v Boys & Anor* 1980 (4) SA 191(J) at 200H-201B. In my view it is appropriate to adopt that approach in the present case.” (emphasis added)

In the present case Mangoma said the applicant and Mudekunya connived to defraud S.S.M Holdings (Pvt) Limited. The figures involved were mentioned. The applicant’s relationship with SSM was explained in his founding affidavit. He is the sole proprietor of ARL which is through other companies the holding company of applicant’s companies in Zimbabwe. See paragraphs 19-20 of his founding affidavit. The circumstances therefore warranted his direct specification as he and Mudekunya were alleged to have defrauded S.M.M. This is a proper case for the piercing of the corporate veil. Otherwise the legal status of the companies could be used to protect fraud and defend crime. The review can also not succeed on this ground.

Jurisidicational Facts

Mr *De Bourbon* for the applicant submitted that the respondent did not have facts or information on which his jurisdiction in terms of section 6(1) of the Act was exercised. He submitted that there is a vast difference between the respondent’s allegations that the applicant has had an influence in the operation of the companies and that he externalized foreign currency from Zimbabwe using SMM Holdings (Pvt)

Ltd and the facts upon which that allegation is based. He said the respondent did not set out those facts. He urged the court to find that those facts do not exist.

He referred this court to the case of *Martin v Attorney General & Anor* 1993(1) ZLR 153 (SC) for the test to be applied in forming the suspicion leading to specification. He also referred to the cases of *Attorney General v Blumers & Anor* 1991 (1) ZLR 544 (SC) at p 557-558 where the SC said:-

“With this approach in mind it is to be decided whether the State has offered facts upon which objectively it can be held that reasonable suspicion existed that the applicant committed the offence for which he was placed on remand.”

In response Miss *Mudenda* for the respondent submitted that the Prevention of Corruption Act does not compel the Minister to supply the applicant with the facts that the Minister relies on for specification. She further said this case is distinguishable from that of the *Minister of Home Affairs and Anor v Austin & Anor* 1986(1) ZLR 240(SC) where the Minister was obliged to give reasons for the basis of the ground for detention therein.

She also referred to the cases of *PF ZAPU v Minister of Justice, Legal & Parliamentary Affairs* 1985(1) ZLR 305(SC), *Zambezi Proteins (Pvt) Ltd & Ors v Minister of Environment & Tourism & Anor* 1996(1) ZLR 378(H), *Affretair (Pvt) Ltd and Anor v MK(Pvt) Ltd* 1996(2) ZLR 15(S).

She concluded by saying the respondent acted in terms of the enabling statute.

The important issue to be decided is whether or not the respondent had information on which he would reasonably suspect that the applicant had done something for which he could be specified.

I have already discussed the circumstances under which the respondent specified the applicant under the heading “Ulterior Motives” and found that the applicant had sound basis upon which the specification was founded. He mentioned interference with the companies, conniving with Mudekunya to defraud S.M.M. and externalization of foreign currency with the details of the amounts involved being given in the supporting affidavit of Assistant Commissioner Mangoma.

It must be borne in mind that the Minister is expected to act on reasonable suspicion. Suspicion is not certainty as to the truth. It is a state of conjecture or surmise without proof of what is suspected.

In the case of *Martin v Attorney General & Anor* 1993(1) ZLR 153(S) at 159B-D GUBBAY CJ dealing with the suspicion required for a court to put an accused on remand said:-

“The test to be applied is the same as that for arrest without a warrant. It does not require the firm resolution of conflicting evidence that guilt beyond reasonable doubt demands, nor even a preponderancy of probability. Certainty as to the truth is not involved, for otherwise it ceases to become suspicion and becomes fact. Suspicion by definition is a state of conjecture or surmise whereof proof is lacking. See *Attorney General v Blumers & Anor* 1991(1) ZLR 118(S) at 122B-C, *State v Ganyu* 1977(2) ZLR 97AD at 104F.” (emphasis added)

It must also be remembered that the Minister is not in the position of a magistrate who has to balance between two competing stories. The Minister Acts on the reasonable suspicion triggered by the information he has received which will at that stage be unchallenged. What I should determine is whether the information the Minister had could trigger a reasonable suspicion.

In the case of *Motsi (supra)* MUBAKO J at page 295 C-E said:-

“The Act requires that specification must be based on the Minister’s suspicion on reasonable grounds that the property in question has been stolen or misappropriated. The Minister is not required to possess anything more than information that would lead a reasonable person to suspect that any of the stated offences may have been committed. In this case, the Minister had information from the Police that \$1916, 385, 72 was in one applicant’s Standard Bank accounts and that large sums of money had been misappropriated from Zimpapers. I am satisfied that such information was sufficient to enable the Minister to form a reasonable suspicion. The Minister on the face of it is allowed a wide and unfettered discretion, only qualified by the requirement of reasonableness. That requirement is met if in fact there was in existence an objective foundation of fact or evidence on which the suspicion could be justified. (emphasis added)

In the present case, the respondent faced with the information in paragraphs 16, 16.2, 20 and 27 of his opposing affidavit and that in Assistant commissioner Mangoma’s supporting affidavit all detailed above had enough information justifying his reasonable suspicion subject to that information revealing a contravention of section 6(1) (a) – (e) of the Act.

Mr *De Bourbon* for the applicant further submitted that even if the respondent had reasonable suspicion he should show why he considered it necessary to exercise his powers having regard to the facts upon which reasonable suspicion was based. The respondent has given such an explanation under paragraph 16.2 he said the mines were being prejudiced of the necessary working capital and were failing to meet

their obligations. It is indicated in Mangoma's supporting affidavit that applicant was conniving with Mudekunya who was heading S.M.M. Holdings in the externalization of foreign currency. In paragraph 34 he speaks of the national interest and the need to save the companies there mentioned from collapsing. In my view the necessity for specification has been explained.

Mr *De Bourbon* for the applicant also submitted that the facts alleged do not establish the jurisdictional facts necessary for a specification in terms of section 6(1) of the Act. He submitted that an exchange control contravention is not an offence which can result in specification. In paragraph 27 of his Heads of Argument he said:-

"Thus the Minister even on the limited allegations put forward by him – could not have suspected the applicant of having done any thing set out in the various paragraphs of section 6(1) of the Act. Thus the respondent's decision to issue a specification order was not an act done by the Minister in the proper exercise of the powers under section 6 of the Prevention of Corruption Act; and must accordingly be set aside."

Miss *Mudenda* for the respondent's response was simply that the respondent exercised his powers in terms of the Act and that the applicant's conduct falls under section 6(1) a-e of the Act.

A reading of section 6(1) provides as follows:-

"Where the Minister, on reasonable grounds suspects that any person

- (a) by theft, fraud or other unlawful means has caused the misappropriation or loss of property of the State a statutory body, a local authority or any other person:
- (b)
- (c)
- (d)
- (e)

and is satisfied that it is in the national interest to do so, he may, by notice published in the Gazette declare such person to be a specified person." (emphasis added)

It is not in dispute that the jurisdictional facts are:-

1. The Minister's suspicion
2. On reasonable grounds
3. The doing by the applicant of what is provided in 6(1)(a) – (e)
4. The Minister's satisfaction that specification is in the national interest.

I have already dealt with jurisdictional factors 1, 2 and 4 and found that they were properly established.

My understanding of section 6(1) (a) is that theft, fraud or other unlawful means establishes the third jurisdictional fact.

In my view the alleged connivance by the applicant and Mudekunye amounts to a fraud against *S.M.M. Holdings (Pvt) Ltd* and would establish the third jurisdictional fact. If I am wrong in so holding the "any other unlawful means" provided for in section 6(1) (a) certainly includes the applicant and Mudekunye's connivance to externalize foreign currency to the prejudice of S.M.M. Holdings.

I am therefore satisfied that all the jurisdictional facts were established in this case. The respondent's decision can therefore not be reviewed on the basis of absence of the jurisdictional facts on which the respondent should have acted.

The applicant's South African Citizenship

The last ground of review was that the applicant was not a Zimbabwean and is therefore not subject to the provisions of section 6(1) of the Act.

Section 6(1) provides as follows:-

"Where the Minister, on reasonable grounds, suspects that any person

- (a)
- (b)
- (c)
- (d)
- (e)

and is satisfied that it is in the national interest to do so, he may by notice published in the Gazette declare such person to be a specified person." (emphasis added)

My understanding is that the provisions of section 6(1) apply to any person who the Minister suspects on reasonable grounds to have done any of the things mentioned in paragraphs (a) to (e). The words "any person" are wide enough to include a person who is not a citizen but has done or is doing any of the things mentioned in section 6(1) (a) – (e). In this case the crucial issue is the allegation that the applicant and one Mudekunye were through connivance externalizing foreign currency earned through the sale of products from a company the applicant has interests in. If the applicant was a foreigner who had no property or business in Zimbabwe and could not contravene sections 6(1)(a) - (e) of the Act then the Act would certainly have been inapplicable to him.

The purpose of specification is to facilitate the investigation of the specified person and to stop the harmful conduct of the specified person. This is demonstrated by the provisions of section 8(1) & (2) and section 10 of the Act. If the applicant's

submissions were to be accepted foreigners with local interests would be able to continue to do things mentioned in section 6(1) (a) – (e) with impunity and the nation would continue to suffer helplessly from the effects of such conduct.

The applicant from the papers and documents produced acquired South African Citizenship in 2002. In terms of section 9(2) of the Citizenship of Zimbabwe Act [*Chapter 4:01*] the applicant ceased to be a citizen of Zimbabwe upon his acquisition of South African citizenship.

Section 9(2) provides as follows:-

“(2) A citizen of Zimbabwe of full age who by voluntary act other than marriage acquires the citizenship of a foreign country shall immediately cease to be a citizen of Zimbabwe.”

There is no doubt that the applicant is an adult and has voluntarily acquired South African citizenship other than through marriage. He has therefore lost his Zimbabwean citizenship.

He however remains within the provisions of section 6(1) of the Act as he has interests in Zimbabwean companies as already explained above. Assistant Commissioner Mangoma has clearly stated that he has in connivance with Mudekunya externalized foreign currency from S.M.M. Holdings. I have already said this conduct justifies the piercing of the cooperate veil.

In the circumstances I find that though the applicant is no longer a Zimbabwean Citizen his alleged conduct brings him within the provisions of section 6(1) of the Act.

The applicant’s application is therefore dismissed with costs.

Costa & Madzonga, applicant’s legal practitioners

Civil Division of the Attorney General’s Office, respondent’s legal practitioners