

TRINIDAD CONTRACTORS (PVT) LIMITED
versus
THE SHERIFF OF THE HIGH COURT
and
77 OTHERS

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 27 July and 6 August 2015

Urgent Chamber Application

Ms *T Gonese*, for the applicant
Ms *R Makamure*, for the 1st respondent
B. Pendei, for the 2nd - 77th respondents
78th respondent: In default

MANGOTA J: Mavhuto Mlaudzi and 76 others [2nd – 77th respondents] were or are employees of the 78th respondent. The parties had a labour dispute. They took the dispute to an arbitrator who ruled in favour of the 2nd - 77th respondents. These registered their award with the court. They then instructed the 1st respondent to attach and take into execution such of the 78th respondent's property as would satisfy their claim.

Evidence filed of record showed that:

(a) the applicant [Trinidad Contractors (Pvt) Ltd] and the 78th respondent [Trinidad Industries (Pvt) Ltd] conduct their respective business operations at one and the same premises namely 7 George Avenue, Amby, Msasa, Harare

(b) the applicant came into existence on 25 July, 2011 – and

(c) by a Board Resolution which the 78th respondent made on 25 August, 2011 all assets which comprised machinery, motor vehicles, office furniture and all equipment which directly related to the applicant's operations were transferred from the 78th respondent into the applicant's name.

When the 1st respondent went to attach the 78th respondent's property in line with the instructions of the 2nd – 77th respondents, he, in the same breadth, attached the applicant's property. The applicant laid claim to its property which had been attached. The 1st respondent issued an Interpleader Notice under case number 1226/15. The applicant filed a Notice of Opposition and Heads of Argument.

On 23 March 2015, the 1st respondent, under case number HC 6839/14, served a writ of execution against the 78th respondent. He attached property which belonged to the applicant. The applicant filed another interpleader affidavit. The 1st respondent issued an interpleader application under case number 3173/15.

The court dismissed the applicant's claim under case number 3173/15. Its reasons were that the applicant had not filed its notice of opposition to that claim. The failure to file notice of opposition was occasioned by an error in the citation of case numbers.

The applicant applied for rescission of judgment. Its application was not opposed. The judgment which the court had entered against it on 17 June, 2015 was rescinded on 31 July, 2015. The import of the rescission is that the parties will have their day in court.

It is pertinent to mention that between 17 June 2015 which is the day that the applicant's claim was dismissed and 31 July, 2015 which is the day that the court rescinded the judgment, the 2nd – 77th respondents had instructed the 1st respondent to execute upon their judgment. At the time of the hearing of this urgent chamber application, therefore, practically all the goods which are the subject of the interpleader proceedings had been sold out in execution of the 2nd – 77th respondents' writ. The applicant was alive to that matter from the time that it filed this present application. The manner in which it drafted its interim order which it moved the court to adopt says it all. The amended provisional draft order which it filed with the court together with its answering affidavit on 29 July, 2015 only serves to emphasise the obvious.

The court noted that the goods to which the applicant lays claim were attached on 23 March 2015. The goods were to be removed from their premises on 26 March 2015. The applicant asserted its rights in the property on or at about the date of the attachment. It did not apply for a stay of execution. It remained of the view that the interpleader proceedings which had commenced had the effect of staying execution until the parties' competing claims had been resolved. Its view in the mentioned regard accords with both the law and logic. The moment a

court is seized with such a process as an interpleader, it is being called upon to resolve a dispute which exists between two claimants to one and the same property. Neither party has, in that regard, any greater rights than those of the other party. It is for the mentioned reason, if for no other, that the 2nd – 77th respondents were initially constrained to execute upon the writ when the interpleader proceedings were in progress. They only asserted their apparently greater rights than those of the applicant when the latter, through inadvertence on its part, had its application dismissed. However, the fact that neither the 1st respondent nor the 2nd – 77th respondents opposed the applicant's application for rescission of judgement meant that all the parties want the matter to be brought back to the status *quo ante* the judgment of 17 June 2015 so that the matter would be determined on the merits as between the applicant and the 78th respondent.

The applicant averred that it is not a party to the proceedings which took place between the 78th respondent and the 2nd – 77th respondents. It insisted that its property should not, therefore, have been attached. It stated that it stood to suffer irreparable harm if the court did not intervene in its favour. It asserted that the property comprises machinery and tools of trade which the 2nd – 77th respondents would not be able to replace in the event that the court resolved the interpleader dispute in its favour.

The 1st respondent did not oppose the application. He was cited in his official capacity. Ms *Makamure* who appeared for him advised the court that her client would abide by the decision of the court. The 78th respondent did not appear in person or through legal representation. The court assumed that it would be bound by whatever decision the court reaches on the matter. The 2nd – 77th respondents filed their opposing papers. Mr *Pendei* who argued in their corner was loud and clear on the point that the applicant was not a smart legal entity. He said the applicant should have applied for a stay of execution. The court agrees with Mr *Pendei* on the point that the applicant should have applied for a stay of execution as soon as it realised that judgment had been entered against it. It should have done so pending its application for rescission. It did not and it, in the process, allowed its position to stand on a very precarious ground where it had to fire-fight, as it were. Further, the error which caused the court to enter judgment against it emanated from no one else but itself. All the work which both the court and the 2nd – 77th respondents endured was as a result of the applicant's making. The court will not unnaturally express its displeasure at the manner that the applicant handled its case.

In the interests of justice, however, the applicant's application will be considered favourably. It treated its case with the urgency which the matter deserved. The court has considered all the circumstances of this case. It, accordingly, orders as follows;

Terms of The Final Order:

It is ordered that you show cause to this Honourable court why a final order should not be made in the following terms:

1. The applicant's claim to the property placed under attachment in execution of judgment HC 6839/14 be and is hereby granted.
2. The property as set out in the notice of seizure and attachment dated 23 March 2015 issued by the 1st respondent be and is hereby declared not executable.

Terms of Interim Relief:

Pending finalization of the interpleader proceedings which must be completed within four weeks from this date,

1. The 1st respondent be and is hereby ordered to collect and keep under judicial attachment all the property which is the subject of interpleader proceedings
2. The 1st respondent be and is hereby ordered not to confirm the sale or release the proceeds of the sale.
3. The applicant be and is hereby ordered to pay the costs of this application on a higher scale.

Lunga Gonese Attorneys, applicant's legal practitioners

Messrs Kantor & Immerman, 1st respondent's legal practitioners

Messrs Machaya & Manyangadze, 2nd – 77th respondent's legal practitioners