

THE SHERIFF OF THE HIGH COURT and LINEREAGLE CLOSE CORPORATION t/a EAGLE LINER versus EDGAR PARATEMA and TOTILLA MARKETING (PRIVATE) LIMITED t/a EAGLELINER	APPLICANT CLAIMANT JUDGMENT CREDITOR JUDGMENT DEBTOR
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HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 27 July 2015 and 21 October 2015

Opposed application

T Tandi, for the applicant
E Mangezi, for the claimant
Judgement creditor in person
Judgement debtor in default

MWAYERA J: This interpleader application was instituted before me on 27 July 2015. After considering documents filed of record and hearing the parties I dismissed the claimant's claim on the following terms:

"It is ordered that:

1. The claimant's claim to the Scania Marcopolo Eagleliner, Registration Number Eagle 37 ZN Trailer N.B 187395 and Scania Marcopolo Eagleliner, Registration Number Eagle 32ZN placed under attachment in execution of judgement HC 1057/15 is hereby dismissed.
2. The buses and trailers as set out in the Notice of Seizure and Attachment dated 2 April 2015 issued by the applicant is declared executable.
3. The claimant and the judgement debtor to pay costs of the judgement creditor and the applicant."

By a letter dated 4 August 2015 the claimant's legal practitioners requested for written reasons for the judgement. The reasons are captioned herein.

The brief background to the interpleader process has of necessity to be outlined. The judgement creditor obtained a judgement in Case No. HC 1057/15 against Totilla Marketing (Pvt) Limited t/a Eagleliner. The High Court order sought to register the labour determination whereby Totilla Marketing (Pvt) Ltd t/a Eagleliner was to pay its former employee the Judgement Creditor one Mr Edgar Paratema. Pursuant to the judgement, the judgement

creditor instructed the applicant to attach property which culminated in the attachment of Scania Marcopolo Eagleliner Registration Number Eagle 372N, trailer N.B. 187395 & Scania Marcopolo Eagle Liner Registration No. Eagle322N. The attachment of the property propelled the claimant into action. Given the adverse and exclusive claims by the claimant, the judgement debtor and judgement creditor the applicant approached the court to get directions as regards the respective claims.

The issue for determination is whether or not the attached property is linked to the judgment debtor and therefore excludable. It is apparent from submissions and documents filed of record that Mr Ghalib Ismail the Chief Executive Officer of Linereagle Close Corporation t/a Eagleliner is the one who was involved in the engagement of the judgement creditor Mr Edgar Paratema as a driver for Eagleliner to drive buses. Even the letter of termination (p27) of service by the Human Resources Manager Zimbabwe Branch, on Totilla Marketing Pvt Ltd trading and Eagleliner letter head was copied to Mr Ghalib and Mr Kwenda among others. Eagleliner is the employer and copies registration books of attached property are in the name Eagleliner. Eagleliner is the one which facilitated the acquisition of multiple entry visa for the judgement creditor Mr Edgar Paratema. In the letter for facilitation of the visa duly signed by the Human Resources Manager p 25 of the record, the judgement creditor is referred to as a driver of Eagleliner. Worthnoting is the same officers who were involved in hiring and suspension appear on the communication documents. That Eagleliner is the common denominator is not in contention given the clear documentary evidence. The property attached is clearly for purposes of enforcement of judgement in favour of the judgement creditor for dues in employment relationship. Having observed that Totilla t/a Eagleliner and Eagleliner are one and the same there is no basis of upholding the claimant's ingenuine claim.

I must also comment on the documents attached by the claimant in particular the claimant's affidavit p 10-11 and 32-34 and the foreign documents on pp 34-38. On the face of it there is no authentication of the documents. There is no indication as regards the identity of the individuals which commissioned the documents.

Section 3 of The High Court Authentication of Documents Rules, 1971 is opposite. It reads

“Any document executed outside Zimbabwe shall be deemed to be sufficiently authenticated for the purposes of production or use in any court or tribunal in Zimbabwe or for the purpose of production or lodging in any public office in Zimbabwe if it is authenticated-

- (a) by a notary public mayor or person holding judicial office; or
- (b) in the case of countries or territories in which Zimbabwe, has its own diplomatic or consular representative by the head of a Zimbabwean diplomatic mission, the deputy or acting head of such mission, a counsellor, first, second or third secretary, a counsel-general, consular or vice consular”

Given the lack of authentication of the documents strictly speaking the claimant’s claim has no basis on which to stand, for it is common knowledge the claim stands or falls on the founding affidavit. Given the circumstances of this matter were it is clear that the judgement creditor has a judgement in his favour, that the employer employee relationship with the claimant has not been placed in doubt and that the claimant’s claim has not been properly mounted the claimant’s claim ought to be dismissed with costs.

Accordingly it is ordered that:

1. The claimant’s claim to the Scania Marcopolo Eagleliner, Registration Number Eagle 37 ZN, Trailer NB 187395 and Scania Marcopolo Eagleliner, Registration Number Eagle 32 ZN placed under attachment in execution of judgement HC1057/15 is hereby dismissed.
2. The buses and trailers as set out in the Notice of Seizure and Attachment dated 2 April 2015 issued by the applicant is declared executable.
3. The claimant and the judgement debtor to pay the costs of the judgement creditor and the applicant.

Kantor & Immerman, applicant’s legal practitioners
Messrs J Mambara & Partners, claimant’s legal practitioners