

THE SHERIFF FOR ZIMBABWE
versus
YASMIN PIRAS
and
MAHBUB MOOSA

HIGH COURT OF ZIMBABWE
MTSHIYA J
HARARE, 14 March 2016 and 11 May 2016

Interpleader

T.B. Kativhu, for the applicant
H. Nkomo, for the claimant
F. Siyakurima, for the judgment creditor

MTSHIYA J: On 26 August 2015, the applicant filed an interpleader notice. This was necessitated by the claimant's claim to the property that had been attached by the applicant on 28 July 2015 pursuant to a warrant of execution issued from this court on 29 June 2015.

On 28 May, 2015, the judgement creditor obtained a judgement in his favour against one Omar Stanziani, who happens to be the claimant's husband. The order of the court read as follows:-

“Judgement in the sum of \$166 800.00 is hereby entered for the plaintiff. The defendant shall pay the plaintiff's costs.”

The judgement creditor, in the judgement of 28 May 2015, was the plaintiff whilst the claimant's husband, Omar Stanziani, was the defendant. It appears Omar Stanziani appealed against this court's judgement of 28 May 2015. This is so because on 15 July, 2015, the judgement creditor obtained the following order from this court:

“IT IS ORDERED THAT:

Applicant be and is hereby granted leave to execute the judgement of this Honourable Court in case No. 631/2014 handed down against respondent on the 28th of May 2015 pending the appeal noted against the said judgement.

- i) Any appeal that the respondent may note against this order shall not suspend this order.

- ii) The costs of this application on the scale of the legal practitioner and client be borne by the respondent.
- iii) Applicant shall not be required to deposit security for executing the judgement pending the appeal.”

On 28 July, 2015, on the basis of the above court order, the applicant attached the following property:

1. Toyota Corolla-registration number AAN 2583.
2. Mercedes Benz E200-Registration number ABO 9216.
3. 1 x Red Couch
4. 1 x Samsung Television
5. 1 x Desk
6. 1 x Dining Room Suite
7. 1 x 15 Chairs
8. 1 x LG Fridge; and
9. 1 x 2 Display Units.

In claiming the above property to be hers, the claimant, in her founding affidavit, averred:-

“8. I acquired the above before I married the defendant. I was married before and that is when I acquired the goods that the Sheriff attached and is due to remove on the 3rd of August 2015. I bought most of the furniture more than (30) thirty years ago and that is before I married the defendant.

9. I have got not nothing to do with this case and there is no reason why my goods should be attached. The defendant moved into my house with nothing when we got married.”

With particular reference to the Mercedes Benz E 200, she had this to say:

“6.b I am also the owner of Mercedes Benz E200 registration ABO 9216 as indicated by the agreement of sale and proof of payment. The transfer of ownership of the car was to be done by the seller, who has delayed for lack of funds. Proof of payment I should receive within 14 days from corresponding bank. See annexure marked “C”.

The parties first appeared before me on 3 March 2016 and in view of the claim that the property originated from an earlier marriage of the claimant, I directed the parties to engage with a view to reaching an amicable settlement. Settlement negotiations failed. The claimant was only prepared to let go the Mercedes Benz E200, the Samsung television and the LG fridge.

There was indeed evidence that, following the dissolution of her earlier marriage, the claimant was granted:

- “(a) The matrimonial home at 4 Piras Gardens, Oxford Road, Avondale, Harare which is registered in Mrs Piras’ name shall remain her absolute property.
(b) Furniture, household effects etc:
(i) All furniture, appliances, bedding, linen, furnishings and other household effects presently in the matrimonial home shall become and remain Mrs Piras’ absolute property.”

Admittedly, furniture and household effects were not itemised. However, there is clear proof that in addition to the matrimonial house, she remained with furniture and household effects.

Were it not for the claimant’s unfortunate false claim to the Mercedes Benz E200, it appears to me the parties could have easily reached an amicable settlement. However, the judgement creditor, and rightly so, was not at all amused by the claimant’s falsehoods relating to the Mercedes Benz E 200 and also the feigning of ignorance about her husband’s business. The falsehoods destroyed the judgment creditors’ good will.

In submissions, the judgement creditor accepted that ownership of the Toyota Corolla had indeed been proved but then went on to insist that under Moslem law the property now belonged to both. Unfortunately our law also recognises the claimant’s right to ownership of property in her own right.

Whilst it is trite in our law that “ a litigant should come to court without dirty hands”, (See Deputy Sheriff, *Harare v Mahleza & Another* 1997 (2) ZLR 425 (HC)), I am, on a balance of probabilities, convinced that, apart from the Mercedes Benz E200, the Samsung television and the LG Fridge, ownership of the rest of the property is exclusive to the claimant i.e. property acquired during her previous marriage.

Without in any way condoning the claimant’s lies with respect to the Mercedes Benz E200, I realise the situation she found herself in when her husband was visited by the law, as happened *in casu*. The temptation to assist her husband must have been great. I do, however, take note of the fact that after I had asked the parties to engage further, she then told the truth and even realised that there were probably no versions of the LG Fridge and the Samsung television at the time of her divorce in 1996. I am therefore unable to dismiss her claim to the ownership of the other property just because of her earlier falsehoods. I believe that this is one of those cases where an order of costs will suffice. Those would be costs incurred by the applicant.

I therefore order as follows:

1. The Mercedes Benz E 200, registration ADO 9216, the Samsung Television and the LG Fridge be and are hereby declared executable.
2. The claimant's claim to the following property, attached under judgement HH 485/15, be and is hereby granted.

Property:

- a) Toyota Corolla-registration number AAN2583
 - b) 1 x Red Couch
 - c) 1 x Desk
 - d) 1 x 15 Chairs
 - e) 1 x Dining Room Suite
 - f) 1 x 2 Display units; and
3. The claimant shall pay the applicant's costs.

Kantor & Immerman, applicant's legal practitioners
Manase & Manase, claimant's legal practitioners
Sawyer & Mkushi, judgement creditor's legal practitioners