

THE SHERIFF OF ZIMBABWE
and
RODNEY DANGAREMBIZI (CLAIMANT)
versus
NMB BANK LIMITED (JUDGMENT CREDITOR)

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 10 February 2016 and 19 May 2016

Opposed application

T B Kativu, for the applicant
Z Takawira, for the Claimant
T Masara, for the respondent (Judgment Creditor)

MWAYERA J: The matter involves interpleader proceedings. The brief facts of the case are that the Judgment Creditor obtained judgment in case No. HC 5339/14 against one Rodney Ndangariro Dangarembizi in order to satisfy the judgment for payment of \$22 724,69 plus interest and costs of suit. The judgment creditor then issued a writ of execution. The applicant, on 23 July 2015 attached goods at the Judgment Debtor's residence. Following the attachment the Judgment Debtor requested the applicant to institute the current proceedings on the basis that the property attached did not belong to him but to the Claimant Rodney Dangarembizi Family Trust.

The Claimant is a Trust registered on 2 February 2015. The Claimant presented argument that the Claimant though not registered existed way before February 2015. The invoices pertaining to the property which forms the subject of the matter are dated from September 2012 to October 2013. Suffices in the circumstances of this case to mention that what is for determination is not whether or not the Trust, that is the Claimant is registered. What is at stake is whether or not the Claimant is the owner of the attached property. Once proved that the Claimant is the owner of the property attached then the Claimant's claim ought to be granted. On the other hand if it is not proved that the Claimant is the owner then the claim ought to be dismissed.

The Law

It is trite in our law that the Claimant bears the onus of proving ownership of property claimed in interpleader proceedings. In the case *Bruce NO v Josiah Parkers and Sons Ltd* 1972 (1) SA 68 R at 70 C-E it was stated as follows:

“In my view, in proceedings of this nature the Claimant must set out facts and allegations which constitute proof of ownership”

See also *Deputy Sheriff, Marondera v Traverse Investments (Pvt) Ltd and Anor* HH 11/2003. The Claimant has the onus to prove ownership *in toto* given the property attached was in possession of the Judgment Debtor at the time of attachment.

In the present case the Claimant did not argue that the property was in its possession when attached. The Claimant rather went to town in explaining what a Trust is and that such a Trust is recognised by the Zimbabwean laws whether registered or not. This is not what is at stake but whether or not the property attached is owned by the Claimant. The Claimant sought to rely on invoices to prove ownership but the bulky of the invoices did not disclose the attached goods. It is a requirement in proceedings of this nature for the Claimant to set out facts and allegations which constitute proof of ownership. See *Bruce NO supra*. Production of invoices without substance of whether or not the goods were delivered to the Claimant is not sufficient proof of ownership. The invoices produced are all dated from September 2012 to October 2013. It is not clear from evidence whether or not the Claimant was already in existence to own property given it was registered on 2 February 2015. The affidavit of evidence is devoid of evidence of the existence and acquisition of the property in question. Vehicles attached have registration books attached and these bear the name of Orimbahuru Holdings (Private) Limited. No further evidence was adduced to show that ownership of the vehicle was passed to the Claimant. It remains speculative the vehicle belong to the registered owner or to the Judgment Debtor from whom they were recovered or to the Claimant. In short there appears to be no proof of ownership of the property as claimed by the Claimant.

The property was attached in the Judgment Debtor's possession. The Claimant has not shown that he owns the property attached. The link between the Judgment Debtor a Trustee and the Claimant a Trust, in the absence of proof of ownership by the Claimant smacks of a ploy to delay the judgment obtained by the Judgment Creditors.

In the result I will make the following order;

1. The Claimant's claim is hereby dismissed
2. The Claimant shall pay the applicant and Judgment Creditor's costs.

Kantor & Immerman, applicant's legal practitioners
Takawira Law Chambers, claimant's legal practitioners
V.S.Nyangulu, judgment creditor's legal practitioners