THE SHERIFF FOR ZIMBABWE

and

TWENTY THIRD CENTURY SYSTEMS (PVT) LTD

and

SAT SPACE AFRICA LTD

HIGH COURT OF ZIMBABWE

MATANDA-MOYO J

HARARE, 4 October 2017 & 25 January 2018

**Opposed Matter**

Mr *N Mugandiwa,* for the applicant

Mr *O Kondongwe,* for the claimant

Mr *H Tongoona,* for the judgment creditor

MATANDA-MOYO J: On 24 August 2016 the judgment creditor obtained judgment against Tripple Play Communications (Pvt) Ltd for the payment of $21 564.85 plus interest plus costs of suit. The judgment creditor then instructed the applicant to attach the movable property of Tripple Play Communications. On 18 August 2016 the applicant attached property appearing on the Notice of seizure and attachment at Number 1 Kenilworth Road Newlands, Harare.

Following such attachment the claimant wrote to the Sheriff claiming that the property so attached did not belong to the judgment debtor but to it. The judgment creditor conceded the claimant’s claim to some of the property namely Marco polo bus ADZ 0283, Volvo ADY 3585 and BMW X5 ADT 3914. The judgment creditor insisted on the attachment of all office furniture resulting in applicant bringing the present interpleader application. The case of *Zandberg* v *Van Zyl* 1910 AD 258. It was argued that at law of possession of a movable raises a presumption of ownership. This there is a presumption that the attached property is that of the judgment debtor.

The claimant insisted that the furniture attached belonged to it and not to the judgment debtor. As proof of ownership it produced an asset register. The claimant submitted that having produced its asset register which captured all assets attached, it has discharged the onus upon it and is entitled to judgment in its favour.

The judgment creditor submitted that the asset register did not represent conclusive evidence that such furniture belonged to the claimant. The judgment creditor further submitted that the asset inventory or register as produced makes no reference to the claimant. The asset register was created by the claimant in a bid to assist the judgment debtor from evading execution.

The judgment creditor submitted that the attached property represented the day to day office furniture used by the judgment debtor. Such property was attached at the premises of the judgment debtor. It is highly improbable that the judgment debtor would fail to own the office furniture it was using. The judgment creditor urged the court to take note of the close relationship between the judgment debtor and the claimant and find the possibility of collusion high and real.

The claimant in order to succeed in this application must show on a balance of probabilities that the office furniture attached by the applicant belongs to it.

The claimant produced an asset register which according to the computer print was created on 24 August 2016. That date of creation has been seriously challenged by the judgment creditor as proof that such asset was conceded on 24 August 2016 after the attachment, in order to create the basis for frustrating execution. This court first needs to examine the meaning of the words “created on.” Those words mean the date that the document was made/brought into existence was created. It depicts the creation production date. The date on which such data was first imputed on the computer. I tend to agree with the judgment creditor’s submission that the document was created after attachment by an interested party in order to frustrate execution.

It is common cause that the claimant is the holding company of the judgment creditor and by virtue of that position, the claimant has interest in the affairs of the judgment debtor. Although it is true that the two enjoy separate legal entity status it is also true that claimant has interest in safeguarding the property of the judgment debtor which is its subsidiary. Whilst normally an asset register which is genuine proves ownership of goods, I cannot say the same in this case as the genuity of such asset register has been successfully challenged. Once so challenged the claimant ought to have gone a step further by producing receipts showing that it indeed owned such property. Failure to do so diminished the chances of claimant to succeed in proving ownership. See *Sheriff of* *High Court* v *Manyanya and Others* HH 494/15.

The claimant in my view has failed to cross the first hurdle of proving that the office furniture belonged to it. Without proof of ownership I am unable to grant an order in favour of the claimant.

In the result l order as follows:-

1. That the claimant’s claim to the office furniture and equipment which was placed under attachment in execution of the order in HC 5730/15 is hereby dismissed.
2. That the above property attached in terms of the notice of seizure and attachment dated 24 August 2016 by the applicant, is hereby declared executable.
3. That the claimant is to pay the judgment creditor’s and the applicant’s costs on a legal practitioner and client scale.

*Kantor & Immerman,* applicant’s legal practitioners

*Dube, Manikai & Hwacha,* claimant’s legal practitioners

*Mapondera & Company*, judgment creditor’s legal practitioners