

THE SHERIFF OF ZIMBABWE
AND
SUPERIOR HOLDINGS (PVT) LTD (CLAIMANT)
AND
ACOL CHEMICAL HOLDINGS (PVT) LTD (JUDGMENT CREDITOR)

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 12 October, 2017 and 8 February 2018

Opposed Matter

Ms T. Mukwasha, for the applicant
B Chizengeru, for the claimant
T.S Manjengwa, for the judgment creditor

MWAYERA J: On 12 October, 2017 I dismissed the claimant's claim and declared the property attached in terms of a notice of seizure executable. The reasons for my disposition in dismissing the interpleader relief are captioned herein.

Pursuant to the judgment creditor obtaining a judgment against Imponente Tanning (Pvt) Ltd in HC 8924/15 the applicant attached the judgment debtor's property in execution. This then occasioned the claimant to claim the goods attached and thus culminating the present interpleader application. The judgment creditor raised a point *in limine* that the claimant's claim was fatally defective as it was not supported by an affidavit of a duly authorised person. The judgment creditor seemed to take issue with there being no resolution authorising the deponent to the affidavit for the judgment debtor. I must hasten to mention that the deponent to the claimant's founding affidavit Nicodimus Madoro a Human Resources Manager for Superior Holdings (Pvt) Ltd swore positively to aspects within his personal knowledge and made it abundantly clear he was duly authorised by the claimant to depose to the affidavit. It is common cause that a company does not function on its own but through agents authorised to do so. The Human Resources Manager was authorised to depose to the affidavit and he is in the category of people who would ordinarily have knowledge of issues relating to the company. To that end the point *in limine* raised could not be sustained.

Turning to the merits, it is apparent that the movable property attached per the notice of seizure was attached in the possession of the judgment debtor. The claimant has to give evidence to prove ownership of that property. This is basically because possession of a thing raises the presumption of ownership. The claimant in an interpleader relief ought to rebut that presumption by way of giving evidence which is clear and satisfactory to prove ownership. See *Randburg v Vanzyl* 1910 AD 258 and *Bruce N O v Parks and Sons P/L and Another* 1972 (1) SA 68. The claimant in this case just claimed it owned the property with no satisfactory proof of ownership. No evidence was adduced why the property, if it belonged to the claimant, was in the custody of the debtor. The asset register produced as an attachment to the claimant's affidavit does not show that the property attached belonged to the complainant but that all property attached belonged to the judgment debtor as it all appeared under the judgment debtor's name. To further make the claimant's claim unsatisfactory is the fact that the judgment debtor is owned by the claimant. Given that relationship, and that the property was recovered in possession of the judgment debtor in the absence of satisfactory evidence of ownership by the claimant there is no basis for declaring that the property belongs to the claimant.

The other evidence which the claimant sought to rely on was on a document that shows prior representation of ownership made to a third party, a valuer who prepared an evaluation document in 2008. There is no supporting evidence from the 3rd party and it is not clear why if the property was the claimant's it was in the possession of the judgment debtor at the time of attachment. The valuation asset report was just depicting a list of property and estimated gross replacement and depreciated cost. Nothing on the report substantiated satisfactorily that the property was indeed acquired and owned by the claimant. The claimant must go beyond just attaching a bunch of papers but must set out facts and allegations which constitute proof of ownership since the property was recovered from the judgment debtor. See *Deputy Sheriff, Marondera v Traverse Investments (Pvt) Ltd and Anor* HH 11/2003. The authenticity of the document the valuation report was not tested and it does not necessarily follow that if the document was used for somebody else it is applicable in the circumstances of this case. There was no evidence to show that the property attached did not belong to the judgment debtor. No evidence was provided of how the claimant acquired title or purchased the goods which happen to have been attached in the possession of the judgment debtor. The presumption of ownership as occasioned by possession of the judgment debtor has not been rebutted by the claimant. It is not sufficient for the claimant to just say it acquired property without substantiating by providing details as to the manner of acquisition so as to prove right of ownership.

In the circumstances of this case satisfactory evidence of ownership by the claimant was essential, more so when one considers the economic relationship of the claimant and the judgment debtor.

Accordingly the claimant's claim must fail.

It is ordered that:

1. The claimant's claim to the property placed under attachment in execution of judgment HC 8924/15 is hereby dismissed.
2. The property attached in terms of Notice of seizure and attachment dated 29 May 2017 issued by applicant is hereby declared executable.
3. The claimant is to pay the judgment creditor and applicant's costs on legal practitioner and client scale.

Dube, Banda, Nzarayapenga & partners, applicants legal practitioners
Chizengeya Maeresera & Mandikumba, claimant's legal practitioners
Wintertons, judgment creditor's legal practitioners