

THE SHERIFF FOR ZIMBABWE
versus
MUSHANDI HOME (PVT) LTD
and
SUNDAY TAUZENI

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 26 July 2019 & 21 August 2019

Opposed Matter – Interpleader proceedings

Ms V R Muzambi, for the applicant
C Mateza, for the claimant
Ms K Mukanhairi, for the respondent

MUREMBA J: These are interpleader proceedings. The applicant is the Sheriff. The claimant is Mushandi Home (Pvt) Ltd. The judgment creditor is Sunday Tauzeni. The judgment creditor obtained an arbitral award against a company called Inter-Agric (Pvt) Ltd for the sum of \$21 182.43. That arbitral award was registered as a judgment of this court on 25 September 2018 under case number HC 7604/17. Pursuant to the judgment the judgment creditor instructed the sheriff to attach property at Box 790 Marondera. No physical address is indicated on the notice of seizure and attachment and the writ of execution. The sheriff went and attached a Hat tat red tractor and 2 New Holland blue tractors. No other descriptions of these 3 tractors were given in the notice of seizure. The claimant lays claim to all these tractors. This resulted in the Sheriff instituting the present interpleader proceedings.

Tendai Ziko the finance manager of the claimant deposed to the claimant's affidavit. He averred that Inter-Agric (Pvt) Ltd the judgment debtor is a company which to the claimant's knowledge has since ceased to trade and has been deregistered. Mr. Ziko averred that he was surprised on 2 November 2018 when the Sheriff attended at the claimant's place of business at Lot 2 and 4 Percyvale, Murehwa and attached 3 tractors. He averred that these tractors were purchased in the name of Minscord Enterprises (Pvt) Ltd this being the former name of the claimant. He averred that the change of name was made to the Holding company. An annexure showing that

change of name was attached. What is noticeable is that Minscord Enterprises (Pvt) Ltd changed its name to Mushandi Holdings (Pvt) Ltd on 22 November 2016. The name did not change to Mushandi Home (Pvt) Ltd. The claimant before this court is Mushandi Home (Pvt) Ltd.

Mr. Ziko averred that these tractors were bought and are owned by the claimant. Proofs of payment for 3 tractors were attached. Annexure D1 is a hire purchase agreement of July 2015 between Credfin (Pvt) Ltd and Minscord Enterprises (Pvt) Ltd for one Hat tat 110A Tractor for US\$35 079.41. Annexure D2 relates to 2 tractors of the same description bought by Minscord Enterprises (Pvt) Ltd dated 12 June 2014 from William Bain and Company Holdings (Pvt) Ltd. Mr. Ziko averred that the tractors were bought by the claimant specifically for its agricultural business on the farm. Mr. Ziko attached the claimant's financial statements for the year ending 31 December 2017 which he said showed that the tractors in question are assets of the claimant. What is also noticeable on this financial statement is that it is for a company called Mushandi Home (Pvt) Ltd and not Mushandi Holdings (Pvt) Ltd. In that financial statement on the very last page the shareholder of Mushandi Home (Pvt) Ltd is indicated as Mushandi Holdings Zimbabwe (Pvt) Ltd.

Mr. Ziko averred that there is no relationship whatsoever between the claimant and the judgment debtor. He contended that the claimant is a company with a separate legal existence from the judgment debtor. To demonstrate that, he attached the claimant's CR 14 as annexure G1. It indicates the company name as Mushandi Home (Pvt) Ltd. Mr. Ziko averred that the tractors in question were attached at claimant's place of business which is box 98 Marondera and not 790 as shown on the notice of removal. He attached a document which he said was proof that the judgment debtor ceased to operate on 25 January 2016. The document is a statement by the directors of the judgment debtor to the Registrar of Companies certifying that the said company ceased to operate from 25 January 2016. Apparently the arbitration proceedings leading to the arbitral award commenced in 2011 and were only finalised on 20 January 2017.

In opposing the claimant's claim the judgment creditor who is a former employee of the judgment debtor averred that he was working for the judgment debtor (Inter-Agric (Pvt) Ltd) at Lot 2 and 4 Percyvale, Murehwa. He said that he left employment in 2011. He was sure that Lot 2 and 4 Percyvale, Murehwa was the judgment debtor's place of business. He averred that he was employed there as a fleet controller and when he left Inter-Agric (Pvt) Ltd had 32 tractors, 15

vehicles and 7 trucks. He said that there was nothing to show that Inter Agric (Pvt) Ltd was liquidated. He averred that its assets were still on site. He further averred that one Nigel Bailey is a director of both Inter-Agric (Pvt) Ltd and Mushandi Home (Pvt) Ltd. This averment is true. The C.R. 14 for Mushandi Home (Pvt) Ltd (Annexure N) and the C.R. 16 for Inter-Agric (Pvt) Ltd (Annexure P) clearly show that. He contended that the claimant merely changed the company name in order to evade debts. He averred that the arbitral award also showed Inter-Agric (Pvt) Ltd as Minscord (Pvt) Ltd and the same Minscord (Pvt) Ltd changed to claimant. The judgment creditor contended that the claimant never bothered to attach registration books of the attached 3 tractors and as such there is no way it can be proven that the documents tendered as proof of purchase can be linked to the attached tractors.

In arguing the matter Mr. *Mateza* for the claimant argued that the name that appears on the arbitral award is Minscord (Pvt) Ltd which is a different company from Minscord Enterprises (Pvt) Ltd which is the claimant's former name. I queried whether there could not have been an omission of the word 'Enterprises' from the name Minscord (Pvt) Ltd. He argued that Minscord Enterprises (Pvt) Ltd and Minscord (Pvt) Ltd demonstrate that these are 2 different companies. He said that there cannot be an omission.

What is apparent in this matter is that the claimant is Mushandi Home (Pvt) Ltd. The proofs of purchase of the 3 tractors that were presented relate to tractors bought by Minscord Enterprises (Pvt) Ltd. The claimant says this is its former name before a change of name was effected. However, the certificate of change of name shows that the new name for Minscord Enterprises (Pvt) Ltd is Mushandi Holdings (Pvt) Ltd. This company cannot be the same as Mushandi Home (Pvt) Ltd. The names are different as further evidenced by the financial statement and the C.R. 14 for Mushandi Home (Pvt) Ltd which are attached to the claimant's affidavit. These two documents bear the name Mushandi Home (Pvt) Ltd and not Mushandi Holdings (Pvt) Ltd. With this there is no way the two companies can be said to be one company. At law each company maintains its separate *persona* from that of its members or shareholders and its directors¹. With the certificate of change of name bearing the name of Mushandi Holdings (Pvt) Ltd the proper claimant should have been Mushandi Holdings (Pvt) Ltd and not Mushandi (Home) Pvt Ltd. No explanation was given as to why Mushandi Home (Pvt) Ltd was suing instead of Mushandi Holdings (Pvt) Ltd.

¹ *Dadoo Ltd v Krugersdorp Municipal Council* 1920 A.D. 530; *Salomon v Salomon & Co Ltd* [1897] AC 22.

Mushandi Home (Pvt) Ltd cannot sue purporting to be the holding company and neither can it sue on behalf of the holding company. The two companies are not the same. For a party to be able to sue it must have a direct interest in the subject matter of the suit. It has to have *locus standi*. See *Bindura Nickel Corporation Ltd v ZRA* 2008 (1) ZLR 152 (H). For the above reasons, I will thus dismiss the claimant's claim.

It be and is hereby ordered that:

1. The claimant's claim to all the property which is listed in the Notice of Seizure and Attachment dated 2 November 2018, which were placed under attachment in execution of the order in case No. HC 7604/17 is dismissed.
2. The above mentioned property attached in terms of the Notice of Seizure and Attachment dated 2 November 2018 issued by the applicant is declared executable.
3. The claimant shall pay the judgment creditor's and the applicant's costs.

V. Nyemba & Associates, applicant's legal practitioners
Chimwamurombe Legal Practice, claimant's legal practitioners
Mukanhairi-Makodza Attorneys, judgment creditor's legal practitioners