

SURVIVAL MANUFACTURING AGENCIES (PVT) LTD
versus
CALVIN MASUWA

HIGH COURT OF ZIMBABWE
TSANGA & CHIRAWU-MUGOMBA JJ
HARARE, 10, 24 September & 8 October 2020.

Civil Appeal

Appellant in person

Respondent in person

CHIRAWU-MUGOMBA J

(1) When this appeal was placed before us, we noted an anomaly in the citation of the parties. This appeal is based on interpleader proceedings in the court *a quo*. The appellant is the claimant. The respondent is the judgment creditor and Jobs Technical College, the judgment debtor that ought to have been cited as the other respondent (hereinafter the judgment debtor).

(2) On the 6th of June 2018, a Senior Labour Officer awarded the respondent a sum of \$2500 being unpaid wages. At that hearing, one Jacob Maruta represented the judgment debtor.

(3) The respondent successfully applied for registration of the award in the court *a quo*. In pursuance of settlement of the claim, a warrant of execution against property was issued on the 1st of August 2019. The Messenger of Court subsequently placed the following property under attachment- a Mazda motor vehicle, a Jimuwork bench and a compressor. The appellant claimed through an affidavit deposed to by Jacob Maruta who stated that he is a director of claimant that the attached property was wholly owned by the claimant. In support, he attached a copy of a registration book for the attached vehicle as proof of ownership and copy of certificate of incorporation for a company called Survival Manufacturing Agencies (Pvt) Ltd. He submitted that receipts for the other property had been misplaced.

(4) At the first hearing of the interpleader matter, the court requested receipts from the appellant. The response was that there were no receipts. The court requested that a list of assets of the claimant be availed at the next hearing.

(5) The court a quo held as follows. The appellant had not shown on a balance of probabilities that the attached property was in its possession. Whilst the court had accepted the appellant's claim that there were no receipts and gave it time to collect the inventory list, no such list was placed before it as proof of ownership. The list tendered belonged to the judgment debtor. Reliance was place on the decision in *Sheriff of the High Court v Majoni* HH-689-15, in which it was held that where goods that are attached are found in the possession of the judgement debtor at the time of attachment, there is a presumption that s/he or it owns the property. The evidence tendered by the appellant showed that the judgement debtor was the owner and not the claimant. Further that registration of a motor vehicle only creates a presumption of ownership. The appellant apart from the book had not tendered other evidence. The appellant's claim was therefore dismissed and the attached property was declared executable.

(6) Aggrieved by the ruling, the appellant noted an appeal on the following grounds.

(1) The Magistrate erred in her findings that the attached property where in judgment debtor's possession whereas the property was in possession of the claimant. The judgment debtor operates their business from the same premises but each owns separately its assets.

(2) The learned Magistrate erred in her finding that the evidence tendered proved that the property attached belongs to the judgment debtor. The inventory tendered during the hearing exclude the property attached by the Messenger of Court and

(3). The Magistrate erred at law in holding that the production of a registration book was not sufficient evidence to prove that claimant is the owner of the said motor vehicle. The registration book showed that the motor vehicle was registered in the claimant's name prior to the registration of the judgment debtor's company.

(7) At the hearing, the appellant was represented by Jacob Maruta and the respondent appeared in person. They were both constrained in advancing legal arguments

in relation to the appeal. The appellant submitted that the judgement debtor operates from premises owned by Survival Manufacturing Agencies (Pvt) Ltd, a company incorporated in 1991. The respondent joined the judgment debtor company in 2016. When the court requested for the list of assets of the claimant, the Magistrate accepted it and did not inquire about the vehicle. In any event, the registration book shows that it is not registered in the name of the judgement debtor. The respondent made the following submissions. The inventory that was produced was that of the judgment debtor and not the claimant. There was no other proof of ownership produced by the claimant. The property that was attached was that of the judgement debtor including the vehicle.

(8) The legal issue in our view is this- Did the court a quo err in holding that the appellant did not prove on a balance of probabilities that the property belonged to the claimant?

Interpleader proceedings are instituted in instances in which a third party lays claim to property placed under attachment. See 70 of the Magistrates Court Act [*Chapter 7:10*] and O27 of the Magistrates Court [Civil] Rules of 2019. See also *Masuku v Chinyemba and ors*, 2010 (2) ZLR 31. It is trite that the claimant bears the onus of proving that s/he or it is the owner of the attached property especially in instances where property is found at the address of a judgment debtor. See *Sheriff for Zimbabwe v Mukoko and anor*, HH-805-17 and *Sheriff of the High Court v Chihota and ors*, HH-669-15. In *Sheriff of Zimbabwe v Majoni and ors*, HH-689-15, MAFUSIRE J opined in an interpleader application that, “*it was not lost to me that in view of the close blood and marital relationship between her and the claimants, the likelihood of collusion to frustrate the judgment creditor was high*”. In *Sheriff of Zimbabwe v K.M Auctions (Pvt) Ltd and anor*, HH-809-15, MAKONI J said, “*in relation to the relationship between a claimant and judgement creditor opined as follows, In view of those findings I will find that the two companies are so inter related that the claimant is being used to defeat the judgment, creditors’ lawful claim. The companies are bound hand and foot to each other if one looks at the circumstances outlined above*”.

(9) Regarding the issue of the registration book for motor vehicles it is trite that its existence is not proof of ownership. See *Air Zimbabwe (Pvt) Ltd and Anor v Nhuta and Ors*, SC-65-14.

(10) In *casu*, the following is common cause. The judgment debtor and the appellant operate from the same premises. The goods were attached from those premises.

The representative of the appellant is a director of the judgment creditor. When requested by the court to provide a list of assets, the appellant produced one of goods belonging to the judgment debtor. The registration book for the motor vehicle shows that it is registered in the name of Survival Tyres. However, no other evidence was produced to show that it belongs to the claimant.

(11) Given the totality of the evidence, the court a quo cannot be faulted for reaching the conclusion that the appellant had failed to discharge the onus cast on it to prove that the attached property including the motor vehicle a Mazda Cronos registration number AAB6666 belonged to it. The probability of collusion between the appellant and the judgment creditor is very high. The claimant's representative is a director of both the claimant and the judgment debtor. The two entities are bound hand and foot.

(12) Accordingly, we find no merit in the appeal.

(13) On costs, it is clear that the appellant simply does not wish to make payment to the respondent and is bent on frustrating the claim. Even though he is a self-actor, the respondent is entitled to the legal costs that he has incurred.

DISPOSITION

1. The appeal be and is hereby dismissed.
2. The appellant shall pay the costs

TSANGA J: Agrees