

THE SHERIFF OF ZIMBABWE  
versus  
DERECK COCKCROFT  
and  
SAKURA VUTA DEWATERINGS (Pvt) Ltd

HIGH COURT OF ZIMBABWE  
MHURI J  
HARARE, 17 February & 27 April 2023

**Interpleader notice**

*Ms F Mabungu*, for the applicant  
*Mr S Chigumira*, for the claimant  
*Ms L Rufu*, for the Judgment creditor

**MHURI J:** On the 5 November 2019 this Court issued an order in favour a Sakura Vuta Dewaterings (Pvt) Ltd (the Judgment Creditor) against Shatirwa Investments (Pvt) Ltd t/a Afmine (The Judgment Debtor).

It was ordered that the judgment debtor pays the judgment creditor a sum of US \$ 37.283.98 plus interest at the prescribed rate from date of summons to date of full payment and costs of suit on the attorney – client scale.

Pursuant to this order, a writ of execution against movable property was issued directing applicant to attach and take into execution judgment debtor’s movable goods at number 44 Grosvener Road Highlands Harare.

On 23 September 2022 applicant proceeded to number 44 Grosvener Road Highlands Harare and attached the following property:

- 1 Ford Ranger white T 6 single Cab AEX 2201
- 27 solar panels
- 5 Lithium batteries
- 3 5kv inverters
- 1 Defender Land Rover green AEB 5582

The date for removal of the property was 28 September 2022.

As a result of the attachment, claimant laid claim to the property and filed his interpleader affidavit in terms of Rule 63 of this Court’s Rules SI 202/ 2021. (THE RULES)

This therefore is an interpleader notice at the instance of applicant in terms of Rule 63 (7) of the Rules. The Court is to determine the competing rights of the claimant and the judgment creditor over the said attached property.

Claimant's affidavit in respect of his claim states that:

- The writ of execution directed the sheriff to execute at No 44 Grosvener Highlands Harare which is his personal address and not that of the judgment debtor, the judgement debtor a distinct legal persona from claimant and whose address is No 5 Alan Wilson Avenue Belgravia Harare.
- the property that was attached is his property and as such the attachment was irregular and ought to be set aside.
- he is not the judgment debtor and there is no court order against him in his personal capacity.
- The defender Land Rover AEB 5582 is his as the registration book will show (annexure "D" E)
- The solar system is his as the invoice of purchase shows (annexure "F" G)
- As the writ was executed at his residential address as opposed to the judgment creditor's (sic) place of business the presumption is that all the property found at his address belongs to him and not judgment debtor.
- The writ of execution is bad at law as it seeks to recover the debt in US \$ without giving the option for settlement in local currency.

His prayer is that applicant removes the property from attachment and he be restored possession.

Mr Philip Vuta, on behalf of the judgment creditor avered in an affidavit that claimant's claim must be dismissed with costs on a higher scale on the basis that:

- claimant has not furnished proof that the attached property is his.
- the property was attached in the possession of the judgment debtor
- claimant and the judgment debtor are one
- Claimant used the judgment debtor to defraud the judgment creditor of the sum of US \$ 37 283-98.

It is not in dispute that under case HC 4504/19 the judgment creditor issued summons against the judgment debtor. The address for the service of the summons was number 5 Alan Wilson Avenue Belgravia Harare. The Sheriff's return of service shows that on 4-6-2019 service was attempted, as the defendant was no longer operating from

the given address of service. As a result, the judgment creditor then instructed the sheriff to serve the summons and declaration at number 44 Grosvener Road Highlands Harare, which he did on the 11 July 2019.

On the 12 July 2019 the judgment debtor entered appearance to defend. The sheriff's return of service of the 13 September 2022 shows that there was attempted service when he wanted to attach the property in execution of the writ. The reason given was that the debt had been paid.

The property was eventually attached after the sheriff engaged the services of a locksmith.

From the above, I am persuaded and of the considered view that the judgment debtor's address was number 44 Grosvener Road Highlands Harare and therefore attachment was correctly effected at this address.

That being the case, the question that arises is whether the property that was attached is the judgment debtor's. Claimant says the property is his. The presumption at this stage is that the property belongs to the judgment debtor, it was in possession of the same at the time and at the address of attachment. It therefore follows that the proof of ownership of the said property falls on the claimant on a balance of probabilities.

As regards the defender Land Rover AEB 5582, applicant attached as proof of ownership of the said motor vehicle, (annexure E) a hand written document stating on its left side the motor vehicle particulars to wit Landrover Defender, 2016, s / wagon, green, 1960, 150615063138 DT 224, SALLDH MR 7 GA 478054, 2 200, Diesel, ex uk, 22/3/16 and on the right side, COCKCROFT DERECK, 08-614645 T 00, 44 Grosvener Rd Highlands Harare.

As I have stated, this is a hand written document. It does not in my view prove anything. This cannot by any stretch of imagination be taken as a registration book. Further, apart from this document, no other document was produced by claimant to support his averment that he owns the motor vehicle. I therefore find that claimant has failed to show that he owns the motor vehicle and it is declared executable.

As regards the Ford Ranger T6 AEX 2201, claimant initially attached a registration book, which book is in the name of Lydia Mining (Private) Limited as the owner. By consent of applicant and the judgment creditor, claimant submitted an agreement of sale of the said motor vehicle between Lydia Mining (Pvt) Ltd (seller)

and Dereck Gwynn Cockroft (Purchaser) dated 18 February 2020. This agreement of sale in my view is proof that the motor vehicle belongs to claimant. This point has not been challenged by the judgment creditor though its submission is that there is collusion between claimant (who is a director in judgment debtor) and the judgment debtor as such the court should pierce the corporate veil and declare the motor vehicle executable.

It is common cause that claimant is a director in judgment debtor. Claimant resides at number 44 Grosvener Road Highlands. The judgment debtor's business address used to be Number 5 Allan Wilson, Belgravia. When the sheriff attempted to serve summons at this address he was advised the judgment debtor no longer operated from there. When the Sheriff was directed to serve the summons at number 44 Grosverner Road, he duly did and the judgment debtor filed its notice to defend which is clear evidence that it was duly served with and got the process. As submitted by the judgment creditor, the judgment debtor did not indicate that the process was served at the wrong address. When the Sheriff tried to execute the writ and attach property at number 44 Grosverner Road he failed at first after being told the debt had been paid. I did not hear claimant submit that the sheriff lied and if he lied, the reason why he would lie.

I am therefore in agreement with the submission that there was collusion between claimant and the judgment debtor and in the result pierce the corporate veil and declare the motor vehicle executable.

I find support in so proceeding in the cases

1. *Deputy Sheriff Harare v Trinpac Investments (Pvt) Ltd and anor* 2011 (1) ZLR 548(H)
2. *Stylianou and others v Mubita and others* SC 7/17
3. *Cape Pacific Ltd v Lubner Coutrolling Investments (Pvt) Ltd and others* 1993 (2) SA 784 (C) AT 816 in which the position was stated that :

“when the corporation is the mere alter ego or business conduit of a person, it may be disregarded. This rule has been adopted by the court in those cases where the idea of the corporate entity hand been used as a subterfuge and to observe it would work an injustice ..... In cases of fraud, whether actual or constructive, the courts regard the real parties responsible and grant relief against them or deny their claims and defences based on principles of equity ..... So where a corporation is organised or maintained as a device in order to evade an outstanding legal or

equitable obligation, the courts, even without reference to fraud refuse to regard it as a corporate entity.”

As regards the solar system (panels, invertors and batteries), claimant attached an invoice dated 15 June 2020 from HEYNES Construction and Solar Energy Knysna in the name of claimant. The invoice was for: -

1	Blue Nova 16 kwh life Po 4 Battery	R 148 000 -00
2	Victron Smart 150/100 MPPT	R 28 240 -00
	Victron Color Control GX	R 7825 -00
24	Peimar 360 Wp Mono Perc panels	R 67 068 -00
1	Victron Flot Fuse 440 Amp and holder	R 2520 -00
	Bracketry and cabling	R 33 252 -00
3	Victron Multiplus 48 /5000/70 Inverter	R 60 676 -00
	VE Direct Cables	R 4825 -00

Total R 353 306.00

There are Banking Details endorsed on the invoice. Of particular note is the endorsement on the invoice words to this effect,

1. “Labour no charge
2. This Quotation does not include transport, travel accommodation or expenses.”

Comparing what was attached by the sheriff as the notice of seizure and attachment shows, and what is reflected on the invoice, one notices that these two documents show totally different items and quantities. What was attached were

- 27 solar panels
- 5 lithium batteries
- 3 5kv invertors,

Whereas the invoice shows 24 solar panels, one battery and 2 inverters.

Further in view of the endorsements earlier referred one cannot be faulted for concluding that the invoice was not proof of payment but a quotation. A quotation, it goes

without saying cannot be evidence or proof of ownership of anything. That having been said, I come to the conclusion that claimant has failed to establish proof of ownership of the attached solar system and I declare it executable.

Having found that claimant has failed in his claim and that all the property is executable, it is ordered that:

1. the claimant's claim to the movable property attached by applicant in execution of judgment in HC 4504/ 19 be and is hereby dismissed.
2. The movable property attached by applicant be and is hereby declared executable.
3. Claimant pays storage costs and all costs associated with the attachment and seizure of the property.
4. Claimant pays applicant's and judgment creditor's costs on the ordinary scale.

*Dube- Banda Nzarayapenga and Partners, applicant's legal practitioner*  
*Whatman and Stewart Law Firm, Claimant's legal practitioner*  
*Rufu- Makoni Judgment Creditor's, legal practitioners*