

THE SHERIFF FOR ZIMBABWE
and
CT LIVE MINISTRIES
and
VIEWSAT LIMITED

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 15 November 2022 & 25 January 2023

Interpleader Notice

Mr *Nyathi*, for the applicant
Mr *T C Gumbo*, for the claimant
Mr *D Kanokanga*, for the judgment creditor

MHURI J: On 25 September 2018, in the matter between *Viewsat Limited and Charles Takavengwa t/a CT Clive Network* HC 7224/17 this Court issued an Order, ordering defendant to pay plaintiff \$27171.30, 10% collection commission and costs on a legal practitioner and client scale. Pursuant to this Order, a writ of execution against movable property was issued directing the Sheriff (applicant) to take into execution movable goods of Charles Takawengwa t/a CT Live Ministries Deliverance Centre No 11 Chatter Road Harare.

On 13 September 2022 applicant attached the following property, in the presence of Charles Takawengwa:-

- 6 piece black leather sofa
- wooden and glass table
- black flat screen 40 inch
- black plastic chairs
- craft audio P A system with speakers
- green drums
- keyboard
- 6 piece brown black sofas

The property was due for removal on 16 September 2022.

Consequent to this attachment, claimant laid claim with the applicant of all the property so attached.

In its affidavit deposed to by one Lois Manjengwa a trustee, claimant averred that it is the owner of the items, procured by the Church 6 years before. It could however not locate some of the receipts for some of the items. Plastic chairs were donated to the Church by congregants, the Public Address system was bought in Harare but receipts cannot be located. The television sets used for announcements and recorded sermons were donated by a company called JB Electric for use in the Church. The keyboard and drums were bought by the Church 6 years before as such receipts cannot be located.

It was further averred that the nature of the items attached clearly show that they are not for home use but are in line with running of the Church, as such ownership by the Church cannot reasonably be challenged. Claimant is the owner of the property and not the judgment debtor. Claimant is not liable for the debt and was not party to the proceedings that gave rise to the attachment and neither was it party to the underlying cause between the judgment creditor and judgment debtor.

The property was attached in error, so claimant averred and it prayed that the said property be released.

In response, the judgment creditor submitted that claimant is not a Church as averred by claimant. The Deed of Trust relied upon by claimant particularly in its objectives does not support that it is a Church.

It was also submitted that claimant failed to prove ownership of the property either in the form of receipts, inventory, affidavits or lease agreement to show that the premises from which the property was attached is Church premises and not judgment debtor's residence.

These are interpleader proceedings instituted by applicant in terms of r 63 of the High Court Rules Statutory Instrument 202/2021. In such proceedings, the onus rests on the claimant to prove on a balance of probabilities that the property attached belongs to him/her. In *Kazi v The Sheriff of Zimbabwe and Anor* SC 26/22 the point was made:-

“The need to provide sufficient proof of ownership of property attached in execution is a mandatory step which every claimant in interpleader proceedings must satisfy.” Per MALABA CJ.

In casu therefore, the claimant has the onus to prove ownership of the property. Claimant has not produced any receipts to show that it bought the property. It averred that due to effluxation of time it is a challenge to produce the receipts. This averment in my view is not convincing at all.

As submitted by the judgment creditor, claimant ought at least to have obtained affidavits from the company it averred donated some of the property to it, namely JB Electric, or even from some members of its church to support that indeed the property is church property which they donated and have been using all along. It should have also produced an inventory of the property or records to show it is church property and its origins.

Further, the averment that claimant is a church which owns the property has not been satisfactorily established. The Trust Deed which it relied on does not show or prove that fact. The objects as enumerated in paragraph six (6) therein do not have anything to do with the church. It is also indicated on p 3 of the Trust that the founder is desirous to establish a Trust for the purpose of coming up with strategies and an open platform that shall proffer ways and means necessary to improve livelihoods patterns among the people of the world. Nowhere in the Trust is it mentioned that claimant is constituted as a church. It is difficult therefore to accept that the property so attached is church property.

It is also not disputed that the property was attached at the judgment debtor’s residence. The law is clear that where the goods attached are found in possession of the judgment debtor at the time of attachment, there is a presumption that he owns the property. The property, was attached at judgment debtor’s residence and in the presence of the judgment debtor. This point was stated by CHATIKOBO J in the case *Phillips N.O v National Foods Ltd & Anor* 1996(2) ZLR 522H that:

“In interpleader proceedings, where a person is found in possession of movable goods, that person is presumed to be the owner of that property unless the presumption is rebutted where a person other than the possessor claims to be owner of the goods that person has the onus of proving on a balance of probabilities that she is the owner of the goods. A bold assertion that she is the owner is not enough.”

See also *Muzanhenamo v Fishtown Investments (Pvt) Ltd & Ors* SC 8/17.

Claimant failed to rebut this presumption.

The nature of property in my view does not prove that the property belonged to claimant and not the judgment debtor. This is a mere bold assertion and will not assist claimant.

I am also persuaded by the judgment creditor's submission that there is collusion between claimant and the judgment debtor so as to defeat the judgment creditor's interest in the property. It is not in dispute that the judgment debtor trades as CT Live Network/CT Live Ministries. He is the founder and Trustee of claimant. The judgment debtor made part payment of the debt out of an FBC account registered in the name of CT Live Network. The claimant's failure to produce any documents to prove ownership except to say, the nature of the property shows it is church property is clear testimony that the two are colluding to defeat the judgment creditor's interest in the property.

I find overallly that claimant failed to prove on a balance of probabilities that the attached property belonged to it.

In the result, therefore, the applicant's alternative relief is hereby granted to wit, that:

1. The claimant's claim to all the property on the Notice of Seizure and Attachment dated 13 September 2022, which was placed under attachment in execution of the Order in Case No. HC 7224/17 be and is hereby dismissed.
2. The said attached property be and is hereby declared executable.
3. The claimant pays in full the storage costs incurred by the applicant from the date of removal of the property to the date of their release from storage.
4. The claimant be and is hereby ordered to pay the judgment creditor's and applicant's costs.

Kantor & Immerman, applicant's legal practitioners
Chinawa Law Chambers, claimant's legal practitioners
Kanokanga & Partners, judgment creditor's legal practitioners