

THE SHERIFF FOR ZIMBABWE
and
PRECIOUS TSITSI CHAWAYIPIRA
versus
HAZVIBVIRI NJOKOYA
and
ROSEWITA NJOKOYA

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 25 January 2022 & 16 March 2022

Ms V. R Muzambi, for the applicant
Mr N. Mupure, and
Mr Machiridza, for the claimant
Ms M. Karimatsenga, for Judgement Creditors

Interpleader Application

MHURIJ: On 31 March 2021, under case No HC 4570/19 the judgment creditors obtained an order against one Felix Munyaradzi (judgment Debtor) in the sum of US\$ 80 000-00 together with interest and costs.

Armed with this Order, the judgment creditors instructed applicant to attach judgment debtor's property. Applicant duly attached the property as listed on the notices of seizure and attachment

These are:

- 4x cream leather sofas
- Brown coffee table
- 3 piece brown leather sofas
- Brown coffee table
- Samsung big screen TV
- 1x executive desk plus 4 chairs
- 3 piece black leather sofas
- Platinum Printer
- White side desk
- Eco TV
- White chest drawer
- 1x Phillips TV

- 1 x Samsung double door fridge
- 4 piece cream leather sofas
- Samsung curved TV
- White centre table
- White and black room divider
- Brown centre carpet
- Black and silver coffee table
- Glass and silver side table
- Round dining table plus 4 chairs
- 3 piece white couches
- Samsung TV
- White coffee table
- White wooden room divider
- Capri fridge (deep)
- 3 piece white sofas
- Russel Hobs microwave

Consequent upon attachment of the above movable property by applicant, claimant laid claim to the property. The claim by claimant gave rise to this application filed on 7 October 2021. Applicant is seeking an order in the following terms:-

- a) that claimant's claim to all the property listed in the notice of seizure which was placed under attachment be granted.
 1. the said property be declared not executable
 2. the judgment creditors pay claimant's and applicant's costs

In the alternative, that

1. Claimant's claim to the listed property placed under attachment be dismissed
2. The attached property be declared executable
3. Claimant pays the judgment creditors' and applicant' costs

Claimant and the judgment debtor are husband and wife legally married in terms of the Marriages Act [*Chapter 5:11*]

In her affidavit in support of and to found interpleader proceedings filed on 29 September, 2021 claimant averred that amongst the attached assets some of them belonged to her which property she purchased from the Republic of China. She attached documentation annexures G 1 – G 11 which she averred was proof beyond a reasonable doubt that the goods belong to her. She listed the assets as:-

SCHEDULE ONE

1. White TV stand
2. Brown leather sofas
3. White leather sofas, six piece display, table and TV stand
4. Outdoor furniture
5. Coffee table and table x 2
6. Safe box x3
7. Four piece leather sofas tables and chairs
8. Outdoor tables and chairs
9. Office furniture table, 5 chairs, display unit and one black sofa
10. 75 inch TV
11. Tea table, round table double door wine Cabinet and Table

Claimant attached documentation written in “Chinese” to support her claim. She further averred that all the documentation referred above, was shown to applicant during attachment but applicant did not take heed. She confirmed that she did not connive with any party to defeat the execution of the Order. She prayed that the said goods be declared hers and therefore not executable.

The application having been filed on 7 October 2021, both claimant and the judgment creditors respectively filed their notices of opposition on 21 October 2021.

In her opposing affidavit, claimant abided by her averments made in the affidavit and annexures founding the interpleader proceedings.

In their notice of opposition, the first judgment creditor in his affidavit whose contents second judgment creditor associated herself with, averred that the documentation attached as proof of ownership of the goods by claimant are of no assistance at all as they are written in “Chinese”, do not bear claimant’s name, there is no translation to the official language of record, one cannot tell receipts from invoices, there is no bank statement to support the purchase whether exclusively by her to the exclusion of her husband, or proof of employment to show she is capable of purchasing the property.

It was averred that claimant, being the wife, connived with her husband (the judgment debtor) to frustrate the judgment creditor’s recovery efforts. They prayed that claimant’s claim be dismissed with costs.

On 26 October 2021 applicant filed his Heads of Argument, following which both claimant and the judgment creditors filed their Heads of Arguments on 10 November 2021. Claimant reiterated in her Heads of Argument that she bought the property from China and that it belonged to her.

On 26 October 2021 however claimant had filed a supplementary affidavit in which she laid claim on other property that was attached. She averred that the affidavit was in support of and to found interpleader proceedings. It had been occasioned by an error of omission when she omitted to include some of her property that had been attached. The filing of this supplementary affidavit by claimant was strongly opposed by the judgment creditors on the ground that claimant did not seek leave of the court before filing it and it ought to be expunged.

Claimant's Legal Practitioner conceded that point and eventually made an oral application to be condoned for the failure to seek leave first before filing and prayed that the supplementary affidavit be admitted and not be expunged from the record.

The explanation given was that there was an error in not including some of the property which had been attached. Claimant had only concentrated on the first page of the notice of seizure leaving the second page due to pressure and the urgency of the matter. It was her submission that when they realized the mistake, they acted immediately though unprocedurally.

On behalf of the judgment creditors, it was submitted that claimant has not proffered a proper and satisfactory explanation for her failure to give the information at the initial stage. If the property belonged to her, claimant should simply have made a claim in the principal claim. What she did was pick and identify certain goods from both pages of the notices of seizure.

Reliance was made on the case of

UNITED REFINERY LIMITED

vs

THE MINING INDUSTRY PENSION FUND & 3 OTHERS SC 63/14

which states that a proper and satisfactory explanation must be given why information was not given at the time and has to be given now.

I am not persuaded by claimant's explanation at all. On the day of attachment of the property (27 September, 2021) by applicant, claimant was present, and according to her she showed applicant the documentation proving that some of the property listed in schedule 1 was

hers. After attachment, the notices of seizure were left behind. On 29 September 2021 she filed her initial claim to some of the property.

It was only after the judgment creditors' had filed their notice of opposition on 21 October 2021 and raised the issue that it's not all the property that claimant has laid claim upon, that she then filed the supplementary affidavit on 26 October 2021 that is almost a month after her initial affidavit. In her notice of opposition filed on 21 October 2021 as mentioned earlier, she reiterated what she had deposed to in her initial affidavit. It was noted, and conceded by claimant's Legal Practitioners that some of the items she now claims as having been omitted are on the first page of the notice of seizure and yet her submission was that she only concentrated on the first page initially and omitted the second page.

On that note, I find the explanation by claimant not satisfactory and consequently decline to condone and grant leave to admit the supplementary affidavit. This was an afterthought by claimant and was filed in a bid to frustrate the judgment creditor's recovery. The supplementary affidavit is therefore expunged from the record. That leaves the initial affidavit and attachments as part of claimant's pleadings.

GOWORA JA (as she then was) put it succinctly that the objective of interpleader proceedings is to permit a party, claiming ownership of property attached in satisfaction of a debt of another to claim such property and have it released from judicial attachment. It is trite that at law a claimant in interpleader proceedings must set out facts and evidence which constitute proof of ownership of the property in contention.

ADAMS FARMS (PRIVATE) LIMITED

vs

- 1) *THE DEPUTY SHERIFF MARONDERA*
- 2) *Z B BANK LIMITED*
- 3) *WILMESSE FARMING ENTERPRISES (PRIVATE) LIMITED*
- 4) *FREDERICK CHRISTIAN MULLER*
- 5) *KARA CHARLENE MULLER*
- 6) *GOLD DRIVEN INVESTMENTS (PRIVATE) LIMITED*

SC 97/20 at page 5

(underlining for emphasis)

In casu, claimant laid claims on certain property that had been attached, as belonging to her. She attached documentation as proof of the fact that she is the one who purchased the property from China. I say documentation because it is not clear from it whether they are receipts or invoices. These documents are in a foreign language, presumably Chinese, not translated to the official language of record, making it difficult to tell or read what it is that is written on them.

I find, claimant has failed to prove that she owns the property she claims belongs to her. I therefore dismiss the interpleader.

In the result, it is ordered that:

1. The claimant's claim to all the property listed in the notices of seizure and attachment dated 27 September 2021 which were placed under attachment in execution of the High Court Order under case No HC 4570/19 be and is hereby dismissed.
2. The mentioned property attached as listed in the notices of seizure issued by applicant on the 27 September 2021 be and is hereby declared executable.
3. The claimant pays the judgment creditors' and applicant's costs.

V Nyemba & Associates, applicants' legal practitioners
Machiridza Commercial Law Chambers, claimant's legal practitioners
Mangeyi Law Chambers, Judgment Creditors legal practitioners