

THE SHERIFF
versus
BERNADETTE NKOMO
and
THABANI ADONIJA
and
ELISHA GARABA

IN THE HIGH COURT OF ZIMBABWE
BACHI MZAWAZI
HARARE, 09 March & 30 March 2022

Judgment Correction

MR Makanda, for the applicant
1st and 2nd Claimants, in default
Judgment creditor, in default

BACHI MZAWAZI J: On the second of February 2022 I had my debut sitting in the unopposed motion court. I was seized with sixty-five court applications amongst them the current one.

The brief facts of the matter are that the applicant is the Sheriff of Zimbabwe who by operation of the law is enjoined to commence interpleader proceedings when a third party claims ownership of goods or property under his attachment. This is such an application. The judgment creditor herein obtained judgment in case the HC 4440/21 against Sapphire Investments (Private) Limited and are Doreen Semester. Pursuant to the judgment, the judgment creditor instructed the applicant to attach certain property in annexure “A1” and “A2”. Consequent to the attachment, the first and second Claimants, both laid claims to the property in the notice of seizure and attachment dated the 14 October 2021 marked annexure “B” and B2 respectively in the record.

The second Claimant laid a further claim to the 2,5K petrol yellow and black generator appearing in the notice of seizure and attachment of the 2 November 2021 annexure “B”.

After complying with all the requirements of what has to be stated in an application of this nature particularly as stated, in terms of the Rule 63(3) the applicant filed this application with this

court. The proof of service of this application has been attached in the form of certificates of service duly prepared and served by the applicant's legal practitioner herein.

The judgment creditor filed his opposing papers refuting the claims of the claimants but was not present at the hearing. The failure of the claimants to file any opposing papers necessitated a default judgment hence the setting of the matter on unopposed role.

After ascertaining that service had been done in terms of the rules and proof of such had been attached I proceed to grant the order as claimed and in terms of the draft. Through an oversight on my part and that of the applicant's counsel the order which was then typed by the typing pool and dispatched without being referred back to me for editing and double checking ended up being discharged and dispatched bearing the order in favor of both the applicant and the claimants.

I have learnt that at law both reliefs are attached to the application with one as an alternative. I have also been informed that the one which carries the day is the one to be typed and the other is expunged. The legal practitioners representing the applicant wrote a letter on the seventeenth of February 2022 to the Registrar drawing my attention to the inadvertent error that had occasioned in light of the explanation I had given above.

I proceeded to invite the parties in chambers in terms of 29(3) so that I inform them of the decision I had made to correct the error which meant retracting the first order already distributed and substituting it with an amended one.

In view of the above this court is empowered in terms of rule 29(1) to amend, vary correct or rescind its own judgments, to the extent of the error or ambiguity on its own volition or at the instance of a party. In my view this was a patent error.

There was a patent error. See, *Masamba v The Secretary Judicial-Service Commission & Anor* HH 283/17. Cilliers A. C, Loots C & Nel, H C in Herbstein and van Winsen in their book, "*The Civil Practice of the High Courts and the Supreme Court of South Africa*", (5th edition, Volume. 1) at page (934) describe as follows a,

“ a patent error or omission is described as an error or omission as a result of which the judgment or order granted does not reflect the intention of the judicial officer pronouncing it. The patent error must be attributable to the court itself.

I hereby substitute the ambiguous order with a new order which reflects only the order claimed by the applicant in terms of the amended draft order filed of record by the applicant.

Accordingly it is ordered that:

The order given on the second of February 2022 is hereby rescinded and replaced with the following order granted on 23 March 2022

1. The first claimant claim to the following property which appears on the Notices of Seizure and Attachment dated 14 October 2021 and 2 November 2021 which was placed under attachment in execution of the order in HC 4440/21 be and is hereby dismissed:

- 1.1. 200x plastic chairs;
- 1.2. Wedding tent;
- 1.3. 18 x round table;
- 1.4. 1 x bar set;
- 1.5. 6 x gold stands;
- 1.6. 1 x dessert station;
- 1.7. 4 x backdrops;
- 1.8. 1 x pink couch;
- 1.9. 2 x cocktail sets;
- 1.10. 6 x white plinth;
- 1.11. 2 x black wingback chairs;
- 1.12. 14 x phoenix chairs;
- 1.13. 1 x brown ottoman table;
- 1.14. 1 x grey bridal bench;
- 1.15. 2 x white gold chairs;
- 1.16. 2 x white and silver bridal chairs;
- 1.17. 1 x white gold couch;
- 1.18. 1 x (sic) ten meter red carpet;
- 1.19. 1 x twenty meter red carpet;
- 1.20. 4 x copper vases;
- 1.21. 6 x cocktail stools;
- 1.22. Jumping castle electro motor;
- 1.23. Outdoor bridal bench;

- 1.24. 1 x black two plate industrial gas stove;
 - 1.25. 1 x four plate industrial gas stove;
 - 1.26. 11 x white defy deep freezer; and
 - 1.27. 1 x Capri white deep freezer
2. The second claimant claim to the following property which appears on the Notices of Seizure and Attachment dated 14 October 2021 and 2 November 2021 which was placed under attachment in execution of the order in HC 4440/21 be and is hereby dismissed;
 - 2.1 Nissan Bongo Registration Number ZW 088402; and
 - 2.2 2.5 KV Petrol yellow and black generator
 3. The above mentioned property attached in terms of the Notices of Seizure and Attachment dated 14 October, 2021 and 2 November 2021 issued by the applicant be and is hereby declared executable
 4. The claimants are to pay in full, jointly and severally the one paying the other to be absolved, the storage costs incurred by the applicant from the date of the removal the goods to the date of their release from storage.
 5. The claimants are to pay, jointly and severally the one paying the other to be absolved, the Judgment Creditors and the applicant's costs on a legal practitioner and client scale

Kantor & Immerman, for the applicant's legal practitioners