

THE SHERIFF OF ZIMBABWE  
versus  
RAZIYA KAZI  
and  
MUNNER KAMURUDDIN KAZI  
and  
THAMER SAID AL SHANFARI

HIGH COURT OF ZIMBABWE  
MANZUNZU J  
HARARE, 14 June & 8 October 2021

### **INTERPLEADER**

*A E Ngwani*, for the applicant  
*S Katsiwa*, for the claimant  
*E R Samukange*, for the judgment creditor

MANZUNZU J: After hearing the parties in the interpleader proceedings I concluded that the claimant had failed to make a case for ownership of the attached goods. I then made the following order;

- “1. The claimant’s claim to all the property which was placed under attachment in execution of judgment in HC 14377/12 is hereby dismissed.
2. All the property attached in terms of notice of seizure and attachment dated 23 December 2020 issued by applicant is hereby declared executable.
3. The claimant is to pay the judgment creditor and applicant’s costs on a legal practitioner and client scale.”

The registrar of this court has asked for a written judgment because the claimant has noted an appeal with the Supreme Court.

On 7 October 2015 the judgment creditor obtained an order from this court under case number HC 14377/12 against Munner Kamruddin Kazi for the payment of certain sums of money. The judgment creditor then instructed the Sheriff to execute the judgment by attaching the judgment debtor’s moveable property. In the course and scope of his duties the Sheriff proceeded to the judgment debtor’s residence and attached certain assets on 23 December 2020. The attached assets were recorded on the notice of seizure and attachment form. The attachment was done in the presence of Mrs Kazi the wife to the judgment debtor who is the claimant. The removal date of the assets was set for 28 December 2020.

The following property appears on the notice of seizure by the Sheriff;

- a) Toyota rav 4 AFG 6186
- b) 1x red generator
- c) Gas stove
- d) 1x silver ladder
- e) 1x boxed electric stove
- f) 2x capri deep freezer
- g) 4 x lithium battery
- h) 1 x washing machine
- i) 4 chairs and 1 table
- j) L-shape garden chair
- k) 1 seater
- l) 1x coffee table
- m) Lounge suite
- n) 1 x upright silver fridge.

The claimant has claimed that the attached property belongs to her and does not belong to the judgment debtor. This is stated in her affidavit to the Sheriff dated 23 December 2020 on the basis of which the Sheriff has in terms of the rules of this court instituted the interpleader proceedings. The claimant stated; “I am the rightful owner of the property. I obtained the property using my own savings without the assistance of the judgment debtor.”

The judgment creditor has opposed the claimant’s claim and alleged the claimant was being used as a front by the judgment debtor. An example was given of the Toyota rav 4 which was previously attached in 2018 when the claimant also claimed the vehicle belonged to her in a separate interpleader proceedings in which she lost. Claimant is alleged to have changed ownership of the vehicle while it was under attachment.

It is trite that if the attached goods are found in possession of the judgment debtor there is a presumption that such goods belong to the debtor. In *Muzanenhano v Fishtown Investments (Pvt) Ltd & Ors* SC 8/17 the court stated;

“The law is clear on this point that a person who is in possession of a movable thing is presumed to be the owner of it. It is also a settled principle that where movable property is attached whilst in the possession of the judgment debtor at the time of the attachment, the onus

of proving ownership rests on the claimant. See *Bruce N.O. v Josiah Parkes & Sons (Rhodesia) Limited & Another* 1971 (1) RLR 154.” See also *Zandberg v Van Zyl* 1910 AD 258 at 272.

The claimant has the onus to show on a balance of probabilities that she is the owner of the attached property. In her attempt to prove ownership, the claimant attached four invoices which only show seven items. The invoices do not show proof of payment. The claimant does not state how she purchased the invoiced items and her source of money. She does not state how she acquired the Toyota motor vehicle. Strangely, in the heads of argument the claimant submits that proof of ownership was found in the agreement of sale, capital gains tax certificate, declaration by the seller and purchaser, acknowledgement of receipt of the full amount of the purchase price. All these alleged documents are not part of this record. At the end of the day the claimant remains holding to a mere claim that the property belongs to her. One cannot escape the temptation that the claimant is being used as a front to protect the judgment debtor. Collusion between the judgment debtor and the claimant cannot be ruled out. The claimant has dismally failed to discharge the onus upon her and for these reasons I granted the order as I did.

*Dube-Banda, Nzarayapenga and Partners*, applicant’s legal practitioners  
*Samukange Hungwe attorneys*, judgment creditor’s legal practitioners  
*Mufadza and Associates*, claimant’s legal practitioners.