

QUATLA ENTERPRISES (PVT) LTD

VERSUS

NORMAN GWANGWAVA

AND

ELINA GWANGWAVA

AND

DEPUTY SHERIFF

IN THE HIGH COURT OF ZIMBABWE

MOYO J

BULAWAYO 12 SEPTEMBER AND 23 OCTOBER 2014

Mrs D. Phulu for the applicant

T. Muganyi with respondents

Urgent Chamber application

MOYO J: This is an urgent application wherein the Applicant seeks interim relief as follows:

“That pending the return date of this matter, the Applicant be and is hereby granted the following interim relief:

- 1) The 3rd Respondent be and is hereby directed to release to Applicant all assets attached pursuant to the order obtained under HC 239/14 specifically the following:

- 1 x chip fryer
- 1 x chip cutter
- 1 x Mac Adams oven
- 2 x Food warmers
- 1 x Mixer
- 2 x oven rigs
- 2 x bakery ovens”

The Applicant’s case is that it is an artificial person whose place of business is stand number 1 Russel Road, Esigodini and that the Respondents obtained judgment against the Applicant Company’s directors, who are husband and wife. Respondents have sought to execute against the property owned by the Applicant Company. The basis of this application is that the

execution by the Respondents on the Applicant company's assets is unlawful as such can not be done since the Applicant's directors were sued in their personal capacities.

Applicant further avers that the ovens are inbuilt and once attached and removed, they will not be usable again. Respondents on the other hand, claim that Applicant should have attached proof that it is indeed an entity separate from the judgment debtors in the case Respondents seek to execute as the Respondent's claim that the existence of Applicant is in dispute. Further, the Respondents aver that Applicant should have provided *prima facie* proof that the assets in question indeed belong to it and not the judgment debtors in the case the Respondents seek to execute. The Respondents further contend that Applicant should have filed separate interpleader proceedings and then sought a provisional order staying execution pending the finalisation of the interpleader proceedings as in the interim relief. Applicant wants the attached goods released back to it. The requirements for a temporary interdict are as follows:

- a) a right which, though *prima facie* established, is open to some doubt,
- b) a well grounded and apprehension of irreparable injury.
- c) the absence of any other remedy.

Per Zesa staff Pension Fund vs Mushambadzi SC 57/02.

The first enquiry that the court has to make is whether or not the Applicant has established a *prima facie* right. The Applicant's affidavit is very scant with information on the veracity of the claims that the property indeed belongs to the Applicant.

However, of paramount importance is the fact that the address wherein the execution has taken place is in Esigodini, which address the Applicant gives as its business address. Also, the items that are the subject matter of this application are items that are normally used in the course of business namely, a chip fryer, chip cutter, oven, food warmers, mixer, oven rigs and bakery ovens. These items are clearly items used in the normal course of business.

It is my finding that for the Applicant to satisfy the requirements of a *prima facie* right, the Applicant should establish facts, that though open to doubt, if proven, they will pass the test of a clear right at the end of the day, that is, upon confirmation of the provisional order into a final order. For the reason that the Applicant is a business concern, and the items being the subject matter of this dispute are items used normally during the course of business operations, and that the address wherefrom they were attached, is in fact not the judgment debtors' place of residence, I am persuaded that a *prima facie* right has been established, though open to some

doubt. Applicant has already satisfied the requirement as to urgency since the removal is imminent and the second requirement of irreparable harm has been satisfied since the removal will not only affect Applicant's business operations but is likely to cause damage to the equipment concerned as its removal entails the dismantling of same. The third requirement of the absence of an alternative remedy is also satisfied as clearly Applicant could only approach this court to stop the attachment.

I have issue though with the wording of the provisional order under the interim relief granted. It is my view that the wording in Clause (i) therein should in fact be thus:

- i) The 3rd Respondent be and is hereby ordered to release to Applicant all assets attached pursuant to the order obtained in HC 239/14, which assets are housed at Applicant's business premises namely stand number 1 Russel Road, Esigodini.

I would then grant the provisional order as amended, for the aforesaid reasons.

Lazarus and Sarif, applicant's legal practitioners

Dube-Banda, Nzarayapenga and partners, 1st & 2nd respondents' legal practitioners