

DEPUTY SHERIFF, HARARE  
versus  
CHARLES GARUTSA  
and  
THOMAS ZIVANAI TAGAIRA

HIGH COURT OF ZIMBABWE  
MATANDA-MOYO J.  
HARARE, 14 and 28 November, 2013

*K. Musimwa*, for the applicant  
*H. Chitima*, for the claimant  
*Ms Kashiri*, for the respondent

MATANDA-MOYO J. In pursuance to a writ of execution granted by this court in case number HC 12338/11, the applicant on 16 May 2012 attached and removed the following assets from respondent's premises;

8 x twin needle machines  
Elasticator  
5 x safety overlocks  
2 x bar tack  
1 x button sewer, and  
1 x button hole machine

The above property was removed from 2 Craig Allan Road, Ardbennie, Harare. Applicant also proceeded to respondent's premises at No. 137 Mbuya Nehanda, Harare and attached a Toyota Camry Lumina Registration No. AAQ 4417 and a butterfly computerised embroidery machine.

The claimant caused the applicant to issue interpleader summons after claiming the property to be his. The applicant has approached the court to determine ownership of the property.

The respondent is barred as he filed his notice of opposition outside the time limits and has not sought the upliftment of such bar. The applicant has indicated that he has no interest in the matter save for the claim of costs. This left the court with the undisputed evidence by the claimant. The claimant produced evidence that the butterfly computerised embroidery machine was given to him by Comrel Trading (Pvt) Ltd in lieu of arrear salaries. The claimant also produced evidence that the Toyota Camry was given to him by Hygienic Services (Pvt) Ltd as motivation for excellent performance of his duties. Without any other evidence to the contrary this court has no reason to disbelieve the evidence produced. It is the finding of this court that indeed claimant has managed to show on a balance of probabilities that he is the owner of the property.

On the contrary such property was attached whilst on the judgment debtor's premises. An order of costs against the claimant would meet the justice of this case.

Accordingly the claimant's claim is granted with the claimant paying the applicant's legal costs on a legal practitioner – client scale and costs of attachment, removal and storage.

*Thondhlanga & Associates*, respondent's legal practitioners

*Mbidzo, Muchadehama & Makoni*, claimant's legal practitioners