

DEPUTY SHERIFF CHINHOYI  
versus.  
APPOINTED ENTERPRISES  
and  
N S S A  
and  
ISAAC MHAKA

HIGH COURT OF ZIMBABWE  
MATANDA-MOYO J.  
HARARE, 21 November and 28 November, 2013

### **Opposed Application**

*Ms S. Rutsito*, for the applicant  
*F. Zuva*, for the claimant  
*T. Muchineripi*, for the judgment creditor

MATANDA-MOYO J: This is an application for an interpleader process. The applicant in pursuant to a writ of execution issued by this court in case number HC 1953/12 attached and removed ten beasts from the judgment debtor's premises. Thereafter the applicant received an affidavit from one Memory Kuhlengisa a representative of the claimant claiming ownership of such ten beasts. In her affidavit the said Memory Kuhlengisa claimed that the beasts were owned by the claimant and not by the judgment debtor. That led to applicant making this application.

Firstly the judgment creditor challenged the authority of Memory Kuhlengisa to represent the claimant, who is a company without authorisation by the Board of Directors. Claimant concedes that there is no resolution showing that Memory Kuhlengisa has been so authorised. However claimant argues that lack of a resolution is not fatal to the proceedings. I was referred to the case of *Tapson Madzivire and 3 Others v Misheck Brian Zvarivadza and 2*

*Others* SC 10/2006. On perusing the above cited case I find no principles therein supporting claimant's contention. In the above case the Supreme Court re-established the well established legal principle that a company is a separate legal persona, which is separate from its directors and cannot be represented in a legal suit by a person who has not been authorised. The exception which is recognised at law where a resolution of the Board would not be required is where a company has only one Director who can perform all judicial acts without holding a full meeting. See *African Diamond Distributors (Pvt) Ltd v Van de Wethrrizen N.O. and Others* 1988 (4) SA 726.

Claimant has more than one Director and as such a duly signed resolution is required before one can represent the company.

The claimant's counsel argued that the deponent to the founding affidavit is a Director of claimant. This was disputed by counsel for the judgment creditor. Both parties filed CR 14. The CR 14 filed by the claimant shows that Memory Kuhlengisa is a Director of the claimant. The judgment creditor filed a CR 14 which shows that Memory Kuhlengisa is not a Director of the claimant. However both CR 14 show that there is more than one Director of the claimant. As I have already found above, once there is more than one Director it is a requirement that there be a duly signed resolution authorising a person to act on behalf of the company. There being no such resolution it is my finding that the founding affidavit by Memory Kuhlengisa is not properly before me. There is also before me no application by the claimant for leave to file a duly signed resolution. The lack of such resolution is fatal to the proceedings.

Accordingly the claimant's claim is dismissed with costs.

*Dzoro & Partners*, applicant's legal practitioners  
*Mhishi Legal Practice*, 1<sup>st</sup> claimant's legal practitioners  
*Muchineripi & Associates*, 2<sup>nd</sup> claimant's legal practitioners