

THE SHERIFF OF THE HIGH COURT  
and  
TAFIRENYIKA CHIHOTA  
and  
MBCA BANK LIMITED  
versus  
HAZEL CHINAKE

APPLICANT  
CLAIMANT  
JUDGMENT CREDITOR  
JUDGMENT DEBTOR

HIGH COURT OF ZIMBABWE  
MATANDA-MOYOJ  
HARARE, 27 July 2015

### **Opposed Application**

*SK Chivizhe*, for the applicant  
*T Biti*, for the claimant  
*FA Rodolph*, for the judgment creditor

MATANDA-MOYOJ: This is an interpleader application. This court on 19 October 2012 granted judgment in favour of the judgment creditor against the judgment debtor in the following;

“IT IS ORDERED THAT:

- a) The Defendant shall pay the Plaintiff the sum of \$18 094-73
- b) The Defendant shall pay interest on the above sum at the rate of 30% per annum with effect from 1 August 2012 up to the date of payment in full
- c) The Defendant shall pay the Plaintiff’s costs of suit on a legal practitioner and client scale.”

Subsequent to the order a writ of attachment was issued and the applicant proceeded to number 67 Rubridge Lane, Hogerty Hill and attached the following property; Mitsubishi Pajero ACD 6089, BENZ ML YANSO and Yamaha Motor Bike ACF 9027. The clamant lodged a claim to the goods resulting in the applicant lodging these proceedings.

The claimant has laid a claim against two of the attached properties that is the Pajero and the Yamaha motor bike. The claimant submitted that he is not the owner of the Mercedes ML Yanso and I do not understand how he became a claimant in relation to the ML Yanso.

When the property was attached by the applicant, the Sheriff (applicant) became the legal possessor of the property on behalf of the judgment creditor in whose benefit the attachment was executed. The only person who could have been listed as the claimant of the ML Yanso is the alleged owner of such ML Yanso a Mr Ian Robert Henney. See *Bissy Bee (Pvt) Ltd v AMB and Others* HH 163/10. The claimant averred that the Yamaha motor bike and the Pajero are owned by him. He attached to his affidavit the agreements of sale.

It is common cause that when the writ of execution was issued the applicant was directed to attach the judgment debtor's property at 48 Kingsmead Lane Borrowdale, Harare. The applicant attempted attachment at that address but was informed that the judgment debtor had since left the premises. The judgment creditor submitted that, consequent to that it employed tracing agents who traced the judgment debtor to number 67 Rubridge Lane, Hogety Hill, Harare. The report by the tracing agents was not furnished to the court. However the judgment creditor's counsel argued strongly that at the time of attachment, the judgment debtor resided at 67 Rubridge Lane and the property was attached whilst in her possession.

On the other hand the claimant insists he resides at 67 Rubridge Lane. He also attached no proof of ownership of the said property, any lease agreement nor any proof of residence thereat. The court has therefore no evidence before it on who actually resides at number 67 Rubridge Lane. The onus was initially on the judgment creditor to show that the judgment debtor resides at that address. The judgement creditor's counsel argued that the return by the Sheriff is clear that the property was attached in the presence of the judgment debtor's maid a B Chokera.

The Sheriff's returns show that the judgment debtor resided at number 67 Rubridge Lane at the time of attachment. Once that is shown the onus shifted onto the claimant to show that he is the one who resides thereat. Claimant has failed to do so. Consequently claimant must prove that he is the owner of the goods attached. See *Chase v Goble* (1841) 2 M and G 935, *Ebrahim v Deputy Sheriff, Dubai and Another* 1961 (4) SA 265D.

The claimant has produced agreements of sale where he bought the Yamaha Motorbike and the Pajero. Counsel for the judgment creditor argued that such agreements are illegal and should be disregarded by the court. However I do not believe that is the province of court in determining ownership for purposes of interpleader process. The court is enjoined to determine ownership of the two vehicles in question; whether they belong to claimant or should be sold in execution to satisfy the judgment debtor's debt. I am of the view that for the

purpose of these proceedings such agreements suffice to show that they belong to the claimant. The registration books are also not in the judgment debtor's name.

Accordingly I order as follows:

- 1) Claimant has no right to claim the Mercedes – ML Yanso.
- 2) The claimant's claim to the Pajero ACD 6089 and Yamaha Motorbike ACF 9027 is hereby granted.
- 3) Such Pajero and Yamaha Motorbike are declared not executable.
- 4) The judgment creditor to pay the claimant and applicant's costs in relation to the Pajero and Yamaha
- 5) The claimant to pay judgment creditor's and applicant's costs in relation to the Mercedes ML Yanso.

*Messrs Wintertons*, applicant's legal practitioners  
*Messrs Tendai Biti Law Firm*, Claimant's legal practitioners  
*Scanlen & Holderness*, judgment creditor's legal practitioners