

THE SHERIFF OF THE HIGH COURT  
and  
STEEL CENTRE (ZIMBABWE) (PVT) LIMITED  
versus  
DAVID CARROLL

HIGH COURT OF ZIMBABWE  
MTSHIYA J  
HARARE, 26 May 2016 & 3 August 2016

### **Opposed Matter**

*F Chikwanha*, for the applicant  
*P Ranchod*, for the claimant  
*D Ochieng*, for the judgment creditor

MTSHIYA J: This is an interpleader application.

On 14 January 2015 this court registered an arbitral award granted in favour of the judgment creditor as an order of this court. The said court order, dated 14 January 2015, provided as follows:

“IT IS ORDERED THAT:

1. The arbitral award issued by Ms G Fereshi on 16<sup>th</sup> September 2011 be and is hereby registered as an order of this Honourable Court in terms of section 98 (14) of the Labour Act (*Chapter 28:01*).
2. Respondent shall pay to the applicant the sum of US\$112 520-00 together with interest *a tempore more* from date of application to date of final payment.
3. Respondent to pay costs of suit.”

On the basis of the above order, on 3 February 2015, the applicant caused the issuance of a writ of execution from this court. The writ was duly executed on 18 March 2015, resulting in the attachment, at Number 48 Barking Road, Willowvale, Harare, of the property now being claimed by the claimant. The basis of the claim is given as follows:-

- “3. It is respectfully submitted that the Deputy Sheriff has attached the wrong assets which vest in Steel Centre Zimbabwe (Private) Limited, in this regard, I beg leave to refer to the registration books attached hereto, marked as a bundle B.
4. Each of the vehicles attached belongs to, and are registered in the name of Steel Centre Zimbabwe (Private) Limited or its subsidiary Steel Supplies.
5. The assets have been owned by Steel Zimbabwe (Private) Limited for varying periods as more fully appears from the registration books and they are not the assets of Steelbase Zimbabwe (Private) Limited. The furniture attached also vests in Steel Centre (Zimbabwe) (Private) Limited and are recorded in the Asset Register of Steel Centre (Zimbabwe) (Private) Limited.”

The registration of the award as an order of this court followed the dismissal, by the Labour Court on 22 July 2014 of an appeal against the now registered award. The judgment creditor herein, was, before a dispute that led to the award, employed by the claimant as a Managing Director. A contract of employment confirming that position was signed by the parties on 15 November 2004. The contract of employment commenced on 24 November 2004 and was later terminated following disciplinary proceedings which became the subject of arbitration

The dismissal by the Labour Court of the appeal against the award which was later registered by this court on 14 January 2015, was, in my view, a clear confirmation of the award.

The claimant, in the Labour Court and in this application, does not deny the contract of employment between itself and the Judgment Creditor dated 15 November 2004. That is the only contract of employment relied upon by the Judgment Creditor before the Arbitrator and, the Labour Court. It is further not denied that there were structural changes in the holding company, Steel Base Africa Ltd, to which the claimant belonged. However, structural changes in the holding company did not impact on the Judgment Creditors rights as an employee of the applicant. To that end, the Judgment Creditor, in an answering affidavit, stated:-

“AD PARA 4-6

“I mention from the onset that claimant does not deny the fact that I was employed by it and this should be taken as admitted. This should therefore resolve the enquiry. As I mentioned in my affidavit as supported by documentary evidence, my employer, Steel Centre Zimbabwe (Pvt) Ltd was generally and commonly referred and known by its trading name, Steelbase Zimbabwe. In this regard, the opportunity never arose to relate Claimant to its trading name because it was not necessary to do so. I therefore proceeded against Claimant as my employer in terms of my contract of employment by its trade name which I am advised is recognizable at law. Claimant cannot seriously dispute that Naz Kader was known to it nor did not have authority to act on claimant’s behalf. Clearly evidence points otherwise. I mentioned that, Naz Kader sold his

interest some time ago and therefore cannot reasonably be expected to be on Claimant's updated Director's list.

AD PARA 7-14

I have made efforts to demonstrate that Claimant and Steelbase are one and the same properly identified as my employer. The only difference being that, the former is the registered name whilst the latter's the trading name. The need has risen to clarify the relationship between Claimant and Steelbase as Claimant is now distancing itself from its extended and commonly known identity. With respect, it is illogical for Claimant to state that the analogy I made is irrelevant. In fact, I cannot understand how Claimant can safely say that Steelbase does not conduct business at No. 48A Barking Road as the case may be, whilst evidence shows otherwise."

In support of his averments the Judgment Creditor further referred to a letter addressed to one Godfrey Mpako (employed by claimant since 1 January 1995). The letter dated 6 May 2011 read as follows:

"Steel centre Zimbabwe (Pvt) Ltd t/a Steelbase Africa Ltd. As you know the ownership of Steelbase Africa Ltd changed hands in September 2009. The change of ownership of Steelbase Africa Ltd does in no way affect the operations of Steel Centre Zimbabwe (Pvt) Ltd t/a Steelbase.

This letter serves to confirm that despite the change of ownership of Steelbase Africa Ltd, all your years of service and all the benefits that have accrued to you at Steel Centre Zimbabwe (Pvt) Ltd t/a Steelbase will be recognised and will be honoured by Steel Centre Zimbabwe (Pvt) Ltd t/a Steel base.

With Regards

Robson Mutiracha  
Chief Operations Officer"

In view of the foregoing there is no doubt that the claimant traded as Steelbase. The fact of its registration as a corporate entity on 7 December 2000 did not affect its relationship with the holding company and its employees as explained later in 2011 in the above letter. The claimant had the opportunity before the arbitrator and the Labour Court to say what he now claims to be the correct position, namely that:-

".....Steel Centre (Zimbabwe) (Private) Limited was not and has never been a party to the proceedings in Case Number HC 10969/11 and Case Number LC/H/490/12, which proceedings took place over a number of years. The notice from the Labour Officer was issued against Steelbase Zimbabwe (Private) Limited and at no point was an attempt made to tie the Claimant to the matter. The Claimant only became aware of these proceedings when its assets were attached in terms of the writ of execution and warrant of seizure and attachment. If the

Judgment Creditor avers that Steel Centre (Private) Limited was the party to those proceedings he did not, since 2007, make any allegation to this effect in the Labour Court or High Court proceedings. The judgment that he obtained and which has been used to attach the assets of Claimant is against Steelbase Zimbabwe (Private) Limited, a separate entity incorporated in Zimbabwe.”

The claimant could not be protected by the above averments because, notwithstanding the principle that the claimant is a separate legal entity, its existence under a single holding company, namely Steel Base Africa Ltd, did not give it room to deny liability both before the arbitrator and the Labour Court. There was never any request for substitution, or joinder. The Claimant was right in not doing so. It properly realised it was the Judgment Creditor’s employer. The Judgment Creditor has, on the basis of the judgment issued in his favour, executed against the property of his former employer, namely the claimant.

In view of the foregoing I find nothing in *casu* which compels me to depart from the correct legal position laid out by Patel J, (as he then was) in *Deputy Sheriff Harare v Trinipac Investments Private Limited and Anor* HH 121/2011 as follows;

“The rationale for this extension, as I perceive it, is that where the operations of an economic group are so close as to be virtually indivisible, considerations of policy tend to militate against any legal separation of its integral units, for to do so would be to perpetuate an essentially corporate fiction. Of course, this may not invariably be the case, but the equities would certainly favour such an approach in dealings at arm’s length with innocent outsiders.”

My finding is that for operational purposes the holding company Steel Base Africa Ltd and its subsidiaries formed a single economic group.

The attachment was therefore, in my view, proper and accordingly the claimant’s claim cannot succeed. The attached property belongs to the judgment debtor who was the judgment creditors’ employer.

I therefore order as follows:

- “1. The claimant’s claim to the motor vehicles and property placed under attachment in execution of judgment HC10969/11 be and is hereby dismissed.
2. The property as set out in the Notice of Seizure and Attachment dated 18 March 2015 issued by the applicant be and is hereby declared executable; and
3. The claimant shall pay the costs of the judgment creditor and the applicant.”

*Kantor & Immerman*, applicant's legal practitioners  
*Atherstone & Cook*, judgment creditors, legal practitioners  
*Hussein Ranchod and Company*, claimant's legal practitioners