

THE SHERIFF OF ZIMBABWE
versus
LOVEMORE MAKONI
and
LAMECK CHITOPÉ

APPLICANT
CLAIMANT
JUDGMENT CREDITOR

HIGH COURT OF ZIMBABWE
DUBE J
HRARE, 28 May 2015 and 4 & 27 June 2018

Opposed Matter

M S Mukwasha, for the applicant
M.L Ziro, for the Claimant
B Mangwanywa, for the Judgment Creditor

DUBE J: The applicant brings interpleader proceedings to stop the sale of his vehicle which was attached by the applicant in execution of a debt owed by his church.

On 18 June 2013 the judgment creditor obtained judgment against Zviratidzo Zvevapostori Makoni Church, hereinafter referred to as the judgment debtor. The judgment creditor instructed the Sheriff to attach and take into execution the judgment debtor's property. The Sheriff attached a Toyota Grand Hiace V6, registration number ADT 5716 from the claimant's residence. The claimant lays a claim to the vehicle. The claims of the judgment creditor and the claimant are mutually exclusive.

The claimant is the Archbishop and leader of Zviratidzo Zvevapostori Makoni Church, the judgment debtor. He claims that he bought the said vehicle from South Africa for his family, as private property and did not buy it for or on behalf of the church. He proceeded and registered the vehicle under his name. He challenges the attachment of the vehicle and contends that his personal vehicle cannot be sold in execution of the church's debts. He has attached to the application the vehicle registration book which confirms that he is the owner of the said vehicle.

The judgment creditor is opposed to the claimant's claim. He insists that the vehicle ought to be sold in satisfaction of the judgment debtor's debt. He submitted that because the

claimant is the head of the judgment debtor's church, he is ultimately responsible for engineering its behaviour and cannot run away from the church's debts.

The court is being called upon to decide whether the head of the church's property may lawfully be attached in lieu of the church's debt. The status of a church was defined in the case of the *Church of the Province of Central Africa v Diocesan Trustees, Harare Diocese*, 2012 (2) ZLR 393, where the Supreme Court described a church as,

“a voluntary and unincorporated association of individuals united on the basis of an agreement to be bound in their relation to each other by certain religious tenets and principles of worship, government and discipline.”

The case describes a church as an unincorporated association. In terms of Order 2A rule 8 of the rules of this court, an “association” includes—

“(a) a trust; and

(b) a partnership, a syndicate, a club or any other association of persons which is not a body corporate.”

Rule 8 provides that an association may sue and be sued in its own name. The rules do not distinguish between an incorporated and unincorporated association. An association has a legal personality. It can sue and be sued in its own name. It is an elementary characteristic of associations that the individuals that form part of the association will not be responsible for the liabilities of the association. A church is an association of individuals which comprises members of the church. It has the status of a juristic person. It follows therefore that a church is a separate entity with a separate legal existence from its members. It has juristic personality and may sue and be sued in its own name. A church is responsible for its own liabilities. A leader of a church, although having control of the church, is separate from the church. He cannot be held personally answerable for the church's debts.

The claimant is said to be the leader of the church and is a member of the church. He filed papers that prove his ownership of the vehicle. There was no suggestion from the evidence that the vehicle in issue belongs to the church or that it was bought by the church for his use. The judgment debtor conceded that the claimant is not an employee of the church but sought to argue that he is the *alter ego* of the church. The judgment creditor contended that the claimant gets tithes from the church and for that reason should be held accountable for the debts of the church. There is no evidence whatsoever to show either that the claimant collects and benefits from tithes from the church or that he is the *alter ego* of the church. The structure of the church and its ownership is not known. The respondent simply surmised that because

the claimant is the archbishop of the church and is its leader, he is the owner of the church and gets tithes from the church. I do not find favour with the judgment creditor's assertion that the fact that the judgment debtor's name incorporates the claimant's own name is significant. It was not established that reference to Makoni in the name of the church refers to the claimant and further that the church belongs to him. There is a place known as Makoni in this country. For all we know, the use of the name Makoni may be referring to the place where the church is situated or originated. It was not shown that reference to Makoni refers to claimant's name. The fact that an association or company incorporates the names of one of the directors or its members as part of its name does not take away the fact that the association or company has a legal personality. I find no legal basis for lifting the corporate veil as requested. No justification has been shown for making the claimant responsible for the debts of the church. The claimant cannot be held personally liable for church debts simply because he is its leader. I find no basis to hold the claimant accountable for the debts of the company. The claimant is entitled to the order sought. In the result it is ordered as follows:

1. The Claimant's claim to the motor vehicle, registration number ADT 5716, which was placed under attachment in execution of judgment number HC 1296/13 is hereby granted.
2. The motor vehicle which was attached in terms of Notice Seizure and attachment dated 11 January 2018 issued by Applicant is hereby declared not executable.
3. The Judgment Creditor is to pay the Claimant and Applicant's costs..

Dube-Banda, Nzarayapenga & Partners, applicant's legal practitioners
Hungwe and Partners, Claimant's legal practitioners
Mufadza & Associates, Judgment Creditor's, legal practitioners