

THE SHERIFF OF ZIMBABWE  
versus  
N-FRASYS (PRIVATE) LIMITED  
and  
ZIMBABWE CONSTRUCTION & ALLIED TRADES WORKERS UNION

HIGH COURT OF ZIMBABWE  
ZHOU J  
HARARE, 25 September & 10 October 2018

**Opposed application – Interpleader proceedings**

*Miss T. Mabundu*, for the applicant  
*T. Zhuwarara*, for the claimant  
*B. D. Ndoro*, for the judgment creditor

ZHOU J: These are interpleader proceedings instituted by the Sheriff, the applicant herein, following objection to attachment of goods by N-Frasys (Private) Limited, the claimant herein. The goods were attached pursuant to a writ of execution issued at the instance of the Zimbabwe Construction & Allied Trades Workers Union which is the judgment creditor. Both the claimant and judgment creditor filed opposing papers to advance their respective claims.

The background to these proceedings is as follows. On 15 April 2013 the judgment creditor obtained a judgment in Case No. HC 6990/12 against Spurtmost Construction (Private) Limited for, *inter alia*, payment of a sum of US\$124 984.43. A writ of execution was issued on the basis of which certain immovables were attached by the Sheriff. The claimant alleges that the property attached belongs to it. The property in question was attached at 28 Carrick Creagh Road, Helensvale, Harare a site at which the claimant is carrying on some construction work as the main contractor. The claimant alleges, and it has not been disputed, that the judgment debtor was subcontracted by it to carry on some work at the site. Claimant further alleges that all the equipment and machinery which the judgment debtor was using to carry on the work belongs to the claimant. The claimant has attached to its papers an agreement with the judgment debtor in

terms of which the latter was sub-contracted to perform the agreed work at the site where the property was attached. It has also attached documents pertaining to the acquisition of the equipment in question consisting of a tax invoice and clearance forms issued by the Zimbabwe Revenue Authority.

The judgment creditor contests the claimant's claim on the basis that there no evidence of ownership of the equipment and that the equipment was found in the possession of the judgment debtor. The existence of the contract between the claimant and the judgment debtor has not been challenged. In the light of the other documents produced by the claimant showing where and how the equipment in question was acquired, the court is satisfied that on a balance of probability the property has been shown to belong to the claimant. It is not entirely correct that the property was in the possession of the judgment debtor. The site in question was a construction site for the claimant. The address at which the attachment took place is not the judgment debtor's address. The writ of execution has an address for the debtor. Further, no evidence has been adduced to rebut the evidence tendered on behalf of the claimant about its ownership of the property.

The court is therefore convinced that the claimant has established its claim to the property on a balance of probability.

In the result, IT IS ORDERED THAT:

1. The claimant's claim to the movable property – a yellow escort TLB, Concrete Mixer, blue Scaffolds and 12 wheelbarrows - which was attached in execution of the judgment granted in Case No. HC 6990/12 be and is hereby upheld and the property shall forthwith be released from attachment.
2. The property which is described in paragraph 1 hereof is hereby declared not executable for the purposes of satisfying the judgment granted in Case No. HC 6990/12.
3. The judgment creditor shall pay the claimant's and applicant's costs on the attorney-client scale.

*Dube-Banda Nzarayapenga & Partners*, applicant's legal practitioners  
*Mawere Sibanda*, claimant's legal practitioners  
*Mabulala & Dembure*, judgment creditor's legal practitioners