

THE SHERIFF OF ZIMBABWE  
versus  
TAMBUDZAI MLAMBO  
and  
ZIMBABWE BROADCASTING CORPORATION PRIVATE LIMITED

HIGH COURT OF ZIMBABWE  
CHIKOWERO J  
HARARE, 26 November 2018 & 5 December 2018

### **Opposed Application**

*F Madhugu*, for the applicant  
*EHamunakwadi*, for the claimant  
*O Mushuma*, for the judgment Creditor

CHIKOWERO J: These are interpleader proceedings.

Claimant moves me to find that she is the owner of various items of movable property attached in execution on August 29<sup>th</sup> 2018.

Applicant undertakes to comply with the judgment of the Court.

The judgment debtor is an association called Hartley House Residents Association.

The judgment creditor “ZBC” owns the block of flats situate at number 27 Josiah Tongogara Avenue Harare.

To its opposing affidavit, ZBC attached a schedule of the names of the members of the association. It also attached copy of its letter to the applicant. It was instructing the latter to execute the writ.

Both annexures reflect that the address for service of Richard Mlambo, a member of the association, is 101 Hartley House, number 27 Josiah Tongogara Avenue, Harare.

That is where the execution was effected.

Now, the onus is on a claimant to prove, on a balance of probabilities that the property which was attached belongs to her. See *Muzanenhamo v Fishtown Investments Private Limited and others* SC 8/17.

In my judgment, claimant failed to discharge that onus.

The property was attached at the residence of a member of the association. That member is Richard Mlambo.

There was nothing put before me to substantiate her bald allegations that she resided at the address for service in question at the relevant time.

In fact, the Notice of Renunciation of Agency filed by Messrs Makiya and Partners on February 12 2018, under case number 13796/16 is further proof that Richard Mlambo resided , as at the date of filing of that notice , at 101 Hartley Court 27 Josiah Tongogara Avenue, Harare.

That firm of attorneys had been representing Richard who was a defendant in that magistrates court matter. ZBC was the Plaintiff.

Similarly, no evidence was tendered to prove that the property belonged to her, having been purchased long back. Her claim that she misplaced the receipts long back is not evidence, but an allegation. It remained unsubstantiated. Claimant does not even indicate where the property was purchased.

Her relationship to Richard remained unexplained. No document was attached to her affidavit to prove such relationship, if any.

In the circumstances of this matter, therefore, claimant was not in possession of the goods at the time of the attachment. Accordingly, no presumption of ownership arises in her favour.

Further, the goods were attached at an association member's place of residence.

I agree with Mr Mushuma that the effect of order 2A r 8A and 8B of the High Court Rules, 1971 is to make members of an association liable for the debts of the association. Otherwise there would be no need for the proviso to r 8B (2) to require that where a writ of civil imprisonment is sought, the civil imprisonment proceedings should name the associate. An associate is a member of the association. The interpretation section of the Order makes this clear.

It reads:

“7 Interpretation in Order 2A

In this Order -

‘associate’, in relation to –

(a) ....

(b) an association other than a trust, means a member of the association.”

In the result, the following order will issue.

1. The claimant’s claim to all the moveable property which was placed under attachment in execution of judgment in HC 10893/15 is dismissed.
2. All the moveable property attached in terms of the Notice of seizure and attachment dated 29<sup>th</sup> August 2018 issued by the applicant is declared executable.
3. The claimant shall pay the judgment creditor and applicant’s costs of suit.

*Dube-Banda, Nzarayapenga and Partners*, applicant’s legal practitioners

*Hamunakwadi and Nyandoro*, Claimant’s legal practitioners

*Mushuma Law Chambers*, Judgment Creditor’s legal practitioners