

THE SHERIFF FOR ZIMBABWE	APPLICANT
versus	
BROSTEK HOLDINGS (PRIVATE) LIMITED	CLAIMANT
and	
TIAN ZE TOBACCO COMPANY (PRIVATE) LIMITED	JUDGMENT CREDITOR

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 29 October and 6 November 2019

Opposed application

TR Phiri, for applicant
GK Muchapireyi, for judgment creditor
M M Ushe, for claimant

TAGU J: The application relate to an interpleader relief sought by the Claimant pursuant to the provisions of Order 30 of the High Court Rules 1971. This Honourable Court is requested to determine the competing rights of the parties over the attached property pending execution as provided by Order 30 Rule 210. The facts are that the judgment Creditor obtained judgment by consent against Jocelyne Chiwenga under case No. HC 987/17 in the sum of USD 99 014.21 on 18 January 2019. Pursuant to obtaining the abovementioned order the Judgment Creditor instructed the applicant to attach and take into execution the Judgment Debtor's movable property through a Writ of Execution issued out in favour of the Judgment Creditor on 26 March 2019. During the course and scope of his duties as Sheriff for Zimbabwe and in execution of the writ in case No. HC 987/17 the applicant attached 5 x 1 piece brown leather sofas valued at \$5 000.00, 1x coffee table valued at \$800.00, 1x Samsung flat screen television valued at \$2500.00 and a Land Rover Discovery registration number ABW 4452 valued at \$70 000.00. All the property was attached at the Judgment Debtor's residence. The Claimant is now claiming the Land Rover Discovery motor vehicle registration number ABW 4452 as its property.

At the hearing of the matter the Judgment Creditor raised two points *in limine*. The first point *in limine* was that there was no valid Notice of Opposition in that the deponent to the founding affidavit did not attach a resolution authorizing him to represent the Claimant which is a company with a separate legal entity. In the present case the Claimant has two directors and a resolution was required. Secondly, it said that where a deponent says he has authority to act on behalf of a company there is no reason to disbelieve him unless it is shown to the contrary. In *casu*, the Creditor submitted that it can show to the contrary in that in its purported Notice of opposition the deponent said it was served with the application on 6 May 2019 whereas the service was effected on 2 May 2019. Hence the Claimant filed its Notice of Opposition on 18 May 2019 well out of time without applying for condonation. It was the Judgment's contention that the court was misled when in fact the Claimant was barred.

The Claimant then immediately applied for condonation and for the upliftment of the bar. Counsel for the Claimant conceded that the Claimant was served on 2 May 2019 through its erstwhile legal practitioners Mambosasa legal practitioners. However, Messrs Mambosasa realized that they were conflicted and the Claimant became a self -actor. The counsel said she was recently engaged and realized papers were not in order. She however did not address the court on the lack of company resolution.

Having considered the submissions by counsels I agree that there is no resolution from the company authorizing the deponent to represent the company. Not only that the Claimant was out of time and is barred. However the deponent misled the court as to when it was served with the application and did not apply for upliftment of the bar. Worse still the claimant only sought to apply for upliftment of the bar after the Judgment Creditor had already raised the issue that the claimant is barred or that the notice of opposition is defective. In my view the granting of an uplifting of a bar is not for mere asking, especially after the other party had raise a preliminary point. It means the claimant is not serious. I therefor agree with the counsel for the Judgment that there is no valid Notice of opposition. The point *in limine* is upheld and judgment in the alternative is granted.

IT IS ORDERED THAT

1. Preliminary point is upheld.

2. The Claimant's claim to Land Rover Discovery motor vehicle registration number ABW 4452 which appears on the Notice of Seizure and Attachment dated 27 March 2019 which was placed under attachment in execution of the order in Case No. HC 987 be and is hereby dismissed.
3. The abovementioned property attached in terms of Notice of Seizure and Attachment dated 27 March 2019, issued by the Applicant is hereby declared executable.
4. The Claimant is to pay the Judgment Creditor's and the Applicant's costs.

Kantor & Immerman, applicant's legal practitioners,
Sachikonye Ushe, Claimant's legal practitioners
Muvirimi Law Chambers, Judgment Creditors' legal practitioners.