

ENFUND TRADING COMPANY t/a ALPHA MOTORS

VERSUS

GORDON THONYE t/a THONYE LAND SURVEYORS

AND

THE DEPUTY SHERIFF (N.O)

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 17 & 22 MAY 2011 AND 20 OCTOBER 2011

Mr. R. Ndlovu for applicant

Judgment-Stay of execution

CHEDA J: On the 17th and 22 May 2011, this matter was heard by myself and I granted a provisional order. I have been asked to give reasons for that decision and these are they.

This is an urgent chamber application for a stay of execution. The background of this matter is that, sometime in March 2011 first respondent caused an attachment of applicant's vehicles in pursuance of a judgment debt against N & S Properties (Pvt) Ltd. The vehicles in question were at the time being used by Mr & Mrs Masuku of applicant. The attached vehicles are:

- (1) a Mitshubishi Pajero
- (2) a Toyota Vigo Single Cab, and
- (3) a Mercedes Benz S 350.

The said motor vehicles are registered under Alpha Motors who furnished proof of ownership and/or registration books to second respondent. In addition to this proof, applicant filed two inter pleader affidavits and a letter advising second respondent that the motor vehicles did not belong to N & S Properties, second respondent however, proceeded to attach them in execution of the said judgment debt.

Judgment No. HB 142/11

Case No. HC 1296/11

Xref No. HC 918/11

Second respondent totally ignored the inter pleader affidavits and letter advising him of applicant's claim on the attached property.

An inter pleader is where a person faced with an adverse claim to property, wherein, he claims no interest but is at the time in possession seeks to compel the warring parties, that is, plaintiff and defendant to settle their dispute without involving him/her in that dispute hence its claim of the attached property.

Second respondent totally ignored advice from applicant not to proceed with the attachment and proceeded to advertise the sale in execution of a Toyota Vigo in the Chronicle of the 11th May 2011.

Second respondent should not have proceeded to advertise the property as soon as he became aware of applicant's claim.

At that point, second respondent should have filed interpleader summons. The reason for an interpleader is to alert the warring parties, that, ownership of the attached property is being challenged. As an officer of the court, second respondent should have acted professionally and impartially. Second respondent's failure to act properly no doubt resulted in actual prejudice to applicant

Applicant has an inherent right to prove its claim on the attached property. The only way of proving this is when second respondent avails that opportunity by following the correct procedure regarding interpleader proceedings. It is their right to be given a chance to prove their claim.

It is for that reason that the provisional order was granted.

R. Ndlovu and Company, applicant's legal practitioners