

DEPUTY SHERIFF – HARARE
versus
HEAVY EQUIPMENT POWER PARTS
and
HOPE TEMBO

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 5 APRIL 2013

K. Musimwa, for the applicant
D. Muskwe, for the claimant
I.G. Musimbe, for the judgment creditor

Opposed Application

MATHONSI J: In the execution of his duties in pursuance of a writ of execution issued out of this court, the applicant placed under attachment certain items of property. This was in the matter involving *Hope Tembo and Morayford Investments (Pvt) (Ltd)* and *Arther Mutasa* HC 8415/2011.

The property attached in execution was claimed by the claimant *Heavy Equipment Power Parts*. As the judgment creditor did not admit the claim, the applicant filed these interpleader proceedings in terms of Order 30 of the High Court rules.

The court application was served upon the claimant and the judgment creditor on 21 March 2012. Only the judgment creditor filed opposition but the claimant did not do so. If it intended to oppose the matter it was required by rule 232 to file opposition and in terms of rule 233 (3) the claimant is barred and has no right of audience. *Deputy Sheriff- Harare v Conview Energy (Pvt) Ltd 7 Anor HH 250/12; Deputy Sheriff-Harare v Brownweel Marketing & Anor HH243/2012*.

The authorities I have referred to make it clear that the matter is essentially unopposed as only the judgment creditor has an interest in the matter. It should be noted that the applicant is only a vehicle through which interpleader proceedings are brought to the court but has no interest in the

matter at all. It is for that reason that in the application rule 208 requires him to state in his founding affidavit that he “ claims no interest in the subject matter in dispute other than for charges and costs.”

For that reason, where only one party files opposition to the interpleader application, it is only that party which has an interest and accordingly the matter is in essence unopposed. It should be set down on the unopposed roll.

To my mind it is undesirable and a complete waste of the court’s time to place such matters on the opposed roll. Both the deputy sheriff and the party who files opposition (be it the claimant or the judgment creditor) are unduly detained having to wait several months for a set down on the opposed roll when the matter should be disposed of on the unopposed roll. This court, which is currently inducted with litigation and has a huge backlog should also not be detained by such matters. Its time should be put to better use instead of being made to sift through so many of these unopposed interpleader applications.

Legal practitioners and indeed, the registrar’s office are therefore advised to take note and direct such matters to the appropriate court.

Accordingly, it is ordered that;-

1. The claimant’s claim be and is hereby dismissed with costs on the scale of legal practitioner and client.

Musimwa and Associates, Applicant’s legal practitioners

Muskwe & Associates, Claimant’s legal practitioners

IEG Musimbe & Partners, Judgment Creditor’s legal practitioners