

THE SHERIFF FOR ZIMBABWE
and
PAUL CHISANGO
versus
HAROLD CROWN
and
PORTRIVER INVESMENTS (PVT) LTD

HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 13 May 2019 & 3 July 2019

Opposed Matter

V. R Muzambi, for the applicant
V Mhungu, for the claimant
A Mubvakure, for the judgment debtor

DUBE J: These interpleader proceedings were brought by the applicant in terms of Order 30 r 205A as read with r 207 of the High Court Rules, 1971.

The judgment creditors obtained judgment against Energy Resources Africa Construction (Pvt) Ltd, the judgment debtor, under SC 695/15. Subsequent to that, the judgment creditors instructed the applicant to attach property of the judgment debtor. Consequent upon such attachment, the claimant has laid a claim to the property attached. The claims of the claimant and the judgment creditors are adverse and mutually exclusive resulting in the applicant filing this application in terms of the rules.

The claimant lays claim to a Nissan Navara Registration Number ACX 2426 that was attached at the judgment debtor's place of business. His claim is based on the following facts. He resides in the United Kingdom and owns house number 30 Woodholme Road, Emerald Hill, Harare. The Nissan Navarra belongs to him and the Sheriff of Zimbabwe attached the Nissan Navarra at this house. The judgment debtor leases the house from him. He attached a City of

Harare Municipal bill in support of his ownership of the house. He asserted that he has always kept the vehicle parked at his property for affordable safekeeping because he resides in the UK. He uses the vehicle when he visits Zimbabwe on holiday. He attached to his notice of opposition to the interpleader proceedings the vehicle registration book and the lease agreement in support his claim for ownership of the vehicle. He challenges the attachment of the vehicle on the basis that the vehicle does not belong to the judgment debtor. He sees no reason why his vehicle should be attached because he was not a party to the proceedings and has no dealings with the judgment creditors.

The judgment creditors are opposed to the claimant's claim. They asserted that there is collusion between the claimant and the judgment debtor. They submitted as follows. An agreement was entered into on 17 October 2011 between the first judgment creditor who is a director of Portriver Investments (Pvt) Ltd, the second judgment creditor and the judgment debtor as well as Dave Mashayamombe for procurement of a vehicle for use by Dave Mashayamombe on a project of the second judgment creditor with the City of Harare. The judgment debtor, Energy Resources Africa (Pvt) Ltd is fronted by Dave Mashayamombe. Dave Mashayamombe negotiated that the amount for the project be increased to US\$40 000.00 and he indicated that he was going to buy a Nissan Navara on 31 January 2013 and a further \$20 000.00 was advanced to him on 6 March 2013. The vehicle which is the subject of these proceedings was then bought. He started using the attached vehicle. The understanding that he gave to all the parties is that the \$40 000.00 advanced to him was used to purchase the vehicle and that the Nissan Navara ACX 2426 was the project vehicle. Dave Mashayamombe was using the vehicle until the date of attachment. The vehicle was not just parked. The judgment creditors submitted that the claimant was used to protect the assets of the judgment debtor. They queried why the claimant and the judgment debtor are represented by the same legal practitioners, GN Mlotshwa and Company.

The onus in interpleader proceedings rests on a claimant to prove ownership of the goods attached on a balance of probabilities, see *Greenfield N.O v Blignaut* 1953 SR 73, *The Sheriff of the High Court v Majoni* HH 689/15 .The law is that where the goods attached are found in possession of the judgment debtor at the time of attachment, there is a presumption that he owns the property, see *Zanderberg v van Zly* 1910 AD 258 at 272. A claimant in interpleader

proceedings must set out facts and allegations which constitute ownership see *Bruce N.O V Josiah Parkers and Sons Ltd* 1972 (1) SA 68 .Where movable property is attached on leased premises, a landlord claiming ownership of the property must convince the court that the property attached belongs to him and not the tenant. The fact that the leased property belongs to him and he is the landlord does not automatically make the property his. He must proffer a reasonable explanation regarding why his property was found on the leased property. He must lead satisfactory evidence of ownership of the property. In the case of a vehicle, he must proffer sufficient evidence in support of his claim for ownership of the vehicle. Registration of a vehicle raises the presumption of ownership of the vehicle but is not conclusive evidence of ownership of a vehicle. More has to be shown.

The onus of proof was on the claimant to show that the attached vehicle belongs to him. The vehicle that is at the center of these proceedings is a Nissan Navara .The claimant told the court that he left the vehicle in the custody of his tenant whilst he left for the UK. It is not realistic that a landlord would lease a property and leave a vehicle in the custody of a tenant. This is because a tenant can move out of the premises at any time. The lease agreement does not record this position. The judgment creditors told the court that the vehicle was being used for the project and was being driven around for more than 5 years by the judgment debtor. It does not appear that the vehicle was always parked at the premises. He failed to rebut this assertion. The claimant does not tell the court where the vehicle keys were kept and how Dave Mashayamombe was able to drive the vehicle for the project. He failed to tell the court what mileage the vehicle was when he left it and its mileage at the time the vehicle was attached in order to disprove the assertion that the vehicle was being driven for the project. The claimant has not been able to refute the assertion that the vehicle is indeed a project vehicle and has always been used by Dave Mashayamombe for that purpose.

There is a misapprehension that a vehicle registration books suffices as proof of ownership of a vehicle. A litigant seeking to show that an attached vehicle belongs to him must produce more than just the registration book of the vehicle if he hopes to convince the court that he owns the vehicle attached. Satisfactory details regarding how he acquired the vehicle, when and from whom the bought the vehicle need to be furnished in order to rebut allegations of collusion with the judgement debtor. *In casu*, the claimant did not state when he bought the vehicle and from

whom. He did not tell the court how much he paid for the vehicle or produce proof of payment for the vehicle. The claimant has sought to rely on the registration book alone as proof of ownership of the vehicle. Whilst proof of car registration raises the presumption of ownership, the registration book on its own in the absence of any other evidence to support his acquisition of the vehicle does not suffice as proof of ownership of the vehicle.

The vehicle was registered on 13 March 2013, barely a week after Dave Mashayamombe had been advanced monies to purchase the Nissan Navarra on 6 March 2013. The coincidence is striking. In the absence of evidence from the claimant regarding the purchase of the vehicle, the inescapable conclusion is that the vehicle belongs to the judgment debtor. Faced with contrary evidence regarding ownership of the vehicle, the claimant ought to have given details regarding his purchase of the vehicle. He ought to have told the court when he bought the vehicle and from who. He could have produced proof of payment or agreements of sale of the vehicle if available. He has failed to show that he purchased the vehicle and that the vehicle is his. The claimant did not tell the court where he kept his vehicle keys and how the Dave Mshayamombe was able use the vehicle and drive it for 5 years without his knowledge. He failed to rebut the assertion that the vehicle was bought for the project and for use by the judgment debtor. The claimant claims that the vehicle used for the project is a Ford Ranger and not a Nissan Navarra. To my amazement, he was unable to give any details of that vehicle.

The vehicle was attached whilst in the possession of the judgment debtor. The presumption that the vehicle belongs to the judgment debtor has not been rebutted. There is an appearance of collusion between the debtor and the claimant. The fact that both the claimant and the judgment debtor were represented by the same legal practitioners in proceedings culminating in this attachment and these interpleader proceedings smacks of collusion. Courts need to be wary of collusion in proceedings where property attached is found on leased premises. In such a case a claimant should have a convincing case. The probabilities of the case favor the assertion that the vehicle was bought for the project and belongs to the judgment debtor. The claimant has not proved on a balance of probabilities that the attached vehicle belongs to him and not the judgment debtor. The claimant's claim fails.

Accordingly, it is ordered as follows,

1. The claimant's claim to the Nissan Navara Registration Number ACX 2426 listed in the Notice of Seizure and attachment dated 19 November 2018, which was placed under attachment in execution of the order in Case SC 693/15 be and is dismissed.
2. The above mentioned property attached in terms of the Notices of Seizure and attachment dated 19 November 2018 issued by the applicant is hereby declared executable.
3. The claimant is to pay the judgment creditors' and applicant's costs.

V Nyemba & Associates, applicant's legal practitioners
GN Mlotshwa & Company, claimant's legal practitioners