

THE SHERIFF FOR ZIMBABWE
versus
DARLINGTON MAVURA
and
AFRICAN BANKING CORPORATION OF ZIMBABWE LIMITED

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 27 June 2019 & 3 July 2019

Opposed Application

T. R Phiri, for the applicant
D Mavura, in person
T Mukwasha, for the judgment creditor

TAGU J: The application has been filed pursuant to the provisions of Order 30 r 208 of the High Court Rules 1971. The facts are that the Judgment Creditor, African Banking Corporation of Zimbabwe Limited obtained Summary judgment against Mr Robert Mangwiro under Case No. HC 2548/18 wherein he was ordered to pay a sum of \$104 382.26, interest on the sum of \$13 442.27 at the prescribed rate from the date of summons to date of full and final payment as well as costs of suit on an attorney – client scale and collection commission in terms of the Law Society By-Laws. Pursuant to obtaining the abovementioned order, the Judgment Creditor instructed the applicant (The Sheriff for Zimbabwe) to attach and take into execution the Judgment Debtor’s movable property. A Writ of Execution was duly issued out in favour of the Judgment Creditor. During the course and scope of his duties as Sheriff for Zimbabwe and in execution of the writ in Case No. HC 2548/18 the applicant attached various household goods as well as a Toyota VX V8 Landcruiser registration ADU 4695, and a Nissan Hard body registration number 8437, assets fully described on the Notice of seizure and attachment dated 5 October

2018. The Claimant Darlington Mavura is now claiming all the property which appears in the Notice of Attachment as his property.

In his founding affidavit Darlington Mavura claimed that he is a mere tenant at House no. 1877 bluffhill Westgate where he rents out the house from Mr Robert Mangwiro the judgment debtor. He further submitted that some of the property was purchased by his wife Amanda B Pakarimwa for their communal benefit. He therefore produced copies of receipts of all household goods as proof of ownership. He did not produce anything to show that he is the owner of the two motor vehicles described above.

At the hearing of this matter the claimant told the court that the full debt had since been paid. He further conceded that he is not the owner of the two vehicles which he indeed said belonged to the judgment debtor.

Counsel for the Judgment Creditor confirmed that the claimant had failed to prove that he is the owner of the two motor vehicles. The counsel for the Judgment Creditor further confirmed that the capital debtor has since been paid in full. However, she maintained that the motor vehicles are executable because costs have not been paid at all and that some money is still outstanding.

What is clear therefore is that all the property was attached at the Judgment Debtor's residence. The counsel for the Judgment Creditor conceded that all the household property should be released from attachment since the Claimant has managed to produce proof that he owned the property. As for the motor vehicles she maintained that they be declared executable because the debt has not been paid in full.

I am therefore satisfied that the claimant managed to prove ownership of some of the attached property in execution and failed to prove ownership of the other attached property. In *casu*, the attached property was attached at the home of the Judgment Debtor. At law it is deemed that the property belongs to the Judgment Debtor. Further, while some payments have been made by the Judgment Debtor the debt has not been fully extinguished since costs and collection commission has not been paid. The Claimant's personal property has to be released from execution while the Judgment Debtor's property has to be executed to clear the debtor.

IT IS ORDERED THAT

1. The Claimant's claim to Samsung Dispenser Fridge Double door, one Piece Dining Table Suite, 3 Brown Leather Sofas, 2 Centre Tables, Black Leather Sofas, LG TV, Round table and 3 stools, a Sony Radio System and 3 Piece Display which is listed in the Notice of Seizure and Attachment dated 5 October 2018 which were placed under attachment in execution of the order in Case No. HC 2548/18 be and is hereby granted.
2. The above mentioned property attached in terms of the Notice of Seizure and Attachment dated 5 October 2018 issued by the applicant is hereby declared not executable.
3. The Claimant's claim to a Toyota VX V8 Landcruiser ADU 4695 and a Nissan Hard body ACC 8437 which is listed in the Notice of Seizure and Attachment dated 5 October 2018 which were placed under attachment in execution of the order in Case No. HC 2548/18 be and is hereby dismissed.
4. The above mentioned property in paragraph 3 attached in terms of the Notice of Seizure and Attachment dated 5 October 2018 issued by the applicant is hereby declared executable.
5. The Judgment Creditor and the Claimant are to pay the applicant's costs.

Kantor & Immerman, applicant's legal practitioners

Dube-Banda, Nzarayapenga & Partners, judgment creditor's legal practitioners