

MARLIZE VAN DER HEEVER
versus
TIGMA HAULAGE PRIVATE LIMITED
and
SHERIFF OF ZIMBABWE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 21 July and 7 October 2020

Opposed application

N. Chinharo, for the applicant
J. Tadiwa, for the 1st respondent

TAGU J: This is an application in terms of Order 49, Rule 449 (1) (a) of the High Court Rules, 1971 for rescission of a judgment that was allegedly erroneously sought and granted in the absence of the applicant by the Honourable Justice Mushore on the 23 October 2019.

The applicant is a businesswoman in South Africa and she own several commercial haulage trucks which she leases to companies and individuals for profit. She is also a director in a company called Streamline International (Private) Limited, a company registered and operating business in South Africa. Every year in June she leases one of her trucks to Streamline International (Private) Limited. The truck is a MAN DIESEL which is registered in South Africa with the Vehicle identification Number **AAMH670859PX22705** and with the registration number DDP349L and trailer with the registration number DBZ557GP.

The truck left South Africa for Zimbabwe but has since not returned owing to some CTIP (Commercial Temporary Import Permit) issues with ZIMRA. While the truck was held by ZIMRA the 1st respondent instituted a chamber application to have the truck attached (along with another) to found jurisdiction in order to pursue a claim against a company called Group Africa Specialised Freight (Pty) Ltd. The chamber application was granted and the applicant's truck was subsequently attached by the second respondent. The applicant alleges she was not a

party to these proceedings and neither was she served with any process. It was when she sought to collect her truck through her agents from ZIMRA that she was told it had been attached.

She avers that the Order attaching the truck was erroneously granted on the basis that the attached truck belongs to Group Africa Specialised Freight (Private) Limited when in fact it belongs to the applicant. In addition to the above error, the Order which was sought and granted in favour of the first respondent was for a truck with the VIN number: **AAMH670859PX2205** which number is different from her truck which has the following VIN number **AAMH670859PX22705**.

She therefore wants the Order to be rescinded in terms of r 449 of the rules of this court.

The first respondent took a preliminary point and prayed that that this application be dismissed on this point alone. The preliminary point taken by the first respondent is that the applicant in her founding affidavit attached foreign documents that are not authenticated. It said for a foreign document to be admitted in Zimbabwe it must comply with the High Court (Authentication of Documents) Rules, 1971. The foreign document being a registration Book of the vehicle in question that was issued in South Africa and is written in both English and Afrikaans is central to this case and needs to be authenticated. In support of its contention the respondent relied on the case of Stand Five Four Nought (Private) Limited Salzman ET CIE SA SC-30/2016.

In her answering affidavit the applicant submitted that in terms of the High Court (Authentication of Documents) Rules, 1971, authentication refers to verification of a signature on a signed document. She said the documents she submitted are issued by the South African Government and no signatures are appended on them for their validity. She said they are issued without signatures. Hence the argument that the documents need to be authenticated falls away. It was her further argument that the Order that she seeks to be rescinded under HC 7623/19 was granted on application by the first respondent which was supported by the same unauthenticated documents so by its point *in limine*, the respondent is inviting the Court to apply its submission selectively and ignore the fact that first respondent also relied on similar documents that were not authenticated.

In *casu* the applicant attached a certified copy of a motor vehicle registration book at page 13 of her founding affidavit. On the left hand side of the registration book the details of the

vehicle in question are written in the English Language. On the right side of the same book the details of the vehicle are written in Afrikaans. This is the same registration book that was used by the respondent in HC 7623/19 and no one took issue with the authentication of that book. This is the same book/document that the respondent is saying should have been authenticated yet when the respondent used it, it was not authenticated. The details of the said vehicle are very clear and leaves the court in doubt as to what it is dealing with. I therefore agree with the applicant that the point *in limine* is inviting the court to apply the law selectively and ignore the fact that the respondent used the same documents in that state in HC 7623/19. I therefore find no merit in the point *in limine* and it is dismissed.

ON THE MERITS

My perusal of the papers filed of record shows that the applicant is conniving with the Judgment Debtor under HC 7623/19 which she wants rescinded so as to evade liability. I say so because the applicant is a director of Streamline International which trades under the name Group Africa. The truck referred to in the order granted by JUSTICE MUSHORE belongs to Group Africa. The trucks namely a MAN TRUCK HORSE REG No. CZX737L (1), Vin No. AAMH670859PX22705, Rear Trailer DBZ557GP and Scania Truck Horse Reg No. NUR47738, Vin No. YS2R6X4001288318, Rear Trailer ND383002 have always been used by Group Africa for the past years using the same drivers as alluded in Christopher Nyatsanga's supporting affidavit. The registration book which the applicant purports to rely upon was only issued on the 24th of July 2019 yet the trucks were already in business from the year 2009 as corroborated by the evidence in Christopher Nyatsanga's supporting affidavit. Applicant was therefore duly served with the papers under HC 7623/19 through her company Streamline International as per annexure "B".

If one has to consider annexures "C1" and "C2", on the 25th of January and 22nd of February 2019, Streamline International prepared invoices for payment of services which were rendered for transportation of goods from Richards Bay, South Africa to Likasi in DRC. The bank account number 62768124358, Branch Code Number 250655 which appears on the invoices referred to above is the applicant's personal bank account yet it appears on Streamline International's invoices. Remember applicant is a director of Streamline International and payment by a customer for services rendered was made directly into applicant's account as

appears from annexure “D”. This in my view shows that the applicant is the alter ego of Group Africa which trades as Streamline International. The applicant is therefore not a lessor but owner of the MAN Truck. A further perusal of annexure “E” shows that on the 5th of February 2019 Group Africa t/a Streamline International forwarded an insurance cover to its agent Christopher Nyatsanga showing the trucks were insured under Group Africa. A further perusal shows that the trucks are the same trucks which were attached by the second respondent under HC 7623/19. Either the applicant is being used as a vehicle to evade liability by the company and or the applicant is using the company to commit fraud. I therefore find that the applicant is simply playing tricks with Group Africa trading as Streamline International so as to mislead this Honourable Court. She is therefore lying under oath by trying to disassociate herself from the judgment debtor (Group Africa) under case number HC 7623/19. There was therefore no error and the application is dismissed.

IT IS ORDERED THAT

1. The application is dismissed with costs on a legal practitioner and client scale.

Scanlen and Holderness, applicant’s legal practitioners
Tadiwa and Associates, 1st respondent’s legal practitioners.