

THE SHERIFF FOR ZIMBABWE
versus
AUDIOMAX 2010 (PVT) LTD
t/a AUDIO MAX CLINIC
and
MIKE MAWOYO
and
WIZEAR TRUST

WIZEAR TRUST
and
MIKE MAWOYO
and
THE SHERIFF OF ZIMBABWE

HC 4368/21
Ref SC 561/19

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 15 October 2021 & 4 January 2023

Opposed Matter Interpleader

A Ingwani, for the applicant
H Sibanda, for the Claimant
T Deme with M Ndlovu, for the Judgment Creditor
A Muchadehama, for the Judgment Debtor

MUSITHU J: The applicant filed an interpleader notice in terms of Order 30A Rule 205A as read with Rule 207 of the High Court Rules, 1971 (the old rules), under HC 979/21. Audiomax 2010 (Pvt) Ltd t/a Audio Max Clinic is the claimant. Mike Mawoyo is the judgment creditor, while Wizear Trust is the judgment debtor. The judgment debtor was joined to these proceedings as the first respondent by an order of this court on 9 June 2021 under HC 2275/21.

At the hearing of the matter, counsel brought to my attention a separate record in a related matter of *Wizear Trust v Mike Mawoyo and The Sheriff of Zimbabwe HC 4368/21*, in which the judgment debtor was seeking the setting aside of the writ of execution that led to the attachment of the property, which is the subject of the current interpleader proceedings. The parties agreed that the two matters be determined at the same time since the interpleader

proceedings before the court were dependent on the outcome of HC 4368/21. I shall revert to HC 4368/21 latter on in the judgment.

The genesis of the interpleader proceedings is an order of the Supreme Court that the judgment creditor obtained in his favour under SC 561/19. The order was granted on 15 June 2020, and it reads as follows:

“IT IS ORDERED BY CONSENT THAT:

1. The instant appeal be and is hereby succeeds with costs.
2. That the judgment of the court *a quo* be set aside and substituted with the following:
 - (i) The application for confirmation of the ruling of Mgazi be and is hereby granted.
 - (ii) The ruling per Labour Officer P. Mgazi dated 3rd July 2018 be and is hereby confirmed.
 - (iii) Wizear Trust be and is herebyto pay Mike Mawoyo US\$16 600.00 within 60 days from the date of this order.”

Pursuant to the granting of that order, the judgment creditor caused to be issued a writ for the execution of the judgment debtor’s movable goods. The applicant acted on the basis of that writ and on 17 December 2020, it proceeded to seize and attach movable goods at Number 93 Baines Avenue, Harare. It is those movable goods that are the subject of the present proceedings.

The Claimant’s Case

The claimant herein claimed ownership of the property under seizure and attachment. In its notice of opposition the claimant raised a point in *limine*. The essence of the preliminary objection was that the claimant was aware by virtue of its position in the judgment debtor, that the judgment debt was fully settled on 10 September 2020. Attached to the claimant’s opposing affidavit is an NMB Bank Internal Funds Transfer Confirmation Receipt confirming the transfer of \$16,600.00 from an NMB Account No. 0000260065246 into the beneficiary’s account number 0000260069829. The beneficiary’s name is listed as Mawoyo Mike Nhamo and the payer as Wizear Trust. The transaction reference was listed as SC 561/19, Case settlement Mike Mawoyo.

The claimant averred that it was therefore dishonest for the judgment creditor to instruct the Sheriff to proceed with execution, three months after the debt was settled in full. The claimant further averred that the judgment debt was a confirmation of a quantification done by a Labour Officer in 2018, and it was therefore affected by the new currency regime that became operational after February 2019. The payment in local currency therefore discharged the debt.

On the merits, the claimant averred that the property attached did not belong to the judgment debtor, but the claimant. The claimant attached receipts and invoices to confirm the purchase of the property. The claimant also claimed that the judgment debtor did not even operate from the address at which execution took place. The judgment creditor was aware of the position as a former employee of the judgment debtor. The correct business address for the judgment debtor was No. 9 Rowland Square, Milton Park, Harare. The instruction to the applicant to execute at the wrong address could only have been actuated by malice. For that reason, and the fact that execution was proceeded with when the judgment creditor had been paid in full, he deserved censure through an award of costs on the punitive scale of legal practitioner and client scale.

The Judgment Creditor's Case

In his opposing affidavit, the judgment creditor claimed that there was collusion between the claimant and the judgment debtor, since the two entities were founded and fronted by one Clemence Chidziva, the deponent to the claimant's opposing affidavit. Chidziva was the director of the claimant as well as being the founder of the judgment debtor. The conflation of the deponent's roles in the two institutions therefore demonstrated collusion between the claimant and the judgment debtor. The claim was therefore an abuse of process meant to frustrate the execution of the judgment debt.

The judgment creditor denied that the asset register attached to the claimant's affidavit demonstrated that the claimant was the owner of the property. The register did not identify with the attached properties. An asset register could be generated at any stage to suit the desires of the party requiring it. The judgment creditor averred that the receipts and invoices attached to the claimant's affidavit were of no relevance since they bore no relationship to the property listed in the notice of seizure. For instance, the Hallway Table, and the 5 Tier Stationary Cupboards White Melamine did not appear in the notice of seizure.

The judgment creditor further averred that the attached certificates of calibration did not prove ownership of the machine. All they confirmed was that the claimant contracted Haas Group to calibrate the machines owned by the judgment debtor. The judgment creditor claimed that the judgment debtor used the machines in its work, and since the claimant was owned by the founder of the judgment debtor, it would not be surprising that the claimant would assist the judgment debtor in having its machines calibrated.

The judgment creditor also contended that the claimant had not explained why its property was in the custody of the judgment debtor at the time of execution. The court was urged to dismiss the interpleader claim and declare the attached property executable.

The Judgment Debtor's Case

The judgment debtor's opposing affidavit was deposed to by one Lucia Nkomo, in her capacity as the Program Manager. She stated that the judgment creditor was employed by the Judgment debtor as its Finance and Administration Officer on yearly renewable fixed term contract, from 1 October 2015. On expiry of the second one year term contract on 30 September 2017, the judgment debtor did not renew the contract. The judgment creditor approached a Labour Officer challenging the non-renewal of the contract, alleging unlawful termination of the contract of employment. He sought reinstatement or damages in lieu of such reinstatement in the sum of \$16, 600.00.

The judgment debtor averred that damages sought in lieu of reinstatement were made up of the judgment's creditor's salary for the period 1 October 2017 to 31 December 2018, and these were denominated in Zimbabwean dollars. The Labour Officer found in favour of the judgment creditor and ordered the judgment debtor to pay him the sum of \$16, 600.00. The Labour Court dismissed the Labour Officer's application for confirmation of the ruling. The Labour Court's decision was overturned on appeal to the Supreme Court.

The judgment debtor averred that in compliance with the Supreme Court order, it deposited the sum of ZW\$16, 600.00 into the judgment creditor's NMB bank account on 10 September 2020. According to the judgment debtor, the amount was paid in local currency in line with the provisions of S.I. 33 of 2019, which converted all US\$ debts to RTGS dollars at the rate of 1:1. The payment had therefore discharged the debt and the writ of execution had no legal basis.

Proceedings under HC 4368/21

The judgment debtor was the applicant, while the claimant was the first respondent. The sheriff was the second respondent. The judgment debtor was seeking an order that the writ of execution in SC 56/19 issued on 20 October 2020 be set aside. The judgment debtor also sought an order of costs on an attorney and client scale as against the claimant. The gist of the judgment debtor's complaint was that following its payment of ZW\$16, 600.00 to the judgment creditor, it had fully discharged its obligations. There was therefore no basis for the

issuing of a writ of execution to enforce the Supreme Court order once payment had been made.

Following submissions by counsel and after some exchanges with the court, Mr *Muchadehama* appearing for the judgment debtor conceded that the application was not properly before the court. This court could not competently set aside a writ that had been issued out of the Supreme Court. Mr *Muchadehama* opted to withdraw the application with each party bearing its own costs of suit. Mr *Ndlovu* appearing for the judgment creditor insisted that the withdrawal be accompanied by a tender of costs on the attorney and client scale. He argued that it should have been common cause that the High Court could not be petitioned to rescind the order of the Supreme Court. I shall deal with the question of costs later on in the judgment.

THE SUBMISSIONS IN RESPECT OF HC 979/21

Two issues arise for determination. The first issue is whether or not the payment of the debt in local currency discharged the judgment debtor's indebtedness to the judgment creditor. The second issue is dependent on how the court determines the first issue. It relates to the merits of the claimant's claim. If this court determines that the debt was discharged by the payment in local currency, then the claimant's claim must be upheld. If however the court determines that the payment did not discharge the debtor's indebtedness, then the court must consider the merits of the claimant's claim in order to determine if the attached property is executable. It emerged during the submissions that the sum of ZW\$16,600.00 was apparently rejected by the judgment creditor and returned to the judgment debtor.

Claimant's Submissions

In its heads of argument, the claimant argued that the judgment debt was settled in full on 10 September 2020, following the payment of the judgment debt in local currency by the judgment debtor. That payment rendered the judicial attachment a nullity. It was further submitted that the mere fact that the court order was in the United States dollar currency was not material. The claimant submitted that Statutory Instrument 33 of 2019 changed the currency regime by providing that all assets and liabilities that were valued and expressed in United States dollars before February 2019, were converted to Zimbabwean dollars at the rate of one to one with the United States dollar. The judgment debt in question arose by virtue of the ruling by the Labour Officer P Mugazi in 2018. According to the claimant, it meant that the judgment debt was a liability already valued and expressed in United States dollars as at

February 2019. It was therefore affected by the new currency law. The Supreme Court order was merely a confirmation of the 2018 ruling by the Labour Officer. The court was referred to the authority of *Zambezi Gas Zimbabwe (Private) Limited v N.R. Barber (Private) Limited & Ors*¹.

As regards the merits of the interpleader claim, the claimant denied allegations of collusion with the judgment debtor, arguing that such allegations were unsubstantiated. The claimant further argued that it had a separate corporate personality to the judgment debtor. The mere fact that the deponent to the claimant's affidavit was an officer of the defendant did not justify the conclusion of collusion between the two entities.

Concerning the ownership of the property, the claimant submitted, on the strength of *The Sheriff for Zimbabwe v Renson Mahachi & Anor*² that at law there is a rebuttable presumption of ownership of movables in favour of someone found in possession of that property. The claimant further submitted that *in casu*, the judgment creditor had instructed the Sheriff to attach the property at the claimant's address instead of the judgment debtor's address. The attached property had to be presumed to be the claimant's. The onus was on the judgment creditor to rebut the presumption of ownership operating in the claimant's favour, seeing as the execution occurred at the claimant's address. The claimant further averred that in the absence of an explanation as to why the execution was made at the claimant's address, one could safely conclude that execution was actuated by malice. This conclusion was justified because the judgment creditor was a former employee of the judgment debtor and was therefore fully aware of the judgment debtor's address since he used to work from there.

The claimant further argued that it had tendered documentation which confirmed its ownership of the property. The claimant submitted that proof of ownership was not just confined to the production of receipts. Relying on the dictum in the cases of *Sheriff of the High Court v Mayaya & Others*³ and *Survival Manufacturing Agencies (Pvt) Ltd v Calvin Masuwa*⁴, it submitted that even in the absence of receipts confirming ownership, the court could still rely on a list of assets or any other document which may assist in proving ownership. According to the claimant, the certificates of calibration therefore qualified as "any other document" that proved ownership since they showed in whose name the calibration was done. The fact that calibration was done before the claimant became aware of

¹ SC 3/20

² HC 98/18

³ HH 494/15

⁴ HH 628/20

the execution, and that the certificates were issued by an independent third party, meant that their production as proof of ownership ought to be accepted since there was no motive to misrepresent.

The claimant urged the court to uphold its claim with costs on the legal practitioner and client scale.

The Judgment Debtor's Submissions

Mr *Muchadehama* submitted that in determining whether or not payment in local currency discharged the debt, the court must not look at the Supreme Court order in isolation, but consider the sequence of events leading to that order. He further submitted that the effect of the Supreme Court order was merely to substitute the Labour Court order so that the Supreme Court order became the order of the Labour Court as at February 2019. Payment was made before the writ of execution was issued. According to counsel, that payment related to a debt which had arisen on 3 July 2018. That was the debt that the judgment debtor was discharging. The return of the money was inconsequential since the debtor had fulfilled his obligations.

Mr *Muchadehama* further submitted that by operation of s 4 of S.I. 33 of 2019, the judgment debt automatically mutated to a local currency debt at the rate of one is to one. Counsel submitted that the case of *Zambezi Gas (Pvt) Ltd v N.R. Barbour (Pvt) Ltd & Another*⁵ had put to rest any doubts concerning the treatment of debts that arose prior to February 2019. The court was urged to find that the debt had been fully discharged and consequently the writ of execution and the attachment of the claimant's property were irregular.

The Judgment Creditor's Submissions

Mr *Ndlovu* submitted that the writ of execution was issued out of the Supreme Court. It followed that it was that court that could only set it aside and not the High Court. For as long as the Supreme Court order remained extant, any payment that was not consistent with that order did not discharge the debt.

On the interpleader claim, Mr *Ndlovu* submitted that no sufficient proof was placed before the court to demonstrate that the claimant was the owner of the attached property. He further submitted that the property in issue was attached at No. 93 Baines Avenue Harare, which was the judgment debtor's address for service. The claimant's address was 9 Rowland

⁵ Supra at p 11 of the judgment

Square, Milton Park, Harare, based on its own evidence. Counsel claimed that when the applicant went to execute at 93 Baines Avenue, Harare, he was not advised that the judgment debtor did not operate from that place. Instead, the applicant's return of service showed that process was served on employees of the judgment debtor who accepted service on behalf of the judgment debtor. The law presumed the Sheriff's service to be valid unless challenged. In any case, the property attached was not the same as what the claimant was claiming.

The Analysis

Whether the judgment debt was discharged by the payment in local currency (ZW\$)

The claimant and the judgment debtor insisted that the payment of the debt in local currency effectively discharged the debtor's liability and therefore there was no need for the applicant to proceed with the seizure and attachment of the property. Their argument is that the change in the currency regime had the effect of transforming a United States Dollar debt into a ZW\$ debt. It did not matter that the Supreme Court order specifically relates to a United States dollar debt. It is critical to relate to the law that transformed the monetary landscape in order to put their argument into perspective.

On 22 February 2019, the Government of Zimbabwe introduced a new currency called the Real Time Gross Settlement Electronic dollar (RTGS), through the Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act and Issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars)) Regulations, 2019, (hereinafter referred to as "S.I. 33/19" or the instrument). The instrument was gazetted on 22 February 2019. That date became the first effective date as defined in the Finance Act (No.2) Act, No.7 of 2019 (the Finance Act). The new currency ran parallel with other currencies that were accepted as legal tender, under what was known then as the multi-currency basket.

On 24 June 2019, the Minister of Finance and Economic Development caused to be gazetted Statutory Instrument 142 of 2019 (Reserve Bank of Zimbabwe (Legal Tender) Regulations, 2019) (SI 142/2019). The 24th June 2019 became the second effective date as defined in the Finance Act. This instrument abolished the multi currencies and declared the ZWL to be the sole legal tender in Zimbabwe. The two instruments were later incorporated into the Finance Act, which was gazetted on 21 August 2019. The key parts of the Finance Act which assimilated some of the provisions of the two instruments are sections 22 and 23. The two sections state in part as follows:

"22 Issuance and legal tender of RTGS dollars, savings, transitional matters and validation

- 1) Subject to section 5, for the purposes of section 44C of the principal Act, the Minister shall be deemed to have prescribed the following with effect from the first effective date—
 - (a) that the Reserve Bank has, with effect from the first effective date, issued an electronic currency called the RTGS dollar; and
 - (b); and
 - (c) that such currency shall be legal tender within Zimbabwe from the first effective date; and
 - (d) that, for accounting and other purposes (including the discharge of financial or contractual obligations), all assets and liabilities that were, immediately before the first effective date, valued and expressed in United States dollars (other than assets and liabilities referred to in section 44C (2) of the principal Act) shall on the first effective date be deemed to be values in RTGS dollars at a rate of one-to-one to the United States dollar; and
 - (e) that after the first effective date any variance from the opening parity rate shall be determined from time to time by the rate or rates at which authorised dealers exchange the RTGS dollar for the United States dollar on a willing-seller willing-buyer basis; and
 - (f) every enactment in which an amount is expressed in United States dollars shall, on the first effective date (but subject to subsection(4)), be construed as reference to the RTGS dollar, at parity with the United States dollar, that is to say, at a one-to-one rate.
- (2)
- (3) The use of the RTGS currency with effect from the first effective date is hereby validated.
- (4) For the purposes of this section—
 - (a) it is declared for the avoidance of doubt that financial or contractual obligations concluded or incurred before the first effective date, that were valued and expressed in United States dollars (other than assets and liabilities referred to in section 44C(2) of the principal Act) shall on the first effective date be deemed to be values in RTGS dollars at a rate of one-to-one to the United States dollar;
 - (b); (Underlining for emphasis)

23 Zimbabwe dollar to be the sole currency for legal tender purposes from second effective date

(1) For the avoidance of doubt, but subject to subsection (4), it is declared that with effect from the second effective date, the British pound, United States dollar, South African rand, Botswana pula and any other foreign currency whatsoever are no longer legal tender alongside the Zimbabwe dollar in any transactions in Zimbabwe.

(2) Accordingly, the Zimbabwe dollar shall, with effect from the second effective date, but subject to subsection (4), be the sole legal tender in Zimbabwe in all transactions.

(3)

The principal Act referred to in ss 22 and 23 above is the Reserve Bank of Zimbabwe Act.⁶

It is common cause that the Labour Officer made her ruling on 3 July 2018 before the first effective date. The Labour Court declined to confirm the ruling and the matter was taken on appeal to the Supreme Court. The court set aside the decision of the Labour Court and granted an order by consent on 15 June 2020. That order was granted after S.I. 33 of 2019 became law. By the time that the parties appeared before the Supreme Court and agreed to an order by consent it was already common cause that the United States dollar had ceased to be legal tender by operation of law. They nevertheless agreed to that order by consent mindful of

⁶ [Chapter 22:15] (No. 5 of 1999).

the implications of the law. The issue is whether this court can interpret the Supreme Court order in such a way that what was contemplated by that court was a payment in local currency when the order specifically refers to payment in the United States dollar. Further, can this court determine that the debt referred to in the Supreme Court had in fact arisen on 3 July 2018, when the Labour Officer made the ruling, and therefore affected by s 22(1)(d) of the Finance Act?

As already observed, the Supreme Court granted an order by consent and that order remains extant. It records what the parties agreed. In submitting that this court must find that the payment in local currency extinguished the debt sounding in the United States dollars, both the claimant and the judgment creditor are in fact asking the court to vary or set aside the Supreme Court order. At the time they agreed to the consent order, the parties ought to have been aware of the effect of S.I. 33 of 2019 on the order that they were agreeing to. The position of the law is clear. An order of the court must be complied with, irrespective of its flaws or imperfections. Any party that wishes to have those flaws corrected must do so in terms of the law instead of invoking legal technicalities in a bid to wriggle out of its obligations under that court order. The judgment debtor was part of that consent order and it agreed to the terms of the consent order as recorded. It has to deal with the terms of that consent order first.

From a reading of the law, it is clear that an order granted in the United States dollar after the first effective date should only be construed in such a way that the envisaged payment complies with s 22(1)(e) of the Finance Act. The effect of the law is that after the first effective date, a party cannot seek to enforce payment in the United States dollar currency. The correct approach, in the court's view is that after the first effective date "any variance from the opening parity rate shall be determined from time to time by the rate or rates at which authorised dealers exchange the RTGS dollar for the United States dollar on a willing-seller willing-buyer basis. The judgment creditor was therefore expected to pay in local currency, an amount equivalent to the United States dollar amount granted in terms of the Supreme Court order at the rate at which authorised dealers exchange the ZW\$ for the United States dollar.

The next point is that the ruling by the Labour Officer did not constitute a final obligation to pay until it was confirmed. In other words, the obligation to pay only arose after the confirmation of that ruling. The ruling was only confirmed by the Supreme Court after the

first effective date. In the court's view, the obligation to pay only arose after the suspensive condition was fulfilled. Section 22(1)(d) of the Finance Act is apposite in this regard. It stipulates that “.....for accounting and other purposes (including the discharge of financial or contractual obligations), all assets and liabilities that were, immediately before the first effective date, valued and expressed in United States dollars (other than assets and liabilities referred to in section 44C (2) of the principal Act) shall on the first effective date be deemed to be values in RTGS dollars at a rate of one-to-one to the United States dollar...”. The words “financial or contractual obligations” are defined in s 20 of the Finance Act to include (for the avoidance of doubt), judgment debts. A judgment debt is defined in the same section to mean:

“.....a decision of a court of law upon relief claimed in an action or application which, in the case of money, refers to the amount in respect of which execution can be levied by the judgment creditor; and, in the case of any other debt, refers to any other steps that can be taken by the judgment creditor to obtain satisfaction of the debt (but does not include a judgment that has prescribed, been abandoned or compromised)” (underlining for emphasis).

In the context of the present dispute, execution could only be undertaken after the ruling was confirmed by an order of a competent court. It follows therefore that for purposes s 21(d) of the Finance Act, the obligation to pay arose after the first effective date, and therefore the payment of ZW\$16, 600.00 could not have extinguished the judgment debt. At most, it would have been a different proposition altogether if the payment was made in local currency at the prevailing interbank rate in order to equate it to the United States dollar obligation recorded in the Supreme Court order. The court therefore determines that the judgment debt was not discharged by the payment of the sum of ZW\$16, 600.00.

Whether the attached property is executable

The claimant bears the onus to prove ownership of the property under attachment, at the outset. If it is established that the claimant was in possession of the property, the onus shifts to the judgment creditor to disprove that claimant is the owner. In *Sheriff of Zimbabwe v Sibanda & Ano*⁷, MWAYERA J (as she then was) aptly dealt with the question of onus and possession as follows:

"In this case the property was recovered from the claimant's place of abode. As the claimant is clearly the owner of number 146 Twickenham Drive, Northwood, Mount Pleasant, Harare from which the movable property was recovered. Where the property that has been attached is in the possession of the claimant at the time of attachment the onus shifts and the judgment creditor has the onus to prove that the property does not belong to the claimant. See *Greenfield N.O v Blignaut and Ors* 1953 (3) SA 597. The court stated as follows:

⁷ HH 275/18

“the claimant is as a general rule made the plaintiff and the burden of proof rests upon him where the goods seized were at the time of seizure in the possession of the judgment debtor, possession being *prima facie* evidence of title.”

If however, the claimant was in possession at the time of seizure the burden of proof is upon the execution creditor, thus reversing the ordinary rule, and the execution creditor may be made the plaintiff.

In *casu* the property attached was in the possession of the claimant at the time of attachment. The property was at the claimant’s house which she owns as evidenced by the deed of transfer of the immovable property 146 Twickneham Drive, Northwood, Mount Pleasant. By inference unless there is evidence placed before the court, the immovable property (there at) belongs to the claimant or at least is under her possession and thus ownership presumed. Given that the property in question from which movables were recovered is a residential premise, I find credence in the claimant’s argument that the judgment debtors did not operate their business from the claimant’s place. No evidence was given to support that the residential place was a business premise from which the judgment debtors operated from. The movable property attached in the claimant’s possession were at the claimant’s residential premises” (underlining for emphasis)

The claimant’s contention is that the execution was carried out at its premises, and that it had tendered documentary evidence which confirmed its ownership of the attached property. Indeed the asset register, the tax invoices and the certificates of calibration all confirm that the attached property is in the name of the claimant. The property was attached at 93 Baines Avenue, Harare, which according to the claimant and the documentary evidence attached is the claimant’s business address.

The resolution by the judgment debtor authorising Lucia Nkomo to represent it in these proceedings shows that the judgment debtor operates from No. 9 Rowland Square Milton Park, Harare. However, the debt stamp impression on the same resolution gives another version. It is dated 26 April 2021, and it states the judgment debtor’s address as “93 Baines Avenue, Between Second & Mazowe, Harare.” That date is also the date on which the resolution was signed. The same stamp impression lists the judgment debtor’s telephone numbers and its email address.

Unfortunately that anomaly on the judgment debtor’s address as reflected by the stamp impression and the resolution were not addressed by either counsel. I also note that in respect of the certificates of calibration, the claimant’s address is stated as 9 Rowland Square, Milton Park, Harare, the same address that the claimant claims to be the judgment debtor’s business address. It leaves the court in doubt as to whether the judgment debtor and the claimant were truthful in asserting that the judgment debtor operates from No. 9 Rowland Square Milton Park.

Be that as it may, the court determines that on the basis of the documentary evidence placed before the court, the attached property belongs to the claimant. While the judgment creditor alluded to collusion between the claimant and the judgment debtor, no evidence was placed before the court to back up that averment. The point still remains that the judgment debtor and the claimant are two different entities. Had that not been the case, then the claimant would have been a party to the original dispute that gave birth to the writ of execution. The judgment creditor did not place sufficient evidence before the court to controvert the documentary evidence.

COSTS

In respect of HC 4368/21

Having considered the submissions made by counsel and in the exercise of my discretion, I determine that there are no extra ordinary circumstances that warrant that the judgment debtor, as the applicant therein, be saddled with an order of costs on the legal practitioner and client scale as prayed by the judgment creditor. The applicant shall pay first respondent's costs on the ordinary scale.

In respect of HC 979/21

Costs were sought against the judgment creditor on the legal practitioner and client scale in the event that the court found in favour of the claimant. I have already expressed reservations as regards the candour of the claimant and the judgment debtor. Even though the court found in favour of the claimant on the basis of the documentary evidence, which the judgment creditor did not convincingly deal with, the court finds it befitting that each part be ordered to bear its own costs of suit.

DISPOSITION

Accordingly it is ordered that:

In respect of HC 979/21;

1. The claimant's claim to all the property which was placed under attachment by the applicant in execution of the judgment in SC 561/19 is hereby granted.
2. All the property attached in terms of the notice of seizure and attachment dated 17 December 2020 issued by the applicant is hereby declared not executable.
3. Each part shall bear its own costs of suit.

In respect of HC 4368/21

1. The application is withdrawn.
2. The applicant shall pay the first respondent's costs of suit.

Dube-Banda, Nzarayapenga & Partners, applicant's legal practitioners
MawereSibanda Commercial Lawyers, Claimant's legal practitioners
Thoughts Deme Attorneys At Law, Judgment Creditors' legal practitioners
Mbidzo, Muchadehama & Makoni, Judgment Debtor's legal practitioners