THE SHERIFF FOR ZIMBABWE
versus
RENSON MAHACHI
and
LEOMARCH ENGINEERING

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 13 June 2018

Opposed application – interpleader

L. Manyika, for the applicant
M. Dzoro, for the claimant
A. Chinamatira, for the judgment creditor
No appearance for the judgment debtor

MAFUSIRE J:

[1] This was an interpleader. I dismissed the claimant's claim at the end of argument. The facts were these. The applicant had placed certain goods under attachment in execution of a judgment obtained by the judgment creditor against the judgment debtor which was still outstanding. The claimant claimed that all the attached goods belonged to him, not the judgment debtor.

[2] The attached goods comprised washing machines; a microwave; several carpets; several television sets and a stand; an office chair; several wall mirrors; a bedside cabinet; a study table; a play station [video game]; a fan; refrigerators; a garden suite and chair; a garden table and chairs; lounge suites; a coffee table; a radio and speakers; side tables; a dining room suite; a VCR and decoders; lamp shades; wall picture frames; dining room cabinet; a glass side table; sets of golf clubs and bar stools.

[3] The goods were attached at an address in Rhodene, a low density suburb of Masvingo City.

[4] The claimant claimed that the court only needed to look at the nature of the attached property to see that it was clearly household goods and personal effects that could not conceivably be assumed to be owned by the judgment debtor, a company. It was argued that the place of attachment was the claimant's place of residence and that the claimant was in possession of the goods when they were attached. In paragraphs 11 to 13 of his affidavit the claimant said:

> "11. If First Respondent[1] is to execute, he [*sic*] should target specifically the assets held by Takataka Plant Hire[2], not me. I cannot lose my property to satisfy an alleged debt the Judgment Debtor would be liable for in its own capacity.
>
> 12 The attached property belongs to me, this fact is obviously apparent from the very nature of the good [*sic*] removed as seen on Annexure "A"[3]. There is absolutely no link between the attached property and the Judgment Debtor.
>
> 13 Proof of my ownership of the items attached is evident from the nature of the property. The items attached are clearly household items."

[5] Developing the above argument further, Mr *Dzoro*, for the claimant, singled out the play station video game, televisions, and the sets of golf clubs as clearly being such household items and personal effects as could not reasonably be expected to be owned by a company.

[6] Mr *Chinamatira*, for the judgment debtor, countered by saying the onus was on the claimant to prove ownership of the attached goods; that he could not do so by merely pointing to the nature and identity of the goods; that nothing stopped a company from owning televisions sets or golf clubs or video games; that the place at which the goods had been attached was the judgment debtor's registered office and place of business and that the claimant was its director and "owner".

[7] For the law on the point the parties referred me to such cases as *Phillips N.O. v National Foods Ltd & Anor*[4]; *Deputy Sheriff, Marondera v Traverse Investments*

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[1] The judgment creditor
[2] The judgment debtor
[3] The Sheriff's inventory of attached goods
[4] 1996 [2] ZLR 532 [H]

[Pvt] Ltd & Anor[5]; *Sheriff of the High Court v Mayaya & Ors*[6] and *Sheriff of the High Court v Majoni & Ors*[7].

[8] One common thread running through such cases, and several others on the point, is that there is a rebuttable presumption that where someone is found in possession of movable goods, they are presumed to be the owner of that property. Where someone else other than the possessor claims to be the owner of those goods, they have the onus to prove, on a balance of probabilities, that they are the owner. There are no hard and fast rules on how they may go about proving such ownership. Every case depends on its own facts. The claimant may have to produce some evidence, such as receipts or other documents, if available, to prove ownership. A bald assertion that they are the owner is not enough.

[9] *In casu*, certain salient facts were highlighted or brought to my attention. They were these. The address in Rhodene at which the goods were attached, Stand 14 Protea Avenue, was at all times the address for service for the judgment debtor. Mr *Chinamatira* said it was the judgment debtor's registered office and place of business. He produced no proof. But Mr *Dzoro* did not refute it. Instead he stressed that it was actually the claimant's residence with his family. He claimed that in the deeds office the property was registered in the name of the claimant. But he produced no proof either, promising to provide the title deed later. That was not good enough. The interpleader had been at the instance of the claimant. He had had two chances: firstly when he submitted an affidavit to the Sheriff which triggered the application. Secondly, when the Sheriff initiated the application and called upon both parties to file their notices of opposition within the requisite ten days. But all that the claimant kept saying was that the nature of the attached property showed that they were household goods and personal effects.

[10] Another salient factor highlighted by Mr *Chinamatira* was that the writ of execution was one against both movable and immovable property. Stand 14 Protea Avenue

[5] HH 11-03
[6] HH 494-15
[7] HH 689-15

above was one of two properties singled out for attachment and said to have been transferred to the judgment debtor. Mr *Dzoro* had no meaningful response to that. If indeed the property was one transferred to the judgment debtor and if in the writ the judgment creditor wanted it attached in execution, then it was probably registered in the name of the judgment debtor.

[11] Some issues could easily have been proved. Details of the registered office of a registered company are filed in the companies' office. Proof of ownership of an immovable property is obtained from the deeds office. But *in casu*, the parties were content to blitz each other and wear down the court with bald assertions and bare denials.

[12] Mr *Dzoro's* argument that one only needed to look at the nature of the attached property to see that they were household goods and effects and that therefore I should find that they belonged to the claimant was lame and insufficient. The argument did not rebut the presumption of ownership by the judgment debtor. Whilst the goods that he singled out to press home the point: video games; golf clubs and televisions sets, are ordinarily personal items for enjoyment by natural persons, nothing precludes juristic persons from owning such type of goods as well, including immovable properties, all for the personal or exclusive enjoyment by such of their personnel as may be entitled to such perquisites. Mr *Chinamatira* claimed the claimant was the soul and brains of the judgment debtor. Mr *Dzoro* said there were other players. Characteristically, there was no proof either way. But it seemed more probable that the judgment debtor was the claimant's *alter ego*. At any rate, among the attached goods were an office chair; garden tables and chairs; a fan; toilet mirrors; refrigerators, and the like, goods that can ordinarily be found in company premises also.

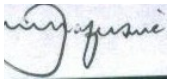
[13] In the end I decided the case on the question of onus. It was on the applicant. Dismally it failed to rebut the presumption that the attached goods belonged to the judgment debtor. I gave an order in terms of the applicant's alternative draft as follows:

i/ The Claimant's claim to the property mentioned in Paragraph 3 of the Interpleader Notice, which was placed under attachment in execution of [the] judgment in HC 1148/15 is hereby dismissed.

ii/ The property attached in terms of [the] Notice of Seizure and attachment dated 6th February 2018 issued by the Applicant is hereby declared executable.

iii/ The Claimant [shall] pay the Judgment Creditor's and Applicant's costs.

6 July 2018



Dube-Banda Nzarayapenga & Partners, applicant's legal practitioners
G.N. Mlotshwa & Co, claimants' legal practitioners
Mavhiringidze & Mashanyare, judgment creditor's legal practitioners