

THE SHERIFF FOR ZIMBABWE  
versus  
ROBERT MASOCHA  
and  
LAFARGE CEMENT ZIMBABWE LIMITED

HIGH COURT OF ZIMBABWE  
MANGOTA J  
HARARE, 15 September & 8 December 2022

### **Opposed Application**

*Ms V R Muzambe*, for the applicant  
The claimant in person  
*Mr L Matapura*, for the judgment creditor

**MANGOTA J:** On 25 April, 2022 the applicant who is the Sheriff for Zimbabwe attached and took into execution the movable goods of the judgment debtor against whom the judgment creditor obtained judgment under HC 6801/20. The goods were attached at the instance of the judgment creditor in whose favour the court entered judgment on 29 March, 2022. Among the goods which the Sheriff attached is an Isuzu, KB 300 double cab motor vehicle, white in colour, with registration number AEC 6139.

The attached motor vehicle constitutes the cause of action of the claimant one Robert Masocha. It forms the subject-matter of these interpleader proceedings which he caused the Sheriff to institute. He claims that the car does not belong to the judgment debtor. It belongs to him, according to him.

The law which deals with interpleader proceedings relates to the claim of the claimant as measured against the interests of the judgment creditor whose rights the law protects in terms of a judgment which the court will have entered in its favour. A claimant who claims ownership of a thing which has been attached in execution of a judgment debt must prove, on a preponderance

of probabilities, that the thing –movable or immovable- which the Sheriff has attached does not belong to the judgment debtor but to him. The *onus* in interpleader proceedings rests on the claimant to prove ownership of the goods which have been attached: *The Sheriff for Zimbabwe v Masango & 2 Others*, HH 448/19.

A claimant in interpleader proceedings must set out facts and allegations which constitutes ownership: *Bruce N.O. v Josiah Parkers & Sons Ltd*, 1972 (1) SA 68. In the case of a motor vehicle, as is the case in these proceedings, he must proffer sufficient evidence in support of his claim for ownership of the motor vehicle. He must, for instance, satisfy the court which is seized with the interpleader proceedings that:

- i) he did not cede the attached property/car to the judgment debtor as security for a debt which he owed to him or to anyone else who has a debtor-creditor relationship with the judgment debtor, and/or
- ii) he did not sell the property in question, *in casu* the car, to the judgment debtor or to anyone; and/or
- iii) he is not a party to any lawsuit to which the judgment debtor and the judgment creditor are parties; and/or
- iv) he is not privy to the cause of action of the judgment creditor as against the judgment debtor- and above all,
- v) he must adduce evidence which satisfies the court that he, indeed, is the owner of the thing which is the subject – matter of the interpleader proceedings.

The claimant attached to his founding papers the registration book of the car as proof of his ownership of the same. This appears at p 12 of the record. The car, as is evident from the book, is registered in his name. His personal particulars which are recorded in his identification certificate appear in the registration book of the car as they appear on his national registration certificate a copy of which he filed at p 11 of the record. The particulars read 12-094666 A 22.

The above-observed matter tends to serve as proof of the claimant's ownership of the motor vehicle. Registration of the motor vehicle, it has been enunciated, raises the presumption of ownership of the vehicle. But that alone is not conclusive evidence of ownership of the car. The claimant has to show more than that for him to succeed in his claim: *The Sheriff for Zimbabwe v Masango (supra)*.

The *onus*, however, shifts onto the judgment creditor to rebut the presumption which arises from the claimant's production of the registration book of the car. He has to rebut the presumption which arises out of the production of the registration book of the car by the

claimant. This is a *fortiori* the case where, as *in casu*, the registration book of the car bears the name of the claimant as well as the latter's personal particulars.

The judgment creditor raises two matters in rebuttal of the presumption which the claimant created when he produced the registration book of the car. These were/are that:

- a) the car was attached from the premises of the judgment debtor- and
- b) the judgment debtor claimed, in two previous applications which it filed with the court, that the car belonged to it.

The clear position of the law is that goods which are attached from the premises of the judgment debtor are presumed to be those of the latter person: *Zanderberg v van Zly*, 1910 AD 258 at 272. The presumption is not an absolute one. It is a rebuttable presumption.

That the car which is the subject of these proceedings was attached from the premises of the judgment debtor requires little, if any, debate. The presumption which is to the effect that the car belongs to the judgment debtor holds in the absence of the claimant's rebuttal of the same.

The claimant does not quarrel with the statement which is to the effect that the car was at the premises of the judgment debtor when the Sheriff attached it. His bone of contention centers on the allegation that the car belongs to the judgment debtor. He claims that he loaned the car to one Gibson Tarugarira ("Gibson") who, according to him, requested the same from him to enable him, Gibson, to run around in preparation for a wedding which was scheduled to take place on 14 May, 2022. The claimant states that he loaned the car to Gibson for the period which stretches from 7 April, 2022 to 31 May, 2022. The car, he asserts, was in the possession of Gibson when the Sheriff attached it together with the judgment debtor's goods. He attached to his notice of opposition which he filed on 22 July, 2022 a copy of the marriage certificate which bears the name of one Tendayi Tarugarira who is recorded in the same as the spinister who, on 14 May 2022, tied the knot with one Claudius Makuni Mufaro. Tendayi Tarugarira's address is recorded on the marriage certificate as that of the judgment debtor.

The claimant explained satisfactorily the reason why the car which he lays claim to was at the premises of the judgment debtor. He does not mince his words on why the judgment debtor claims that the car belonged to it. He states that he does not know why the judgment debtor made the statement in question.

Indeed, the claimant cannot account for the position which the judgment debtor took on the matter. He cannot, in short, know what propelled the judgment debtor to claim as it did. Nothing therefore turns on the statement of the judgment debtor. This is a *fortiori* the case given that the he denies having ever colluded with the judgment debtor to defeat the judgment creditors' intention to enforce the order of the court

The judgment creditor corroborates the assertion of the claimant in so far as the issue of the latter's ownership of the car is concerned. It does so in its opposing affidavit wherein it makes the following statements:

Paragraph 4.4.4. p 26

“.....Claimant's allegation is disputed in that Claimant's relationship is not disclosed. The judgment creditor confirms that at all material times before the attachment and before the alleged April 2022, the vehicle has been in the custody of the Debtors and was bought by them *although they have not changed ownership of the vehicle*”.

Whilst the statement of the judgment creditor appears at best to be without foundation and at the worst a very wild guess, its importance can hardly be glossed over. The phrase which reads '*although they have not changed ownership of the vehicle*' says it all. It states, in a clear and categorical manner, that no one but the claimant is the owner of the motor vehicle. It stands to correct reason and logic that it is only after it has changed ownership that the motor vehicle in question will cease to belong to the claimant and have its ownership assumed by whoever has the right to own it.

The claimant, it is my considered view, was able to show that he owns the car which is the subject of the interpleader proceedings which the applicant placed before me. His evidence is clear, cogent and to the point. It is not the quantity of evidence which matters in proceedings of the present nature. What matters most is the quality of that evidence. The claimant was able to rebut the presumption which operated against him and to explain away insinuations which the judgment debtor made against his ownership of the car. He maintained a clear course which did not leave any doubt lingering in the mind of the court. He denied that he was colluding with the judgment debtor whom he alleges he only got to know of when the Sheriff attached his car. He states, in a clear and unambiguous way, that the only person who was known to him is Gibson to whom he loaned the car for a specific purpose.

The claimant proved his case on a balance of probabilities. The claim is, in the result, granted as prayed in the draft order.

*V Nyemba and Associates*, applicant's legal practitioners  
*Magofoya & Matapura*, creditors' legal practitioners