

THE SHERIFF OF ZIMBABWE

Versus

BLUE LINE ELECTRICAL APPLIANCES (PVT) LTD

And

HOMELIFE FURNITURE & ELECTRICAL APPLIANCES

IN THE HIGH COURT OF ZIMBABWE
MANGOTA J
BULAWAYO 22 AUGUST 2024

Interpleader

H. Chimbetete for the applicant
Ms H. Sibanda for the Claimant
Ms C. Madzudzu for the Judgment Creditor

MANGOTA J

Following the judgment which it obtained on 13 November, 2023 under HC 539/23, Fortune Investments (Pvt) Ltd, the Judgment Creditor, attached and took into execution the property which allegedly belongs to Homelife Furniture And Electrical Appliances and another, the Judgment Debtor. The attached goods constitute the cause of action for Blue Line Electrical Appliances, the Claimant in casu. It alleges that the goods which the Sheriff attached belong to it. It premises its claim on the allegation that it is not a party to the judgment which the court entered for the judgment creditor. It avers that its goods cannot be attached or sold in settlement of a judgment granted against the judgment debtor. It insists that the goods which the applicant attached are not executable. It moves me to direct the Sheriff to release such to it.

The Judgment Creditor opposes the claim of the claimant. It states that the claimant did not produce proof of ownership of the goods which the Sheriff attached. The lease and the tax clearance certificate which the claimant attached to its interpleader, it insists, do not prove ownership of movable goods. It avers that the claimant should lay before the court concrete evidence to prove that the goods which were attached belong to it. It refers me to the Investment Agreement, Annexure B, and the Acknowledgement of Debt which it concluded with the Judgment Debtor which it claims shows the lie which the claimant is telling in the interpleader.

It states that the Claimant is colluding with the Judgment Debtor. The collusion, it claims, is evident from a reading of the annexure. Its contents, it asserts, show that the Judgment Creditor agreed to invest into the Judgment Debtor the sum of USD 80 000 for the latter to buy furniture with the capital and, pending repayment of the capital, the goods in the shop would stand as surety for the capital invested. The applicant, it insists, attached goods which the Judgment Debtor gave as surety. It avers that the observed matter shows that it is the Judgment Debtor which is selling its stock at the premises. It moves me to dismiss the claim with costs which are at attorney and client scale.

A person who claims ownership of goods which the Sheriff has attached in pursuance of a judgment which has been entered for the judgment creditor must prove such ownership : Sheriff of Zimbabwe v Mahachi and Leomarch Engineering, HMA 34/18; Bruce N.O. v Josiah Parkers & Sons, 1972 (1) SA 68 at 70 C-E and Sheriff of High Court v Munyaradzi Majoni & 2 Others, HH 689/15. Where he (includes she) proves ownership of the goods which are the subject-matter of interpleader proceedings to the satisfaction of the court, his day in court will be a well -rewarded one. Where, on the other hand, he fails to produce proof of ownership of the goods or where he shows collusion with the judgment debtor, the court will have little, if any, difficulty in dismissing his claim with, or without, costs depending on the circumstances of the case which is before it. The duty to prove ownership, therefore, rests on no one else but on the claimant. He should prove the same on a preponderance of probabilities.

Whilst the sheriff invites, in the interpleader notice, the claimant and the judgment creditor to deliver to the registrar of the court particulars of the claim to the attached goods in terms of Form Number 24 together with one or more opposing affidavits within ten (10) days of service upon them of the interpleader notice, the judgment creditor is not, at law, required to deliver particulars of its claim to the property. It is not required to do so because it, in point of fact, has no claim of ownership to the attached property. Its presumed claim to the same is premised on the judgment which has been entered in its favour. All it is required to do therefore is to rebut any presumption of ownership of the goods by the claimant and no more than that. The moment it successfully rebuts presumption of ownership of the goods by the claimant, the latter's claim to those goods cannot succeed.

The writ of execution which the Judgment Creditor issued out has some semblance of relevance to these proceedings. It appears at page 14 of the record. It instructs the applicant, who is the

Sheriff in casu, to take into execution the movable goods which are at Number 225 L. Takawira Street, Gweru and at Shop 1, Mercury Building, Robert Mugabe Way, Gweru.

The applicant cannot, in the circumstances of the instruction, attach and take into execution property which is not at the mentioned two premises. Doing so would be tantamount to the applicant acting on a frolic of its own. It would, in short, be acting outside the mandate which the Judgment Creditor gave to it and therefore in violation of the order of court.

The question which begs the answer is: who owns, or is a tenant at, the premises from which the first lot of goods were attached by the Sheriff on 27 November, 2023. The Acknowledgment of Debt Agreement, Annexure B, provides a partial answer to the same. It appears at page 60 of the record. It reads, in part, in the following words:

“We, the undersigned, Homelife Furniture and Electrical Appliances, domiciled at Stand No.225, L. Takawira Street, between 5th and 6th Avenue, Gweru,

Do hereby acknowledge that we are truly and lawfully indebted to Forlune Investments (Pvt)Ltd...

In the sum of eighty thousand United States Dollars (USD 80 000).....”.

When the above-mentioned annexure is read together with the Investment Agreement which the Judgment Creditor and the Judgment Debtor concluded between them on 10 January, 2023 ownership of goods which appear in the first two notices of seizure and attachment, Annexures B1 and B2 (pages 10 and 11 of the record respectively) is of no one else but the Judgment Debtor. The goods which were attached from the Judgment Debtor’s *domicilium citandi et executandi* cannot be those of the claimant at all. They are those of the Judgment debtor. This is a *fortiori* the case when regard is had to clause 3.1 of the Investment Agreement which the Judgment Creditor concluded with the Judgment Debtor on 10 January, 2023.

The long and short of the matter is that the Judgment Creditor advanced the sum of USD 80 000 to the Judgment Debtor to enable the latter to purchase what I may refer to as its stock-in-trade. The Judgment Debtor which at all material times was domiciled at Stand Number 225, L. Takawira Street, between 5th and 6th Street, Gweru from which the first lot of goods were attached used the sum so advanced to it to purchase goods for its operations. It is for the mentioned reason, if for no other, that the parties agreed between them to include in their Investment Agreement the clause which reads in the following words:

“The goods purchased and availed in stock shall provide the surety for the funds invested”.

The clause, it is evident, operates as a measure of security in terms of which the Judgment Creditor remained assured that its joint venture with the Judgment Debtor was not doomed to failure and that, if any failure occurred, it would lean on the clause to recover part of, if not all, the money which it injected into its business with the Judgment Debtor. The goods which are mentioned in Annexures B1 and B2, therefore, are not those of the claimant as the latter would have me believe. They are those of the Judgment Debtor, so to speak.

The second lot of goods, it is clear, appear in Annexures C1 and C2. These are respectively at pages 12 and 13 of the record. They were attached from Shop 1, Mercury Building, Robert Mugabe Way, Gweru. The question which begs the answer, in respect of this second lot of goods, is: who owns, or is tenant at, the mentioned premises.

In a Commercial Lease which the claimant signed with Crown Jewellers (Pvt) Ltd on 26 July, 2022 one Emmanuel Chikweza, a director in the claimant, represented the latter. The lease relates to Shop Numbers 1 and 2, Mercury Road, Gweru. It is from Shop 1 Mercury Road, Gweru that the second lot of goods were attached. The goods would, on the papers filed of record, appear to be those of the claimant. It is for the mentioned reason, if for no other, that the claimant instituted these interpleader proceedings.

However, when the Lease, Annexure D3, page 40 is read together with the claimant's resolution, Annexure D1, page 39, evidence of collusion which the judgment creditor alleges to be existent between the claimant and the judgment debtor becomes inescapable. It is inescapable when regard is had to the statement of Emmanuel Chikweza who, in the Investment Agreement, page 61, gives out to the world at large that the judgment debtor, Homelife Furniture and Electrical Appliances, is a legal entity which is incorporated according to the laws of Zimbabwe and denies his same mentioned assertion in the application for rescission of judgment which he filed on 6 December, 2023. He, for instance, states in paragraph 13, page 73, of his rescission application that there is no company or legal entity by the name of Homelife Furniture and Electrical Appliances.

The footprints of one Kenias Sinoya and Emmanuel Chikweza in Homelife Furniture and Electrical Appliances cannot escape the eye of any effortless reader of the Investment

Agreement which the Judgment Creditor and the Judgment Debtor concluded. The question which begs the answer is: if Homelife Furniture and Electrical Appliances does not exist as officials of the claimant would want me to believe, where did the money which the Judgment Creditor injected into its joint venture with a non-existent entity which, in fact, is a nullity. Where, in short, did the sum of USD 80 000 go to? The sum, may have taken the one or the other route. It may have gone into the pocket of Emmanuel Chikweza and/or Kenias Sinoya who describes himself as the claimant's manager. Alternatively, it would have found its way into the pocket of Blueline Electrical Appliances (Pvt) Ltd the business of which Emmanuel Chikweza admits that he and others are running. He makes a statement to an equal effect in paragraph 11 page 73 of his application for rescission of judgment.

It would not have made any good business sense for the Judgment Creditor to have injected into its joint venture with some person-natural or legal- the sum of USD 80 000 into the pockets of such individuals as Emmanuel Chikweza or Kenias Sinoya or both. It would also not have made any good business sense for it to have invested the stated sum of money into a non-existent company as the latter would have had no power nor capacity to receive such. What therefore made good business sense under the circumstances is that the Judgment Creditor injected the sum into no other legal entity but Blueline Electrical Appliances (Pvt) Ltd.

Once it is accepted, as it should, that the Judgment Creditor entered into an Investment Agreement with a company in which Emmanuel Chikweza and Kenias Sinoya are officials, the company in question becomes the Judgment Debtor whatever its name and /or its status in the equation may be.

Conclusive evidence which comes out of the above-analysed set of matters is that Blueline Electrical Appliances (Pvt) Ltd which Emmanuel Chikweza and Kenias Sinoya admit operating is the judgment debtor and not the claimant. It received the money which the judgment creditor injected into the parties' business venture, used the same to purchase stock for trade and the judgment creditor attached such from whatever premises it operates to recover the sum which it advanced to it plus interest. Blueline Electrical Appliances has no option but to repay the advanced sum to the judgment creditor. It cannot hide behind the façade that it is a claimant who has nothing to do with the money which the Judgment Creditor advanced to it in terms of the Acknowledgement of Debt which Emmanuel Chikweza signed under the guise of a company he alleges is non-existent.

The letters which Emmanuel Chikweza and Kenias Sinoya wrote to the judgment creditor's legal practitioners on 20 June, 2022 and 25 July, 2023 respectively are very revealing. They are revealing in the sense that both of them are written on the letterhead of Homelife Furniture and Electrical Appliances the existence of which company both authors of the letters deny. There is no doubt that the officials of the purported claimant which, in actual fact, is the judgment debtor are approbating and reprobating. They make every effort to conceal from me the correct position of the case of Blueline Electrical Appliances (Pvt) Ltd and/or that of Homelife Furniture and Electrical Appliances. They, in the process, seek to achieve their desired end-in-view by telling lies. They do so in the vain hope that the lie which they are telling will remain unearthed. The lie, unfortunately for them, continues to rear its ugly head much to their discomfort, so to speak.

It is trite that, if a litigant gives false evidence, his story will be discarded and the same adverse inferences may be drawn as if he has not given any evidence at all: L.H. Hoffmann and D.T.Zeffertt, *Law of Evidence*, 3rd edition, page 472. The law states as such for the simple reason that the court will not, under the observed set of circumstances, be able to draw a line and distinguish the lies which the litigant is telling from the truth, if any, which he is also telling. The safest route for the court to take in a situation where, from its observations, a lie has been told is to discard the evidence of the litigant as a whole and to draw adverse inferences as if he has not given any evidence at all.

The lies which the officials of the purported claimant told in circumstances where it is, in actual fact, the judgment debtor coupled with the claimant's inability to produce proof of ownership of the goods which the applicant attached at the instance of the judgment creditor in whose favour the court entered judgment makes the case of the claimant still born. The claimant, in short, failed to prove its claim on a preponderance of probabilities. Its claim is, therefore, dismissed. It is, in the premise, ordered as follows:

1. The claimant's claim to the goods placed under attachment in execution of Judgment, HC539/23, granted at the High Court in Harare is hereby dismissed.
2. The goods as set out in the Notice of Seizure and Attachment dated 27th November, 2023 issued by the applicant are declared executable.
3. The claimant shall pay costs of the applicant and the Judgment Creditor.

Messrs Coghlan & Welsh, applicant's legal practitioners
Messrs Chitsa Masvaya Law Chamber, Claimant's legal practitioners
Mhaga Attorneys, Judgment Creditor's legal practitioners