

THE SHERIFF FOR ZIMBABWE  
versus  
VINCENT KAMOTO  
and  
MATIZA INVESTMENTS (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE  
**CHITAPI J**  
HARARE, 23 September 2024

**Unopposed application for default judgement**

*Nyati*, for the applicants  
Claimant and judgment creditor in default  
Interpleader application - reasons for judgment

CHITAPI J: The above matter was an inter pleader application. It enrolled the unopposed motion roll on and dealt with in default of appearance by the claimant and the judgment creditor. Only the applicant's counsel was in attendance. The application was granted by way of default judgment dated 10 May 2024.

The background to the case was as follows. The judgment creditor is Matiza Investments (Pvt) Ltd, a duly registered company according to the Laws of Zimbabwe. The claimant is Vincent Kamoto an adult male of Harare. The judgement creditor obtained judgement against one *Richard Komoto & Anor* under case number HC 6110/23 per CHIRAWU-MUGOMBA J on 1 December 2023 for payment of \$ 207 200.00 or the equivalent in local currency.

The judgment creditor caused the issue of a writ of execution against the movable property of the judgment debtors in case number HC 610/23. The writ was issued on 20 December 2023. The applicant who is the sheriff for Zimbabwe charged with *inter-alia* execution of rights and other court process attached movable goods at 21 Coal Drive Mount Pleasant Harare, being the address given in the writ of execution as the business of both defendants in case number 610/23.

The applicant acting on the strength of the writ attached and placed under judicial attachment certain goods listed in the notice of seizure and attachment dated 18 January 2023.

A copy of the notice was attached to the applicant's papers. Removal of the goods was slated for 23 January 2024.

On 24 January, 2024 the applicant filed an affidavit with the applicant in which he challenged the attachment of the movable goods. The applicant attached as an annexure to his affidavit an invoice number 0014528/21 dated 26 February 2012 by Midlands Auctions purporting that he bought the goods from the auction. The invoice in the sum of as \$ 8 300 on its face was a curious one because it listed the goods purportedly bought as all of the goods attached and in their order. In other words the notice of attachment listed the attached goods singularly. The invoice listed the two motor vehicles listed in the notice separately attachment. However it listed the attached goods in the same sequence as on the writ. It was almost as if the maker of the invoice took the writ of execution and used it to prepare the invoice in the same order as per how the applicant had listed the goods on the notice of attachment.

Be that as it may the applicant being faced with the documents adverse claim initiated this inter pleader application requesting the court to enquire into the claimants claim. The applicant as customary stated that he did not collude with either party and prayed for an order granting or dismissing the application as the court considered appropriate, his only concern being his costs incurred in the making of the application.

The application was served on the judgement creditor's legal practitioner on 8 February 2024. They filed a notice of opposition on 23 February 2024. The notice of opposition was time barred as it should have been filed within ten (10) days of the date of service of the application the latest date therefore being 22 February, 2024. There was no validly filed opposition to the application by the judgment creditor.

The same application was served on the claimant on 9 February 2024. Service was affected upon Simba Chihwa who attended to be served with the application at the offices of the applicant's legal practitioners and accepted service on behalf of the claimant. Simba Chihwa was described as a responsible person who acted on behalf of the claimant. The claimant did not file any response to the application. The claimant was therefore as with the judgement creditor barred by operation of law.

The applicant's legal practitioners treated the application as unopposed and set it down on the unopposed roll-on 8 May 2024. Mr *Nyathi* who appeared for the applicant submitted that his application papers were in order and prayed for the alternative relief of dismissal of the claimant's claim. Being satisfied that there was no valid opposition filed by the judgment

creditor and no response filed by the claimant in support of the application or otherwise, a default judgement dismissing the application was granted.

For the reasons explained above, the matter was disposed of as an unopposed application and an order issued dated 10 May, 2024.

*Kantor and Immerman*, applicant's legal practitioner