

KUDAKWASHE A C CHIGOMA N.O
versus
MOHANLAL NATHU NARAN
and
RENAISSANCE MERCHANT BANK (PVT) LTD

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 9 FEBRUARY AND 3 MARCH 2016

Opposed matter

S. Tsumele for the applicant
P. Madzivire for the claimant
P Mukono for the judgment creditor

MOYO J: This is an interpleader. At the hearing of this matter I granted an order in favour of the claimant and stated that my detailed reasons would follow.

The facts of the matter are that the claimant purchased stand number 431 Victoria falls Township from the judgment debtor on 22 December 2010 for a sum of \$80000-00. The purchaser, before taking transfer realised that he had to clear a mortgage bond in favour of POSB prior to taking transfer. He then set to clear that amount which totalled \$86000-00. He has since cleared it and before he could take title, the property was then attached to satisfy a debt owed by the judgment debtor to the judgment creditor. The claimant has shown that the real interest in the property now vests in him as a result of the sale agreement between himself and the judgment debtor. He has also shown that he paid for the property in full and that transfers were delayed as he had to seek to clear and cancel a mortgage bond encumbering the property.

The judgment debtor on the other had contends that ownership of immovable property is through registration of title in the Deeds Registry in terms of the law and that since the property is registered in the names of the judgment debtor then it is attachable at law to satisfy the judgment debtor's liabilities.

It is true that ownership of an immovable property in terms of the law is through the registration of title in the Deeds Registry. However, it is my considered view that where a party has fully divested himself of any rights to a property and there is ample evidence in that regard,

the only outstanding issue being the issue of transfer, the court should in the interests of justice look into the balance of convenience.

It is my considered view that where an owner has fully detached himself from a property through sale and where a third party has fully paid for it and is in the process of taking transfer, where such a property is then attached for purposes of execution against the judgment debtor, the law cannot look aside and find that as long as the property is in the judgment debtors' name then it is attachable and yet all the evidence before it points otherwise. The judgment creditor does not dispute that in fact the property was bought by the claimant, paid for in full and that the claimant also went on to pay off a mortgage bond that encumbered the property and prevented transfer.

It would then be unjust that the court fully being aware of the judgment debtor's divested interest in the property, and that the court fully being aware of the claimant's real interest in the property instead of ensuring that the interests of justice are served, the court would then simply choose to go the technical route which is that the property is owned by the person against whom title is registered at the Deeds Registry. I find that such a conclusion would not be supported by the facts before me and would thus not have been arrived at after a proper application of one's mind to the facts. Clearly, the real interest that the claimant has in this property cannot be held to be non-existent, neither can it be held to equate to that of a judgment creditor such that the two have competing interests, no, for the simple reason that whilst one is in the process of acquiring the asset and assuming ownership thereof, the other is owed a debt by the judgment debtor and registered owner of the property, which debt has absolutely no relationship whatsoever, with the property in issue.

It is for these reasons that I released the property from attachment in favour of the claimant.

Dube-Banda, Nzarayapenga and partners, applicant's legal practitioners
Joel Pincus, Konson and Wolhuter, claimant's legal practitioners
Danziger and Partners, judgment creditor's legal practitioners