

DEPUTY SHERIFF CHINHOYI  
versus  
JOSEPHAT HATIDANI KEVIN SACHIKONYE  
and  
APPOINTED ENTERPRISES  
and  
ISAAC MHAKA

HIGH COURT OF ZIMBABWE  
CHIGUMBA J  
HARARE, 17 March 2014, 24 March 2014

**Opposed Application-Interpleader**

*Mrs. S. Rutsito* for applicant  
*Z. Chidyausiku* for 1<sup>st</sup> claimant  
*F. Zuva*, for 2<sup>nd</sup> claimant  
*Non Appearance*, for 3<sup>rd</sup> claimant

CHIGUMBA J: The applicant filed an interpleader notice on 16 July 2013, in order to have it determined and declared whether, certain movable property which includes ten beasts which were attached by the Deputy Sheriff at Chinhoyi by virtue of a writ of execution issued by this court in which Mr. Josephat Hatidane Kevin Sachikonye the judgment creditor obtained judgment under case number HC10545/12, in the sum of US\$6 100-00 on 21 November 2012 against Isaac Mhaka the judgment debtor, which property is claimed by Appointed Enterprises Private Limited to be its property, is or is not its property. The relief that the applicant is seeking is an order that either the first or the second claimant's claim be dismissed, and payment of costs of suit. The movable assets in dispute were attached in execution by the applicant on 8 April 2013, and removed. Applicant averred that, subsequent to removal, he received an affidavit from a Memory Kuhlengisa in which she claimed that the ten beasts belonged to the second claimant. Applicant has no interest in this matter other than a claim for his costs and other charges. He averred that he will abide by the court's decision.

Memory Kuhlengisa, deposed to an affidavit in which she swore that she was duly authorized to represent the second claimant in these proceedings. In her affidavit, she averred

that second claimant is not a party to the dispute between the first and the third claimant, and is not cited on the notice of attachment in execution of 8 April 2013. She averred that the ten beasts attached by the applicant belong to the second claimant, and not to the third claimant, and stated that the beasts were in the third claimant's possession at the time of the execution, pursuant to a grazing arrangement between the second and the third claimant, necessitated by the fact that the second claimant did not have sufficient grazing land. It was averred further, on behalf of the second claimant, that the ten beasts were registered with the Livestock Identification Trust as second claimant's livestock, and attached records to bolster that averment. It was averred further, that the beasts were branded with the "MKT" brand, which is a registered brand, and which does not belong to the third claimant, the judgment debtor. Finally, second claimant averred that there was no collusion with the judgment debtor and that the ten beasts were attached in error.

The first claimant filed papers in opposition to the second claimant's claim to the ten beasts attached in execution, on 1 August 2013. He averred that the ten beasts had previously been placed under judicial attachment prior to the 8<sup>th</sup> of April 2013, and that the applicant had been unable to remove the cattle when third claimant advised that the cattle had been released into the wilderness for grazing, and that the cattle would stay there for several weeks. 1<sup>st</sup> claimant alleged that the third claimant, the judgment debtor, would do anything to avoid paying the debt. First claimant disputed that the second claimant is indeed the registered owner of the attached property, and demanded that Memory Kuhlengisa verify her status in second claimant, and produce proof that she was duly authorize to depose to the opposing affidavit on behalf of second claimant.

First claimant averred that, the documentation attached by second claimant as a record of cattle should be disregarded by the court for the following reasons:

1. The document is dated 10 October 2006 and bears no official date stamp to verify that it was generated by the Livestock Identification Trust. It lists livestock but does not specifically identify the livestock as belonging to the second claimant. It does not stipulate if all the livestock listed was still alive in 2014, eight years later.
2. Second claimant ought to have a herd book, which would be a more genuine form of ownership.

3. The branding certificate is in the name of the deponent to the affidavit and not in second claimant's name.
4. The danger of collusion was high because the third claimant and the deponent to the second claimant's affidavit are husband and wife.

Applicant filed heads of argument on 11 October 2013 in which he referred to the provisions of Order 30 rr205A (1) and (2) and to the following cases, as authority for the proposition that the Deputy Sheriff is permitted, at law, to institute interpleader proceedings where he holds property in respect of which he expects to be sued by two or more persons making adverse claims in respect of the property or liability. See *Deputy Sheriff Marondera v Traverse Investments Private Limited & International Finance Corporation* HH-11-2003, *Deputy Sheriff Harare v Miriam Bwanya, Samson Munyaradzi & First Banking Corporation* HH-105-2006. The court accepts that the applicant discharged the duty incumbent on him and satisfactorily fulfilled the requirements stipulated by rr207, and 208, in regards to the contents of the interpleader notice, and the contents of the founding affidavit.

It is the court's view, that, based on the papers filed of record, it is not clear whether the second claimant is indeed the registered owner of the ten beasts that were attached and removed in execution on 8 April 2013 by the applicant. It is not clear which beasts exactly were registered with the Livestock Identification Trust in 2006. It is not clear which of those duly registered beasts are still alive, eight years after the alleged registration. The papers which are allegedly from the Livestock Identification Trust do not have an official stamp to verify their authenticity. The evidence in regards to the brand on the attached beasts is unclear. It is not clear whether the second claimant's representative, who is married to the third claimant, registered a brand in her personal capacity, and whether she owns the brand, but does not own the beasts in her personal capacity, but through second claimant. Second claimant has not discharged fully, the onus on it to prove that it owns the ten beasts that are under attachment. It has raised a *prima facie* presumption of ownership in its favor, and in my view, it ought to be given an opportunity to prove its ownership on a balance of probabilities. There is need for the second claimant to verify the claim through oral evidence, and for the documents attached, to be ventilated through cross examination. See *Bruce NO v Josiah Parks & Sons Ltd & Anor* 1972 (1) SA 68(R), *Phillips No v National Foods Ltd & Anor* 1996 (2) ZLR 532 (H).

For these reasons, the matter is referred to trial. Costs shall follow the cause.

*Dzoro & Partners*, applicant's legal practitioners

*Dube, Manikai & Hwacha*, 1<sup>st</sup> claimant's legal practitioners

*Mhishi Legal Practise*, 2<sup>nd</sup> claimant's legal practitioners