

THE SHERIFF FOR ZIMBABWE
and
FRANCIS CHIMARIRO UTETE
versus
BRIGHTON KATERERE

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 22 March 2017

Opposed Matter

A.R Chizikani, for the Claimant
S. Banda, for the Judgment Creditor

MUNANGATI-MANONGWA J: On 22 March 2017 I partially dismissed Claimant's claim to goods attached by the Sheriff of Zimbabwe in a bid to satisfy a debt due to the Judgment Creditor, Brighton Katerere. Reasons for the decision having been requested, I hereby furnish same as provided in my *ex tempore* judgment. The Judgment Creditor is a former employee of Claimant's company Auto House (Pvt) Ltd. He got an award in a labour matter and registered same in this court against Auto House (Pvt) Ltd. In seeking execution, two tractors one water bowser and 20 disc roam harrows were attached. Claimant claims the tractors do not belong to the company but to him and as proof of that, he attached a pro-forma invoice which proves that he purchased the two tractors.

Regarding the rest of the assets, the claimant seeks to rely on a letter which in fact is a Ministerial directive which indicated that upon him being allocated Mapanda farm he was being appointed the Caretaker of all equipment at Mapanda farm with immediate effect. He therefore argued that the bowser and the roam disc harrow is part of that equipment he has to take care of.

Mr *Banda* for the judgment creditor insisted that all the attached equipment belongs to claimant's company. He sought to rely on the fact that service of a chamber application was served on the claimant's wife at Mapanda farm where the parties are now resident hence that is now the *domicilium citandi* of the company, more so, when the company has not been liquidated.

I do not find merit in that argument. Mr *Banda* was at pains to satisfy the court as to how mere service on the Claimant's wife as a representative of the Judgment Debtor proves that assets on the farm belong to the company simply because the Directors of a company are now resident on that particular property. Mr *Banda* asked the court to lift the corporate veil and make a finding that the claimant and the judgment debtor were one and the same person. I find no basis to sustain that argument moreso when it is not being alleged that the attached property belongs to the company, to the contrary the claimant claims the property to be his. Piercing of the corporate veil is done in exceptional circumstances where evidence reveals that the company's activities and those of its directors are so interwoven and interlinked such that to separate them would lead to injustice by allowing a party to avoid its obligations to other parties hiding behind the fact that a company is a separate and distinct legal entity. No such exceptional circumstances have been established given the evidence before the court. As a result, I find no basis to invoke the principle.

Suffice to state that in interpleader proceedings the onus lies on the Claimant to prove to the court's satisfaction that the assets so claimed belong to him. A *plethora* of cases indicate what it is that the Claimant to assets attached in pursuance of a Judgment Debt has to prove¹. Compelling evidence has to be furnished in the form of receipts or any other information that shows that apart from the judgment debtor being found in possession of the property in issue, the assets belong to the Claimant and not the Judgment Debtor. Thus, satisfactory evidence has to be placed before the court proving such ownership on a balance of probabilities.

I, however, find that cogent proof has been placed before the court regarding the purchase of the two Massey Ferguson Tractors. Apparently, that evidence (the invoices) has not been sufficiently rebutted by the Judgment Creditor in which case, therefore, I find that the Claimant has proved to the court's satisfaction that indeed the two tractors do not belong to the Judgment Debtor. With regard to the bowser and the disc harrow, nothing is on record to indicate what equipment is covered by the Ministerial directive. No inventory or list of assets was provided to support this averment. The reference to the Ministerial direction in the absence of the equipment which is covered therein does not assist the Claimant. I thus find that no satisfactory evidence to

¹ *Sheriff of High Court v Tiritose Consulting (Pvt) Ltd, Bruce N.O v Josiah Parkes & Sons Ltd* 1972 (1) Sa 68 (R), *Phillips NO v National Foods Ltd & Anor* 1996 (2) ZLR 532 HC @ 534.

sway the court to believe that those assets do not belong to Auto House (Pvt) Ltd has been placed before me. Therefore, in the absence of any proof that such equipment falls under the equipment that the Claimant has been made to take care of or is under his trust, Claimant's claim cannot succeed except to the extent that satisfactory proof has been tendered to court pertaining to the two Massey Ferguson tractors.

In the result it is ordered that;

- a. The Claimant's claim to the two Massey Ferguson 440 tractors placed under attachment in execution of Judgment HC8134/13 is hereby granted.
- b. The notice of seizure and attachment dated 10 September 2015 issued by applicant in respect of the aforesaid two tractors is hereby set aside and the property therein is declared not executable.
- c. Each party shall bear its own costs.

Kantor and Immerman, applicant's legal practitioners
A.R. Chizikani, Judgment creditor's legal practitioners
J Mambara & Partners, claimant's legal practitioners