

THE SHERIFF FOR ZIMBABWE
versus
MABALANGWE SAFARIS (PVT) LTD
and
BOUNA SAFARIS (PVT) LTD

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 11 October 2019

Opposed Application

M. Moyo, for the applicant
T. M. Gmbiro, for the claimant
Ms V. Vera, for the judgment creditor

ZHOU J: These are interpleader proceedings which were instituted at the instance of the claimant following the attachment of certain goods as detailed in the notice of attachment. The attachment was in execution of the judgment granted in case no. HC 5242/15 in favour of the judgment creditor and against Russ Broom and Roger Madangure. Roger Madangure is a director of the claimant.

Both the claimant and the judgment creditor filed opposing papers in this matter. The claimant's case is that the goods in question belong to it and were attached at a tourist resort camp which is owned and managed by it. The claimant further states that the nature of the goods attached is consistent with its business hence it must be found that the goods belong to it.

It is trite that in interpleader proceedings the onus is on the claimant to prove ownership of the goods attached in execution. Such proof must be on a balance of probabilities. In casu, the assertion that the goods were attached at a camp owned and operated by the claimant does not constitute proof of ownership on a balance of probabilities. Neither can the presumption of ownership which arises in relation to possession of movable property assist the claimant. This is so because the judgment debtor also resided at that same camp at the time of the attachment .

The resolution by which the judgment debtor was authorised to initiate the interpleader proceedings explicitly states that he is the resident Director of the claimant. He therefore has an equal chance of being the owner of the property in question.

The nature of the goods attached does not constitute proof of ownership, as has been held by this court in the case of *Sheriff of Zimbabwe v Mahachi & Another* HMA 34-18. The claimant being a company must ordinarily have company documents which include its asset registers or some other form of inventory of its property. It is unthinkable that in incorporated company such as the claimant keeps so much property without any record of its title to it. The fact that the claimant does not have receipts or other documents reflecting the manner acquisition of the attached property does not therefore constitute proof of ownership nor an excuse for having no record that the property belongs to it.

In all the circumstances of this case, the claimant has failed to sustain its claim of ownership of the attached property.

In the result the claimant's claim must be dismissed and relief is granted in terms of the draft order.

Dube-Banda, Nzarayapenga & Partners, applicant's legal practitioners
Chimwamurombe Legal Practice, claimant's legal practitioners
Tamuka Moyo Attorneys, judgment creditor's legal practitioners