1) HC 904/22
THE SHERIFF FOR ZIMBABWE
And
WILTON AND MAKS (PVT) LTD
Versus
EARLBAT INVESTMENTS (PVT) LTD
T/A GIDZA CREDIT

2) HC 1080/22
THE SHERIFF FOR ZIMBABWE
And
WELLINGTON MAKONESE
Versus
EARLBAT INVESTMENTS (PVT) LTD
T/A GIDZA CREDIT

3) HC 1081/22
THE SHERIFF FOR ZIMBABWE
And
FRANCIS BHUNU
Versus
EARLBAT INVESTMENTS (PVT) LTD
T/A GIDZA CREDIT

4) HC 1082/22
THE SHERIFF FOR ZIMBABWE
And
PETER KAPIRINGISHE
Versus
EARLBAT INVESTMENTS (PVT) LTD (JUDGMENT CREDITOR)
T/A GIDZA CREDIT

5) HC 1083/22
THE SHERIFF FOR ZIMBABWE
And
JON`S ENGINEERING (PVT) LTD
Versus
EARLBAT INVESTMENTS (PVT) LTD
T/A GIDZA CREDIT

HIGH COURT OF ZIMBABWE
CHILIMBE J
HARARE 20 June 2022 & 15 March 2023

Interpleader application

N. Chiota for applicant

V.C. Chidzanga with *E. Jera* and *P.E. Chivhenge* for claimants
V.Musora for judgment creditor

CHILIMBE J

BACKGROUND

[1] Five (5) different parties laid claim to various chattels seized by applicant ("the Sheriff"), in execution of a judgment in favour of the judgment creditor ("Gidza Credit") against the judgment debtor referred herein as "Welli-Well".

[2] The 5 different claims were consolidated and heard as one matter, issuing as they did from a judgment order of this court dated 3 January 2022 in HC 4098/20. Pursuant to that order, the Sheriff attached and uplifted an assortment of goods on 31 January 2022 at Welli-Well`s premises, being 499 Goodwin Road Willowvale Industrial, Harare.

[3] Each claimant contended that the seized property neither belonged to the judgment debtor, nor were the claimants liable for the judgment debtor's obligations in terms of the court order. Each however, admitted having various dealings or relationships with Welli-Well as client, tenant or associate. Such relationships accounted for the presence of the claimants` property at Welli-Well`s premises when attachment took place.

[4] Gidza Credit, the judgment debtor dismissed all claims as a grand coalition of insincere attempts to frustrate judicial execution.

[5] Determination of this matter rests on two pillars; - (a) possession of the attached property at the time of execution and (b) the relationships between the parties. On (a) all the assets were seized at 499 Goodwin Road. As regards (b), it is indisputable that a Siamese relationship existed between 3 claimants (one natural and two juristic) on one hand, and the judgment debtor on the other. The other 2 claimants were admitted associates of the judgment debtor.

CLAIMANT (1), WILTON MAKS (HC 904/22)

[6] Wilton Maks`s ("Maks") claim was set out in its director, PURSIENIEZAH NYAKUDYA `s affidavit ("Pursieniezah") who claimed for following; -

i. 14 boxes of flasks

ii. 6 measuring glasses

iii. 19 retort stands

iv. 6 circuit boards

v. 4 ammeters

vi. 9 PVC pipes

vii. 50 boxes of shelve drawers

viii. 9 various lab science chemicals.

[7] Pursieniezah indicated in paragraph 8 of her affidavit that; -

> "The claimant [Maks] had an arrangement in terms of which the claimant keeps its various products in the claimant [judgment debtor] `s warehouse for a fee and the judgment debtor is also agent for the marketing and distribution of the products."

[8] A copy of the lease agreement between Maks and Welli-Well executed on 1 January 2018 was attached. Clause 3 thereof indeed confirmed the above arrangement. Pursieniezah also referred to an invoice which was apparently issued to Welli-Well as acknowledgement of the goods as proof of the hand over by Maks and receipt by Welli-Well. This invoice was not however, attached to Maks`s papers.

[9] MR. GILBERT GWAZE, a director of the judgment creditor Gidza Credit`s disputed Pursieniezah` s claims to the goods as he disputed the legitimacy of the lease agreement. The lease agreement predated Maks`s date of incorporation (23 July 2018), which meant that the judgment debtor Welli-Well concluded a lease agreement with a non-existent entity.

[10] Further, Mr. Gwaze alleged that the commonality of directors between Welli-Well and the claimant Maks in Messrs Wilbert and Wellinton Makonese, raised well-grounded suspicion of collusion. The two were determined to frustrate the execution process. Mr. Gwaze also challenged the genuineness of the invoices referred to by Pursieniezah, (notwithstanding that these were not attached). He contended that apart from these

documents, the claimant Maks had completely failed to adduce any other proof of ownership of the goods.

[11] Materially, Pursieniezah' s reply was that (a) the lease agreement represented a pre-incorporation contract- perfectly valid at law and (b), the commonality of directors between Well-Well and Maks did not dissolve the separate identity, rights and personalities whose benefits Welli-Well and Maks also enjoyed at law.

CLAIMANTS (2) AND (3); - WELLINGTON MAKONESE (HC 1080/22); AND FRANCIS BHUNU (HC 1081/22)

[12] Mr. Makonese is a director of Welli-Well the judgment debtor. He laid claim to a motor vehicle being a Toyota Corolla with registration number ADN 5545.This vehicle was his personal property which could not be attached, for the debts incurred by a separate legal persona, notwithstanding his directorship in it.Mr. Makonese attached a vehicle registration book serial number 00418546 issued by the Central Vehicle Registry (CVR).

[13] Similarly, Mr. Bhunu the third claimant prayed for release of 2 vehicles; -a Toyota Belta registration number AEY 3366, and a Toyota Runn-X, registration number AFA 0492.He attached the registration books for the vehicles. No issues arose from the 3 registration books other than argument on Gidza` Credit`s behalf that the books were not necessarily proof of Messrs Makonese and Bhunu`s legal ownership of the vehicles.

[14] Mr. Gwaze dismissed as an improbability that Mr. Bhunu would have 2 personal vehicles simultaneously present at the judgment debtor`s premises. No lease agreement was attached to support the claim that Mr. Bhunu was a tenant at Welli-Well`s premises.

CLAIMANT (4) PETER KAPIRINGISHE (HC 1082/22)

[15] Mr. Kapiringishe the fourth claimant sought release of a Toyota Axio motor vehicle registration number AEH 2811 on the basis that it was his property which he had purchased same from Welli-Well, a business associate, in February 2019.The cruelty of fate saw Mr. Kapiringishe, who happened to visit Welli-Well`s premises, lose his vehicle to attachment.

[16] Mr. Gwaze again dismissed Mr. Kapiringishe` s claim to the vehicle. The agreement of sale attached in support of the claim was condemned by Mr. Gwaze as insufficient proof of ownership in the absence of transfer and registration. Mr.Kapiringishe`s explanation of the vehicle`s coincidental presence at Welli-Well`s premises was also rejected as improbable in the absence of plausible evidence of legitimate business engagements.

CLAIMANT (5) JON`S ENGINEERING (HC 1083/22)

[17] This claimant`s representations were set out in an affidavit deposed to by MEGAN MASISMANI ("Megan") a director thereof. Megan claimed a list of tools, equipment and furniture. Megan averred that these assets were owned by Jon`s Engineering but were on lease to, and present at Welli-Well`s premises at the time of execution. Megan attached a lease agreement in support of Jon`s Engineering`s claim. This lease expired on 31 January 2022.It was in the process of re-negotiating an extension that Jon`s Engineering discovered that their equipment had been seized on 31 January 2022.

[18] Mr. Gwaze disputed Megan`s averments and in fact disclosed the curious tale associated with this self-same equipment. To begin with, the judgment debtor Welli-Well pledged, in 20198, part of the equipment under a general notarial covering bond (GNCB) to the present judgment creditor. Secondly, Welli-Well had claimed ownership of this very property in another interpleader action. In fact, Welli-Well had taken its claim all the way to the Supreme Court which however, ruled that Welli-Well had failed to prove its claim.

THE LAW ON INTERPLEADER APPLICATIONS

[19] I am indebted to all counsel for the authorities cited. I have relied on them. The authorities confirm the following over-arching legal principles relevant to the matters before me; -firstly, execution of court judgments represents the logical conclusion of a successful litigant`s quest for justice. The successful party is permitted to attach property belonging to the judgment debtor and realisation of such property will only be stopped where third parties satisfy the court that the property does not constitute the debtor`s estate or entitlement. MATHONSI J (as he then was) expressed these principles as follows in *Humbe v Muchina & 4 Ors* SC 81-21 [at page 8]; -

> "It is settled in this jurisdiction that a judgment creditor is entitled to attach and have sold in execution the property belonging to the judgment debtor. This is so even in a situation where a third party has a personal right against such a debtor in respect of the same property. The position is the same even where the personal right of the third party preceded the attachment of the property. See Herbstein and Van Winsen, Civil Practice of The Superior Courts in South Africa 3 Ed at p 597 (quoted with approval in *Maphosa & Anor v Cook & Ors* 1997 (2) ZLR 314 (H) at p 316 G)."

[20] This principle should set the correct tone regarding the claims and oppositions brought forth. The second over-arching principle is that

> "The execution of a judgment is a process of the court. The court therefore retains an inherent power to manage that process having regard to the applicable rules of procedure. What is required for a litigant to persuade the court to exercise its discretion in favour of granting a stay in the execution of the court's judgment has been stated in a number of cases.
>
> In *Mupini v Makoni* 1993 (1) ZLR 80(S) at 83 B–D this Court stated the position of the law quite clearly: "In the exercise of a wide discretion the court may, therefore, set aside or suspend a writ of execution or, for that matter, cancel the grant of a provisional stay. It will act where real and substantial justice so demands. The onus rests on the party seeking a stay to satisfy the court that special circumstances exist." [1]

[21] The third principle speaks to onus of proof and goes thus; -

> "It is settled that a party claiming ownership of a property placed under judicial attachment in interpleader proceedings must produce clear and satisfactory evidence to prove such ownership. Such a party bears the *onus* to prove ownership on a balance of probabilities. See *Sabarauta v Local Government Pension Fund & Anor* SC 77/17.
>
> I should add however that in situations where the goods are attached in the possession of the claimant, there is a presumption that they belong to the claimant. In those circumstances, the execution creditor has the *onus* to prove otherwise."[2]

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[1] *Humbe v Muchina* (supra) [at page 7]
[2] *Welli-Well (Pvt) Ltd v Imbayago & Anor* SC 8-21

[22] I might briefly opine generally on what constitutes "*clear and satisfactory evidence to prove ownership*". The starting point in that inquiry is that each case must be treated on its own facts or as the elders say; - each bird must perch on its own branch. (See also *Sheriff of Zimbabwe* v *Mahachi and Leomarch Engineering* HMA 34-18; *Paul Chisango versus Harold Crown and Portriver Invesments* (Pvt) Ltd HH 448-19). But as a general precept it is expected that claimants and judgment creditors will (a) approach the court with comprehensive disclosures riding on a bed of truth, and (b) support their case with business or personal records that are accurate, clear, incontrovertible and helpful to cause.

[23] This because the conduct of corporate, business and personal affairs, as a matter of law[3], requires the maintenance of certain records. Would it then be misplaced for one to assume that entities and individuals involved in judicial execution interpleader proceedings should readily proffer evidence in the form of business ledgers, journals and minutes, or resolutions, bonds, deeds and certificates, in addition to emails, letters, agreements and many more, to robustly prove or disprove such claims? All these backed up by licences, permits, receipts, certificates and other documents issued by regulatory authorities? I think not.

[24] Quite modest are the courts` demands in that regard. A party should prove the following; - its identity, ownership of assets, relationships with third parties, dealings and transactions, obligations and entitlements, as well as (very importantly) integrity, diligence and legitimacy in all those aspects. In doing so, parties are not obliged to tick each and every single box on that list. Courts require relevance; - and relevance is a but a function of the peculiar circumstances of a party and case. MAFUSIRE J expressed this last point as follows at page 3 in *Sheriff of Zimbabwe* v *Mahachi and Leomarch Engineering* (supra) at [8]; -

> "One common thread running through such cases, and several others on the point, is that there is a rebuttable presumption that where someone is found in possession of movable goods, they are presumed to be the owner of that property. Where someone else other

[3] The Income Tax Act *[Chapter 23:06]*; the Companies and Other Businesses Act *[Chapter 24:31]*; Banking Act *[Chapter 24:20]* ;Mines and Minerals Act *[Chapter 21:05]* and the Urban Councils Act *[Chapter 29:15]* ,among many more- (especially those under Title 27 of the Statute Law of Zimbabwe – "Professions and Calling") demand that corporate and natural citizens observe certain formalities, maintain particular records or obtain certificates, licences and permits in the course of various pursuits.

> than the possessor claims to be the owner of those goods, they have the onus to prove, on a balance of probabilities, that they are the owner. There are no hard and fast rules on how they may go about proving such ownership. Every case depends on its own facts. The claimant may have to produce some evidence, such as receipts or other documents, if available, to prove ownership. A bald assertion that they are the owner is not enough."

CLAIM (1), WILTON MAKS (HC 904/22)

[25] I now deal with the individual claims in turn, starting with Maks. The goods claimed were recovered in the judgment debtor`s possession. This raises a presumption of ownership by the judgment debtor which Maks must offset. (See *Philips & Anor v National Foods Limited & Anor* 1996 (2) ZLR 532 (H); *Zandberg v Van Zyl* 1910 AD 258). Maks faces two obstacles in that regard. Firstly, the lease-and-agency-contract was not supported by any further evidence. Pursieniezah referred to an invoice but it was not attached to the papers. Even then, one would have required much more than just an invoice.

[26] The lease-and-agency agreement constituted an elaborate set of terms and conditions. In fact, each single clause of that agreement could have yielded a host of documentary proof to confirm beyond doubt, not just the existence and authenticity of the relationship, but its performance and ultimately; - ownership of the goods. What were the stock reconciliations and payments as provided for in clause 3.2? What evidence was there of the marketing and promotion initiatives stated in clause 3.3? What of the remuneration provided for in clause 7? And in the first instance, where was proof of Maks`s procurement of these stocks?

[27] Secondly. Mr. Gwaze condemned the relationship between the claimant Maks and the judgment debtor Welli-Well as being so tainted that no reliance could be placed on the former`s representations. This contention carries weight. To this damning allegation, Maks together with Mr. Wellington Makonese and Jon`s Engineering (claims 2 and 5) could do no more than plead the shield of separate legal personality.

[28] This court recognised (per CHITAKUNYE J as he then was), in *The Sheriff for Zimbabwe versus Robert Tindwa and Institute of Mining Research* HH 54-18,the importance of upholding the doctrine of separate legal personality of incorporated entities with limited liability as defined in *Salomon v Salomon and Company Ltd* (1897) AC 22 (HL).It was also

held in that matter, after a review of the authorities [4],that courts will not however, hesitate to pierce the corporate veil in order to prevent injustices arising out of misconduct committed behind that veil. The following is pertinent; -

> *[1]* "What should exercise the court's mind is whether on the facts or evidence placed before it the corporate veil should be lifted in the interests of justice failure of which manifest justice will be denied. Courts must not be seen to be shielding proven fraudsters or deceitful actors who seek to avoid personal liability by hiding behind the mask of corporate veil."[5]
>
> *[2]* "…when the corporation is the mere *alter ego* or business conduit of a person, it may be disregarded. This rule has been adopted by the courts in those cases where the idea of the corporate entity had been used as a subterfuge and to observe it would work an injustice…. In cases of fraud, whether actual or constructive, the courts regard the real parties responsible and grant relief against them or deny their claims and defences based on the principles of equity…. So, where a corporation is organised or maintained as a device in order to evade an outstanding legal or equitable obligation, the courts, even without reference to actual fraud, refuse to regard it as a corporate entity."[6]
>
> *[3]* "It is my view that there is some element of dishonesty in the manner claimant operated the company and attempted to evade liability. He just could not own up and pay what was due to the judgment creditor. Manifest Injustice will occur if claimant is allowed to get away with such a scheme. He clearly must be personally made to account for the debt in question."[7]

[29] Gidza Credit testified as to Welli-Well`s general unwillingness to settle its obligations. The matter of *Welli-Well v Imbayago & Anor* SC 8-21 records such attempts. Welli-Well`s committed attempts to evade responsibility over its debts is a matter most relevant, for present purposes, where I must exercise the discretion referred to by MATHONSI JA in *Humbe v Machina* (supra). I am satisfied that this claim warrants a setting aside of the

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[4] *Cape Pacific Ltd* v *Lubner Controlling Investments (Pty) Ltd* 1995 (4) SA 790; *T Sibanda* v *H M Sibanda* SC 7-14; *Deputy Sheriff* v *Trinpac Investments (Pvt) Ltd and Anor* 2011(1) ZLR 458;

[5] *The Sheriff for Zimbabwe versus Robert Tindwa and Institute of Mining Research* [at page 6]

[6] *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd & Ors* 1993 (2) SA 784 (C) at 816-818)

[7] *Deputy Sheriff v Trinpac Investments (Pvt) Ltd & Anor* (supra) [at page 6]

corporate veil .The attempts to avoid the consequences of the writ are exposed and must be defeated. As noted in *Sheriff of Zimbabwe* v *Mahachi and Anor* (supra) each claim must be considered in the light of its facts.

[30] Herein is a case of parties who are all related to the judgment debtor. The relationships include corporate intertwining as well as others where demonstrable attempts have been made to assist the judgment debtor escape the result of lawful obligation. The claim by Maks does not meet the requisite standard and must therefore fail.

CLAIM (2) - WELLINGTON MAKONESE (HC 1080/22)

[31] Mr. Makonese based his claim on two reasons; - (a) he owned Toyota Corolla registration number ADN 5545 concerned complete with its registration book. As (b), he was a mere director of Welli-Well, a separate legal entity. He could therefore not be held accountable at law for the liability of a separate legal persona. Gidza Credit countered by dismissing the registration book as inconclusive proof of ownership (implying therefore that the vehicle belonged to Welli-Well). It also urged the court to sidestep the protection offered by separate legal personality to find Mr. Makonese liable for Welli-Well`s misdeeds. These were both largely legal arguments.

[32] I may state that for legal arguments to have a telling effect, they need to ride on factual stilts. That was not so with Mr. Makonese`s argument. He merely adverted to the legal position regarding separate personality of corporates without relating it to his circumstances. His assets were located at the judgment debtor`s premises and he had an obligation to rebut the presumption of ownership. Additionally, the very defence which he touted in his favour was the self-same sword with which his opponent sought to pin him down. Mr. Makonese's tendered no answer to the allegations of perfidy and evasion. Him being essentially the same party that had again failed to offer a rebuttal of similar allegations of the part of Maks. On that basis alone, I would discount his claim.

CLAIM (3); - FRANCIS BHUNU (HC 1081/22)

[33] Mr. Bhunu was armed with two registration books to the vehicles a Toyota Belta registration number AEY 3366, and a Toyota Runn-X, registration number AFA 0492, seized

from Welli-Well`s premises. The judgment creditor relied on (a) the fact that vehicle registration books are not conclusive proof of ownership and (b), what it termed the improbability of two vehicles belonging to one person being found on premises of the judgment debtor. Moreso where claimant Mr. Bhunu did not tender a lease agreement to confirm that he was a legitimate tenant at the premises.

[34] It necessary to restate that *Humbe* v *Muchina, Philips & Anor v National Foods Limited, Zandberg v Van Zyl* (supra) and other authorities hold that where movable assets are found in possession of the judgment debtor, then a presumption of ownership arises. In the case of these two vehicles does such presumption automatically arise? As an indisputably factual conclusion? I believe not. The situation of Mr. Bhunu is different from that of Maks and Jon`s Engineering where no doubt arises as to the judgment`s debtor`s possession of the goods as at the time of execution. The judgment creditor Gidza Credit tendered no evidence of possession other than presence at the judgment debtor`s premises where the claimant alleges, he was present.

[35] The judgment creditor needs to satisfy the court on this point because much then turns on it. In *The Sheriff of the High Court versus Shephard Mayaya & 2 Ors* HH 494-15, and *Paul Chisango versus Harold Crown and Portriver Investments (supra*), the judgment debtor`s possession of the claimed property was clearly established.

[36] I now consider whether the judgment creditor disproved Mr. Bhunu` s claim of ownership of the two vehicles. Mr. Gwaze for the judgment creditor, relied on one fact in seeking to wrest the asset away; -that a vehicle registration book was not conclusive proof of legal ownership of that asset. The other arguments submitted on behalf of the judgment creditor that further proof was required, were misplaced. As already noted, the vehicle was not found in the possession of the judgment debtor. No presumption of the debtor`s ownership of the property arises.

[37] Which brings me to the issue of the registration books which were described in the following terms in *Paul Chisango* [at page 3]*;* -

> "There is a misapprehension that a vehicle registration book suffices as proof of ownership of a vehicle. A litigant seeking to show that an attached vehicle belongs to him must produce more than just the registration book of the vehicle if he hopes to convince the court that he owns the vehicle attached. Satisfactory details regarding how he acquired the vehicle, when and from whom the bought the vehicle need to be furnished in order to rebut allegations of collusion with the judgement debtor. *In casu*, the claimant did not state when he bought the vehicle and from whom. He did not tell the court how much he paid for the vehicle or produce proof of payment for the vehicle. The claimant has sought to rely on the registration book alone as proof of ownership of the vehicle. Whilst proof of car registration raises the presumption of ownership, the registration book on its own in the absence of any other evidence to support his acquisition of the vehicle does not suffice as proof of ownership of the vehicle."

[38] Two issues emerge from the above observations by DUBE J (as she then was). Firstly, each matter will be treated on its facts as clearly emerges from the court`s reasoning therein. And in *Chisango`s* case, the additional burden of proof arose because the vehicle was located in the judgment debtor`s possession. Similarly, in *The Sheriff v Development Trust of Insiza & Anor HB 169-16*, the registration book could not conclusively determine the question of ownership given that a person other than the registered owner had been using it.

[39] Secondly, the vehicle registration book only raises a presumption of ownership. I associate myself with that pronouncement by this court per my sister-now DUBE JP. In doing so, I add the following; - this position seems well-established[8]. The Supreme Court itself has also held thus[9] .The issuing authority of vehicle registration books, the CVR, endorses that condition on its certificates. The Vehicle Registration and Licencing Act *[Chapter 13:14]* does not confirm the status of vehicle registration books as proof of legal title.

[40] One ponders though, why the vehicle registration book, being a document issued by authority, does not constitute an unequivocal certificate of title to a motor vehicle. Moreso

[8] See also *Sheriff v Mayaya & 2 Others* HH 494-15 where MUREMBA J recognises the absurdity that can arise from non-compliance with change of ownership requirements in the Vehicle Registration Act.; *Deputy Sheriff v Sairos Lameck & 2 Ors* HH 269-16.

[9] *Air Zimbabwe (Pvt) Ltd & Anor v Nhuta & 2 Ors* SC 65-14 which held per ZIYAMBI JA that "It is trite that registration books are not proof of ownership." [at page 10].

when issuance of that document is preceded by strict verification procedures which include identification particulars, place of residence, customs as well as police clearances. Again, one notes that the same Vehicle Licencing Act actually recognises the concept of an "owner", and places serious obligations of such persons. And lastly, the vehicle registration certificate on the face of it represents in every respect, a certificate of ownership-apart from the disparate endorsement on its face that it is not.

[41] But as stated, there could be reason behind the CVR`s legal ownership disclaimer. Perhaps the high turn-over of vehicles changing hands. Or widespread failure by many to adhere to the requirement around registration and licencing of vehicles. Possibly because the jurisdiction must distinguish owners from user-drivers. The reason could even arise from the need to thwart the diverse range of criminal and other misconduct associated with ownership, usage, registration of licencing of vehicles including counterfeit registration books? Implying perhaps that officialdom is reluctant to certify ownership due to market delinquency in the use,possession,ownership and dealing in vehicles? Or that such status of the registration book is for some reason considered beneficial to the public?

[42] One can only speculate (as a second point continuing from [38] above), because this aspect (of vehicle registration books being prima facie but not conclusive proof of legal ownership) was not argued in the matters before me. What emerged were a few equally speculative submissions from counsel after probing from the bench. I raise this issue because it is pertinent to the matter herein whose main purpose is to ascertain ownership of property.

[43] As noted above,[23] and [24], citizens should be able to prove title or interest variously. Official documents form part of the compendium of such records. Official documents or certificates should be able to speak unequivocally on matters for which they were issued. The vehicle registration certificate does not quite do so. The question being; - what then will constitute unquestionable title to legal ownership of a motor vehicle?

[44] Unless there exists a valid and persuasive reason (which escaped the attention of argument in this application) why officialdom seemingly separates registration from ownership, it may be timely for authority to rethink the issue of conclusive proof of ownership of motor vehicles. Regulatory data bases are invaluable sources of official, certain,

dependable and verifiable information. The nation should be able to rely on same- for various purposes, apart from the resolution of disputes in courts. Motor vehicles constitute, from various perspectives, a critical class of national asset.

[45] Relevant to this discourse on vehicle registration books, are the new dimensions introduced by the Movable Property Security Interests Act *[Chapter 14:35]* enacted in 2017.This Act attempts to blow a gust of fresh breath into the tired lungs of the Deeds Registry Act [Chapter 20:05] enacted *circa* 1958. The Movable Property Security Interests Act `s self-explanatory short title reads '-

> "AN ACT to provide for the registration of movable property security interests; to amend various Acts; and to provide for matters incidental thereto or connected with the foregoing."

[46] The status of registration books as proof of ownership of a very common type of movable asset capable of hypothecation becomes apt. As my parting *obiter* shot, I express the optimism that commerce will shift a gear up and embrace these new perspectives in securitisation of risk and relationships, given the agony associated with traditional recovery options such as execution. But possibly a discourse for another day. Having opined thus I revert to the present dispute.

[47] Indeed, the registration books may only amount to rebuttable evidence of ownership. But in the absence of proof that the motor vehicles claimed by Mr. Bhunu were found in possession of the judgment debtor, or persuasive factors suggesting collusion; I am inclined to allow the claim.

CLAIM (4) PETER KAPIRINGISHE (HC 1082/22)

[48] Mr. Kapiringishe was armed, not with a registration book for the vehicle he had purchased, but an agreement of sale between himself and the judgment debtor Welli-Well. The agreement, dated 11 February 2019 carries less than a hundred words. The parties did not proceed as required by Part III of the Vehicle Registration and Licencing Act. No proof of payment was tendered nor was there any suggestion that steps were taken to progress the

agreement of sale in order to transfer ownership-such as getting the vehicle cleared by the Zimbabwe Republic Police as per practice.

[49] In the absence of such, an explanation as to why steps where not taken would have been helpful. The claimant Mr. Kapiringishe avers that he is an associate of Welli-Well. He was not a stranger to the judgment debtor. The circumstances of this matter are relevant to the view that the court forms of his claim. There has been demonstrable effort to avoid the effect of the court`s judgment in HC 4098/20. The vehicle was also seized whilst parked at Welli-Well`s premises. Whilst the issue of possession was not ascertained, I am recognise the glaring inadequacies in the contract, especially the absence of any evidence to confirm that it was progressed beyond mere paperwork. The claim is therefore refused.

CLAIM (5) JON`S ENGINEERING (HC 1083/22)

[50] The equipment seized by the Sheriff was in the possession of the judgment debtor Welli-Well. The equipment is listed below; -

i. Guillotine – hydraulic shear QC 12Y
ii. Magnum machinery JG23-40 D *[GNCB[10]]*
iii. CNC Turret Punching Machine *[GNCB]*
iv. Bending Machinery WE67Y – 80/3200
v. Guillotine Machinery – Yawei *[GNCB]*
vi. Bending Machinery – Yawei
vii. Drilling Machine
viii. Double Compressor
ix. Ingco Grinder
x. Maurine Platt Machine
xi. 7-piece boardroom table

[10] The items marked *[GNCB]* were apparently pledged as per paragraph [55] below.

xii. Oak drawer

xiii. L-shaped desk with two white chairs

xiv. Oak Drawer with two shelves

xv. 7 Nice chairs

xvi. 16 Drawers

xvii. 17 Desk with four chairs

[51] This raises a presumption of ownership which Jon`s Engineering was obliged to offset. In that quest, Jon`s Engineering furnished a lease of equipment agreement between itself and Welli-Well. But Jon`s Engineering`s quest stumbled on several obstacles. Firstly, 2 matters being (a) *The Sheriff for Zimbabwe versus Welli-Will Industries (Private) Limited and Malvern Imbayago Judgment Creditor HH 746-19*; and (b) *Welli-Well v Imbayago & Anor* (supra) made the following findings; -

i. Welli-Well owned 100% shareholding in claimant Jon`s Engineering. Which means that Welli-Well, the judgment debtor herein, is the beneficial owner of the assets of claimant Jon`s Engineering.

ii. The movable assets present at Stand 449 Goodwin Road belonged to Jon`s Engineering but Welli-Well had claimed same under oath.

iii. Welli-Well and Jon`s Engineering had structured arrangements in a bid to escape the consequences of a writ issued in favour of a judgment creditor one Malvern Imbayago.

[52] On the back of these findings (a few among many more adverse to claimant), it becomes clear that Welli-Well and Jon`s Engineering are two intertwined parties. This relationship was not disclosed by Megan in her affidavit in support of the claim. If anything, the affidavit sought to create a very distant relationship between the parties. As noted above, there has been persistence by the related parties to capitalise on the legal principle of separate corporate personality in order to defeat the cause of justice.

[53] In any event, one notes that the lease agreement related not just to tools and equipment, but to office furniture. The probabilities strongly suggest that the Sheriff seized goods and equipment evidencing a trading entity. Megan could have confessed that as different but related entities, Jon's Engineering was drawing income from its parent through the lease of property on Jon`s Engineering inventory or balance sheet. No such candour was forthcoming and Megan went further to create an impression of parties negotiating from different locations to renew the lease.

[54] Secondly, this lengthy relationship of landlord and tenant that had commenced in 2012 was not evidenced by anything else apart from the lease agreement. Documents in the form of payment schedules or bank deposits would have assisted in proving the genuineness of the relationship.

[55] As a third reason, it was alleged by Mr. Gwaze that in 20219, the judgment debtor Welli-Well had executed a GNCB which included part of the tools in in favour of Gidza Credit. No explanation was tendered to explain how Welli-Well came to hypothecate assets not belonging to it. I am satisfied that the cumulative effect of lack of candidness, the very close and opaque relationships between Jon`s Engineering, Mr. Wellington Makonese, Maks as well as the judgment debtor Welli-Well disentitle this claimant and its prayer must therefore fail.

DISPOSITION

IT IS ORDERED AS FOLLOWS

1. CLAIM (1), WILTON MAKS (HC 904/22)

    1) The claimant's claim to part of the property listed in the Sheriff`s Notice of Seizure and Attachment, dated 31 January 202, and placed under attachment in execution of the order in case number HC 4098/20 be and is hereby dismissed.

    2) The property listed below, which was attached in terms of the Notices of Seizure and Attachment dated 31 January 2019 issued by the applicant is hereby declared executable being; -

        i. 14 boxes of flasks

ii. 6 measuring glasses

iii. 19 retort stands

iv. 6 circuit boards

v. 4 ammeters

vi. 9 PVC pipes

vii. 50 boxes of shelve drawers

viii. 9 various lab science chemicals.

3) The claimant is to pay the judgment creditors and applicants costs.

2. CLAIM (2) - WELLINGTON MAKONESE (HC 1080/22)

1) The claimant's claim to part of the property, being a Toyota Corolla with registration number ADN 5545, listed in the Sheriff`s Notice of Seizure and Attachment dated 31 January 202, and placed under attachment in execution of the order in case number HC 4098/20 be and is hereby dismissed.
2) The motor vehicle, being a Toyota Corolla with registration number ADN 5545, which was attached in terms of the Notices of Seizure and Attachment dated 31 January 2019 issued by the applicant is hereby declared executable.
3) The claimant is to pay the judgment creditors and applicants costs.

3. CLAIM (3); - FRANCIS BHUNU (HC 1081/22)

1) The claimant's claim to part of the property, being two motor vehicles (1) a Toyota Belta registration number AEY 3366; and (2) a Toyota Runn-X registration number AFA 0492 a listed in the Sheriff`s Notice of Seizure and Attachment dated 31 January 202, and placed under attachment in execution of the order in case number HC 4098/20 be and is hereby allowed.
2) The judgment creditor to pay the applicant and claimant`s costs.

4. CLAIM (4) PETER KAPIRINGISHE (HC 1082/22)

1) The claimant's claim to part of the property, being a Toyota Axio motor vehicle registration number AEH 2811, listed in the Notice of Seizure and Attachment dated 31 January 202, and placed under attachment in execution of the order in case number HC 4098/20 be and is hereby dismissed.
2) The motor vehicle, being Toyota Axio motor vehicle registration number AEH 2811, which was attached in terms of the Notices of Seizure and Attachment dated 31 January 2019 issued by the applicant is hereby declared executable.
3) The claimant is to pay the judgment creditors and applicants costs.

5. CLAIM (5) JON`S ENGINEERING (HC 1083/22)

1) The claimant's claim to part of the property which was listed in the Notice of Seizure and Attachment dated 31 January 202, which was placed under attachment in execution of the order in case number HC 4098/20 be and is hereby dismissed.
2) The property listed below, which was attached in terms of the Notices of Seizure and Attachment dated 31 January 2019 issued by the applicant is hereby declared executable being; -
    i. Guillotine – hydraulic shear QC 12Y
    ii. Magnum machinery JG23-40 D
    iii. CNC Turret Punching Machine
    iv. Bending Machinery WE67Y – 80/3200
    v. Guillotine Machinery – Yawei
    vi. Bending Machinery – Yawei
    vii. Drilling Machine
    viii. Double Compressor
    ix. Ingco Grinder
    x. Maurine Platt Machine
    xi. 7-piece boardroom table

xii. Oak drawer

xiii. L-shaped desk with two white chairs

xiv. Oak Drawer with two shelves

xv. 7 Nice chairs

xvi. 16 Drawers

xvii. 17 Desk with four chairs

3) The claimant is to pay the judgment creditors and applicants costs.

V.Nyemba & Associates-applicant`s legal practitioners
Moyo & Jera -claimants` legal practitioners
Honey & Blanckenberg -judgment creditor`s legal practitioners

CHILIMBE J_____ [15/03/23]