

REGINA GUMBO

Versus

COMPANY WHITE SPACE SALES (PVT) LTD

And

ALBERT TONHOMA

And

STANBIC BANK ZIMBABWE LIMITED

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO
21 JANUARY AND 17 FEBRUARY 2011

No appearance for the applicant
M Nzarayapenga for 1st and 2nd claimants
Miss E Sarimana for the 3rd claimant

Interpleader Notice

KAMOCHA J: During the period extending from May 2009 to 19 January 2010 Boniface Tonhoma, the son of the first claimant, who was employed as a bulk bank teller by Stanbic Bank in Bulawayo received various deposits from the customers of the bank and allegedly converted a total of \$223 701 to his own use. He was arrested but was granted bail on 26 January 2010 pending his trial. He absconded shortly thereafter after reporting once to the police on 27 January 2010 and his whereabouts are unknown to the authorities.

During investigations he had led the police to the recovery of the following property which he said was purchased using the money he had stolen from his employers:-

1 mini bus Mitsubishi registration number ABB 2885;

1 mini bus Coaster registration ABB 2884;

1 Isuzu bus registration number ABJ 6980;

1 Isuzu bus registration number ABJ 6972;

1 Ford Bantam registration number AAA 8778;

61 mattresses and 1 LG home theatre

All the four buses were registered in the name of the first claimant within a short space of time. They were registered during the period 8 October 2009 and 5 January 2010. The two mini buses registration numbers ABB 2884 and ABB 2885 were registered on 8 October 2009 while the two Isuzu buses registration numbers ABJ 6972 and ABJ 6980 were registered on 30 December 2009 and 5 January 2010 respectively.

The Ford Bantam motor vehicle was allegedly bought by the second claimant from a company known as Professional Clearing (Pvt) Ltd of 6th Floor Zimdef House, Fort Street, Bulawayo on 14 September 2009.

In an effort to recover its money Stanbic Bank Zimbabwe Limited – “the Bank” sued Boniface Tonhoma – “Boniface” for the recovery of the US\$ 223 701 he had stolen. The bank obtained a default judgment in that sum with interest thereon a *tempore morae* from 19 January 2010 to date of payment plus costs of suit on an attorney and client scale.

A writ of execution was issued against the above mentioned movable property which the police had recovered following indications made by Boniface. The belief was that the property belonged to him.

It, however, turned out that the first claimant Company White Space Sales (Private) Limited was claiming ownership of all the property except the Ford Bantam motor vehicle. It filed registration books for the vehicle it claimed to own. The two company’s directors are Boniface himself and his brother Clephas Tonhoma. Its principal officer and secretary is Boniface himself. The company exists on paper only.

The father of Boniface Albert Tonhoma claimed ownership of the Ford Bantam motor vehicle and filed an agreement of its sale reflecting the seller as Professional Clearing of 6th Floor Zimdef House, Fort Street Bulawayo.

The Deputy Sheriff for Bulawayo filed this interpleader notice on 20 August 2010 but seems to have abandoned the matter as there was no appearance by her at the hearing. Her interpleader notice did not even have a draft order as required by the rules of this court – see rule 227(3).

In the light of the documents filed of record it would seem the vehicles belong to the company and Boniface’s father. The property was registered into their names. Ex facie it cannot be said that the property belongs to Boniface. It is a different proposition to say the

property was bought using the money he stole from his employer which requires a separate investigation.

The bank has already filed a court application wherein it is seeking to have the corporate veil pierced so that the property can be declared to be the sole property of Boniface and executable.

In the light of the foregoing I do not consider this to be a proper matter for the relief of an interpleader notice and would dismiss it with costs being borne by the bank as it was the one that encouraged applicant to interplead by letter dated 25 June 2010.

Calderwood, Bryce Hendrie & Partners applicant's legal practitioners
Dube-Banda, Nzarayapenga & Partners, 1st and 2nd claimants' legal practitioners
Messrs Coghlan & Welsh judgment creditor's legal practitioners