

TAKUDZWA ROMEO CHIHOTA
versus
GIVEMORE MUNYARIWA AND 12 OTHERS
and
SHERIFF OF THE HIGH COURT (GWERU)
and
SUMMESTER STEEL (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 31 July 2014

Urgent chamber application

R. Fambisayi, for the applicant
B. Makururu, for the first respondent
Second and third respondents in default

MATHONSI J: The first respondent obtained judgement against the third respondent and issued a writ in the sum of \$11 821-12 against the third respondent's property on 14 May 2014. In pursuance thereof the first respondent instructed the Sheriff of this court to execute against the third respondent's property whereupon the Sheriff placed under attachment certain items of property found at No 6484 Sumatra Road Shamrock Park Gweru. This was on 7 July 2014.

In terms of the notice of seizure dated 7 July 2014, the items attached were "now under judicial attachment" and the goods were to be sold *in situ*. Those goods were later claimed by the applicant who says that it was only fortuitous that on 16 July 2014 he had visited the business stand where he kept his equipment, being 6484 Sumatra Road Shamrock, Gweru and found that the locks had been changed. He also found the writ of execution and the notice of attachment showing that his equipment had been attached. In locking the premises and putting a chain at the main entrance the Sheriff was effectively evicting him from the premises.

At the instance of the Sheriff the applicant says he instituted interpleader proceedings which he expected the Sheriff to issue out of the court in order to resolve the conflicting claims. On 22 July 2014 he delivered the process to the Sheriff and paid the requisite \$388-00

to enable the issuance of the interpleader application. He was laying a claim on all the property that had been attached.

Instead of staying execution, the Sheriff telephoned the messenger of court in his presence and instructed him to forthwith remove the property and put it in storage. As a result the property was removed on 28 July 2014 and is now in storage in spite of a letter of protest written by the applicant's legal practitioners on 24 July 2014.

It would seem that the Sheriff's office is now wallowing under this unfortunate misconception that where goods that have been placed under judicial attachment are claimed by a third party, the Sheriff must move with indecent haste to remove those goods and place them in storage before instituting interpleader proceedings. It is a misconception that not only betrays a closed mind but also an unfortunate trait indeed. What it achieves is an inconvenience of gigantic proportions which is as unacceptable as it is not borne by logic and common sense.

Where goods are claimed by a party who is not the judgement debtor, such claim must first be investigated before execution proceeds. Ideally the Sheriff should refer the claim to the judgement creditor and enquire whether the judgement creditor is prepared to admit the claim or not. If the judgement creditor admits the claim the matter should end there as the goods should be released from judicial attachment.

In the event that the judgment creditor does not admit the claim, then 2 conflicting claims over the goods arise bringing into play the provisions of Order 30 of the High Court of Zimbabwe Rules, 1971. That Order sets out the procedure to be followed in Interpleader proceedings. In terms of r 205 A (2) in regard to conflicting claims with respect to property attached in execution, the Sheriff shall have the right of an applicant and the execution creditor shall have the right of a claimant.

In terms of r 206 (2) where the claim relates to a thing capable of delivery the applicant shall tender the subject matter to the registrar when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the registrar may direct.

In my view, it is sufficient for the Sheriff to render a return of service to the registrar signifying that the goods being claimed have been placed under judicial attachment. The effect of a judicial attachment is to place the goods so attached under the wings of the court and any person who places those goods outside that ambit acts unlawfully and in contempt of

the court. It is for the registrar, perhaps after taking into account the exigencies of a particular matter, to give directions as to how the goods should be dealt with.

To my mind, it is extremely uncanny for the Sheriff to proceed *mero motu* to remove goods that are being claimed without even seeking an input from the judgment creditor and without the specific directions of the registrar. Practically it unnecessarily increases execution costs even when it may well be that the claim for the goods is well grounded. Rule 211 makes it clear that where an interpleader notice is issued by a defendant, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court otherwise orders.

By parity of reason, where the claim is made by a third party, the execution must be stayed to allow for an investigation into the claim and a decision on the interpleader.

I am therefore satisfied that a good case has been made for the interim relief sought. Accordingly the provisional order is granted the interim relief of which is:-

“INTERIM RELIEF GRANTED

Pending determination of this matter, the applicant is granted the following relief:-

1. The second respondent is restrained and interdicted from removing applicant's property in execution until the hearing and determination of the interpleader proceedings.
2. In the event that the property has been removed, the second respondent is directed to forthwith release that property to the applicant.
3. Notwithstanding that, it is confirmed that the goods shall remain under judicial attachment.”

Mhaka Attorneys, applicant's legal practitioners
Guni & Guni, 1st respondent's legal practitioners