MEIKLES LIMITED
versus
WIDEFREE INVESTMENTS (PRIVATE) LIMITED t/a CORE SOLUTIONS
and
SHERIFF OF ZIMBABWE
and
STANBIC BANK LIMITED
and
REGISTRAR OF COMPANIES

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 4 & 12 September 2018

Urgent Chamber Application

M. Tshuma, for the applicant
S. Hashiti, with him *A. Mambosasa,* for the 1st respondent
No appearance for the 2nd & 4th respondents
S. Mbalekwa, for the 2nd respondent

ZHOU J: This is an urgent chamber application in which the applicant seeks interim relief to the effect that the seizure and attachment of its bank account number 9140000213879 held with the third respondent bank at its Parklane Branch be suspended and that the seizure and attachment of the applicant's shares effected on 29 August 2018 be suspended. The applicant seeks a further interdict restraining the first and second respondents from "attempting any further seizure and attachments in execution of the applicant's funds or bank accounts and applicant's shares". The final order sought is for the setting aside of the seizure and attachment of the discharge from attachment of applicant's funds and bank account the particulars whereof are given above, and applicant's shares. Applicant also prays that the first respondent be ordered to pay costs of suit on the attorney-client scale. The application is opposed by the first respondent. Mr *Mbalekwa* who appeared for the third respondent advised that his client has elected to abide by the judgment in this matter.

The attachments which the applicant complains of were made in execution of the judgment of this Court given in Case Number HC 5958/17 (Judgment Number HH 250 – 2018). The judgment was given on 16 May 2018, registering for enforcement an arbitral award rendered by an arbitrator in favour of the first respondent and against the applicant. The judgment is extant.

After the registration of the arbitral award the first respondent caused a writ of execution to be issued on 30 May 2018. On 12 July 2018 the Sheriff through a notice of seizure and attachment attached the applicant's bank account and notified that a sum of US$1 492 970 should be transferred into his bank account. On 29 August 2018 the Sheriff attached certain shares which are said to be held by the applicant in the companies named in the notice of seizure and attachment of that date. These are the attachments which the applicant complains of.

The applicant's complaint in relation to the attachment of the bank account is that the attachment is unlawful because the first respondent did not first obtain a garnishee order prior to attachment of the account. In relation to the attachment of the shares the complaint is that there was no compliance with the requirements of r 343 of the High Court Rules, 1971.

Mr *Tshuma* for the applicant submitted that an attachment of a bank account can only be done in terms of Order 42. Order 42 r 377 provides as follows:

> "377. ***Court application for attachment of debt due to judgment debtor***
> A judgment creditor who has obtained a judgment or order for the recovery or payment of money, which judgment or order is unsatisfied, may make a court application for an order that any money at present due or becoming due in the future to the judgment debtor by a third party within the jurisdiction (hereinafter called 'the garnishee') shall be attached."

The above provision applies where a judgment creditor elects to enforce a judgment by way of a garnishee order and not, as in the present case, where there has been an attachment of a bank account. For that procedure to be available it is a requirement that there be money "at present due or becoming due in the future to the judgment debtor". It has been held that a credit balance in a bank account is not money that falls within the ambit of r 377, see *Matarutse & Anor* 1968 (4) SA 752(R), cited in *Samson Martin Meki* v *Air Zimbabwe (Private) Limited & Ors* HH 27 – 18 at p. 6.

There is no need for the judgment creditor to apply for a garnishee order prior to attachment of rights to money in a bank account. The rights to money in a banking account constitutes incorporeal property, see *Omerod* v *Deputy Sheriff, Durban* 1965 (4) SA 670(D); *Simpson* v

Standard Bank of South Africa Ltd 1966 (1) SA 590(W) at 591G-H. That being the case, no prior application to court is necessary to validate the attachment of such rights. The notice of seizure and attachment shows that what has been placed under attachment is the bank account. The account number is stated in the notice of attachment.

The challenge to the attachment of the bank account must therefore fail.

In respect of attachment of shares held in companies, Order 40 r 343(4) which deals with the attachment of incorporeal property and incorporeal rights in property provides as follows:

> "(a) the attachment shall only be complete when –
>
> (i) Notice of the attachment has been given in writing by the sheriff or his deputy to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also be given to the Registrar of Deeds in whose deeds registry the property or right is registered; and
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> (ii) The sheriff or his deputy shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document."

It is clear from the above provisions that the requirements stipulated therein are necessary to complete the attachment and not to commence the process of attachment. The applicant's complaint is therefore misplaced as the sheriff does not purport to have completed the process of attachment of the shares.

There is also a complaint made equivocally in the applicant's papers that some of the attached shares do not belong to the applicant but to third parties. Apart from the fact that the applicant has no *locus standi* to represent those unnamed other parties, no detail is given as to which of the attached shares do not belong to the applicant. In any event, the relief sought both in the interim and as part of the terms of the final order sought explicitly speaks the "applicant's shares" and not those of third parties. This complaint therefore lacks validity. The complaint that the Sheriff made no inventory upon attachment is factually incorrect as the notice of seizure and attachment contains the inventory. After all, as noted above, the attachment is not yet complete as the Sheriff was yet to obtain the document evidencing title in the shares at the time that the application was lodged.

The applicant raised the issue of the costs of the arbitration proceedings which he said were in dispute. Mr *Hashiti* for the applicant submitted, and it has not been disputed, that the attachment

pertains only to the principal sum and does not include the costs of the arbitration proceedings. This is also clear from the two notices of seizure and attachment which form part of the applicant's papers. The issue of the disputed costs of arbitration cannot therefore ground the challenge to the attachments.

The first respondent has asked for costs on the attorney-client scale. That is a special order of costs that is reserved for cases in which the court expresses displeasure at some reprehensible conduct on the part of a litigant. *In casu* the applicant accepts that the debt is due. There is nothing in the application to show an intention to settle the debt. Instead, there are suggestions, which were rejected in the judgment in HC 5958/17 that the applicant would become insolvent if enforcement of the judgment is allowed to proceed. That is a frivolous ground for resisting enforcement of a judgment. The application is meant to harass the first respondent and frustrate the execution of a judgment. That is conduct which must be censured by a special order of costs.

In the result, IT IS ORDERED THAT:

1. The application be and is hereby dismissed.
2. The applicant shall pay the costs on the attorney-client scale.

Chinamasa Mudimu & Maguranyanga, applicant's legal practitioners
Mambosasa, 1st respondent's legal practitioners