THE SHERIFF OF ZIMBABWE
versus
SALINI IMPREGILO (PVT) LTD
and
RUSSELL IGNATIUS KARIMAZONDO
and
STEWARD BANK LTD

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 11 September 2018 & 12 September 2018

Opposed Application

F Mabungu, for the applicant
No appearance for the 1st claimant
2nd claimant barred
M T Rujuwa, for the judgment creditor

TSANGA J: Steward Bank Limited obtained a judgment for the sum of US$ 237 064.40 against Peppy Motors (Pvt) Ltd. Pursuant to obtaining the judgment it sought to execute against that judgment and attached certain property at the address of service of the judgment debtor. The 1st claimant Salini Impregilo through its founding affidavit deposed to by Mr Steve Muza had laid claim to the property on the basis that "most of the property attached" did not belong to the judgment creditor but belonged to it. The first claimant also stated in its claim that led to these interpleader proceedings that in fact "all the property including the movable Toyota land cruiser Registration ACT 2989" belonged to Salini Impregilo. It was further stated that the defendants i.e. the judgment debtor were "renting at the premises and using our property".

Upon receipt of these claims, the Sheriff instituted interpleader proceedings in terms of Order 30 r 205A as read with r 207 of the High Court Rules 1971. In his founding affidavit

the applicant made it very clear that the first claimant laid claim to **all** the property that appeared on the notice of seizure whilst the 2nd claimant laid claim to two motor vehicles.

Notably the first respondent then filed its notice of opposition in accordance with the rules. It departed materially from the initial averments in that it now laid claim to the vehicle only on the basis that they had been taken there for service. A registration book was attached.

Whilst the first claimant filed its papers and heads of argument and was legally represented, there was no appearance by the claimant's counsel at the hearing despite clear evidence that its lawyers, Chadyiwa and Associates, had been duly served with the notice of set down for this opposed matter on 10 August 2018. The notice of set down clearly indicating that the hearing would be on 11 September, was duly received, date stamped and signed for by one Juliet, the receptionist at the firm. Accordingly, in default of appearance by the 1st claimant at the hearing of the opposed matter, the first claimant's claim was dismissed.

The second claimant also laid claim to two vehicles ground at the address on the basis that his two vehicles were parked there because he did not have parking space and that he had bought the cars from the judgment debtor. Besides copies of the purported agreement of sale there was however no other proof attached to solidly support his claim that he paid for the vehicles. He had thereafter not bothered to file any opposing papers to the interpleader and was accordingly barred. At the hearing the applicant appeared as a self-actor. In his oral application for upliftment for the bar he claimed to have engaged a lawyer who had not appeared.

A party has to show good and sufficient grounds for the bar to be uplifted. There must be a genuine attempt to defend the proceedings as opposed to an attempt to delay or frustrate the granting of the relief sought. See *William Bain & Co Holdings (Pvt) Ltd* v *Chikwanda* 2013 (2) ZLR 215 (H*) Stuttaford Holdings Ltd* v *Madzudzu* HH-33-03, *Mnkandla* v *Mudzviti* & *Ors* 2003 (2) 168 (H).

For a person whose founding affidavit attached agreements purporting to have paid US$8000.00 for one vehicle and US$40 000.00 for the other less than a year ago, there was surprisingly little to no genuine effort to protect his interests. His explanation for his default in responding to the interpleader was simply that he did not know what to do. He could have sought legal advice and was clearly negligent in not seeking any. It was also hard to imagine that a purportedly genuine owner who has paid that much for his cars would simply sit on his laurels faced with a real threat of the disposal of vehicles and do nothing only to casually

saunter into court on the day of the hearing with little to no enthusiasm, in response to a notice of set down. Moreover, having been served with the notice of set down on 9 August it made little sense that he would have waited until the 11th hour to engage an undisclosed lawyer who did not even bother to appear. Having been served with the notice of set down for this hearing on 10 August he had had ample time to engage a lawyer or advice the court of any challenges. There was no proof on file of the assumption of agency by any law firm on his behalf on record. Furthermore, the second claimant was also not able to show that he has a *bona fide* defence on the merits having not attached concrete proof that he had indeed purchased the vehicles as per the agreement of sale. What he sought was merely to delay the matter as opposed to having a genuine burning claim to the property. As such there was no merit in granting the upliftment of the bar and the application was accordingly dismissed.

Accordingly I granted the order in terms of applicant's alternative draft as follows:

1. 1st claimant's claim to all the property excluding the Toyata Alphard registration number AEE 6439 and Toyota Land Cruiser registration number AAR 3887, which was placed under attachment in execution of judgment in HC 8081/15 is hereby dismissed.

2. 2nd claimant's claim to the Toyata Alphard registration number AEE 6439 and Toyota Land Cruiser registration number AAR 3887, which were placed under attachment in execution in judgment HC 8081/15 is hereby dismissed.

3. The property attached in terms of Notice of Seizure and attachment dated 19 march 2018 issued by applicant is hereby declared executable.

4. The claimants are to pay the judgment creditor and applicant's costs on a legal practitioner and client scale.

Dube-Banda Nzarayapenga & Partners, applicant's legal practitioners
Messrs Mtetwa & Nyambirai, judgment creditor's legal practitioners