

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2018/HP/1900

(Civil Jurisdiction)



BETWEEN:

NOMAD'S COURT LODGE LIMITED	PLAINTIFF
AND	
GATEWAY SAHARA OIL LIMITED	1ST DEFENDANT
GRACIOUS STARS LIMITED	2ND DEFENDANT
DOMINIC KABAMBA	3RD DEFENDANT

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN
CHAMBERS, ON 4TH MARCH, 2020.**

For the Plaintiffs: Mr. M. Phiri - Mwack Associates

For the Defendants: N/A

RULING

LEGISLATION REFERRED TO:

1. *The High Court Act, Chapter 27, Volume 3 of the Laws of Zambia.*

1 INTRODUCTION

1.1 The Court has been moved to determine an application for attachment and sell of property No. CHING/641/CL1/7, (subject property) situate in

Chingola, in the Copperbelt Province of the Republic of Zambia.

2 BACKGROUND

- 2.1 On 31st October, 2018, the Plaintiff issued a Writ of Summons and Statement of Claim, claiming *inter alia*, payment of the sum of K372,018.59 in respect of accommodation, food and beverage services rendered to the Defendants.
- 2.2 Judgment in Default of Appearance and Defence was entered on 13th February, 2019 and the Plaintiff issued a Writ of *Fifa*, where personal belongings were seized and are still in the custody of Sheriff awaiting the hearing of an interpleader application by a Ms. Pamela Chibonga Kabamba.
- 2.3 The Plaintiff believes that the personal goods seized from the 2nd Defendant, will not satisfy the Judgment, hence it has applied for attachment and sale of the subject property.
- 2.4 Accordingly, this application comes before this Court after a Judgment in default endorsed by the Court on 13th February, 2019. The application was made by way of Summons filed on 30th December, 2019, in support whereof is an Affidavit deposed to by one Janet Banda Shawa, a Director in the Plaintiff Company.

2.5 The Defendants were served with this application by way of substituted service and proof of service filed herein. The application is not opposed.

3 AFFIDAVIT EVIDENCE

3.1 The Affidavit in Support revealed that there is a Judgment in Default against the Defendants in the sum of K372,018.59. It also revealed that personal property belonging to the 2nd Defendant was seized in execution of the Judgment, which is now subject of an interpleader application. That the deponent verily believes that the said personal goods will not satisfy the Judgment sum. Further, that the 2nd Defendant is the absolute owner of the subject property, thus it would be in the interest of justice and equity that the Plaintiff be granted the order to attach and sell the subject property in order to recover the debt owed by the Defendants.

4 THE APPLICABLE LAW

4.1 The starting point in consideration of this application is determining the effect of **Order XLII, Rules 1 and 3 of The High Court Rule**¹. The said Order states as follow: -

"1. All property whatsoever, real or personal, belonging to a party against whom execution is to be enforced, and whether held in his own name or by another party in trust for him or on his behalf (except the wearing apparel and bedding of himself or his family and the tools and

implements of his trade, if any, to the value of five hundred Kwacha or, in the case of a farmer, one million Kwacha) is liable to attachment and sale in execution of the decree.

3. *On any levy on the property of any person to satisfy an order or judgment of Court for the payment of money, the real property of such person shall only be sold if the personal property is insufficient." (Court's emphasis)*

5 ANALYSIS

- 5.1 I have considered the Affidavit evidence and submissions by Learned Counsel for the Plaintiff. The issue for determination is whether or not the Plaintiff ought to be granted an order for attachment and sale of the subject property.
- 5.2 By law, the Plaintiff is at liberty to enforce Judgment made in its favour by any of the available means. The law governing satisfaction of Judgments is specifically provided for in **Order XLII of The High Court Rules¹**, whose relevant provisions, I have cited above. As seen from the above provision of the law, the Plaintiff is at liberty to apply for attachment of property after the Judgment.
- 5.3 The Plaintiff averred in its Affidavit in Support that the personal goods seized by the Sheriff are subject of an interpleader application and that it verily believes that these personal goods will not satisfy the Judgment sum.

It has thus applied for attachment and sale of the subject property.

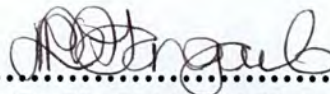
- 5.4 By the use of the words "... *the real property of such person shall only be sold if the personal property is insufficient...*", which I emphasised in the above provision of the law, implies that an application for sale of real property can only be made if the personal property is insufficient.
- 5.5 It is my considered view that in as much as an Order for attachment can be granted to the Plaintiff, the Plaintiff can only apply to sell the attached property if the personal property is insufficient. In *casu*, the personal goods seized in execution of the Judgment in Default have not yet been sold and as such there is no basis for determining that these goods are insufficient to satisfy the Judgment. Other than a perceived threat that the goods are not sufficient, no cogent evidence has been placed before this Court to satisfy me that the goods are not sufficient to satisfy the Judgment debt. I am thus not satisfied that the Plaintiff is not assured of recovering the Judgment debt through the sale of the seized goods. In my view, the application for sale is premature and ought to be made after the sale of the seized goods, if it turns out that the Judgment debt is not satisfied.
- 5.6 While I find that the application for attachment is properly before me, I do not find that the application for

sale, at this stage, is properly before me, as I find that the Plaintiff has not satisfied the requirement under **Order XLII, Rule 3** of **The High Court Rules**¹ to warrant the grant of the order of sale. For such an order to be granted, there must be insufficient funds realised from the sale of the seized goods to satisfy the Judgment debt. In other words, cogent evidence must be placed before the Court to show that the goods seized are not sufficient to satisfy the Judgment debt. This in my considered view has not been proved by the Plaintiff.

6 CONCLUSION

- 6.1 By way of conclusion, the application for attachment of Property Number CHIN/641/CL/1/7, situated in Chingola, in the Copperbelt Province of the Republic of Zambia, is hereby granted to the Plaintiff.
- 6.2 The application for sale of Property Number CHIN/641/CL/1/7, situated in Chingola, in the Copperbelt Province of the Republic of Zambia lacks merit and I accordingly dismiss it.
- 6.3 Leave to appeal is granted.

Dated this 4th day of March, 2020.



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P. K. YANGAILO
HIGH COURT JUDGE