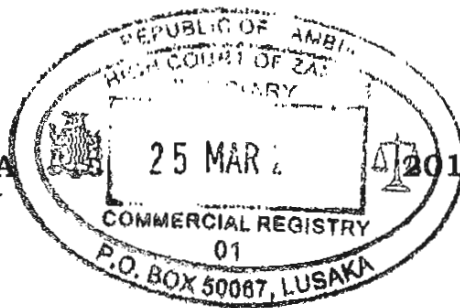


IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA

(Civil Jurisdiction)



2018/HPC/0464

IN THE MATTER OF:

ORDER 30 RULE 14 OF THE HIGH COURT
RULES, CHAPTER 27 OF THE LAWS OF
ZAMBIA AND ORDER 88 OF THE RULES OF
THE SUPREME COURT OF ENGLAND AND
WALES, 1999 EDITION

IN THE MATTER OF:

AN ORDER FOR POSSESSION,
FORECLOSURE AND SALE OF THE
PROPERTY COMPRISED IN THE LEGAL
MORTGAGE RELATING TO SUBDIVISION G
OF SUBDIVISION NO. 37 OF FARM 397A,
LUSAKA

BETWEEN:

CAVMONT BANK LIMITED

APPLICANT

AND

MEGA EARTH MOVERS LIMITED
GO TRADING LIMITED
OTTAVIO GIANNOCCARO
EUGENIO GINO GIANNOCCARO
SOS EMERGENCY RECOVERY AND
SERVICES LIMITED

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT

INTENDED CLAIMANT

**CORAM: Honourable Lady Justice Dr. W. S. Mwenda in Chambers at
Lusaka this 25th day of March, 2021**

For the Applicant:

Mr. M. Phiri of Mwack Associates

*For the Respondents
and Intended Claimants:*

Mr. A. Kearns of Willa Mutofwe and Associates

For the Sheriff:

Mr. R. Kasengele of Sheriff's Office

RULING

Cases referred to:

1. *Zlatan Zlatko Arnautovic v. Stanbic Bank and the Attorney General, SCZ Appeal NO. 56 of 2007.*

2. *Linus Eyotia Eyaa v. Finance Bank, SCZ Appeal No. 134 of 2015.*
3. *De La Rue v. Hernu, Peron & Stockwell Ltd De La Rue, Claimant (1936) 2 All ER 411.*
4. *African Banking Corporation (Z) Limited v. Plinth Technical Works Limited and Others, SCZ/8/128/2015.*

Legislation referred to:

1. *Order 43 of the High Court Rules, Chapter 27 of the Laws of Zambia.*
2. *Order 17, Rule 2 (1) of the Rules of the Supreme Court of England and Wales, 1999 Edition (the White Book).*
3. *Order 17, rule 3 of the White Book.*
4. *Practice Note 17/3/6 of the White Book.*
5. *Practice Note 17/5/12 of the White Book.*
6. *Practice Note 17/8/2 of the White Book.*

1. INTRODUCTION

1.1 There are two applications being considered in this ruling, namely, an application for Stay of Execution of Judgment (hereinafter referred to as the “First Application”) and an application for Interpleader (hereinafter referred to as the “Second Application”), both made on the same day, being 10th September, 2020.

1.2 The two applications were heard and reserved on the same day and the First Application was made pending the determination of the Second Application and as the success or failure of the First Application is dependent on the success or failure of the Second Application, I shall summarise the two applications in the order

above, but will determine the Second Application before moving to the First Application.

2. THE FIRST APPLICATION

2.1 The First Application was made by the Respondents and the Claimant, and was filed into court on 10th September, 2020. By the Summons, the Respondents and the Claimant are seeking an order to stay the execution of judgment pending the hearing and determination of an application for an order for Interpleader for the property, assets and goods seized by the Sheriff of Zambia on 2nd September, 2020.

Respondents' and Claimant's Evidence in Support

2.2 In the accompanying affidavit (hereinafter referred to as the "First Affidavit in Support"), sworn by the 4th Respondent herein, and General Manager of the 1st Respondent, it was deposed that on 2nd September, 2020, the Sheriff of Zambia executed a Judgment in favour of the Applicant herein, against the Respondents, in the sum of K1,187, 833.00.

2.3 It was the 4th Respondent's testimony that he had been advised by the Respondents' advocates that the process relating to the execution of the Court's Judgment and/or seizure of the assets, goods or property relating to such Judgment was supposed to

be served either on the Respondents and/or the advocates on record. That, however, the 4th Respondent had not had sight or been served with such documents, except the seizure notice.

2.4 The 4th Respondent deposed that when the Bailiffs approached the 1st Respondent's business premises, he explained to them that the assets they were trying to seize belonged to other named third-parties, being the Interpleaders, and that said third-parties had no knowledge, connection or interest in the claim and proceedings herein.

2.5 It was further deposed by the 4th Respondent that despite his explanation, the Bailiffs continued to levy execution on the assets and entered details of the same on the seizure notice. That, several items referred to on the seizure notice are properties of third-parties and registered in their names. In this regard, the deponent referred the Court to exhibit "EGG2"

2.6 The deponent deposed that he visited the Bailiff's Office and was issued with a Sheriff's Seizure Form without prior notice or service of any execution process. That, the notice referred to a Writ of Possession purporting to seize the mortgaged property, clearly stating that the said property had been

repossessed by the Applicant Bank. That, however, the court process relating to repossession of the mortgaged property had not been served upon the Respondents or the Respondents' advocates.

2.7 The 4th Respondent deposed that he had been advised by the Respondent's' advocates that there is need to obtain an order to stay the sale of the seized property as there is a risk of the same being dissipated and rendering the interpleader application nugatory, and resulting in irreparable damage which may not be atoned for in monetary terms.

Applicant's Evidence in Opposition

2.8 In opposition, Carol Kaputo the Rehabilitation and Recoveries Manager in the Applicant Bank and deponent to the Affidavit (hereinafter referred to as the "First Affidavit in Opposition") deposed that the execution of the judgment by the Bailiffs was done pursuant to this Court's judgment of 20th May, 2020 and the subsequent ruling of the Court of Appeal under Cause No. CAZ/08/157/2019, delivered on 29th June, 2020. Further, that the execution was done in due process of the law.

2.9 The deponent also deposed that it is not true that the Respondents pledged fixed and floating charges on

Dynapac Roller the subject of a fixed charge. That, Motor Vehicle Ford belongs to the 2nd Respondent and unless proven otherwise, the 1st Respondent secured the loan through a floating and fixed charge and thus, all assets are a subject of execution.

2.10 It was the deponent's testimony that the deponent to the First Affidavit in Support has not been specific as to which goods belong to third-parties. Further, that the deponent has been advised by the Applicant's Counsel that there is no legal provision that mandates the Applicant to serve the Writ of Possession or FiFa on the Respondents before execution.

2.11 The deponent finally deposed that it is not true that no purported process relating to repossession was served on the Respondents' Advocates. That, in fact, the parties' lawyers held a number of meetings with the intention of settling the debt before execution, but to no avail and the Plaintiff's Advocates wrote a demand letter for their fees. That, this goes to show that the Respondents' Advocates were fully aware of what was going on.

Respondents' and Claimant's Evidence in Reply

2.12 In reply, Eugenio Gino Giannocarro, the deponent to the Affidavit in Reply (hereinafter referred to as the

“First Affidavit in Reply”), deposed that he has not seen or been served with an Order Absolute in respect of these proceedings. Further, that said Order was not served on the Respondents’ Advocates and that the exhibits in the First Affidavit in Opposition do not demonstrate or indicate whether or not the documents were served prior to execution, on the Respondents and/or their Advocates.

3. THE SECOND APPLICATION

3.1 On 10th September, 2020, the Sheriff of Zambia took out an Interpleader Summons pursuant to Order 43 of the High Court Rules, Chapter 27 of the Laws of Zambia (the High Court Rules), for an order that the Applicant and the Claimants appear and state the nature and particulars of their respective claims to the goods seized by the Sheriff under Writ of *feri facias* issued in this action, and maintain or relinquish the same and abide by such order as may be made herein and that in the meantime all further proceedings be stayed.

3.2 The Summons was supported by an affidavit (hereinafter referred to as the “Second Affidavit in Support”) sworn by one Romeo Kasengele, an

employee of the Judiciary serving as Under Sheriff under the office of the Sheriff of Zambia.

- 3.3 Filed along with the Summons and Second Affidavit in Support was a Notice of Claim to Goods taken in execution, pursuant to Order 17 of the Rules of the Supreme Court of England and Wales, 1999 Edition (hereinafter referred to as the "White Book") and a Schedule listing the goods claimed by the Claimant. The documents were signed by Counsel for the Claimant and the goods claimed in the Schedule were a Paramount Trailer Registration No. ALH 9364 T and a Ford Ranger ALB 5076.

Sheriff's Evidence and Arguments in Support

- 3.4 It was Romeo Kasengele's testimony, in the Second Affidavit in Support, that he executed a writ of FiFa issued by the Applicant against the Respondents herein for the recovery of the claimed sum of money plus the Sheriff's commission and other costs for levying execution and interest on or about 1st September, 2020. That, he could not proceed and/or complete the execution because of a Notice of Claim served on him by the Claimant herein.
- 3.5 He further asserted that the Sheriff of Zambia claims no interest in the goods in dispute other than

commission and other costs of execution. He deposed that the Claimants in this matter are purporting to be the rightful owners of the motor vehicle, truck and trailer and/or goods taken in execution by the Sheriff of Zambia and not the Respondents. That, for that reason, he is seeking the indulgence of this Court to determine who the rightful owner of the seized goods is and also to make an order as to who pays the Sheriff's fees.

Applicant's Evidence and Arguments in Opposition

3.6 The Interpleader Summons was opposed by the Applicant, who filed an Affidavit (hereinafter referred to as the "Second Affidavit in Opposition"), sworn by Carol Kaputo, the Rehabilitation and Recoveries Manager in the Applicant Bank. It was her testimony that the Ford Ranger ALB was a subject of execution because it belongs to Go Trading Limited who were sued by the Applicant in their capacity as 2nd Respondent. That, moreover, on page 4 of the letter written by the Applicant, the 2nd Respondent placed itself as unlimited corporate guarantor for the loan obtained by the 1st Respondent. Furthermore, that this Court, at page J3 of the Judgment, adjudged that the Applicant was at liberty to enforce the unlimited guarantee on the 2nd, 3rd and 4th Respondents.

3.7 The deponent deposed that the Claimant is only claiming for the paramount Trailer Registration No. ALH 9364T and this is indicated in the schedule under the Notice of Claim and not the truck and motor vehicle.

3.8 In augmenting the Second Affidavit in Opposition, Counsel for the Applicant submitted that the Ford Ranger registration number ALB 5076 belongs to a company called Go Trading Limited which is the 2nd Respondent in this matter and was a party to the proceedings and judgment before this Court. That, as such, the Applicant did not see any reason why the Applicant should not execute against the 2nd Respondent's assets. Counsel admitted that SOS Emergency Recovery and Services Limited was not a party to the proceedings. Further, he submitted that the Applicant would leave it to the Court to make a determination with regard to the claim by SOS Emergency Recovery and Services Limited.

Claimant's Evidence and Arguments in Reply

3.9 The Claimant filed an Affidavit (hereinafter referred to as the "Second Affidavit in Reply"), sworn by Eugenio Gino Giannocarro, the 4th Respondent herein and General Manager of the 1st Respondent Company. It was his evidence that after reading paragraph 5 of the

Affidavit in Opposition sworn by Carol Kaputo, he had noted that there are no exhibits to the Affidavit. Further, that the record would show that the paramount trailer claimed, being ALH 9364, is duly registered to SOS Emergency Recovery and Services Limited as evidenced by exhibit "EGG1" in the 1st Respondent's First Affidavit in Support dated 10th September, 2020. That, SOS Emergency Recovery and Services Limited merely seeks that its goods are not made subject to seizure by a Judgment of this Court to which it is not a party.

3.10 It was further asserted that the Second Application, clearly seeks the determination of this Court as to who is the rightful owner of the seized goods and also an order as to who pays the Sheriff's fees. It was averred that he had not seen an order demonstrating that the seized property, being Subdivision G of Subdivision No. 37 of Farm No. 397a, Lusaka had been sold by the Applicant Bank to a third party; that an account had been rendered and that the Applicant Bank was now calling in property of the various guarantors and seeking in part or full satisfaction of the residual balance from the realisation from the sale of Go Trading Limited's assets.

3.11 In the combined List of Authorities and Skeleton Arguments in Support of the First and Second Applications, filed on 10th September, 2020, on behalf of the Claimant, it was submitted that it is a matter of record that execution was done on or about 2nd September, 2020 on behalf of the Applicant in the substantive matter against the 1st Respondent on its property and/or offices located along Kafue Road in Lusaka to recover the monies claimed by the Applicant, Sheriff's fees and costs against ostensibly, the 1st Respondent. Further, that it is also a matter of record that the Claimant, SOS Emergency Recoveries and Services Limited, did file process into Court claiming rights over the trailer registration number ALH 9364 seized by the Sheriff of Zambia at point of execution on or about 2nd September, 2020.

3.12 It was also argued that the Claimant has complied with Order 43, rule 1 of the High Court Rules which was set out and deposed to by the Sheriff's office and therefore, the application before Court for the release of the Claimant's property should be granted by this Court. It was submitted that the Court's role in a Sheriff's Interpleader is to determine whether or not the property seized by the Sheriff and as tabulated in the seizure notice (exhibit "EGG3") belongs to the Judgment debtor or the Claimant.

3.13 It was submitted that the Notice of Seizure on record indicated that the following vehicles were physically seized or taken into walking possession by the Sheriff's Office, namely:

- (1) Lebrero Roller;
- (2) Dynapac Roller;
- (3) Trailer ALH 9364;
- (4) Fireman Genset;
- (5) Ford Ranger ALB 5076; and
- (6) Compressor.

3.14 It was contended that from the foregoing facts, the Claimant invites this Court to peruse the Affidavit evidence on record and the exhibits attached thereto and take judicial notice of the fact that the subject properties and/or goods complained about and claimed, are simply not the registered goods and/or property of the 1st Respondent. Further, that the evidence on record is incontrovertible that the Trailer registration number ALH 9364T and the Ford Ranger registration number ALB 5076 claimed by the Claimant are their property. Therefore, these should be released into the custody and care of the rightful and registered owners.

3.15 It was further submitted by Counsel for the Claimant that in the case of *Zlatan Zlatko Arnautovic v. Stanbic*

*Bank and the Attorney General*¹, the Supreme Court stated that the sole question for determination in an interpleader application is the issue of rights over the seized item. He argued that in the case before this Court, SOS Emergency Recovery and Services Limited had in fact exhibited ownership documents over the items seized and the company is not a party to the proceedings.

3.16 With respect to the Ford Ranger, Counsel contended that Go Trading Limited had also exhibited a document showing ownership of the said motor vehicle. That, while Go Trading Limited is a party to the substantive claim, it is a guarantor in relation to the facility. Counsel submitted that the law on guarantors is that they are only called upon to discharge a debt once the party who obtained the facility fails to settle the debt. Counsel submitted that in this case the Applicant has been in too much a hurry to go for the guarantors. Counsel referred this Court to the case of *Linus Eyotia Eyaa v. Finance Bank*². It was Counsel's contention that in this case, SOS Emergency Recoveries and Services Limited is not a party to the proceedings and Go Trading Limited only comes in once the Applicant Bank has sold the property and there is a residual amount. That, the substantive property along Kafue Road was seized on

the same day that the Ford Ranger was seized. Counsel prayed that the Court grants the application for interpleader and returns the properties to the rightful owners and that all costs occasioned by this application should be borne by the Applicant.

3.17 It is the Claimant's prayer that it has clearly demonstrated that the disputed property does not belong to the Judgment debtor but rather, belongs to the Claimant and should accordingly, be released both into the custody and care of the Claimant as the purported seizure was both irregular and untenable at law. The Claimants sought for the costs of this application against the Applicant.

4. ANALYSIS AND FINDINGS WITH RESPECT TO THE SECOND APPLICATION

4.1 It is trite that the underlying objective of interpleader proceedings is to enable a person who himself makes no claim to property (the subject matter of the suit), but who faces competing claims from others to remove himself from the dispute and protect himself from the competing claims. It was thus, put this way by the English Court of Appeal, in the case of *De La Rue v. Hernu, Peron & Stockwell Ltd De La Rue, Claimant*³:

"In substance, when an interpleader issue is tried, two actions against the person interpleading are being

dealt with, and interpleader proceedings is the method of compelling the parties—either one, or both, or neither of whom may have actually issued a writ—to prosecute their claims. As it is the essence of interpleader proceedings that the person who has interpleaded has no title himself, he naturally drops out of the suit. But in effect the entire matter is tried out in the presence of all the parties concerned, and the real claimants are compelled to put forward their claims and have them adjudicated upon. The reason for that is not their own benefit, it is for the relief of the person interpleading.”

- 4.2 As regards claims to goods taken in execution of a judgment order, Order 17, rule 2 (1) of the White Book provides as follows:

“Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the sheriff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.”

- 4.3 Further, Order 17, rule 3 of the White Book shades some light on the mode that an interpleader application should take, as well as what the affidavit in support of such application should reveal. The Order thus, provides as follows:

“(1) An application for relief under this Order must be made by originating summons unless made in a

pending action, in which case it must be made by summons in the action.

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2 (4) the summons must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.

(4) Subject to paragraph (5) a summons under this rule must be supported by evidence that the applicant –

(a) claims no interest in the subject-matter in dispute other than for charges or costs,

(b) does not collude with any of the claimants to that subject-matter, and

(c) is willing to pay or transfer that subject-matter into Court or to dispose of it as the Court may direct.

(5) Where the applicant is a sheriff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court to do so.

(6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall within 14 days serve on the execution creditor and the sheriff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.
(Emphasis supplied by the Court)

4.4 Practice Note 17/3/6 of the White Book prescribes the standard of clarity required of an affidavit to be filed by a claimant in an interpleader application as follows:

“The nature and particulars of the claim must be stated on oath with such precision as to enable the opposing claimant or the execution creditor to decide whether to oppose it, and the Court to make an appropriate order.”

4.5 Further, on the strength of Practice Note 17/5/12 of the White Book, where the applicant for relief is the sheriff, who has seized under a writ of execution, goods in the possession of the judgment debtor, the claimant is generally made plaintiff, and the execution creditor defendant, in the issue. In such a case the burden of proof is on the claimant to prove his title to the goods or to the possession thereof at the time of seizure.

4.6 I have perused the Second Affidavit in Support and Second Affidavit in Reply (which has made reference to the First Affidavit in Support), and I am satisfied that they were settled in line with the guidance of Order 17 of the White Book, considering that the Second Application herein was made at the instance of the Sheriff of Zambia. In the Second Application, therefore, although not instituted at the instance of the Claimant, the Claimant and the 2nd Respondent have made a claim to property, which was seized in the execution of a Writ of Fieri Facias issued against the Respondents, and which said property, the said parties have endeavoured to describe.

4.7 The Applicant Bank herein, in opposing the Second Application has contended, particularly, that the Ford Ranger registration number ALB 5076 belongs to the 2nd Respondent herein (the guarantor) and further, that this Court by its judgment of 20th May, 2019, ordered that the unlimited guarantees of the 2nd, 3rd and 4th Respondents could be enforced.

4.8 The Applicant Bank's contention has been controverted by the Claimant herein, which insists that the property, namely, Paramount Trailer, Registration No. ALH 9364 T and Ford Ranger, ALB 5076, belong to the Claimant and 2nd Respondent (as guarantor), respectively. Further, that the law on guarantors is that they are only called upon to discharge a debt once the party who obtained the facility fails to settle the debt. It has been contended, thus, that in this case the Applicant has been in too much a hurry to go for the guarantors.

4.9 From the above, it seems to me, that the issues that need resolution by this Court are:

(a) whether the Claimant and the 2nd Respondent herein have sufficiently demonstrated that they are the rightful owners of the property listed in the Notice of Claim to Goods taken in execution; and

(b) whether the Applicant is at liberty to pursue guarantors before first attempting to recover the judgment debt from the primary security pledged by the principal borrower.

4.10 To determine the first issue, I will have to examine the exhibits tendered on behalf of the Claimant and 2nd Respondent, on the record. The Second Affidavit in Support made reference to the First Affidavit in Support sworn by one Eugenio Gino Giannocarro, in which exhibit "EGG2" was produced. The said exhibit "EGG2" consists of two Motor Vehicle White Books, the first relating to a Paramount Trailer 7406, Registration No. ALH 9364 T, issued in the name of SOS Emergency Recovery and Services Limited; and the second one relating to a Ford Ranger, Registration No. ALB 5076, issued in the name of Go Trading Limited.

4.11 Exhibit "EGG2" was produced in order to substantiate the Claimant's and 2nd Respondent's assertion that they are the rightful owners of said property. I have carefully examined the contents of the exhibit "EGG2" and I find, that the same does, indeed, demonstrate that the Claimant is the owner of Paramount Trailer 7406, Registration No. ALH 9364 T; and that the 2nd Respondent is the owner of Ford Ranger, Registration

No. ALB 5076, which both constitute part of the list of inventory on the Seizure Notice issued by the Bailiffs.

4.12 Turning to the second issue, namely, whether the Applicant is at liberty to pursue guarantors before first attempting to recover the judgment debt from the primary security pledged by the principal borrower, it has been contended that, in *casu*, the Applicant has been in too much of a hurry to go for the guarantors as the law on guarantors is that they are only called upon to discharge a debt once the party who obtained the facility fails to settle the debt. The position of the Applicant, on the other hand, has been that the judgment of this Court, dated 20th May, 2019, adjudged that the Applicant was at liberty to enforce the unlimited guarantee on the 2nd, 3rd and 4th Respondents. The relevant portion of the judgment stated as follows:

"I order that the Respondents shall pay to the Applicant the judgment sums plus interest within ninety (90) days of the date hereof, failing which the Applicant shall be at liberty to repossess, foreclose and exercise its right to sale the mortgaged property being Subdivision G of Subdivision No. 37 of Farm No. 397A, Lusaka and enforce the Unlimited Personal Guarantee (Individuals and Partnerships) and Unlimited Guarantee (Company/Trust) against the 2nd, 3rd and 4th Respondents, respectively.

I further order the sale of all assets contained in the Fixed Debenture and Floating Charge relating to company assets dated 1st March, 2017.”

4.13 While the order has been structured as above, the logical assumption is that a certain sequence should be followed in enforcement. An example of such sequence of enforcement to be followed can be seen in the order made in the case of *African Banking Corporation (Z) Limited v. Plinth Technical Works Limited and Others*⁴, as follows:

“Consequently, judgment is hereby entered in favour of the appellant against the 1st Respondent for the sums of..., together with contractual interest... to be paid within 30 days from the date hereof.

In the event that the judgment debt and interest remain unpaid at the expiry of the stated period, then the 2nd Respondent shall deliver vacant possession of the mortgaged property to the appellant who shall be at liberty to foreclose and exercise its right of sale.

Further, the appellant shall also exercise its right as debenture holder over the assets of the 1st Respondent in the settlement of the judgment debt. Should there be any amount due after the sale of the mortgaged property and enforcement of the debenture, then the 3rd, 4th, 5th and 6th Respondents shall pay the difference as guarantors.”

4.14 From the Supreme Court example above, it goes without saying, that it is not proper procedure for guarantors to be pursued to make good a judgment debt where there is a primary security such as a

mortgaged property, that has not yet been sold, and any shortfall established from such sale. The idea is that the guarantors should only come in to cover the deficit and not to be the primary persons pursued for the actual principal debt. This is regardless of the order of this Court in the 20th May, 2019, judgment.

5. CONCLUSION AND ORDERS

- 5.1 From the findings above, the question of who is entitled to the goods seized by the Sheriff of Zambia, and listed in the Notice of Claim to Goods taken in execution, has thus, been resolved in favour of the Claimant and the 2nd Respondent.
- 5.2 Further, having found that guarantors should only come in to cover the deficit and not to be the primary persons pursued for the actual principal debt, it is resolved that the 2nd Respondent's property sought to be recovered from the Sheriff's seizure was not amenable to seizure and ought not to have been seized by the Sheriffs.
- 5.3 As earlier stated, the success or failure of the First Application herein, is dependent on the success or failure of the Second Application. The latter having succeeded; therefore, it follows that the First Application should also succeed. The stay of execution upon and/or sale of the disputed property is hereby

confirmed. Further, the said property shall be released to the rightful owners as above established.

- 5.4 The Sheriffs did indicate, in the Second Affidavit in Support, that they wanted to know who would bear the costs of execution/Sheriff's fees.
- 5.5 With respect to the order as to costs in an interpleader application, Practice Note 17/8/2 of the White Book provides as follows:

“As a general rule, in a sheriff's interpleader, where the claimant fails, the sheriff is entitled to his costs (including possession money) from the time of the notice of claim or from the sale, whichever be the earlier. Where the claimant succeeds, the sheriff is entitled as against the execution creditor to costs from the time when the latter authorised the interpleader proceedings - i.e., generally from the return of the interpleader summons. But in either case the sheriff gets his costs from the execution creditor, who (if successful) obtains a remedy over against the claimant. Similarly, a successful claimant gets his costs against the execution creditor from the return of the interpleader summons...”

- 5.6 The Claimant and the 2nd Respondent having succeeded as regards their claim, the costs herein shall be administered in accordance with Practice Note 17/8/2 of the White Book quoted above, in favour of the Claimant and 2nd Respondent, and the Sheriff as against the Applicant Bank herein. For the avoidance of doubt, the Respondents and Claimant are awarded

costs for the two applications, while the Sheriff shall have his costs of execution as well costs of the interpleader application. The said costs shall be taxed in default of agreement.

5.7 Leave to appeal is denied.

Dated at Lusaka the 25th day of March, 2021.


W.S. MWENDA (Dr)
HIGH COURT JUDGE