



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**JUDGMENT**

Case No.: HC-MD-CIV-ACT-CON-2019/02094

In the matter between:

**THE ACTING DEPUTY SHERIFF WINDHOEK**

**PLAINTIFF**

and

**INGO HASSE**

**1<sup>ST</sup> CLAIMANT**

**MARIGOLD HOTEL DEVELOPERS (PTY) LTD**

**2<sup>ND</sup> CLAIMANT**

**Neutral citation:** *The Acting Deputy Sheriff Windhoek v Hasse and Another* (HC-MD-CIV-ACT-CON-2019/02094) [2021] NAHCMD 269 (1 June 2021)

**Coram:** PARKER AJ

**Heard:** 23, April and 11 May 2021

**Delivered:** 1 June 2021

**Flynote:** Practice – Interpleader proceedings – Court held that where a successful party pursuant to execution of a judgment in his or her favour causes goods in possession of the other party to be attached in execution and a third party claims ownership of the attached goods that third party bears the unshifting onus to prove his or her claim – On the basis that third party is the claimant and upon the presumption of ownership flowing from possession – Court finding that second

claimant (the third party) has failed to place before the court sufficient and satisfactory evidence to prove ownership of the attached goods – Consequently, second respondent's claim failed.

**Summary:** Practice – Interpleader proceedings – Successful party (first claimant) in the action proceedings caused goods in possession of the other party to be attached by applicant in execution – Third party (second claimant) laid claim of ownership of the attached goods – Court finding that second claimant failed to place sufficient and satisfactory evidence to prove its claim – Consequently, second claimant's claim failed.

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### ORDER

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1. Second claimant and any person claiming under and through second claimant are barred as against the applicant and first claimant, from making claim on the attached goods.
2. Second claimant must pay the costs of:
  - (a) the first claimant; and
  - (b) the applicant.
3. The matter is considered finalized and is removed from the roll.

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### JUDGMENT

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PARKER AJ:

[1] On 9 December 2019 the deputy sheriff of Windhoek attached certain goods listed in Annexure A, attached to the writ of execution issued by first claimant. The second claimant has claimed the goods as their property. In his interpleader notice, the Acting Deputy Sheriff of Windhoek as applicant applies to the court for its decision on the validity of the claimants' respective claims.

[2] In the recent case of *The Acting Deputy Sheriff of Windhoek v Minnesota Trading Enterprises Group CC and Others* Case No. HC-MD-CIV-ACT-CON-2020/01229/INT-HC-INTERP-2020/00224) [2021] NAHCMD 7 (25 January 2021), the court (per Schimming-Chase AJ) relied on the comprehensive guidelines for the determination of interpleader disputes propounded by Van Niekerk J in *Deputy Sheriff of Tsumeb v Koch and Another* 2011 (1) NR 202 (HC). Schimming-Chase AJ summarized those guidelines neatly as follows:

‘11.1 Firstly, a claimant should set out the particulars concerning her/his claim in a written document by providing the material facts which form the basis of her/his claim. This document may in some respects be similar to a particulars of claim (need not be set out with the precision required of pleadings) attached to a combined summons, but it is not to be confused with the particulars required for Interpleader proceedings, which has its own set of requirements.

11.2 It is assumed that where one litigating party, in execution of a judgment in her/his favour, has goods attached which are with the other party, and a third party claims those goods as her/his property, that third party is burdened with the onus (throughout) to prove her/his claim to the goods. This is firstly because the third party is the claimant and secondly, because of the presumption (of ownership) which flows from possession.

11.3 If the bare allegation of ownership contained in the particulars of claim is not supported by facts, the factual basis may be provided during the hearing of evidence as is envisaged in Rule 113(10) (a).’

[3] *Koch and Another* and *Minnesota Trading Enterprises Group CC and Others* are in my view good law. I am bound by them unless I consider them to be wrong (see *Chombo v Minister of Safety and Security* Case No. I3883/2013 NAHCMD 37 (20 February 2018), but I do not consider them to be wrong. I shall, accordingly, apply them to the facts of the instant matter.

[4] Going by para 11.2 of the Schimming-Chase summary in *Minnesota Trading Enterprises Group CC and Others*, this emerges clearly in the instant matter: The first claimant is ‘the litigating party, (who) in execution of a judgment in his favour, has goods attached which are with the other party (i.e. the execution debtor), and a

third party (Marigold Hotel Developers (Pty) Ltd, the second claimant) claims those goods as his/her property, that third party (second claimant) is burdened with the onus (throughout) to prove her/his claim to the goods. This is first, because the second claimant is the claimant and secondly, because of the presumption (of ownership) which flows from possession. In the instant proceeding, Mr Pfeifer represents first claimant, and Mr Kasper second claimant.

[5] The burden of the court in the present matter is, therefore, to determine whether second claimant proved his or her claim to the attached goods. (See *Minnesota Trading Enterprises Group CC and Others*.) It follows that any issues raised that are extraneous to facts capable of discharging the onus are irrelevant; and the court ought to disregard them, as I do. The question that arises for determination is, therefore, whether second claimant has placed before the court sufficient and satisfactory proof of her or his claim to the goods attached by the applicant, as second claimant claims in its particulars of claim filed in terms of r 113 of the rules of court.

[6] It is beyond dispute that not one iota of sufficient and satisfactory evidence has been placed before the court by the second claimant to prove second claimant's claim to the goods. I accept the submission by Mr Pfeifer to that effect. I should say, the second claimant's particulars of claim in the instant matter and counsel's submission do not on any pan of legal scales amount to evidence required to prove second claimant's claim; neither do issues and papers filed in connected with r 42 of the rules of court. They are as extraneous as they are incapable of establishing sufficient and satisfactory proof of second claimant's claims to the attached goods.

[7] Based on these reasons, I hold that second claimant has not discharged the onus cast on it to prove its ownership of the attached goods.

[8] In the result, second claimant's claim fails; whereupon, I order as follows:

1. Second claimant and any person claiming under and through second claimant are barred as against the applicant and first claimant, from making claim on the attached goods.

2. Second claimant must pay the costs of:
  - (a) the first claimant; and
  - (b) the applicant.
3. The matter is considered finalized and is removed from the roll.

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C PARKER  
Acting Judge

## APPEARANCES:

APPLICANT: No Appearance

1<sup>st</sup> CLAIMANT: W.H. PFEIFFER  
Of Behrens & Pfeiffer Attorneys, Windhoek

2<sup>nd</sup> CLAIMANT: Mr G KASPER  
Of Murorua Kurtz Kasper Inc, Windhoek