



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No.: I 2097/2014

In the matter between:

THE ACTING DEPUTY SHERIFF OF SWAKOPMUND

APPLICANT

and

RIISTO MEDGAR KADHILA

1ST CLAIMANT

BERTHA INODHIMBWANDJE KADHILA

2ND CLAIMANT

Neutral citation: *The Acting Deputy Sheriff of Swakopmund v Kadhila* (I 2097/2014) [2021] NAHCMD 484 (21 October 2021)

Coram: PARKER AJ

Heard: 8 October 2021

Delivered: 21 October 2021

Flynote: Practice – Interpleader – Guidelines for conduct of Interpleader proceedings – Attached motor vehicle in possession of execution debtor – First claimant who claims ownership of the motor vehicle attached in execution of the judgment bears the onus of proving his ownership of the motor vehicle.

Held: The fact that a motor vehicle is registered in the name of a particular person in terms of the Roads Traffic and Transport Act 22 of 1999 and the regulations made

thereunder does not necessarily take away the right of ownership in terms of the common law.

Summary: Practice – Interpleader – Guidelines for conduct of Interpleader proceedings set out – Applicant attached motor vehicle in execution of judgment in favour of plaintiffs – Motor vehicle was in possession of second claimant, the execution debtor – First claimant claiming motor vehicle purchased by second claimant as gift to him – Motor vehicle registered in first claimant’s name in terms of Act 22 of 1999 and regulations made thereunder – Court finding first claimant has not placed sufficient and satisfactory evidence tending to prove his claim – Court finding that the fact of the registration was not enough to rebut common law principle of ownership as second claimant bought the motor vehicle and the vehicle was found in her possession – Court rejecting claim that vehicle bought as a gift to first claimant – Court dismissing first claimant’s claim.

ORDER

1. First claimant and any persons claiming under and through first claimant are barred as against the applicant and the execution creditors from making any claim on the attached motor vehicle, namely, Ford Figo.
2. First claimant shall pay the costs of the applicant.
3. The matter is considered finalized and is removed from the roll.

JUDGMENT

PARKER AJ:

[1] The neat question that presents itself is whether the claimants have proved their respective ownership of the goods attached for execution by the deputy sheriff, being a Ford Figo motor vehicle. In that regard, the guidelines for the determination of interpleader disputes were authoritatively set out by Van Niekerk J 10 years ago in

Deputy Sheriff of Tsumeb v Koch and Another 2011 (1) NR 202 (HC). *Koch and Another* settled the applicable principles; and it has been followed by the court in numerous cases.

[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 summarized those guidelines concisely thus:

‘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] In the very recent case of *The Acting Deputy Sheriff of Windhoek v Hasse and Another* NAHCMD 269 (1 June 2021) I said:

‘*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] Applying the *Minnesota Trading Enterprises Group CC and Others* summarized guidelines, I find that in the instant matter, the execution creditors, represented in the instant proceedings by Ms Angula, are Raim Ndapewa Naanda and Irma Ndatega Naanda. They are the litigating parties who in execution of a judgment in their favour has had the goods, a motor vehicle, namely, a Ford Figo, attached, which is with the execution debtor, who is the second claimant in the instant matter; and a third party, ie the first claimant, represented by Mr Hamunyela, claims the goods (ie the Ford Figo) as his property; then that party is burdened with the onus throughout to prove his claim to the motor vehicle. The reason is that first claimant is a claimant of the motor vehicle; and, what is more, because of the presumption of ownership which flows from possession.

[5] It follows that the burden of the court is to determine whether first claimant has proved his ownership of the attached motor vehicle. (*Minnesota Trading Enterprise Group CC and Others*) In sum, the question to be determined by the court is whether first claimant has placed before the court sufficient and satisfactory proof of his ownership of the motor vehicle attached by the applicant.

[6] The grounds on which first claimant relies to prove his ownership of the motor vehicle are these: (a) the motor vehicle was purchased on or about 9 April 2019 by second claimant; (b) on May 2019 the motor vehicle was registered in the name of first claimant; and (c) second claimant avers she purchased the motor vehicle for first claimant as a gift.

[7] I find that these three items, namely, item (a), item (b) and item (c) in para 6 above do not separately or cumulatively constitute sufficient and satisfactory evidence capable of rebutting the presumption of ownership which flows from possession. The motor vehicle was found in second defendant's possession in Swakopmund. Second claimant who paid for the *merx* (ie the motor vehicle) is therefore the owner of the motor vehicle at common law. It is possible to have a motor vehicle registered in X's name but ownership thereof vesting in Y (*Standard Bank of Namibia Ltd, Stannic Division v Able Trading (Pty) Ltd and Another* 2003 NR 183 (HC) at 188E)

[8] Thus, the fact that a vehicle is registered in the name of a particular person in terms of the Road Traffic and Transport Act 22 of 1999 and the regulations made thereunder does not necessarily take away the right of ownership in terms of the common law. (*Uvanga v Steenkamp and Others* 2016 (2) NR 465 (HC)) In the instant matter second claimant bought and paid for the motor vehicle; and it was found in her possession at a place (Swakopmund), where she lived and worked as a teacher, which is some 353 km away from where first claimant resided (Windhoek), as Ms Angula submitted.

[9] I conclude that first claimant has failed to prove his ownership of the motor vehicle. Mr Hamunyela relies on a judgment of the court to support the averment that second claimant was the owner of the motor vehicle. The case is *The Deputy Sheriff of Swakopmund v Marina Toyota CC and Another* 2012 (1) NR 321 (HC). With respect, I should say, counsel misreads *Marina Toyota CC and Another*. There, the second claimant, being the judgment creditor, lay claim to a Motor vehicle. Second claimant did not dispute first claimant's ownership of the motor vehicle but sought to rely on estoppel to prevent first claimant vindicating the motor vehicle. That case is therefore plainly distinguishable on the facts. That case is of no assistance on the point under consideration.

[10] The foregoing findings and conclusions are unaffected by the apparent non-compliance with rule 113 (7), (8) and (9) of the rules of court by first claimant. The court is able to determine the matter on the papers filed of record.

[11] Based on these reasons, I hold that first claimant has not discharged the onus cast on him to prove his ownership of the attached motor vehicle. Consequently, first claimant's claim fails; whereupon, I order as follows:

1. First claimant and any persons claiming under and through first claimant are barred as against the applicant and the execution creditors from making any claim on the attached motor vehicle, namely, Ford Figo.
2. First claimant shall pay the costs of the applicant.
3. The matter is considered finalized and is removed from the roll.

C PARKER
Acting Judge

APPEARANCES:

APPLICANT: No appearance

1st CLAIMANT: H Hamunyela
Of Andreas and Hamunyela Legal Practitioners,
Windhoek

2nd CLAIMANT: No appearance

EXECUTION CREDITORS K Angula
Of Angula & Co Inc., Windhoek