



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

JUDGMENT

Case no: C80/2016

Not Reportable

In the matter between:

**SHERIFF OF THE HIGH COURT
FOR THE DISTRICT OF BELVILLE**

First Applicant

and

**BEULA LORRAINE HAYWOOD
TEBINKOSI ELLIOT NQUMA
SOUTH AFRICAN SECURITY COMPANIES
ASSOCIATION**

**Second Applicant
Claimant**

Respondent

Heard: 23 June 2016

Delivered: 27 October 2016

JUDGMENT

RABKIN-NAICKER, J

- [1] The citation of the parties by the applicant in this matter is novel. In this judgment I refer to the citation of 'second applicant' as the 'first claimant', and that of 'claimant' as the 'second claimant'. Further, the Sheriff has not made mention of the close corporation of which the second claimant is sole member in his citations. This interpleader came before Van Niekerk J on the 24 April 2016 when he ordered that the matter be postponed until the 23 June 2016, in order for the first claimant (Haywood) to file answering papers and for replying papers to be filed on behalf of the second claimant (Nquma). Costs for that day were reserved. The issue of citations was not raised in the proceedings before court by the parties or by Van Niekerk J.
- [2] It was averred by Nquma in an affidavit dated 28 January 2016 that all items in the Sheriff's inventory belong to Ilizwe Armed Security CC of which he is the sole member. He further avers that the address where the applicant Sheriff attached the goods, pursuant to a warrant issued out of this court under case number C80/2016, is the address where the close corporation's offices are situated.
- [3] Nquma avers that ownership of 5 of the 13 items attached cannot be substantiated by vouchers. Vouchers are attached to his affidavit in respect of the remaining goods. The reason given for his failure to attach vouchers for 5 of the items is that the said items were brought more than 10 years ago; and that he has moved premises and changed accountants since they were purchased. He claims that all of the goods listed are the property of Ilizwe Armed Services CC which is a

separate entity from the respondent, the erstwhile employer of Haywood, the South African Security Companies Association.

[4] The answering affidavit deposed to by Haywood reads as follows:

“The employer failed to follow due process by applying for rescission or review of the said award under the abovementioned case number, within the prescribed timeframes as allowed for in law.

Only once the goods were removed, did the employer approach the “umpteenth” attorney for further assistance. The employers have not given any legal basis for their failure to pay, after making numerous promises to pay commitments.

During my employment and in dealing with invoices and payment, the employer never separated the individual Tembinkosi Elliot Nquma from Sasca and vice versa.

The goods attached and removed are the property of SASCA and all instructions regarding payments, orders and corporate decisions were given and taken by Tembinkosi Elliot Nquma.

The 2nd Applicant humbly submits and pray that the court remove the corporate veil that the claimant is using to frustrate the process, and grant the award plus cost and interest as per the filed CCMA arbitration award.”

[5] In reply, Nkutha stresses that Haywood does not challenge any of the annexures to his affidavit which prove ownership of the certain of the goods but merely provides the court with a bold statement that the removed goods are the property of the respondent employer. It is apparent from an annexure to Haywood’s affidavit that the respondent is a non-profit organization formed inter alia to unite and promote security employers who have been previously disadvantaged and that Ilizwe Security Services is a member of the Association.

[6] The first claimant's answering papers amount to a bald denial of the second claimant's claim to ownership, and do not raise any real dispute of fact ¹in relation to ownership of the goods attached. On this basis I find that the second claimant, Nkutha has discharged the onus of proof² that the attached goods belong to Ilizwe Armed Security Services CC, of which he is the sole member. I do not consider it apposite to order any costs in this matter, given that the first claimant is an employee seeking to execute on an arbitration award in her favour.

[7] I therefore make the following declaratory order:

Order

1. The goods attached by the Applicant Sheriff are the property of Ilizwe Armed Security Services CC (registration number 2001/036657/23) of which Teminkosi Elliot Nquma is the sole member.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

First Claimant: In person

Second Claimant: Mirah Ranchod Associates

¹Soffianti v Mould 1956 (4) SA 150 (E)

² The onus is on the interpleader claimant in interpleader proceedings see Gillett v Pickard and Another, 1927 AD at p. 158; Sogadi v Sutton Bros., 1931 (1) P.H. J. 3; Persotam v Minty, 1943 T.P.D. at p. 372; Hulumbe v Jussob, 1927 T.P.D. at pp. 1008, 1011.

H. Rabkin-Naicker

Judge of the Labour Court

Appearances:

Applicant: JA Nortje instructed by Heidi van der Meulen Attorneys

Respondents: T.J Golden S.C. instructed by State Attorney