

IN THE HIGH COURT OF MALAWI
COMMERCIAL DIVISION
LILONGWE DISTRICT REGISTRY
COMMERCIAL CASE NO. 43 OF 2018

BETWEEN:

PEERD SOUTH AFRICA (PTY) LTD.....ENFORCEMENT CREDITOR
-AND-
NT SHOP.....ENFORCEMENT DEBTOR
NTC INVESTMENTS.....INTERPLEADER

CORAM: HON. JUSTICE DR. C.J. KACHALE, Judge

Chilenga, of Counsel for the Enforcement Creditor

Mwawa, of Counsel for the Interpleader

Nanga, Court Clerk

RULING ON INTERPLEADER SUMMONS

(Under section 20 of the Sheriff's Act)

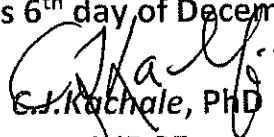
1. Through a Notice filed on 20th May 2022 the Sheriff of Malawi requested Peerd South Africa (Pty) Ltd (the Enforcement Creditor), NT Shop (the Enforcement Debtor) and NTC Investment (the Interpleader) to appear before the Court and state the nature and particulars of their respective claims to the goods seized by the Assistant Sheriff which are believed to belong to the Enforcement Debtor who (according to the Notice) merely disguised themselves as NTC Investments.
2. Under the scheme of the law in section 20 of the Sheriff's Act upon which the Notice of 20th May 2022 was issued, the onus has been placed on NTC Investments to show that they are not a mere disguise of the judgment-debtor on whose debt the execution was carried out.
3. The essence of the claim of NTC Investments is that the order was executed on the wrong party: while not disputing that NT Shop used to occupy the same premises from where NTC Investments currently conducts its business, it has

been proposed that these are two distinct entities, and it is therefore wrongful to seize goods of the former in satisfaction of the latter's judgment debt. Proof of registration of business name as well as tenancy agreements in the name of NTC Investments have been produced to prove this distinction.

4. In response Peerd South Africa (Pty) Ltd vehemently contests the assertions of NTC Investments; it is their position that the latter has been created to evade justice and yet represents the same interests at the judgment debtor. In order to support that assertion, the judgment-creditor has pointed out the possession of otherwise private correspondence between the judgment-debtor and Malawi Revenue Authority which NTC Investments has access to as evidence of the intimate link between these two entities.
5. In addition, there is proof that NTC Investments were in occupation of the same premises at the time the action commenced, and that the sales receipt issued on 23rd May 2017 identified NT Shop as occupants of the premises on which the seizure and sale order was executed. On a close analysis of the totality of the evidence the Court is not satisfied that the purported distinction between NT Shop and NTC Investments is genuine in reality.
6. Rather, it is the specific finding of the Court that NT Shop and NTC Investments are in collusion to defeat the ends of justice: the interests of the two are so closely linked as evidenced by the access of one to the correspondence between one with the tax authorities. One would not expect such private correspondence to fall into the hands of an entirely independent entity, unless there was some close link.
7. The result is that the action of the Sheriff to seize the property in the shop is lawful and has been hereby upheld as legitimate enforcement action in satisfaction of the judgment debt herein. The claim of NTC Investments to the property seized is hereby dismissed as being founded on a fraudulent attempt to undermine the effective workings of our judicial processes. That kind of unconscionable conduct should not be condoned and is strongly censured by this Court. Costs of the present proceedings are for the judgment-creditor.

Order accordingly.

Made in Chambers this 6th day of December 2022 at Lilongwe.


S.J. Kachale, PhD
JUDGE