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MALAWI GOVERNMENT  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 11 OF 2015

BETWEEN:

RUBI SULEMAN..... PLAINTIFF

AND

RAHIM NGWALI.....FIRST DEFENDANT

AND

PRIME INSURANCE COMPANY LIMITED.....SECOND DEFENDANT

(MWANASHA JAMALI NGWALI.....CLAIMANT)

CLAIM OF PROPERTY SEIZED BY THE SHERIFF

Coram Honourable Justice Jack N'riva  
Mr Tchaka Nkuna counsel for the claimant  
Counsel for the first plaintiff not present  
Mrs D Nkangala Court Clerk

RULING

BACKGROUND AND ASSERTIONS TO THE APPLICATION

On 20<sup>th</sup> March 2019 the Sheriff of Malawi seized a maize mill and sheller at Bangula Trading Centre in an attempt to enforce a judgment of the court in the present cause against the first defendant. Pursuant to section 20 of the Sheriff's Act, Mwanasha Jamali Ngwali, the claimant, gave notice to the Sheriff of Malawi for claiming an interest in the maize mill and sheller. Pursuant to the notice, the Sheriff of Malawi caused to be issued sheriff's interpleader summons for the court to adjudicate upon the claim. In her sworn statement in support of her claim for the maize mill and sheller

the claimant states that she is one of the widows of Usseni Ngwali (deceased) who died intestate on 22<sup>nd</sup> September, 2010 at his home at Chisambo Village, T/A Mbenje, Nsanje at the age of 92 years and that she is one of the beneficiaries of the estate of the said Usseni Ngwali (deceased).

She further suggests that her late husband had four wives. At his death he was survived by four wives, sixteen children and some grand children. The family was divided into four groups in the line of the four wives. Each group had under its care property which without any formality, was considered to belong to that group.

At the time of his death the claimant of property headed the third family composed of herself, and her four children Madani Ngwali, Sekani Ngwali, Rahim Ngwali and Fatima Ngwali. Therefore, she testified that her late husband left in her control one shop at Bangula Trading Centre, one dwelling house at Bangula Trading Centre and one maize mill and sheller at Bangula Trading Centre.

She states that sometime in 2018 the Sheriff of Malawi visited her business place at Bangula where he attempted to seize the maize mill and Sheller in enforcement of the judgment of the court aforesaid but she through her children protested as the maize mill and sheller did not belong to the first defendant. The Sheriff of Malawi returned without seizing the maize mill though he ended up arresting her two children Madani Ngwali and the first defendant for conduct likely to cause a breach of peace.

She said her late husband, at the time of his death, also left over 400 heads of cattle which were distributed among the children as their share of the deceased estate. There is no one who has taken out letters of administration for a formal and legal distribution of the estate.

Her child, the first defendant, is an adult with a family and is not dependent on her for support. Further, the minibas, the subject of the court's judgment for which the evidence of of the judgement arose, belonged to him and she had nothing to do with it.

The maize mill and Sheller which the Sheriff of Malawi seized belong to her and is ran on her behalf by her son Madani Ngwali and is the only source of her income.

The maize mill and sheller are still in the name of her late husband and all the taxes are still paid in this name as evidenced by the various receipts which she attached to her sworn statement.

She further states that the seizure of her maize mill and sheller has left her destitute and she has suffered damages as these were her source of income and were giving her a net average income of K24, 000 per day as evidenced by a record of her income



from the maize mill and sheller for the months of January 2019, February 2019 and March 2019 attached to her sworn statement.

She has two employees, a miller and a sheller who are on respective monthly salaries.

By close of business on 30<sup>th</sup> September 2019 she would have lost income amounting to K3, 690, 000 representing 164 milling days excluding Sundays.

In his sworn statement in opposition to the claimant's claim of the maize mill and sheller the plaintiff starts by disputing the assertion that the claimant had four children as alleged in the sworn statement in support of the claim of property adding that the mother of the children died and that at the time of her death she was divorced by the deceased. The plaintiff alleged that upon the death of the deceased his four wives and the children shared the property of the deceased.

He alleges that the first defendant got two maize mills at Bangula one of which was seized by the sheriff and is subject of the interpleader summons. He also claims that the claimant has her own maize mill at Phokera. He describes the claim that the maize mill and sheller belong to her as a contortion of the story made to defeat the course of justice.

The plaintiff further argues that if it is accepted that the maize mill and sheller do not belong to the first defendant then legally the same belongs to the estate of Usseni Ngwali (deceased) and that it is only the administrator of his estate who can claim the same and not the claimant.

In reply through a sworn statement the claimant agrees that the four children including the first defendant are not her biological children but her step children raised by her from their tender ages following the divorce and subsequent death of their mother hence she considers and refers to them as her children.

She reiterates that following the death of her late husband there has been no formal distributions of the deceased's property save for the heads of cattle. She further contends that it has been 9 years now since the death of her late husband and the children have moved on acquiring their own properties. The maize mill and sheller seized by the sheriff are part of the property left under her care at the time of her late husband's death and before the seizure were ran on behalf of her family by her step son Madani Ngwali.

#### ISSUE FOR DETERMINATION

I have to decide whether the property the Sheriff intended to seize belongs to the claimant, or, as the plaintiff suggests, to the first defendant.

#### THE LAW

Section 20 of the Sheriffs Act provides as follows: -

- (1) If a person (hereinafter in this section referred to as the claimant) claims any movable property seized in execution under any process, or the proceeds or value thereof, he shall first give notice in writing thereof to the Sheriff in such form, if any, as may be prescribed. The Sheriff shall thereupon serve copies of such notice in the manner prescribed for the service of any document of the court out of which the process issued upon the execution creditor and upon any other person he considers to be interested in the property.
- (2) The Sheriff shall hold the property claimed for 14 days from the date upon which the last person was served with a copy of the claim under subsection (1) and if such claim is not disputed by any of the persons upon whom copies of the claimant's notice have been so served within such 14 days the Sheriff may deliver the property in question to the claimant.
- (3) If the claimant's claim is disputed, the person disputing it shall give notice in writing in such form, if any, as may be prescribed to the Sheriff, who shall forthwith apply to the court from which the process was issued and such court shall issue a summons calling before the court the party at whose instance the process issued and the claimant.
- (4) Upon the issue of the summons, any action brought in any court in respect of the claim or of any damage arising out of the execution of the warrant shall be stayed.
- (5) On the hearing of the summons, the court shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the Sheriff upon any claim to damages arising or capable of arising out of the execution of the warrant by the Sheriff, and shall make such order in respect of any such claim and the costs of the proceedings as it thinks fit.

In an inter-pleader action, the action is taken by a person claiming to be the rightful owner of property that has been seized by the sheriff in due execution of process to satisfy judgement debts of another.

It is important for the claimant to satisfy the court that the goods seized are his or her own and not of the judgement debtor or that he owns part of the goods seized. In the case of *Tarmahomed and Tarmahomed and Company v Mlenga* 9 MLR 454, the sheriff of Malawi interpleaded in the proceedings between the parties and sought determination of the question whether one party could levy execution on the other's property. Villiera, J as he then was held that the defendant would not be allowed to levy execution on the plaintiff's property, since the Sheriff's Act (cap: 3:05) provided



that only the property of the judgement debtor could be seized and sold to enforce payment and the plaintiffs were not such a debtor:

‘It is, I think, clear from the provisions of the Sheriff’s Act (Cap 3:05) that execution can only be levied on the judgement debtor’s property. Section 6(2) of the Act provides as follows: -

“The court on application in the prescribed manner of the judgement creditor shall cause to be issued a warrant of seizure and sell the moveable property of the judgement debtor whenever it may be found in Malawi to enforce payment of the amount due under judgement and the costs of the execution.””

### ANALYSIS OF THE ARGUMENTS

From the assertions by the claimant, it appears to me that the maize mill and sheller that the Sheriff of Malawi confiscated at the instance of the plaintiff is part of the intestate property. It is also clear that there is no administrator of the intestate and that after the death of the deceased and because of the nature of the family of the deceased the beneficiaries of the interstate proceeded to leave their lives in the manner the deceased had left them.

The evidence of the plaintiff, in my judgment, hardly establishes that the property in dispute belonged to the first defendant.

Therefore, one cannot be heard to assert that the maize mill and sheller was property of the first defendant for the Sheriff of Malawi to seize in respect of a judgment debt incurred by the said defendant.

It might be argued that the first defendant as a child of the deceased has a beneficial interest in the maize mill and sheller. However, the evidence of the plaintiff hardly established the extent of such the first defendant’s interest in the property. That evidence is at large.

Likewise, the plaintiff argued that in any event, the property in question belonged to the deceased estate. However, I fail to appreciate how that makes it apt that that property can be subject to enforcement of judgment liability for the first defendant in this case.

Counsel for the claimant made reference to the law on inheritance of intestate. I wish not repeat the law and the arguments. Suffice to say that no principle under the law would entitle seizure of the property in respect of a debt incurred by the first defendant.

In contrast, the claimant has demonstrated that the maize mill and the sheller are her only source of income.

### DISPOSAL

In the light of all this, my finding is that the property in dispute belongs to the claimant, and that it cannot be subject to seizure in respect to the judgment credit in this matter.

### COSTS

I am inclined to make an order of costs to the claimant. The plaintiff opposed the claimant's application. Yet he did not attend the hearing. His legal representative appeared at a later time. I advised counsel that counsel for the claimant had sought to provide a submission on the matter. I thought counsel for the plaintiff would also have filed his submissions. From that moment, the plaintiff took no further steps.

For that reason, I award the claimants costs of this hearing, to be met by the plaintiff.

Made the 15<sup>th</sup> day of November, 2019



J N'RIVA  
JUDGE