

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE, PORT ELIZABETH**

**Case no: 3312/2011
Date heard: 26.4.2012
Date delivered: 26.2.2013**

In the matter between:

**THE SHERIFF OF THE HIGH COURT,
HUMANSDORP**

Applicant

vs

FIRSTRAND BANK LIMITED

First Claimant

BAREND CHRISTOFFEL VAN VUUREN

Second Claimant

DANIEL JACOBUS VOSLOO

Third Claimant

ANNA MAGDALENE VOSLOO

Fourth Claimant

BAREN CHRISTOFFEL VAN VUUREN

Fifth Claimant

JUDGMENT

TSHIKI J:

[1] In this matter Firstrand Bank Limited, the first claimant, instituted action against the second to fourth claimants jointly and severally for the payment of a sum of R913 294,95. On 23rd November 2010, the first claimant, as plaintiff in such proceedings, obtained summary judgment against the second to fourth claimants for the payment of the sum of R913 294,95 plus costs on the scale as between attorney and client.

[2] The applicant herein, being the Sheriff of the District of Humansdorp executed the writ of execution which was authorised by this Court in execution of the summary judgment by attaching the goods or property that is the subject of these interpleader proceedings. When the applicant herein executed the writ he attached property that he found in second claimant's premises to the value of R12 820,00 which property is being claimed by one Mr Vincent Van Vuuren and his brother Mr Regardt Van Vuuren as their property.

[3] In response to the attachment, second claimant deposed to an affidavit stating that he was not the owner of the attached goods. Upon the first claimant's refusal to admit the second claimant's claim the Sheriff instituted the interpleader proceedings in terms of Rule 58(1) calling upon the claimants to deliver particulars of their claim. The time frames that were set by the Sheriff were not observed by the correct claimants herein, however, they ultimately complied and after their delay had been condoned by this Court, somewhat surprisingly, the parties decided to argue the interpleader proceedings before me on 26th April 2012 when judgment was reserved. When the claim was argued the actual claimants had not yet appeared in the list of claimants and only their particulars of claim were filed.

[4] During argument, Ms Bands appeared for the first claimant and Mr Naidu represented the claimants other than the first claimant, that is Mr Vincent Van Vuuren and his brother Mr Regardt Van Vuuren.

[5] Interpleader proceedings, are governed by Rule 58 (1-7) which reads as follows:

“Interpleader

- 58(1) Where any person, in this rule called ‘the applicant’, alleges that he is under any liability in respect of which he is or expects to be sued by two or more parties making adverse claims, in this rule referred to as ‘the claimants’, in respect thereto, the applicant may deliver a notice, in terms of this rule called in ‘interpleader notice’, to the claimants. In regard to conflicting claims with respect to property attached in execution, the deputy-sheriff shall have the rights to an applicant and an execution creditor shall have the rights of a claimant.
- (2)(a) Where the claims relate to money the applicant shall be required, on delivering the notice mentioned in sub-rule (1) hereof, to pay the money to the registrar who shall hold it until the conflicting claims have been decided.
- (b) Where the claims relate to a thing capable of delivery the applicant shall tender the subject-matter to the registrar when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the registrar may direct.
- (c) Where the conflicting claims relate to immovable property the applicant shall place the title deeds thereof, if available to him, in the possession of the registrar when delivering the interpleader notice and shall at the same time hand to the registrar an undertaking to sign all documents necessary to effect transfer of such immovable property in accordance with any order which the court may make or any agreement of the claims.
- (3) The interpleader notice shall –
- (a) state the nature of the liability, property or claim which is the subject-matter of the dispute;
- (b) call upon the claimants within the time stated in the notice, not being less than fourteen days from the date of service thereof, to deliver particulars of their claims; and
- (c) state that upon a further date, not being less than fourteen days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his liability or the validity of the respective claims.
- (4) There shall be delivered together with the interpleader notice an affidavit by the applicant stating that -

- (a) he claims no interest in the subject-matter in dispute other than for charges and costs;
 - (b) he does not collude with any of the claimants;
 - (c) he is willing to deal with or act in regard to the subject-matter of the dispute as the court may direct.
- (5) If a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject-matter of the dispute.
- (6) If a claimant delivers particulars of his claim and appears before it, the court may –
- (a) then and there adjudicate upon such claim after hearing such evidence as it deems fit;
 - (b) order that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute *in lieu* of or in addition to the applicant;
 - (c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;
 - (d) if it considers that the matter is not a proper matter for relief by way of interpleader notice dismiss the application;
 - (e) make such order as to costs, and the expenses (if any) incurred by the applicant under paragraph (b) of sub-rule (2), as to it may seem meet.
- (7) If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court upon an application made by any other party to the action otherwise orders.”

[6] As already alluded to above, the attached goods worth R12 820,00 were in the possession of the second claimant, Mr Barend Christoffel Van Vuuren when they were attached. He, however, does not lay ownership claim to the property in issue,

but has entered the fray only on the grounds that this property was in his possession and within his premises when it was attached by the applicant.

[7] I fail to understand why the second claimant has elected to become one of the claimants in these proceedings. When the property in issue was attached by the Sheriff (applicant) the Sheriff became the legal possessor of the property for the benefit of the first claimant who is the judgment creditor in whose benefit the attachment was executed. If, therefore, another person decides to claim ownership of the attached goods, the Sheriff is obliged to deliver the property or money, in dispute, as the case may be, to the Registrar of the High Court who will hold it for delivery or payment to the successful claimant when the issue of the interpleader proceedings has been finalised in favour of the successful claimant (***Kamfer v Redhot Haulage (Pty) Ltd*** 1979 (3) SA 1149 (W) at 1152 c).

[8] Strictly speaking the second claimant is not a claimant to the property in issue. He was not supposed to have been listed as one of the claimants in the first place. The only people who can legally be regarded as claimants are the Van Vuuren brothers mentioned above. Where the property in question is held by the Sheriff, he or she has *locus standi vis-a-vis* the claimants to bring an interpleader application, which he has done herein, while the execution creditor has the rights of a claimant (***Bernstein v Visser*** 1934 (CPD) 270).

[9] The latest papers filed of record herein show that the people who can now legitimately lay claim of the attached property are Regardt Van Vuuren and Vincent Van Vuuren. In their particulars of claim the above two claimants both claim that the

attached goods were given to them by their parents, the second claimant and one Claressa Van Vuuren, save for the piano which Regardt Van Vuuren claim to have received as her tenth year birthday from his parents on 14 November 1996.

[10] This, therefore, means that the two claimants referred to above who have filed their Particulars of Claim in these proceedings should be reflected as claimants and this has not been done as the record does not indicate the two as the claimants in the proceedings.

[11] It follows, therefore, that when the matter was argued the correct claimants were not reflected in the record as claimants herein as is required by Rule 58(1). Moreover, from the evidence that appears from the record, I cannot make a finding on the ownership of the property. I say so because there are conflicting claims which cannot be determined on the papers before me. It would be prejudicial to the first claimant for me to proceed with these proceedings, as they are. There has been no proper handling of the matter by both counsel especially counsel for the new claimants. The correct claimant's names should have been reflected on the face of the filing notice and in all the papers herein. Instead the record shows names of irrelevant persons as claimants in particular Barend Christoffel Van Vuuren, Daniel Jacobus Vosloo and Anna Magdalene Vosloo.

[12] I am also of the view that if the parties intend to pursue this matter the proceedings would have to be referred for oral evidence on the basis that the issues cannot be resolved on paper. Therefore, the first claimant shall be referred to as the

plaintiff and the second and third claimants as the first and second defendants respectively. This is so if the first claimant still insists on its claim to the property.

[13] It is also unfortunate that in this matter the order has only been issued at this stage. When I was preparing my judgment in this case about August/September 2012, my vehicle was broken into and my briefcase containing the Court files inclusive of the one in issue was stolen. I requested the parties to reconstruct the Court file herein and they took a long time to do so. To make matters worse, Veritas, the transcribing company, transcribed the record that belongs to another case and the parties were unable to notice this error before they brought the incorrect record to me. When I picked up the error, I again returned the file to the parties for a transcription of the correct record which only reached my office on 29th January 2013. It is for the above reasons that this matter took so long to reach this stage. None of the parties herein was able to pick up the error of not reflecting the names of the correct claimants. I cannot, therefore, order any party to pay costs occasioned by the omission to pick up the error of reflecting the incorrect names of the claimants.

[14] For the above reasons, I make the following order:

[14.1] The applicant is ordered to remove the names of the second to fifth claimants herein and that they be substituted by the names of the first claimant as the plaintiff and Vincent Van Vuuren and Regardt Van Vuuren as first and second defendants respectively.

[14.2] If the first claimant is still interested in pursuing the claim, the matter is hereby referred for oral evidence to determine the ownership of the property which

forms the subject matter of these interpleader proceedings.

[14.3] There shall be no order as to costs.

P.W. TSHIKI
JUDGE OF THE HIGH COURT

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| Counsel for the applicant | : | No appearance |
| Counsel for the first claimant | : | Adv Bands |
| Instructed by | : | McWilliams & Elliot PORT ELIZABETH |
| Counsel for the second claimant | : | No appearance |
| Counsel for the third and fourth claimant | : | Mr Naidu |
| Instructed by | : | Legal Aid Board PORT ELIZABETH |
| Counsel for the fifth claimant | : | No appearance |