THE SHERIFF OF ZIMBABWE
versus
GLOATUS INVESTMENT (PVT) LTD
and
LANDOS FARM (PVT) LTD

THE HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 3 November, 2021 & 28 March, 2022

Opposed Matter

Ms A. Ingwani, for the applicant
Mr P.Nyakutombwa, for the claimant
Mr T Sena, Judgment Creditor

MANGOTA J: I heard this matter on 3 November 2021. I delivered an *ex tempore* judgment in which I dismissed the claim of the claimant with costs.

On 24 November 2021, the registrar of this court wrote a letter to me. He advised that the claimant appealed my decision. He requested me to furnish written reasons for the same. My reasons are these:

Following a judgment which the court entered for the judgment creditor on 12 May 2021 under HC 759/21, the latter instructed the applicant who is the sheriff for Zimbabwe to attach and take into execution the movable goods of the judgment debtor, namely Platinum Fuels Limited ("Platinum"). The sheriff attached such goods from Block B, First Floor, Smatsatsa Office Park, Borrowable, Harare. He did so on 23 June, 2021 in the presence of one Nobuhle Sibanda ("Nobuhle").

The attached goods constitute the claimant's cause of action. It alleges that the goods do not belong to the judgment debtor. It asserts that the same belong to it. It, on 25 June 2021, filed an affidavit which supports its claim.

The judgment creditor filed its notice of opposition on 25 August 2021 and, on its receipt of the said notice, the claimant filed its notice of opposition on 16 September 2021. It erroneously refers to it as its answering affidavit. It, however, stated at page 122 of the record that it was its

opposing affidavit to issues which the judgment creditor raised in its opposing and supplementary affidavit *(sic).*

The issue of supplementary affidavits of the claimant and the judgment creditor calls for comment as well as elucidation. It should be addressed in such a manner that none of the parties is allowed to remain in doubt as to the correct position of the matter.

I mention, in passing, that interpleader proceedings, such as what the parties placed before me, are in no way different from ordinary opposed applications. The only difference is that, once the judgment creditor has filed his opposing affidavit to the claim of the claimant, the latter does not, unlike in an ordinary opposed application wherein the applicant files an answering affidavit, file an answering affidavit. He files an opposing affidavit. This serves as an answer to the judgment creditor's opposing affidavit. His filing of that affidavit closes the pleadings of the parties as a result of which they both file their respective Heads, and in the process, allow the claimant, or where he fails to do so, the judgment creditor, to set the interpleader proceedings down for hearing.

No further affidavits may be filed after the abovementioned stage has been reached. Any party which intends to file such further affidavit(s) can only do so after he has obtained leave of the court or a judge to so file. Sub-rule (12) of Rule 59 of the High Court Rules, 2021 is relevant in the mentioned regard. It prohibits filing of further affidavit(s) by any party except with leave of the court or a judge. The leave, it stands to reason, is only granted on a proper application for the same with cogent reasons which justify the filing of the further affidavit(s).

It follows from the above-stated matter that the supplementary affidavit which the judgment creditor filed on 26 August, 2021 (page 91 of the record) cannot carry any weight. It is improperly filed. It violates Rule 59 (12) of the High Court Rules, 2021. This is *a fortiori* the case given the statement of the judgment creditor which asserts, in paragraph 3 of the impugned affidavit, that it would, at the hearing of the matter, seek leave for the admission of the supplementary affidavit. The correct position of the matter is that it sought no such leave. The stated position renders its supplementary affidavit ineffectual as it is outside the record of proceedings. It is, for the avoidance of doubt, expunged from the record.

Equally improperly filed is what the claimant refers to as its answering affidavit to issues raised in the judgment creditor's opposing affidavit. The affidavit appears at page 121 of the

record. It is of no legal force or effect. It violates sub-rule (12) of Rule 59 of the rules of court. It cannot remain filed of record. It is similarly expunged from the record.

It is disquieting to know that the claimant and the judgment creditor both of whom were/are ably legally represented went out of their way to outdo each other in their effort to file documents which they knew would not add any value to their respective cases. Litigants are advised that it is not the quantity of the material which they file which matters in any given case. They should know that only qualitative quantity makes the requisite difference in any litigation which parties place before the court. It is, in short, a waste of the litigant's time, effort and energy for him to file process which he knows will not assist in the resolution of his dispute with his adversary. It is also a complete waste of the time of the court which, as is known, operates on a very tight schedule.

Because legal practitioners are, more often than not, to blame for the above-mentioned misdemeanor, the court will, in future, not hesitate to express its displeasure by visiting these with costs and, in some serious cases, punitive ones. Such a measure will, it is hoped, instil some sense of sanity in the rank and file of this group of learned persons so that they put a stop to this unnecessary conduct in the interest of the attainment of real and substantial justice.

Interpleader proceedings are interlocutory in nature. They are, if a comparison may be favoured, a tag of war between the judgment creditor and the claimant. The proceedings arise following attachment of goods-movable or immovable- by the judgment creditor who believes, on reasonable grounds, that the same belong to the judgment debtor against whom he has obtained judgment. The claim of the claimant to the goods brings out a live issue between the judgment creditor, on the one hand, and the claimant, on the other.

Because he asserts his claim to the goods, the claimant bears the *onus* to prove his ownership, and not possession, of the goods. He does so following the trite position of the law which states that he who alleges must prove: *ZIMASCO* v *Chizema*, SC 38/07. The claimant must, in other words, prove on a balance of probabilities, that the property which is the subject of his dispute with the judgment creditor is his or hers….: *The Sheriff of the High Court* v *Mayaya & Ors*, HH 494/15. He must, in other words, show proof of ownership of the goods for him to succeed: *The Sheriff of the High Court* v *Nomvuyo Hilary Madziyo & Others*, HH 670/15.

Proof of ownership does not refer to the claimant's affidavit alone. Such is not sufficient for him to discharge the *onus* which rests upon him. It refers to that affidavit and such other

evidence as will tip the scales in his favour for the court to remain satisfied that he has discharged the burden of proof on a preponderance of probability. Production of receipts by the claimant, for instance, evinces the clear impression that he acquired the goods through the contract of purchase and sale. A written agreement of sale is one such example of proof. It shows that he got the property from the seller. Such weighs more heavily in his favour than otherwise where he is able to produce proof of payment of the property. Another example is where the claimant has the goods insured in his name. The list of examples of proof of ownership goes on without any limitation.

Proof of ownership becomes a very serious matter for the claimant where, as *in casu*, the judgment debtor and him once lived under the same roof. The need on his part to prove that the goods which the sheriff attached are his, are separate and different from those of the judgment debtor becomes very imperative under the stated set of circumstances. The claimant must, therefore, make every effort to obliterate from the mind of the court and that of the judgment creditor any semblance of collusion existing between the judgment debtor and him. He obliterates the semblance when he produces concrete documentary evidence which establishes his ownership of the goods to the total exclusion of the judgment debtor. Where he fails to produce such evidence, his case remains hanging in the balance, so to speak. His success to the claim may not, therefore, be guaranteed under such circumstances.

The statement of the claimant is that Platinum and it operated from Block B, First Floor, Smatsatsa Office Park, Borrowdale, Harare ("the premises") for three consecutive months. The two legal entities, it asserts, shared the same premises during the period which extended from March 2021 to May 2021. Platinum, it alleges, intended to enter into a partnership agreement with it. The stated matter, it avers, caused the two companies to operate from under one and the same roof. It alleges that, during the three-month period of assessment, it discovered that a partnership could not be concluded between them as a result of which Platinum left its premises in May, 2021 going to a destination which is unknown to it. Platinum, it avers, left behind at the premises 6 desks, postures, pictures, signage, stationary and some banner.

The judgment creditor points at collusion existing between the claimant and Platinum. It asserts that its legal practitioners advised it that:

i) In June 2021, Nobuhle to whom it refers as Platinum's company secretary phoned and advised its legal practitioners that one Shingi Munyeza ("Munyeza") was requesting a dialogue with them for, and on behalf of, Platinum;
ii) its legal practitioners met Munyeza but their meeting yielded no meaningful result;
iii) the goods were attached in the presence of Nobuhle;
iv) the claimant produced no evidence to show that Platinum left the premises from which the goods were attached;
v) the claimant does not mention the date that Platinum left the premises, if it did;
vi) the claimant produced no evidence which shows that it occupies the premises;
vii) platinum's Facebook, as gleaned from Annexure 7 which it attached to its notice of opposition, page 82 of the record, shows that, as late as 9 July 2021. Platinum still occupied the premises.

The claimant, unfortunately for it, did not address its mind to the fact that, once it instituted interpleader proceedings as it did, the judgment creditor would most likely respond to its claim. It, uncharacteristically, filed its notice of opposition before the judgment creditor filed its notice of opposition. It filed its notice on 21 July 2021 which was one whole month before the judgment creditor filed its notice of opposition. This was filed on 25 August, 2021. It, accordingly, could not and did not rebut the issues which the judgment creditor raised.

The matters which the judgment creditor raised in its opposing papers are critical to the resolution of this case. They cry out for answers from the claimant which, following its receipt of the judgment creditor's notice of opposition, sought to address them through what it referred to as its answering affidavit to issues raised in the judgment creditor's opposing and supplementary affidavit (*sic).* Its effort in the mentioned regard would have been well rewarded if it followed the correct procedure. However, its procedure of filing the answering affidavit irregularly in violation of the rules of court places the blame on no one else but on the claimant itself. Nothing prevented it from following the correct procedure which is laid down in the rules of court to introduce its further affidavit which, in its correct view, would have rebutted the allegations which the judgment creditor raised in its notice of opposition.

As matters stand currently, the issues which the judgment creditor raised in its opposing papers remain unchallenged. The long and short of the observed matter is that the issues which the

judgment creditor raised are regarded as having been admitted. That view is *in sync* with the trite position of the law which is that what is not denied in affidavits must be taken to be admitted: *Fawcett Security Operations* v *Director of Customs & Excise*, 1993 (2) ZLR 121 (SC); *DD Transport (Pvt) Ltd* v *Abbot*, 1988 (2) ZLR 92; *Remo Investment Brokers (Pvt) Ltd* v *Securities Commission of Zimbabwe*, SC 13/13.

It follows, from the above-stated matter, that the assertion of the judgment creditor which is to the effect that Platinum and the claimant are colluding between them with a view to frustrating the execution process it instituted cannot be said to be without merit. Equally with merit is its statement which is to the effect that Nobuhle is Platinum's company secretary. The statement, it stands to reason, should not be read in isolation. It should be read in its clear and unambiguous context which the claimant did not challenge. The context is that:

a) Nobuhle received the summons and declaration which the judgment creditor served upon Platinum at the latter's business premises on 14 April, 2021. Reference is made in this regard to Annexure 4 which the judgment creditor attached to its notice of opposition. This is at page 78 of the record;
b) she, on 28 April 2021, wrote an email to the judgment creditor's legal practitioners for, and on behalf of, Platinum proposing an out of court settlement.
c) she attached to her email a letter of acknowledgment of the debt which was signed electronically by Platinum's general manager one Michelle Mushonga;
d) she was at the premises when the sheriff attached and took into execution the goods which were at the premises on 23 June, 2021.

The unchallenged statement of the judgment creditor which is to the effect that, in June 2021, Nobuhle phoned its legal practitioners whom she advised that Munyeza was requesting a dialogue with them for, and on behalf of, Platinum confirms the observation that Platinum was still at the premises in June, 2021.That statement as read with Annexure 7 which the judgment creditor attached to its notice of opposition shows that Platinum was at the premises as late as 9 July, 2021. The stated matter renders the allegation of the claimant which is to the effect that Platinum left the premises in May, 2021 to be a complete falsehood. The fact that the claimant does not mention the exact date that Platinum left the premises, if it did, drives the assertion of the claimant on the issue at hand into oblivion. If Platinum left the premises,

as it would have the judgment creditor and me believe, it should not have had any difficulty to mention the date that it did so. The difficulty comes about when the claimant has fabricated matters to suit a particular set of circumstances which does not exist as appears to be the case *in casu*.

The claimant does not produce any evidence which shows that it occupies the premises. Whatever evidence was produced on the mentioned point was by Platinum. Reference is made in the mentioned regard to Annexures 4, 6 and 7. These respectively appear at pages 78, 80 and 82 of the record. The evidence shows that it is not the claimant but Platinum which occupies the premises. The observed matter raises the presumption that goods which were attached from the premises of Platinum belong to the latter. The presumption is, however, rebuttable. Whether or not the claimant rebutted it will become evident in the subsequent parts of this judgment.

Added to the above-observed matters are the circumstances which led Platinum and the claimant to operate from the same business premises, if they did. The circumstances are as vague as anyone's guess. The claimant's statement is that Platinum intended to enter into a partnership with it. Platinum's intention, the assertion goes, matured into the latter having to move from number 35 Samora Machel Avenue, Harare to the premises it claims are its own.

The judgment creditor challenges the claimant's statement on the issue at hand. It insists that Platinum and not the claimant occupies the premises. It places reliance on Annexures 4, 6 and 7 which it attached to its notice of opposition. It avers that the claimant did not produce any evidence which proves its right to occupy the premises let alone its ownership of the same.

The fallacy of the assertions of the claimant becomes evident on an effortless analysis of the same. The claimant cannot have the judgment creditor and me believe that a mere intention on the part of Platinum to enter into a partnership with it caused the latter to leave the premises from which it used to operate to move to the premises which the claimant claims to operate from. Nothing compelled Platinum to operate from the same business premises that the claimant was operating from, if it was. A number of question arise out of the mentioned statement of the claimant. The questions which remain without any answer to them are:

i) Did Platinum have to leave number 35, Samora Machel Avenue, Harare to go and operate from Block B, First Floor, Smatsatsa Office Park, Borrowdale, Harare on a mere intention on its part to enter into a partnership with the claimant;

ii) Given that both the claimant and Platinum are two independent legal entities which have their respective separate existence as well as operations, would Platinum have decided to move out of its former place of business without a resolution of its directors to move to the new premises and, would the claimant have agreed to share its business premises, if such belong to it, with Platinum without a resolution of its directors to do so;

iii) Did the claimant and Platinum reduce the intention of the latter into writing and, if they did, where is the written document which confirms the stated matter;

iv) If the intention of Platinum was not reduced to writing, could the two legal entities take such a far-reaching decision as to operate from the same premises without any document which defines their manner of operation particularly in regard to such obvious matters as payment of water bills, electricity, rates and the like. The claimant is not suggesting that Platinum was riding on its back for a period of three months without paying any rent, if it did not own the premises as it would have the judgment creditor and me believe;

v) The best which the claimant should have done to make its statement more credible than it currently is was to produce a document which defined the relationship of the parties in the contemplated partnership, the contribution of each to the partnership as well as the division of profits which accrue from the same.

The long and short of this matter is that there was never any contemplated partnership which was to come into existence between the claimant and Platinum. Such could not ever take place without resolutions by directors of the two legal entities to enter into such. Directors, it is a fact, are the soul, mind, eyes, ears, mouth and nose of any legal entity the world over. As a fictitious person, a company cannot speak or act or do anything except through a resolution which its directors sitting as a board with the relevant quorum pass to show that the company has spoken or acted in a particular manner or has taken a specific direction on any matter which relates to its operations as well as its relationship with persons-natural or legal- who are outside of it: *De Beers*

Consolidated Mines Limited v *Howe*, (1906) CA 455 (HL); *Madzivire* v *Zvarivadza,* 2006 (1) ZLR 514 (S), *Hahlo, South African Company Law* through cases, 6th edition, page 343.

The statement of the claimant which is to the effect that, although Platinum and it once shared the same business premises, the operations of the two companies have been completely separate and independent of each other remains an unexplained mystery. The mystery, however, disappears when regard is had to what Munyeza, who is the deponent to the claimant's affidavits, stated in paragraph 3 of the claimant's notice of opposition. It is from a reading of the same that it becomes clear to all and sundry that the issue of the alleged contemplated partnership between Platinum and the claimant remains the latter's fabricated story. The paragraph reads:

> "Sometime in March 2021, Platinum Fuels (hereinafter the judgment debtor) approached me for counselling purposes on how to resuscitate its business in which a strategy session was actually paid for. There are emails to that effect attached hereto. See Annexure A."

It is evident, from a reading of the above-cited statement, that no partnership was ever contemplated by Platinum and the claimant. Such could not occur where Platinum was, according to the statement of the claimant, falling on its knees and required resuscitation. What Platinum required was a strategy session, according to the statement. It did not require the strategy session from the claimant as the latter would have me believe. It required such from Munyeza who is a natural person. The observed matter explains the absence of a resolution having been made by the claimant which had no business at all in the counselling session which Platinum required from Munyeza.

The question which begs the answer is: was it necessary for Platinum to move to the premises of the claimant to receive the session which it required. The answer is definitely in the negative. Munyeza could easily have given the required session to Platinum at the latter's business premises. Alternatively, he could have performed the same on line. Alternatively, he could have requested only the persons to whom he had to deliver the session to meet him at his office(s) or at any venue which was convenient to the teacher and the students. The statement which the claimant makes which is to the effect that Platinum intended to enter into a partnership with it is therefore a falsehood. Equally a lie is its assertion which is to the effect that Platinum moved to its premises for purposes of being assessed by it. There was no need for the claimant to assess Platinum when the two legal entities had no business with each other.

It is not clear why the claimant chose to tell a lie about a matter which should have been told in its clear and unambiguous manner. The lie which it told serves to show the lengths to which it was prepared to go to frustrate the judgment creditor's due process. The same attracts adverse consequences on the claimant's case. The trite position of the law is that, if a litigant gives false evidence, his story will be discarded and the same adverse inferences may be drawn as if he had not given evidence at all: *Leader Trade Zimbabwe (Pvt) Ltd* v *Smith*, HH 131/13; *L,H. Hofman & D.T. Zeffert, South African Law of Evidence,* 3rd edition, page 472 and *Deputy Sheriff, Harare* v *Mahleza,* 1997 (2) ZLR 425 wherein the court expressed its displeasure at persons who come to court to lie to it. It stated that:

> "People are not allowed to come to court seeking the court's assistance if they are guilty of a lack of probity or honest in respect of the circumstances which cause them to seek relief from the court."

The second question which flows from the above-observed matter is: why did the claimant choose to tell a falsehood in this case. The reality of the matter is that the claimant, as a fictitious person, does not lie. It does not have the capacity to do so. It cannot therefore lie. Natural persons who speak for, and on behalf of, the fictitious person are capable of telling lies. They more often than not do so as they speak for, and on behalf of, legal entities whom they represent. Their reason for lying varies from one case to the other, the bottom line being, in such cases as the present one, to undo the lawful process of their adversary.

In casu, one Shingirai Munyeza told a lie as he spoke for, and on behalf of, the claimant. He lied when he talked about the non-existent partnership which was allegedly contemplated between Platinum and the claimant. He told the story of the claimant on this point in tongues, if a comparison may be favoured. His initial statement was that Platinum intended to enter into a partnership with it. He does not tell if the claimant was amenable to such a relationship coming into existence. He changed and talked about resuscitation of Platinum not by the claimant but by him. He, however, could not explain why Platinum and the claimant had to operate from the same premises, if that occurred. His aim and object, it would appear, were to knit a credible story with a view to persuading me to singing along with him. He, unfortunately for him, could not tie the loose ends of his story to make it a credible one. He could not do so largely because most of the matters which he made mention of were of a made up story which could not hold on a scrutiny of the claimant's case as a whole.

The collusion which Munyeza sought to conceal comes out clearly from a reading of paragraph 9 of the judgment creditor's notice of opposition. It states, in the same, that:

> "9. I am informed by our legal practitioners that sometime in the month of June, the Judgment Debtor's Company Secretary Nobuhle Sibanda called our legal practitioners and advised them that Dr Shingi Munyeza, the deponent to the claimant's affidavit, was requesting a dialogue over the matter under HC 759/21 as the Chief Executive Officer of the Judgment Debtor. I am informed further by our legal practitioners that the dialogue went on but did not yield any settlement."

The judgment creditor refers me to the supporting affidavit of one Tonderai *Sena* in respect of the abovementioned matter. Mr *Sena* who is the judgment creditor's legal practitioner confirms paragraphs 7 and 9 of the latter's notice of opposition. He states that he received an email and a call from Nobuhle in June, 2021.Nobuhle was, according to him, negotiating a dispute under HC 759/21 for, and on behalf of, Platinum as the latter's company secretary. He alleges that Nobuhle advised him that Dr Shingi Munyeza, the Chief Executive Officer of Platinum, intended to discuss the abovementioned matter with him or his partners. He avers that the negotiations between his client and Platinum yielded no fruitful result. He insists that Nobuhle and Munyeza are officers of Platinum.

The claimant does not deny that it assisted Platinum. It states, through Munyeza, that it assisted Platinum. Reference is made to paragraph 8 of its notice of opposition in which it states as follows:

> "8. In trying to assist the judgment debtor we engaged its creditors that we were aware of to try and enter into payment arrangements so as to sanitise Platinum Fuels previous dealings. This was done to try and assist the judgment debtor so as to solve the issues that had arisen from these dealings and to allow the parties to enter into the partnership on a clean slate"

The abovementioned matter is a complete falsehood. The claimant did not produce any resolution which shows that it agreed to assist Platinum as alleged or at all. The assistance, it stands to reason, was not coming from the claimant. It was coming from Munyeza and Nobuhle. None of them denied that he or she was an officer of the judgment debtor. Munyeza, it has not been controverted, was Platinum's chief executive officer and Nobuhle was its company secretary. Both of them abused the claimant's corporate personality to further the interest of Platinum which, no doubt, was one of the companies which the two were, or are, managing. The allegation of collusion cannot, therefore, be said to be without merit given the circumstances of the present case. Neither Munyeza nor Nobuhle would have assisted Platinum to settle its debt out of court for no reward

on their part unless they were doing so for a company which was within their scope of operation. The issue of collusion is therefore established to a point where no further debate on it remains.

The claimant is making a misstatement when it alleges that "the LG television 55" and "the LG television 65" belong to it. Annexure E which it attached to its notice of opposition shows that the two sets of television were purchased by Munyeza on 11 January, 2019. He does not state that he purchased the television for the claimant. Nor does he allege that he donated the same to the claimant. He, on his part, did not co-claim with the claimant. He, in fact, chose to remain out of court. He cannot therefore be both the claimant and the deponent to the affidavits of the latter. He can only be the one or the other of the two and not both. Because nothing shows that he purchased the two sets of television for the claimant, the latter cannot claim the two items to belong to it. They do not. This *a fortiori* the case when regard is had to the fact that the goods of a legal entity are separate and distinct from those of a natural person who drives its operations on a day-to-day basis. The two items were attached from Platinum's premises. The unrebutted presumption operates in the judgment creditor's favour.

Annexure G which the claimant attached to its notice of opposition is relevant. It is a letter which one Daniel Munetsi, the executive assistant of Faith Ministries wrote to the claimant, specifically to Munyeza whom it refers to as a pastor. On 16 May, 2019. The letter which is dated 16 May 2019 offers to the claimant use of Faith Ministries' 14 seater boardroom table with one chair missing from the same. The claimant cannot therefore assert that it owns the 14 seater boardroom table. Faith Ministries does own such and, if a claim is to be instituted, it should be moved by none other than Faith Ministries. The claimant cannot move for that when all it has is nothing but possession of the 14 seater boardroom table and nothing more than that. Possession, it must be noted, is not the same as ownership. The one relates to physical and mental control of the thing as against its owner. The other relates to having real rights over the thing as against the whole world. Only the owner of a thing can claim the same from the judgment creditor in interpleader proceedings. Because Faith Ministries did not join itself as co-claimant with the claimant, the latter cannot claim for it as it endeavors to do. It cannot do so when Faith Ministries has chosen to remain out of court.

The goods which relate to the agreement of sale, Annexure H, is, as the judgment creditor correctly states, dubious. The claimant produced no resolution(s) which show(s) that the seller

agreed to sell and the purchaser agreed to purchase the goods which form the subject of the purported sale. At any rate, evidence which was adduced showed that one of the parties to the purported contract is a subsidiary of the other. This fact alone makes the sale suspect confirming the judgment creditor's assertion which is to the effect that the agreement of sale is a fabricated one: *W and D Consultants (Pvt) Ltd* v *Sean Thomas Nielson Doran*, HH 5551/15.

The judgment creditor's uncontroverted statement is that goods which it mentioned in paragraph 31 of its opposing affidavit should be declared executable without any further ado. The goods, according to it, comprise 3 Samsung television sets, 18 desks, 1 workstation, 2 office fans, 3 filing cabinets, 1 microwave and 7 chairs. Because no dispute exists in respect of those, it goes without saying that the same remain executable. As to the rest of the goods which are the subject of these proceedings, the claimant failed to prove on a balance of probability that it owns those. It is for the mentioned reason, if for no other, that it states in its Heads that it established a *prima facie* proof as opposed to proof on a balance of probabilities. Reference is made in the mentioned regard to the following paragraphs of its Heads 5, 7, 18, 19, 21, 22, 23 which respectively appear at pages 100 and 102 of the record. *Prima facie* proof, it is needless to mention, is not the same as proof of a matter on a balance of probabilities which is a *sine qua* non aspect of proof which is required in civil, as opposed to criminal, proceedings.

The claimant told its story in dribs and drabs. One could not tell what it was putting across to me. The collusion which it sought to conceal, unfortunately for it, reared its ugly head in a clear and unambiguous manner. The judgment creditor was able to establish the same to my satisfaction. The lies which the claimant told through the deponent to its affidavits, who is a man of the cloth, did a lot of damage to its case. Men of the cloth are, by and large, expected to be honest especially where they testify under oath. The oath should bind them in conscience. The court frowns upon their conduct when they choose to lie in-between their teeth as the deponent *in casu* did.

The moment it is established, as has been done *in casu,* that Platinum colluded with the claimant, the latter's claim cannot stand. The finding of collusion which has been made supports the statement which the judgment creditor made in paragraph 29 of its notice of opposition. Its uncontroverted assertion was/is that the evidence it furnished shows a forgery of documents which has not been carefully done. Once it is accepted, as it should, that the claimant forged documents, its case falls to pieces which cannot be pieced together to make a complete whole.

It follows from the foregoing that whenever a party who, as actor, seeks to set the judicial machinery into motion and obtain some remedy, has violated conscience or good faith or other equitable principle, in his prior conduct, then the door of the court will be shut against him; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy: *Keystone Driller* v *General Excavator Co*. 290 US 240, 244-45 (1933).

The cited case authority remains clearly *in sync* with the conduct of the claimant. It cannot have its case considered favourably when it chose to lie as it did. It cannot succeed where it failed to prove its claim on a preponderance of probability. Its claim remains without merit. It is, accordingly, dismissed with costs.

Dube-Banda-Nzarayapenga, partner's plaintiff
Nyakutombwa Legal Practitioners, claimant's legal practitioners
Chimuka-Mafunga Commercial Attorneys, Judgment Creditor