



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

CIVIL SUIT NO 74 OF 2016

KENJAB MORORS LIMITED.....PLAINTIFF

-VERSUS-

ZEKI WANJALA T/A ZEKI MOTORS.....DEFENDANT

RULING

BACKGROUND

1. This a ruling on objector's application dated **18th August 2020**. The objector/applicant herein is challenging attachment of motor vehicle registration number KCA 647W following enforcement of decree resulting from judgment delivered on 14th May 2020. In the said judgment, this Court entered judgment for kshs 36,120,000 in favour of plaintiff against the defendant. The plaintiff's claim was for the unpaid amount in respect of vehicles it supplied to the defendant.

APPLICANT'S ORAL SUBMISSIONS

2. The objector **Stanley Simiyu Sitati** submitted that he is the owner of motor vehicle registration number KCA 647W and that the said vehicle together with motor vehicles registration number KBY 743M and KBV 099Z were fully paid and should not be attached in execution of the decree herein.

3. The objector submitted that despite the Court judgment indication that the three said vehicles were fully paid, the plaintiff has gone ahead to attach his vehicle. He prayed that this Court find that the said vehicle belongs to him and is exempted from the decree and judgment of this Court and it be released to the objector unconditionally.

4. On the respondent's argument that there is no privity of contract between the applicant herein and the respondent, the applicant argued that objection proceedings are filed under **Order 22 of Rule 53** and the objector is a person who has an interest in what is the subject of execution; that he does not need to have a contract with the decree holder. Applicant's counsel urged Court to allow the application.

RESPONDENT'S ORAL SUBMISSIONS

5. **Ms. Kimoriot** for the respondent submitted that the application herein is incompetent and unmerited. She prayed that it be dismissed as the issue is *resjudicata*. She submitted that the defendant had filed a counterclaim which was dismissed; that the counterclaim concerned the 3 vehicles and the issue has therefore been dismissed. She submitted that the agreement was between the interested party and the defendant and plaintiff was not involved. She submitted that the defendant bound himself to pass a good title which it did not have and that the plaintiff was not a party between the defendant and the objector; therefore, there is no privity of contract. Further that the objector has not proved that he paid for the vehicle.

6. Counsel for the respondent submitted that in paragraph 56 page 24 of the judgment, the Court held that the defendant having failed to demonstrate that balance is owing, the plaintiff was entitled to repossess to recover the balance and the attachment was within the law so as to satisfy the decree. She prayed that the application be dismissed.

7. In response **Mr. Kobe** for the applicant submitted that on page 56 of the judgment, as put by counsel for the respondent, they agree that they were entitled to repossess 35 motor vehicles but paragraph 56 should be read with paragraph 43; that 3 motor vehicles were paid for but 35 were not paid. He referred to paragraph 14 of the judgment which captures the plaintiff's testimony by **Hellen Kagiri** who names the vehicles which had been paid for and they include KCA 647W. That the plaintiff cannot now come to Court and say they want prove of payment. He submitted that the nature of claim under objection proceedings is not like a contract. He submitted that there was a judgment for 35 vehicles and not the 3 vehicles.; and issue of privity of contract should not arise in objection proceedings.

8. On *res judicata*, he submitted that they are challenging that a motor vehicle which is not subject of the judgment has been attached and

objector has not been part of these proceedings and to settle this matter fully, the logbook of the vehicle ought to be released. He prayed that the objector be paid costs incurred following attachment of his vehicle.

ANALYSIS AND DETERMINATION

9. The applicant’s argument is that he has come to Court as an objector having not been a party to this suit and her vehicle having been fully paid and therefore not subject of judgment and decree issued. On the other hand, the respondent argues that the applicant is not privy to the contract between the plaintiff and the defendant and the defendant ought to have passed good title to the applicant.

10. On perusal of the judgment which I delivered on 14th May 2020, I confirm that in paragraph 14, 43 and 44, I noted that the plaintiff had confirmed in evidence adduced in Court that 3 vehicles KCA 647W, KBY 743N and KBV 099Z had been paid for but logbooks had not been collected. The owners of the 3 vehicles cannot therefore be called to demonstrate that they had completed paying for the vehicle. In paragraph 56 of the judgment, I indicated that the plaintiff was entitled to repossess the 35 vehicles which were not fully paid for. The plaintiff therefore had no justification to attach the 3 vehicles fully paid for.

11. There is no doubt that the 3 vehicles should not be part of attachment to satisfy decree in this case. It was wrong for the plaintiff to attach any of the 3 vehicles having confirmed in their evidence that they were fully paid for and were awaiting collection of logbooks.

12. From the foregoing, I find the attachment of motor vehicle KCA 647W illegal.

13. FINAL ORDERS

1. Motor vehicle registration KCA 647W be released to the applicant/objector.
2. Log book be released to the defendant who will in turn release to the applicant.
3. Costs of objection proceedings to the applicant

Ruling dated, signed and delivered via zoom at Eldoret This 28th day of October 2020

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RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Mr. Akango - Counsel for the Applicant

Ms. Kimoriot - Counsel for the respondent