



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

CIVIL SUIT NO. 144 OF 2008

GULAMHUSEIN F GULAMHUSSEIN

SEA ANGEL SERVICE STATION LTD PLAINTIFFS

V E R S U S

CAPITAL CARGO SERVICES LIMITED DEFENDANT

RULING

1. Plaintiff in execution of the decree obtained against the Defendant attached motor vehicle Registration Nos. KBB 157R and KBB 158R and a Trailer Reg. No. ZC 8521. The attachment was by proclamation of 4th November 2008. An objection was raised by IMPERIAL BANK LTD by a Notice of Objection filed in Court on 14th November 2008. By that Objection the bank claimed to have a legal and equitable interest in the attached vehicles. The said claim was based on the grounds that the motor vehicles were registered in the joint names of the Defendant and the Objector.
2. Following the objection filed the Objector filed a Notice of Motion dated 27th November 2008 seeking an order that the attachment of the motor vehicles and the trailer be lifted. The only relevant document attached to the supporting affidavit of that application is the Hire Purchase agreement dated 10th May 2008 between Defendant and Objector in respect of attached motor vehicles. The attached trailer however is not the subject of that Hire Purchase agreement. In filing the Notice of Objection on 14th November 2008 the Bank attached the Kenya Revenue Authority Registration books (Log Books) of motor vehicles KBB 157R, KBB 158R and Trailer Reg. No. ZC 8521 which show that those vehicles were registered in the joint names of Defendant and the objecting Bank on 21st April 2008 for the motor vehicles and on 14th April 2008 for the trailer. That Log Book shows that there was no previous registered owner in respect of those vehicles and trailer.
3. Objector also relied on supplementary affidavit of Kombo Masud dated 13th October 2009. By that affidavit the objecting bank attached other log books of the same vehicles and trailer which

now showed that as at 21st April 2008 the motor vehicles and trailer were registered jointly in the names of SHIVA CARRIER LTD & IMPERIAL BANK LTD. The log books which shows that the registration of those vehicles in the joint names of Shiva Carriers Ltd and the objecting Bank also show that there was one previous owner. It would therefore seem that as at the date of attachment by Plaintiff on 4th November 2008 the motor vehicles and trailer were registered in the names of Shiva Carriers Ltd and the objecting Bank. The Defendant did not have legal interest in those vehicles.

4. The Plaintiff's objection to the objection raised was that the application by the Objector is brought in bad faith because the vehicles really belonged to the Defendant. The Plaintiff failed to support its assertion because mere possession is not indicative of ownership of vehicles. In this regard reference is made of Section 8 of the Traffic Act which provides-

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”

5. There being no contrary evidence shown to the Court I find the presumption stated in Section 8 above must prevail. I need to state that the cases relied upon by Plaintiff does not advance its case at all. The case **HCC 528 OF 2003 NRB MILIMANI ADDAH KISAI WAKESHO –VS- STANLEY WAMWANDU MWAWASI** the Court dismissed the objection proceedings because the Objector failed to establish its claim to the attached goods. In the case **NEW NYANZA WHOLESALE –VS- MUHAMMED RIZAKA UMAL HAJI & ANOTHER [2013]eKLR** the objection proceedings failed because the Objector purchased the motor vehicle after it had been proclaimed by an auctioneer.
6. In the end the orders that commend themselves to the Court are-
 - a. **The attachment of 4th November 2008 of motor vehicles Reg. Nos. KBB 157R, KBB 158R and Trailer Reg. No. ZC 8521 is hereby lifted.**
 - b. **The objections costs and the costs of Notice of Motion dated 27th November 2008 are awarded to Imperial Bank Ltd to be paid by the Plaintiff.**

It is so ordered.

Ruling by:

MARY KASANGO

JUDGE

DATED and DELIVERED at MOMBASA this 27TH day of FEBRUARY, 2014.

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JUDGE