



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISCELLANEOUS APPLICATION NO. 372 OF 2013**

**MARGARET AMIMBO T/A IGARE AUCTIONEERS ..... PLAINTIFF**

**-VERSUS-**

**LASIT LIMITED..... DEFENDANT**

**RUIRU AND REBANIA LIMITED ..... OBJECTOR**

**RULING**

1. Before the Court is the Objector's Notice of Motion dated 11th February, 2014 which seeks an order to lift the attachment effected on the Objectors property by Nasioki Auctioneers on 3rd February, 2014 and that the attached tractor registration number KBB 939X be released to the Objector forthwith. There was also a prayer for costs of the application.
2. The application is based on the grounds that the attached tractor belongs to the Objector and not the Defendant hereinafter referred to as the Judgment Debtor; that the Objector was not a party to the suit; that the Judgment Debtor is unknown to the Objector; that the attachment of the said tractor was irregular and without justification.
3. It was supported by an affidavit sworn by **Peter Ndirangu Mwaniki**, on 11th February, 2014. He deposed that he is the Manager of the Objector and seized with the facts herein and competent to make the affidavit. The effect of his affidavit was to confirm that the Objector is the registered legal owner of the tractor registration number KBB 939X; that the said tractor was attached by Nasioki Auctioneers on 3rd February, 2014 in execution of a decree; that the Objector was not a party to the suit nor is the Judgment Debtor herein known to the Objector.
4. Despite service of the application, the Decree/Plaintiff and the Auctioneer did not file Replying Affidavits nor were they represented when the application came up for hearing on 10th March, 2014.
5. Counsel for the Objector, **Mr. Nyaribo**, reiterated that the attachment was irregular and without justification. A copy of the logbook for the tractor registration number KBB 939X was exhibited to confirm that the tractor is registered in the name of the Objector and not the Judgment-debtor. Further counsel submitted that the Judgment-debtor is not known to the Objector hence the attachment as being irregular. He urged the court to invoke **Order 22 Rule 53** of the **Civil Procedure Rules** as the Decree-holder had failed to respond to court despite having been served with the application.

**ISSUES FOR DETERMINATION**

6. Whether the Objection proceedings were filed in a proper and timely manner?
7. Whether the attached property belonged to the Objector or the Judgment Debtor?

8. Whether the attachment was justified or wrongful?

### **ANALYSIS**

9. It is not disputed that the tractor was attached on the 3<sup>rd</sup> February, 2014 and that the Auctioneer has possession of the property attached.
10. On the 11<sup>th</sup> February, 2014 the Objector filed a Notice of Objection to Attachment and caused the same to be served on the Decree-Holder and the Auctioneer. Service of the Notice was effected on the 12<sup>th</sup> February, 2014 and a Return of service was made by the Process Server in support of such service.
11. Under the provisions of Order 22 Rule 51 of the Civil Procedure Code the Decree Holder is obligated to intimate to the court her intention to proceed with the attachment. The filing into court of the notice indicating such intention has a time limit of seven days after service of the notice of objection to the attachment.
12. No notice or Replying Affidavits were filed by either the Decree-holder or the Auctioneer in response and therefore the application filed by the Objector proceeded un-opposed.
13. The Objector depones that the Judgment –Debtor is unknown to it. The Objector further depones that it was not a party to the proceedings as between the Decree-holder and the Judgment-debtor. This court notes from the pleadings that both the Objector and the Judgment Debtor are limited liability companies. This court opines that even if the two companies had any relationship in the context of membership, common directors, shareholding or one being a subsidiary of the other, which is denied, the principle set out in the renowned case of **Salmon vs Salmon (1897) AC 22** is applicable. That a company is a distinct and separate legal entity from its members, shareholders and directors and a company is liable for its own liabilities.
14. Any relationship between the two companies is denied and this court reiterates that a member, a shareholder, a director cannot be held liable for the debts of the company. The attachment was therefore wrongful.
15. The Objector further produced a Log Book in support of the fact that it was the registered owner of the attached tractor. This court opines that it would have been prudent for the Decree-holder and the Auctioneer to have carried out a search at the Kenya Revenue Authority- Registrar of Motor Vehicles to verify the ownership of the tractor before proceeding with the said attachment.
16. The Objector has a right to own and enjoy its property and also has a right under the law to protection of its property. The onus of conducting the search was upon the Decree-holder and the auctioneer and in the absence of such a search the attachment is found to be wrongful.
17. The objector was also not party to the suit, therefore, the attachment is wrongful and unjustified.

### **FINDINGS**

18. The objection proceedings are found to have been filed in a proper and timely manner.
19. The attached property is found to belong to the Objector and not the Judgment Debtor and the attachment is found to be wrongful and unjustified.

### **CONCLUSION**

20. The application is found to be meritorious and is hereby allowed.
21. The attachment of the tractor is hereby raised and the attached property be released to the Objector forthwith.
22. The costs of the application and all other costs incidental to the attachment shall be borne by the Decree-holder.

It is so ordered.

**Dated, Signed and Delivered at Nakuru this 31st day of March, 2014**

**A. MSHILA**

**JUDGE**