



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 131 OF 2005**

**TRUST BANK  
LIMITED.....PLAINTIFF**

**VERSUS**

**BONIFACE NJIRU TRAINING AS BONIFACE & COMPANY ADVOCATE.....1ST  
DEFENDANT**

**PAWI ENTERPRISES LIMITED..... 2ND  
DEFENDANT**

**STEPHEN MUTO MUTOTHORI.....3RD  
DEFENDANT**

**AGNES MUTHONI MUGO..... 4TH  
DEFENDANT**

**J. K. HORERIA TRAINING AS HORERIA & COMPANY.....5TH  
DEFENDANT**

**RULING**

1. There are two Notice of Motion applications before the court. The first application is dated 27th December 2012 and filed in court on 28th December 2012. The first application is filed by the Objector and seeks the following surviving orders:-
  1. ***That the court be pleased to lift the attachment of the Objector's motor vehicle registration number KBQ 204A X- Trail by M/s Dalali Traders.***
2. The application is premised on the grounds that on 20th December 2012 M/s Dalali Traders attached the Judgement Debtor's office furniture together with the motor vehicle registration number KBQ 204A. The Judgement Debtor immediately notified the Auctioneer that the said motor vehicle was not his property and was not attachable, and that the said motor vehicle is the property of the Objector and is registered in her name having purchased it at Kshs.1.6 million in August 2011.
3. The application is supported by affidavit of **Anne Wangechi Njiru** (the Objector herein) dated **27th December 2012**. In the affidavit the Objector states that motor vehicle registration number KBQ 204A X- Trail belongs to her and that she purchased it at Kshs.1,600,000/=. She attached a logbook as annexure **AWN 2** which shows that the Objector is the registered owner of the said motor vehicle. The Objector states that the Judgement Debtor is not the owner of the said motor

vehicle, and that the same should be released to her forthwith. The application is opposed by the Plaintiff/Decree Holder.

4. The second application dated 2nd January 2013 is filed by the Judgement/Debtor and seeks the following orders:-
  1. ***The application be certified urgent and be heard ex-parte in the first instance.***
  2. ***This Honourable Court be pleased to urgently order a stay of execution of the decree for such a period as it may determine pending the hearing of prayer number 4 hereof.***
  3. ***This Honourable Court be pleased to lift the attachment of the Judgement Debtor's office furniture proclaimed by M/s Dalali Traders on 20th December 2012.***
  4. ***This Honourable Court be pleased to suspend the execution hereof for a period of 60 days from the date of this application.***
  5. ***Costs of this application be provided for.***
5. The application is premised on the following grounds:
  1. ***On 20th December 2012 M/s Dalali Traders attached the Judgement-Debtor's office furniture consisting of:-***
    - a. ***One wooden table***
    - b. ***Three small chairs***
    - c. ***One executive chair***
    - d. ***Three file cabinets***

***All the good are worth Kshs.8,500/=***

2. ***The attached goods are not attachable because they are tools of trade or profession required by an advocate in service of his clients. The goods are of very nominal value and the attachment has the effect only to harass the Judgement-Debtor.***
3. ***The Judgement-Debtor has a standing arrangement with the decree-holder to pay the agreed amount within one year which period has not yet elapsed.***
6. The application is opposed by the Decree Holder. Parties file written submission. The Objector submitted that the motor vehicle registration number KBQ 204A X- Trail belonged to her and not to the Judgement-Debtor. She provided a logbook to prove that the vehicle belongs to her.
7. In response the Decree-Holder submits that the Objector only relies on a copy of the purported sale agreement and a copy of the logbook as evidence of her interest in the proclaimed motor vehicle. The Decree Holder submitted that these documents do not do sufficiently prove that the Objector has got any interest or otherwise in the motor vehicle KBQ 204A. This is because of the following reasons:-
  - i. ***The purported sale agreement is inadmissible in evidence for want of compliance with the provisions 19 of the Stamp Duty Act (Cap 480 Law of Kenya).***
  - ii. ***It is trite law that in the absence of a copy of records from the Registrar of motor vehicles confirming the ownership of motor vehicle KBQ 204A as at the date when proclamation was levied, the copy of the logbook has no probative value as evidence of ownership thereof.***
8. The Decree Holder quoted Section 8 of the Traffic Act stipulates as follows:-

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

It submitted that the extracts from the records of the Registrar are of more value than the copy of the logbook. This means that the records are prima facie evidence of ownership.

9. The Decree Holder submitted that the Judgement debtor is the real and actual owner of the said motor vehicle KBQ 204A and if the same is registered in the name of the Objector, then she holds

it in trust for the Judgement Debtor.

10. On their part, the Judgement-Debtor submitted that the Judgement Debtor is an advocate of the High Court of Kenya practicing from Princely House, 1<sup>st</sup> Floor, Room 3A, Moi Avenue. The Judgement Debtor's occupation qualifies to be described as a profession in terms of Section 44 Proviso (ii) of the Civil Procedure Act. On 20<sup>th</sup> December 2012 M/s Dalali Auctioneers visited the Judgement Debtor's office and purported to attach the following items:-

- a. **One wooden table – Kshs.2,000/=**
- b. **Three small chairs – Kshs.1,500/=**
- c. **One executive chair – Kshs.2,000/=**
- d. **Three file cabinets – Kshs.3,000/=**

**Total                      Kshs.8,500/=**

The auctioneers was purporting to enforce a decree against the Judgement Debtor for a sum of Kshs.3,729,486/=. It is the Judgement Debtor's contention that the attachment of his office goods is not for the purpose of collecting the debt but to harass him, disparage him, contemn him and finally put him out of the profession and disable him from earning a living. The items attached are purely furniture used in the Judgement Debtor's trade or profession to enable him serve his clients. Hence the executive chair is where the advocate sits to meet his clients, the three small chairs are where his clients sits, the wooden table is a desk from where he serves his clients and keeps security documents, and the three file cabinets are for storing files. The items are most minimal for any advocate to practice his profession. The Judgement Debtor contends that removing and selling the listed items will completely disable him and destabilize his clientele as they will not take seats or access files and security document. The Judgement Debtor has been in private practice for more than 30 years and he has old files extending for that period. The Judgement Debtor has entered into an arrangement with the decree holder and has paid some substantial amount of Kshs.400,000/= and intends to pay the balance shortly.

It is the contention of the Judgement Debtor that attachment must be for the purpose of achieving the recovery of the decree sums and not for prosecution of the Judgement Debtor. The current attachment of the Judgement Debtor's office furniture does not achieve that purpose particularly when one considers the amount of the decree against the goods intended to be attached.

11. I have carefully considered the two applications and the submissions of the parties. The issues for determination are whether the said motor vehicle registration number KBQ 204A X- Trail belongs to the Objector or to the Judgement-Debtor, and secondly whether the goods of trade belonging to the Judgement Debtor are attachable.

12. Section 8 of the Traffic Act states that a logbook is prima facie evidence that the person registered thereon is the owner of the said motor vehicle. Once a logbook shows the objector to the owner of the motor vehicle it is for the decree holder to establish otherwise. In the case of **Clement Kako Odilo – Vs T.A. Bao Transporters Services Kisumu HCCC No. 429 of 1997** the High Court (Hon. B. K. Tanui) held as follows:-

***“I note that the logbook of the Tata lorries reg. no. KTG 128 and 819 shows that they are owned by Victoria General Repairs (E.A. Ltd.) Earlier on the two motor vehicles were owned by BAO Balanced Farming and Stores Limited and that the transfer of the two vehicles was effected on 30<sup>th</sup> September 2000. There is nothing to show that the vehicles were ever owned by Olive Agnes Owala to 30<sup>th</sup> September 2000 or at any time after that date. The proclamation of these vehicles wa also without any basis or grounds.”***

13. In **Kenya Oil Company - Vs – Fuaad Mahmoud Mohammed HCCC NO. 886 of 2002** the High Court (Ringera J) held that the burden of proof on the objector to establishes a legal or equitable interest in the property subject matter of the execution objected to, which burden is to be discharged on a balance of probability. The logbook is prima facie evidence of ownership and it is for the decree holder to prove to the contrary and it is not proved by merely showing that the

vehicle previously belonged to the Judgement Debtor and that it was attached while being driven by him. The logbook which is attached to the affidavit of the objector clearly indicates that the motor vehicle registration number KBQ 204A is registered in the name of Wangeci Njiru Anne. The motor vehicle sale agreement shows the objector purchased it from John Mutabari on 3<sup>rd</sup> August 2011 at a cost of Kshs.1,600,000/=. There is nothing on record to dislodge the claim of the objector as being the owner of the motor vehicle. The decree holder has not established that the motor vehicle belongs to the Judgement Debtor. The objector objects to the insinuation in paragraph 4 of the affidavit of Adam Boru that “**it has come to their knowledge that the objector is a spouse of the Judgement Debtor**” as the statement is discriminatory of here on ground of sex of marital status by implying that she has no legal capacity of holding property in her own right. It is the finding of this court that the Objector has established on a balance of probability that the said motor vehicle registration number KBQ 204A belongs to her, and not to the Judgment Debtor.

14.As for the attached office equipment belonging to the Judgement-Debtor I rely on the case of **John Amama Amendi training as Amama Amendi & Company Advocates – Vs – Edith Nyaboke and Others Civil Suit Numbe 329 of 2008**. In that

case, the court stated that files, cabinets and computers belonging to an advocate are ordinarily used in his professional business as a lawyer and therefore cannot be attached. However, in my view not every item found in an advocate’s office is exempt from attachment. In this particular case the only item exempt from attachment are the three file cabinets. This is so because the cabinets could contain matters which are subject to Client/Advocate privilege under Section 134 of the Evidence Act. This means that the wooden table, three small chairs and one executive chair which were attached shall remain under attachment and may be sold in satisfaction of the decree

15.In the upshot of the foregoing is that:-

- i. ***The Objector’s Notice of motion application dated 27th December 2012 succeeds fully with each party bearing own costs.***
- ii. ***The second application by the Judgement-Debtor dated 2nd January 2013 partially succeeds to the extent that the three file cabinets valued at Kshs.3,000/= are forthwith released from the attachment. Each party shall bear own costs in this application.***

Orders accordingly.

**DATED, READ AND DELIVERED AT NAIROBI THIS 18TH DAY OF NOVEMBER 2014**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

No appearance for the Plaintiff

No appearance for the for Defendants

Njiru for the Objector

Teresia – Court Clerk