



REPUBLIC OF KENYA

High Court at Mombasa

Commercial Suit 62 of 2006

(FORMERLY HCC 84 OF 2003)

RASHID SOUD MOHAMMED.....PLAINTIFF

VERSUS

1. MECHANISED CARGO SYSTEMS LTD.....OBJECTOR/APPLICANT

2. A.M. BASALINGA.....1ST DEFENDANT/RESPONDENT

3. CAPTAIN CARGO LIMITED.....2ND DEFENDANT/RESPONDENT

4. NASSIR ABDIKADIR.....3RD DEFENDANT/RESPONDENT

RULING

1. This is an application by the 1st Defendant/Objector through Chamber Summons dated 18th November, 2009. The application was before Hon. Justice M. Ibrahim who on 27th August, 2010 directed that the parties do file written submissions. They did so. This is the ruling on the same.

2. The 1st Defendant's objection was brought under Order XXI Rule 56 and 57 of the Civil Procedure Rules and Section 3A Civil Procedure Act. The Objector seeks:

“That the honourable court do vacate, lift raise and/or wholly set aside the attachment of the whole of the objector's sundry goods and chattels as particularised in the Notice of Objection annexed hereto.”

3. The grounds of the objection are essentially that:

- the Plaintiff has estimated to proceed with execution
- the objector is the legal owner of the goods proclaimed
- No judgment has been entered against the objector

In the supporting Affidavit of Simon Torgi Ochako he says that the attached goods belong to the Objector, who is the 1st Defendant, and that the judgment was entered against the Third Defendant/Captain Cargo Limited.

4. The plaintiff filed a Replying Affidavit deposited on 12th March, 2010 by Rashid Sood Mohamed. He

annexed, *inter alia*, copies of records from Registrar of Motor Vehicles for the vehicles which had been attached, namely, KAG 234D, KAK 293Q and trailer ZB 8075. The records, as at 12th November, 2009 show the owners of the vehicles to be respectively as follows: KAG 234D owned by “**Kama Engineer Services and Fin**” of Box 44905, Nairobi; KAK 923 Q - owned by Ragsons Carriers Ltd of Box 44706 Nairobi and trailer ZB8075 – owned by Masai (K) Ltd.

5. There are only two issues for determination:

- a) Whether the execution/attachment herein is irregular
- b) Whether the Sunday goods/chattels attached by the Plaintiff belong to the Objector/Applicant.

The first issue emanated from the submissions of the Applicant, but did not feature in its application.

6. The arguments of the Respondent on the point was that the attachment offended the provision of Order XXI Rule 18(1) which provides that:

“Where an application for execution is made -

- a) more than one year after the date of decree; or*
- b) against the legal representative of a party to the decree, or*
- c) for attachment of salary...*

the court executing the decree shall give notice to the person against whom execution is applied for requiring him to show cause, or a date to be fixed, why the decree should not be executed against him...” (underlining mine)

7. The decree was given on 19th June, 2008 and issued on 20th June 2008. The application for execution was dated 9th October, 2009, which is more than one year after the date of the decree. It indicates that it is to be executed against Captain Cargo Limited, the judgment debtor. No execution has been sought or alleged to have been sought against the Objector, herein. Therefore, the claim by the Objector that no notice was issued by the court to the judgment debtor does not lie as Order XXI Rule 18 (1) applies only in respect of the person against whom execution is decreed. The judgment debtor has not raised any complaint on this issue.

Accordingly, from that perspective, the execution cannot be said to be or be deemed to be irregular. I so hold.

Whether the attached grounds belong to the Objector/Applicant

8. The evidence at the time of the attachment showed that the three vehicles were owned by three different companies *viz* Kama Engineering Services and Finance, Pegasus Carriers Ltd and Masai (K) Limited, none of which was either the judgment debtor or the objector. None of those companies has objected to the attachment. The Objector asserts that the goods are its own but has availed no evidence of such ownership, except in regard to motor vehicle KAG 234D, in respect of which a photocopy of a logbook shows a transfer to the Objector. That entry is however not counter stamped or verified with the stamp of the Registrar of Motor Vehicles.

9. Accordingly, the assertions of the Objector as to ownership are mere allegations. Section 8 of the Traffic Act 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.”

10. All in all, I am not satisfied that the Objector's application can succeed in absence of proof as to its ownership of the attached goods.

Accordingly, the Objector's Chamber Summons application dated 18th November, 2009 is hereby dismissed with costs.

Dated, signed and delivered this 11th day of February, 2013

R.M. MWONGO
JUDGE

Read in open court

Coram:

Judge: R.M. Mwongo

Court clerk: R. Mwadime

In Presence of Parties/Representative as follows:

- a).....
- b).....
- c).....
- d).....