



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO.257 OF 2011**

**NAKURU STEAM LAUNDRY &**

**DRY CLEANING LTD ..... PLAINTIFF/JUDGMENT DEBTOR**

**VERSUS**

**IBRAHIM KARIMBUX LIMITED .... DEFENDANT/DECREE HOLDER**

**GATEHOUSE LTD. .... OBJECTOR/APPLICANT**

**RULING**

The application dated 12/10/2012 is made pursuant to the provisions of **Order 51 Rule (2)** and **Order 52** of the **Civil Procedure Rules (2010)** seeking that the attachment and subsequent proclamation for sale against the objector and any of his property, particularly motor vehicle registration No.KAS 512g Pick-up, four processing machines, two washing machines, two complete sets of computers i.e. CPUS, monitors, mouse, keyboard, four tables, one deep freezer, one photocopying machine, five office chairs, three iron boxes, and any other movables available during collection time, be set aside and/or lifted.

The application is premised on grounds that, the applicant is the sole legal owner of the said motor vehicle and the various proclaimed items. It is a total stranger to the suit between the plaintiff and defendant and it risks incurring irreparable losses as a result of the attachment by the decree holder.

In a supporting affidavit sworn by Margaret Mburu (director of applicant), she deposes that the objector is a Limited Liability Company, totally distinct from the judgment debtor, and has no association with it at all.

The Objector/Applicant entered into a sale agreement with the judgment debtor on 13/09/2010, for purchase of parcel Number Nakuru Municipality Block 4/78, together with all its assets and improvements. The sale agreement indicates the completion date as 27/09/2010, and the vendor undertook to cater for all outstanding rates, bills, liabilities and/or any debts owing to creditors in respect of the said business, prior to the agreement. The vendor was Nakuru Steam Laundry. On 28/02/2011, the judgment debtor company i.e. Nakuru Steam Laundry was dissolved vide Gazette Notice No.2615 and it ceased to exist. On 8<sup>th</sup> October, the decree holder (Ibrahim Karimbux Ltd) issued a proclamation for attachment, affecting the items already referred to in this application. This attachment was in execution of a ruling dated 1<sup>st</sup> December 2011, where judgment was obtained against the judgment debtor in the sum of Kshs.110,750/=.

It is the applicant's contention, that ownership of the attached assets are vested in it and the same has never passed to the judgment debtor at any one time, nor has the same ever been co-owned. The objector/applicant has annexed a copy of the log book showing that the said motor vehicle is registered in its name.

The application is opposed on grounds that it is incompetent and bad in law, and the grounds advanced for resistance to execution ought to have been taken by the judgment debtor in an application for review of the court ruling. The sale agreement relied on is described as being formulated solely for the purpose of defeating the recovery of costs against the plaintiff, but it does not show any disposition of the assets to the objector/applicant. It is contended that the applicant has no proprietary interest in the proclaimed goods.

The application proceeded by way of written submissions, and counsel for the applicant seeks to rely on the ruling by this court which held that the suit was filed by a non-existent body in law, and it had been listed in the Kenya Gazette as dissolved.

The decree holder/respondent's counsel submits that the sale agreement does not specify the movable and immovable property being transferred to the objector during the sale; and the agreement was only for sale of the land and the fixtures thereon – he relies on the case of **Newlook Estate Ltd. & Another V Khora Omar and Burger Dome Restaurant**. I agree with counsel that the sale agreement does not specify the nature of assets and improvements transferred to the applicant, and the court is being asked to assume that they include the items complained of.

Indeed to borrow from the words of the court in **Raphael Musyoka Ngumbi V Paem Agencies Co. Ltd. And Another HCCC No.208 of 2010**, the objector has not produced any documents apart from the log book, to demonstrate that any of the goods belonged to it. The general principle is that, he who alleges must prove the allegations on which the relief of court is based.

I however must look further than just ownership and consider whether the execution being carried out is valid, since the court held that the suit had been filed by a non-existent body, it then follows that to allow the plaintiff to proceed with the attachment as matters stand here, would be completely contradictory to the court's earlier finding. I take note that the respondent's counsel is quiet on the action of execution taken. The application is merited and I allow it, to the extent that the proclamation for attachment be and is hereby lifted. Costs of the application shall be borne by the respondent/Judgment Debtor.

**Delivered and dated this 16<sup>th</sup> day of December 2013 at Nakuru.**

**H.A. OMONDI**

**JUDGE**

Miss Njoroge holding brief for Kisila for Defendant

N/A for plaintiff

N/A for objector