



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Civil Suit 73 of 2004**

**AGRO CHEMICALS & FOOD COMPANY LTD .....PLAINTIFF**

**VERSUS**

**W. G. CHIHI & COMPANY LTD .....DEFENDANT**

**AND**

**DIAMOND TRUST BANK LTD .....OBJECTOR**

**RULING**

The objector application dated 26<sup>th</sup> October 2011 prays that there be stay of attachment levied by Keysian Auctioneers on 7<sup>th</sup> October 2011 in execution of the decree and that the attachment of motor vehicle Registration number K A X 744 P be lifted. The application is supported by the affidavits of one Elizabeth Wanjiku Hinga sworn on 26<sup>th</sup> October 2012.

The objector contends that it has a debenture over the suit motor vehicle. In support of this they have attached a copy of the log book which shows the registered owners to be the objector / applicant as well as the defendant. They further attached the certificate of Registration of a mortgage as well as the particulars of the mortgage .

What can be gleaned from the annexures above is that the defendant took a mortgage of Kshs. 500,000 from the defendant sometimes in May 2010 and it offered the motor vehicle K A X 744 P and K A Y 872 U as securities.

The plaintiff on the other hand has argued that whereas this would be true the objector / applicant has not shown the outstanding loan due to the applicant from the defendant. According to the plaintiff failure to exhibit this could mean as well that the defendant has cleared the loan and therefore the vehicle was free.

Having listen to the parties oral submission and the affidavit evidence presented, it is not in dispute that the defendant is indebted to the plaintiff and that execution process has commence.

It is not also indispute that motor vehicle registration number KAX 744P is mortgage to the objector.

What is therefore the right of the objector? Its right is that by law it jointly owns the vehicle together with the defendant till it recovers its loan. The objector have a first priority over any other creditor who is owed by the defendant.

The contention therefore that the objector ought to have exhibited the amount due to it by the defended is a matter between the parties and not necessarily to be intruded by the plaintiff.

Order 22 Rule 55 however provides that:-

**“Any court executing a decree may order that any property attached by it and liable to sale or such portion thereof as may seem necessary to satisfy the decree, shall be sold and that the proceeds of such sale or a sufficient position thereof, shall be paid to the party entitled under the decree to receive the same”.**

In light of the above portion of the law and in light of the decree against the defendant which has been pending I do make the following order:-

- (a) The motor vehicle registration number K A X 744 P which was attached by Keysian Auctioneers be sold within the next fourteen (14) days from the date herein vide public auction and the proceeds thereof be paid first to satisfy the objectors mortgage and the balance thereof if any to satisfy the decree holder herein.**
- (b) Each party be at liberty to apply.**
- (c) The costs of this application shall be born by the defendant.**

**Dated, signed and delivered at Kisumu this 24<sup>th</sup> day of October 2012.**

**H.K. CHEMITEI  
JUDGE**

In the presence of:

Asunah for the plaintiff

Otieno for Chache for the defendant

*HKC/aa0*