



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL CASE NO.46 OF 2002

KIPLANGAT ARAP CHEBOSIR.....PLAINTIFF

VERSUS

LINEAR COACH CO. LTD.....1ST DEFENDANT
JOSEPH NJOGU KARANJA.....2ND DEFENDANT

RULING

The Plaintiff, **Kiplangat Arap Chebosir**, has a decree in his favour dated 3/5/2004 issued on 8/3/2007 in this suit. It is against the Defendants/Respondents for

1. Kshs. 1,500,000 towards general damages
2. Kshs. 460,000 towards special damages
3. Costs of the suit taxed in the sum of Kshs. 169,597

The said decree has not been satisfied. In her application by Chamber Summons application dated 11th September 2007, the Plaintiff seeks orders to compel the directors of Linear Coach Co. Ltd, the 1st Defendant, (Messrs Alfred Moffat Omundi Michira and Duncan Mogaka Michira) to attend Court to be orally examined as to, *inter alia*, the property of the 1st Respondent and/or properties of its subsidiaries and the means of satisfying the said decree. An order is also sought to compel production of books of accounts of the 1st Respondent.

It is alleged in the application that the 1st Respondent (company) does not carry on business any more and that the warrants of attachment remain unexecuted. It is alleged that motor vehicles Nos. KAS 648Y, and KAR 172B were transferred to one Alfred Moffat Omundi Michira, a director of the 1st Defendant.

The application, although served, was not opposed by the Defendants and none of the defendants attended the hearing.

Miss P C Mitei, learned Counsel for the Plaintiff/Applicant, urged the Court to grant the orders and reiterated that the Directors of the 1st Defendants have disposed of the 1st Defendant's properties.

Under **Order 35 Rule 35** of the **Civil Procedure Rules 2010**, a monetary decree - holder is entitled to apply to court for an order that the judgment debtor or any officer of a corporation or any other person be orally examined as to whether any or any of what debts are owing to the judgment – debtor and whether

the judgment debtor has any and if so what property or means of satisfying the decree and the Court may make an order for the attendance and examination of such judgment debtor or officer, or other person, and for production of any books or documents.

I have duly perused the application and considered the submissions made by Miss P C Mitei. I am satisfied that the Plaintiff is entitled to orally examine the directors of the 1st Defendant. Accordingly, I allow the application and grant orders in terms of prayers 1, 2 and 3 of the Chamber Summons dated 11th September 2007. The time and date when oral examination may be conducted shall be given by the registry. It is so ordered. The Defendants shall bear the costs of this application.

DATED at KERICHO this 16th day of March 2011

G.B.M KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. P. C. Mitei, Advocate, for the Applicant
Mr. Nyamweya Osoro, Advocate, for the Defendant
Mr. Bett, Court clerk