



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

CIVIL SUIT NO. 578 OF 2002

GITHU MUIGAI.....PLAINTIFF/RESPONDENT

VERSUS

THE PEOPLE LTD. & BEDAN MBUGUA.....DEFENDANT/RESPONDENT
THE PEOPLE MEDIA GROUP LIMITED.....OBJECTOR/APPLICANT

RULING

Before me is a Notice of Motion dated 22nd March, 2011 premised under Order 22 Rule 57 and Order 52 of Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of Civil Procedure Act.

The application filed by the Objector/Applicant seeks orders that the proclamation of attachment of the property of the Objector by Keysian Auctioneers dated 15th March, 2011 be lifted and/or set aside and that the said attachment be declared as wrongful staying the execution thereof.

The application is supported by the grounds set forth on the application, affidavit in support sworn by Robert Ndungu, a Director of the Objector on 22nd March, 2011 and supplementary affidavit sworn by him on 18th April, 2011.

The said application is opposed and the Plaintiff/Respondent has sworn a replying affidavit on 5th April 2011.

The main contention of the Objector is that, it is a separate entity to the Judgment-debtor which is "People Ltd." whose assets are purchased by the Objector under its former name, namely "*Ropart Corporate Ltd.*". The said purchaser through its Special Resolution changed its name to "*The People Media Group Ltd.*"

The said Business Asset Transfer Agreement dated 19th June, 2009 is annexed as Annexure RN2 to the affidavit in support. The Objector is relying on Clause 3.2 thereof which excludes certain items from the

sale, which included inter alia (See Clause 3.2 (b)), “the Creditors and Claimant”. Clause 9.2 of the said Agreement stipulates that the Vendor is liable to discharge the liabilities relating to the Assets and also to indemnify the purchaser in respect of any claim or liability before the completion date, which was 30 days from the date of execution of the Agreement. The date of execution of the Agreement was 19th June, 2009 and hence the completion date would be 19th July, 2009.

I do note that the cause of action in this matter accrued in the year 2002, long before the execution of the Agreement.

Be that as it may, it was pointed out by the Plaintiff/Respondent that the Agreement though is titled as “Asset Transfer Agreement”, its provisions stipulate specifically that it was the Agreement for Transfer of Business which is governed under the Transfer of Businesses Act (Cap 500).

The Objector has relied upon Sec. 8 of the said Act while the Plaintiff/Respondent has relied upon Sec. 3 thereof.

The said provisions stipulate:-

3. (1) *Whenever any business or any portion of any business is transferred, with or without the goodwill or any portion thereof, the transferee shall, notwithstanding any agreement to the contrary, become liable for all the liabilities incurred in the business by transferor, unless due notice in accordance with this Act has been given and has become complete.*

(2) *The liability of the transferee under subsection (1) shall cease immediately notice given in accordance with this section has become complete:*

Provided that should proceedings be instituted against the transferee before such liability has ceased the said notice shall (for the purposes of such proceedings but for such purposes only) be deemed incomplete pending the final determination of such proceedings, including all possible appeals, and pending the expiration of all period during which such appeals may be brought.

(3) Nothing in this section shall have the effect of relieving the transferor from any liability to which he would otherwise be subject. (emphasis mine)

8. *Notwithstanding the provisions of this Act or of any other written law, no proceedings shall be brought against a transferee in respect of any liability imposed by this Act after the expiration of six months after the date of the transfer concerned.*(emphasis mine)

The Plaintiff/Respondent also stresses on clause 9 of the Agreement which stipulates the purchaser’s (Applicant) acceptance to discharge liability accruing after the completion date. (see clause 9.3)

However, I would note that the liability stipulated in the said clause is in respect of the Assets and in any event, Clause 9.2 stipulates that the Vendor shall be responsible for all the liabilities relating to the Assets payable by and claims outstanding against it at the completion date. Obviously, the claim herein was outstanding before the completion date.

I may also now deal with the provisions of the Transfer of Businesses Act. I would note that Sec. 3 (3) of the Act does not release the transfer or from its liability and that Sec. 8 of the Act on the other hand, overrides all the provisions of The Act including Sec. 3. In my considered opinion, Sec. 8 debars any proceedings against the transferee for any liability of the Transferor imposed by this Act after the

expiration of six months from the date of the transfer concerned. The completion date was July, 2009 and the execution proceedings are commenced in May, 2011, obviously long after the expiry of six months from completion date.

With the above specific provisions of law and facts of this application and the terms of the Agreement, I shall tend to agree with the Applicant that the proclamation dated 15th March, 2011 is not lawful and need to be set aside.

I thus allow the application dated 22nd March, 2011 as prayed.

Dated, signed and delivered at Nairobi this 29th day of **June, 2011**

K. H. RAWAL

JUDGE

29.06.2011