



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 283 OF 2002

C. G. MOKKU.....PLAINTIFF
ABDI AHMED ABDI aka KAWIR.....PLAINTIFF

V E R S U S

KALAMKA LTD.....DEFENDANT
ABJAT KHALIF.....DEFENDANT
MUSA AHMED WARSAME.....DEFENDANT

AND

ALLIANCE GROUP MANAGEMENT COMPANY LIMITED....OBJECTOR

R U L I N G

The Objector herein, **ALLIANCE GROUP MANAGEMENT COMPANY LIMITED**, took proceedings under **Order XXI, rules 56 and 57** of the old **Civil Procedure Rules** (the **Rules**) to establish its claim to ownership of certain goods attached in execution of decree herein against the 1st Defendant/Judgment-Debtor. The application is by **chamber summons dated 29th August, 2008** and is supported by an affidavit sworn by one **JULIUS GAKURE NYANJUI**, a director of the Objector.

The Plaintiffs/Decree-Holders have opposed the application by replying affidavit sworn by one **ELIUD KING'ARA**, the auctioneer who carried out the attachment. There is no replying affidavit sworn by any of the decree-holders.

I have read the supporting and opposing affidavits. I have also given due consideration to the submissions of the learned counsels appearing, including the one case cited.

At the material time, an objector to attachment of any property in execution of a decree had to establish that he was entitled to, or had, a legal or equitable interest in the whole or part of the attached property. See **Order XX1, rule 53(1)** of the Rules.

To the supporting affidavit are annexed various cash-sale receipts for various office equipments and

furniture similar to the attached goods. The receipts are variously dated 5th and 12th April, 6th and 29th May and 8th June 2005. All the receipts are in the name of the Objector. This is *prima facie* evidence that the attached goods belong to the Objector.

What is the answer of the decree-holders to this? As already pointed out, there is no affidavit by any of them. What there is an affidavit by the auctioneer who attached the goods.

The auctioneer has deponed that upon receiving instructions to attach the Defendant's goods, he on 8th August, 2008 "proceeded to the defendant's registered offices located on the 4th and 5th floors, Union Towers, Nairobi and proclaimed the judgment-debtor's property."

The auctioneer further depones that "there was no sign or indication of a registered office in the name of the objector herein and the only offices located on the said floor were those of the defendant and the People Newspaper."

The auctioneer has also categorically deponed that the attached goods were found within the premises and in the custody of the Defendant.

No supplementary affidavit was filed by the Objector. Such would have been necessary to shed light upon the following issues:-

1. Why were the attached goods, apparently and recently purchased by the Objector, in the 1st Defendant's premises and custody?
2. What was the connection or relationship between the Defendant and the Objector?
3. Why is there no averment in the supporting affidavit that the attached goods were found in offices belonging to and occupied by the Objector?
4. Why was there no evidence of any offices occupied by the Objectors in premises occupied by the 1st Defendant and its newspaper?

In the circumstances of this case the cash sale receipts exhibited by the Objector are not of themselves sufficient evidence of its legal or equitable interest in the whole or part of the attached goods. The receipts themselves are not serialised and appear to be computer-generated. It would have helped if there were affidavits by the various merchants named in the receipts to the effect that they sold the goods to the Objector.

I am thus not satisfied that the Objector has established that it is entitled to, or has, a legal or equitable interest in the whole or part of the attached property.

The application by chamber summons dated 29th August, 2008 is without merit. It is hereby dismissed with costs to the Plaintiffs/Decree-Holders. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF SEPTEMBER, 2011.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 2ND DAY OF SEPTEMBER, 2011