



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 412 of 2008

SCANHOUSE PRESS LTD..... PLAINTIFF

VERSUS

TIMES NEW SERVICES LIMITED.....DEFENDANT

AND

NEWS & PRINTING SERVICES.....OBJECTOR

RULING

By a warrant of attachment issued by the Deputy Registrar of this court on 13th February 2009, Messrs Daystar Auctioneers attached some properties which were found in the premises purporting to belong to the defendant. The said auctioneers proclaimed the property in question on 16th February 2009. On 16th April 2009, the objector, News and Printing Services Limited commenced objection proceedings challenging the said attachment. The objector alleged that the proclaimed goods were its property. They did not belong to the defendant. The plaintiff notified the objector that it would proceed with the attachment.

On 29th April 2009, the objector filed an application pursuant to the provisions of **Order XXI Rule 57** of the **Civil Procedure Rules** seeking the lifting of the attachment and thereafter the unconditional release of its property. In its application, the objector contends that it was not a party to the suit that resulted in the issuance of the decree that was subsequently executed. The application is supported by the annexed affidavit of Charles Ruto, the senior operations manager of the objector. The application is opposed. The plaintiff filed notice of preliminary objection to the application. In the said notice, the plaintiff argues that the application was incompetent as the objector had filed the substantive application seeking the lifting of the attachment after expiry of ten (10) days after the plaintiff had intimated that it would proceed with the attachment. The plaintiff contends that the application was frivolous, vexatious and unmeritorious since the objector had placed no evidence to support its assertion that it is indeed the owner of the proclaimed goods.

At the hearing of the application, I heard rival submissions made by Mr. Enonda for the objector and by Mr. Ndurumo for the respondent. I have carefully considered the said submissions. I have also read the pleadings filed by the parties in support of their respective opposing positions. The issue for determination by this court is whether the objector has indeed established ownership of the proclaimed goods to entitle this court reach a finding in its favour and thereby lift the attachment of the proclaimed goods. It is imperative that where a party claims to be the owner of certain property, such a party must supply evidence that it indeed owns the property in question.

In the present application, it is clear that the objector placed no evidence in form of documentary evidence such as receipts, invoices, delivery notes and purchase documents to establish its ownership of the proclaimed goods. The only evidence that the objector placed before the court to support its claim of ownership of the proclaimed goods is the supporting affidavit sworn by an employee of the objector

asserting ownership of the goods in question. In paragraph 7 of the said affidavit, the said employee deponed that, given time, the objector would file further pleadings to prove its ownership of the proclaimed goods. Eight (8) months later, the objector had filed no such pleadings. This court cannot, on the strength of mere assertion by a deponent, reach a finding that the objector is the owner of the proclaimed goods. In the premises therefore, I hold that the objector has failed to establish ownership of the proclaimed goods.

The application by the objector therefore lacks merit and is hereby dismissed with costs to the plaintiff. The orders earlier granted staying further execution of the said warrants of this court are hereby vacated.

DATED AT NAIROBI THIS 20TH DAY OF JANUARY 2010.

L. KIMARU
JUDGE