

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Petition 330 of 2009

STEGMA ENTGERPRISES.....PLAINITFF

VERSUS

VICTAR MAINA NGUNJIRI.....DEFENDANT

RULING

By this application, the applicant seeks two main orders:-

- (i) **That an order be issued prohibiting Maathai Supermarket Limited from transferring the judgment debtor's shares "of and in it" (sic) and or in its property and or from receiving any dividend and or thereon, and further from giving possession of movable property held on account of or on behalf of the judgment debtor.**
- (ii) **That this Honourable Court be pleased to order actual seizure of movables held by M/S Maathai Supermarket Limited as per the share held by the judgment debtor as if the same were in the possession of the judgment debtor in execution of the decree herein.**

The application is brought by a notice of motion dated 18th March, 2010, and made under **Order L rule 1; Order XXI rules 41 and 42 of the Civil Procedure Rules, and Sections 3A and 63(e) of the Civil Procedure Act**. It is supported by the annexed affidavit of Stephen Matheka, a director of the plaintiff /decree holder, and is based on the grounds that:-

- (a) **The judgment debtor holds shares in and or is a shareholder of Maathai Supermarket Limited, which also holds property in his name.**
- (b) **The judgment debtor has a share in the said corporation and its assets.**
- (c) **A decree has been issued against the judgment debtor which he has failed to satisfy.**

At the hearing of the application, Mr. Ombwayo appeared for the applicant Decree Holder, but the judgment debtor did not attend court. After service on him of summons to enter appearance, the judgment debtor entered appearance in person but did not file any defence. Judgment was accordingly entered against him on request under **Order IXA rule 3 of the Civil Procedure Rules**. After the filing of

this application, he was duly served in sufficient time to react to the application but he filed neither a replying affidavit nor grounds of opposition. And on the hearing date he did not attend court, prompting the court to proceed ex parte. His apathy to the proceedings in this matter is self evident, and this application is unopposed.

In the judgment debtor's absence, Mr. Ombwayo for the decree holder argued the application ex parte and urged the court to grant the orders as prayed. As the application is unopposed, I grant the prayers sought and make the following orders:-

1. THAT M/S Maathai supermarket Ltd. be and is hereby prohibited from transferring the judgment debtor's shares in the said company and from paying any dividend thereon, or giving possession of any movable property held on account or on behalf of the judgment debtor.
2. THAT all movable properties held by M/S Maathai Supermarket Ltd. on account of the judgment debtor's share be seized as if the same were in the possession of the judgment debtor in execution of the decree herein.
3. The judgment debtor to bear the costs of this application.

Dated and delivered at Nairobi this 26th day of March 2010.

L. NJAGI

JUDGE