



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL CASE NO. 6 OF 2010

MUMIAS OUT-GROWERS CO. (1998) LTD & ANOTHER..... PLAINTIFFS

-VERSUS-

CMC MOTORS GROUP LIMITED.....RESPONDENT

R U L I N G

1. The application before court is a Chamber Summons dated 21st January, 2010 brought pursuant to Section 3A, 63(e) of the Civil Procedure Act and Order XXXIX, Rule 1 2 & 9 of the Civil Procedure Rules; seeking for an order of temporary injunction against the defendant, restraining the defendant by itself, its officers, employees, servants and/or agents from attaching, repossessing any of the 1st plaintiff's tractors and/or properties or interfering with its use and possession of the tractors and properties pending hearing and determination of the suit.
2. The application is supported by the affidavit of **D. M. Rapando** the 1st plaintiff's Company Secretary and on the grounds that the respondent wrongfully proclaimed the 1st applicant's goods without a valid judgment and therefore their action is unlawfully, illegal and null and void abnatio.
3. The defendant objected to the application by filing a replying affidavit dated 2nd February, 2010 sworn by one **Dennis Musungu** a branch Manager of the defendant. It is his contention that the 1st applicant owes the defendant money, secondly the 1st applicant failed to disclose material facts to the court, thirdly if any debenture exists with a third party the defendant is a total stranger to the same.
4. The issue for determination is whether or not to issue a temporary injunction pending hearing and determination of the suit.
The conditions upon which to grant an injunction are well settled in the case of **GIELLA VS CASSMAN BROWN LTD [1973] E. A.** It is also to be noted that an injunction is an equitable remedy and he who comes to equity must come with clean hands.
5. The facts laid by both parties have brought forth several issues; a dispute as to the amount outstanding, whether or not having sold spare parts and transferred the tractors to the 1st plaintiff and without an agreement for repossession the defendant can without a decree or lawfully court order simply move into the 1st defendant's premises, proclaim and sell the 1st plaintiff's property.
6. The court is of the view that the defendant must of necessity in the absence of a repossession arrangement file suit and obtain judgment against the 1st defendant before attaching the properties of the 1st defendant.
7. Noting though that the 1st plaintiff has not come to court with clean hands, as there is an admission by it of sums due but for reason given in 4 above, that the defendant has to move the court, before attachment the court reluctantly grants a temporary injunction against the defendant by itself, its officers, employees, servants and or agents from attaching, repossessing and/or interfering with the use or possession of the plaintiff's tractors and/or properties pending further orders of the court.
8. Costs in the cause.

DATED AND DELIVERED IN KISUMU THIS 26TH NOVEMBER, 2010.

ALI-ARONI

JUDGE

In the presence of:

..... present for plaintiff

.....present for defendant.