



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 575 OF 2009

CONSOLIDATED BANK OF KENYA LTD.....PLAINTIFF

VERSUS

MULTI GRAPHICS WORKS LTD

JOHN MWAURA GICHENGA

AND LILIAN GICHURE.....DEFENDANTS

AND

ZACHARIA MWANGI MAINAINTERESTED PARTY

R U L I N G

The application before the court is brought by way of a chamber summons dated 8th September, 2010, and taken out under Order I Rule 8 (3) of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act. The applicant thereby seeks from the Court the following orders –

- 1) That the applicant herein be made a party to the proceedings herein as an Interested Party.**
- 2) That there be a temporary stay of sale, transfer or otherwise of the Motor vehicle Registration No. KBA 932S by M/s GIATUTU INVESTMENT AGENCIES and EQUITY BANK LTD until the hearing and determination of this application.**
- 3) That this Honourable court be pleased to order that the attached Motor Vehicle Registration No KBA 932S Toyota be released immediately to the Interested Party by M/s GIATUTU INVESTMENT AGENCIES and EQUITY BANK LTD .**
- 4) That the costs of this application be paid by the said GIATUTU INVESTMENT AGENCIES and EQUITY BANK LTD.**

The application is supported by annexed affidavit of ZACHARIA MWANGI MAINA, and is based on the ground that the Interested Party purchased the subject Motor vehicle at a public auction on 14th May, 2010 as an innocent purchaser for value, and that he was not indebted to either GIATUTU INVESTMENT AGENCIES or EQUITY BANK LTD.

To this application, the Advocates for EQUITY BANK LTD raised a preliminary objection on the grounds that the prayers sought were against persons not parties to the suit. When this preliminary objection came for hearing before the court, Mr Kayai appeared for the Interested Party while Mr Matheka appeared for the Plaintiff and Mr Onyango for the Defendant. Mr Onyango submitted that the orders sought were not tenable when EQUITY BANK was not a party to the suit. Secondly, he argued that the application was brought under Order 1 Rule 8(3) which can support only the prayer for the Interested Party to be made party to the proceedings. And thirdly, he argued that there was no suit filed against EQUITY BANK and therefore the application was incompetent. It was his further contention that the application could have been competent only if a substantive suit had been filed against EQUITY BANK to form a basis for the application. He urged the court to dismiss the application.

On his part Mr Kayai argued that the preliminary objection was misplaced both in law and in fact. He contended that what the Interested Party specifically sought was an order to be joined as a party which had nothing to do with EQUITY BANK. It was after he was made a party that he would pursue the other orders against EQUITY BANK. He invoked the courts inherent powers under Section 3A to do justice in the case and grant the orders prayed.

Having considered the pleadings and the submissions of counsel, I find this application to be very strange. Its brief background is that the Interested Party bought motor vehicle registration No. KBA 932S at an auction on 14th May, 2010. The vehicle previously belonged to the Defendant in this suit. After the purchase, the same vehicle was attached by GIATUTU INVESTMENT AGENCIES, Auctioneers, on instructions from EQUITY BANK in a bid to enforce the payment of a debt from LIMWA GENERAL AGENCIES. After the attachment, the Interested Party came calling to be joined as a party to this suit.

The strange aspect of this application is that the Interested Party has not demonstrated any privity of contract or estate with either the Plaintiff or the Defendant in this case. His relationship remains with EQUITY BANK LTD, who instructed GIATUTU INVESTMENT AGENCIES to attach the said motor vehicle in order to recover the loan balance. Since the debtor was LIMWA GENERAL AGENCIES, one can only reasonably deduce that the Interested Party was probably carrying on business under the name and style of LIMWA GENERAL AGENCIES. Such an account does not accord the applicant any juridical basis upon which to apply to join the present suit. Upon buying the motor vehicle, it became his property and the parties to this suit had nothing more to do with the motor vehicle.

On account of the foregoing, I find that the Interested Party's complaints are misdirected as they should be addressed to EQUITY BANK and GIATUTU INVESTMENT AGENCIES who were instrumental to the attachment of his motor vehicle. But clearly, his remedy does not lie in joining this suit which has nothing to do with EQUITY BANK. For these reasons, I find that the Interested Party has not established any nexus between himself and the parties to this suit, or the issues therein, to warrant the grant of his application to be made a party thereto.

In the circumstances, I therefore uphold the preliminary objection and order that the Interested Party's application by chamber summons dated 8th September, 2010 be and is hereby struck out with costs. It is so ordered.

DATED and DELIVERED at NAIROBI this 11th day of November 2010.

L. NJAGI

JUDGE