



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI COMMERCIAL COURTS

Civil Suit 21 of 2003

REGISTERED TRUSTEES OF KENYA

EPISCOPAL CONFERENCE.....PLAINTIFF

VERSUS

PREPS INTERNATIONAL LIMITED.....DEFENDANT

R U L I N G

This is a Chamber Summons application brought under Order XXI Rules 53, 54, 56 and 57 of the Civil Procedure Rules Section 3A of the Civil Procedure Act. It seeks the following orders:

1. THAT the proclamation and attachment of the Objector's goods namely;-

- (i) 3 No. Ordinary office desks**
- (ii) 1 No. Compaq computer**
- (iii) 1 No. computer table**
- (iv) 5 No. arm-chairs**
- (v) 2 No. dining chairs**
- (vi) 1 No. Lanier 7313 copier**
- (vii) 1 No. HP Computer**
- (viii) 1 No. small office desk and**
- (ix) 1 No. book shelf**

Be lifted and cancelled unconditionally.

2. THAT the auctioneers charges and costs herein be borne by the Plaintiff in any event.

The application is supported by grounds which are on the face of the application.

The application is also supported by an affidavit sworn by Jimmy Wafula, the National Coordinator of the Objector. I have considered the contents of the affidavit together with the annexures.

The Decree Holder/Plaintiff in this matter was served with the Notice of Objection together with the instant application on 23rd March, 2009. Despite service with the said Notice, the Plaintiff has not filed any documents to oppose the application. The Notice of Objection was issued pursuant to rule 54 of Order XXI. Under rule 55 where a Creditor pursuant to a notice issued under rule 54 fails to reply to the Court and the Objector within the period prescribed by the Notice, or to intimate in writing to the court and to the Objector of his intention to proceed with the execution of the attachment of either the whole or part of the property, subject of the attachment, then the court should raise the attachment. The Plaintiff was served with the Notice of Objection and the instant application on 23rd March, 2009. It had 15 days within which to intimate to the Court or the Objector in writing, whether it proposed to proceed with the attachment and execution. The 15 days lapsed on 7th April, 2009. By the time the application came up for hearing on 22nd April, 2009, the Plaintiff had not filed any notice of its intention to proceed with the attachment, whether wholly or in part.

When the matter came up for hearing on 22nd April, 2009 the Plaintiff/Decree-Holder applied for adjournment on grounds that it had been unable to trace the Plaintiff. That application was made on behalf of the Counsel for the Defendant, by a Counsel holding brief. No further details were supplied. That application was declined for the simple reason that the Plaintiff had not, in any event, and in response to the Notice served upon it under rule 54 of Order XXI of the Civil Procedure Rules, intimated an intention to proceed with the attachment. Even without hearing the Objector on his application, the Court has a duty under rule 55 to raise the attachment over the property, the subject of the Objector's application in such circumstances.

I have gone further and heard submissions from the Objector. I have also considered the filed affidavit sworn on behalf of the Objector. At paragraph 10 of that affidavit, the Objector has adduced copies of receipts for the purchase of the goods the subject of prayer 1 of the Chamber Summons application. Under paragraph 2 of the affidavit of Mr. Wafula, he deposes that the Objector is a licensee of the Defendant, who is the Judgment-Debtor in this suit, at the Defendant's premises situate at Finance House, 7th Floor, Loita Street, Nairobi. At paragraph 4 it is deposed that following the accommodation accorded to the Objector by the Defendant, the Objector brought into the said premises furniture and other items before it started its operations therein. The proclamation in issue, it is deposed at paragraph 5, was carried out at the said premises.

I have considered this application. I am satisfied that the Objector is not a party to this suit. It is evident that the Objector is a licensee of the Defendant in the Defendant's premises at Finance House. These facts have not been controverted. The Objector has also produced receipts and other documents showing proof of his ownership of the goods proclaimed in execution of the decree in this suit. Having proved that it is the owner of the goods, the attachment cannot be allowed to proceed.

On the two grounds which I have shown in this ruling, I am satisfied that the Objector is not a party to these proceedings. It is the owner of the proclaimed goods. The Plaintiff has not intimated its intention to proceed with the attachment. For these reasons, the Objector's Chamber Summons application dated 20th March, 2009 is granted as follows:

1. The proclamation and attachment of the Objector's goods as listed in prayer 1 of the Chamber summons application be and is hereby lifted, and the attachment cancelled unconditionally.

2. The Plaintiff/Decree Holder will pay the auctioneers charges and costs if any.

Dated at Nairobi, this 30th day of April, 2009.

LESIIT, J.

JUDGE

Read, signed and delivered, in the presence of:

N/A for Mr. Mutuli for the Applicant/Objector

N/A for Mr. Liko for the Respondent /Decree Holder

LESIT, J.

JUDGE