



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**(MILIMANI LAW COURTS)**  
**CIVIL CASE 655 OF 1998**

**WELLMA INSURANCE BROKERS .....DECREE HOLDER**

**V E R S U S**

**MUHORONI SUGAR COMPANY .....JUDGMENT DEBTOR**

**AND**

**1. MARTIN OWITI**

**2. KIPKORIR BETT**

**(As Receiver Managers of Muhoroni Sugar**

**Company Ltd (Under Receivership) .....OBJECTORS**

**R U L I N G**

By this application (**chamber summons dated 9<sup>th</sup> December, 2008**) the Objectors herein, MARTIN OWITI and KIPKORIR BETT, the receivers/managers of MUHORONI SUGAR COMPANY LTD (in Receivership), which is the Defendant/Judgment-Debtor in this suit, have raised objection to attachment of the Judgment-Debtor's assets in execution of the decree. The main ground advanced is that as such receivers/managers, the Objectors "**claim entitlement to a legal interest in the whole of the property attached**". Other grounds are:-

- (i) That the attachment flies in the face of a legally binding and preferential debenture already existing in favour of Kenya Sugar Authority.
- (ii) That the attachment is contemptuous of orders of the court.
- (iii) That the attachment is vexatious and scandalous.
- (iv) That the attachment represents an unlawful attempt to exalt an unsecured debt over secured creditors.

The application is brought under **Order 21, rules 56 and 57 of the Civil Procedure Rules** (the Rules). It is supported by the affidavit of the 2<sup>nd</sup> Objector.

The Decree-Holder has opposed the application as set out in the replying affidavit sworn by one **JOSEPH WANYAMA**, a director of the Decree-Holder, filed on 14<sup>th</sup> January, 2009. Various grounds of objection are raised, *inter alia*:-

- (i) That the Objectors have no *locus standi* and should not have brought these objection proceedings in their own names, which proceedings should have been brought by Kenya Sugar Board.
- (ii) That the debentures in favour of Kenya Sugar Board are invalid and void.

The issue of *locus standi* raised by the Decree-Holder is an issue of jurisdiction. If the Objectors have no *locus standi* to bring these objection proceedings, the court would have no jurisdiction to substantively determine the application. I must therefore deal with that issue up-front.

I have considered the written submissions filed on behalf of the parties herein, including the authorities cited. In the case of **Lochab Brothers –vs- Kenya Furfural Co. Ltd. [1983] KLR 257** the Court of Appeal held as follows at holding number 3:

**“A receiver cannot sue in his own name as receiver since he has no property vested in him, and so acquires no right of action by his appointment. Nor can the court give a receiver leave to sue as receiver. The receiver’s duty is to take care of and receive the property which is put under his charge, and he is not at liberty, and is not entitled to bring an action in his own name. Thus the second respondents (who were receivers) had no locus standi and they could not bring the (objection to attachment) proceedings in their own name. They were authorised to take proceedings only in the name of the company whose agents they were.”**

The court further held at holding number 4 that the second respondents in that appeal, as receivers, had no interest, legal or equitable, in the attached goods, and that it was not a case of mere mis-joinder of parties as, in effect, would be curable under **Order 1, rule 9** of the Rules which provides:-

**“9. No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it”.**

At holding number 5 the court held that the legal interest in the attached goods was held by the debenture holder; the receivers were thus not entitled to bring objection proceedings against the attachment of the judgment-debtor’s assets without joining the holders of the legal interest as parties. They had no *locus standi*, and their action was a nullity in law.

In the present case, assuming that the debentures held by **Kenya Sugar Authority** were good, the said Authority was the holder of the legal interest in the assets of the Judgment-Debtor. The Objectors were thus not entitled to bring the objection proceedings herein without joining Kenya Sugar Authority. By authority of the Court of Appeal in the above-quoted case, the objection proceedings herein are a nullity in law.

Secondly, and by the same authority, the Objectors could not bring the objection proceedings in their own name as receivers, because the assets of the Judgment-Debtor did not vest in them. They did not acquire any right of action by their appointment as receivers. They thus did not have *locus standi* to bring the objection proceedings in their own name, and the same is a nullity in law and must be struck out.

In these circumstances the court has no jurisdiction to determine the application substantively. In any event, any substantive determination of the application when the same is not properly before the court may prejudice a proper hearing of any proper application that may be brought before the court. I therefore decline to determine the other issues raised in this application.

The upshot is that the chamber summons dated 9<sup>th</sup> December, 2008 must be, and is hereby, struck out with costs to the Decree-Holder. The stay of execution issued under **Order 21, rule 53** of the Rules is hereby lifted. Those are the orders of the court.

**DATED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MAY, 2009**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 22<sup>ND</sup> DAY OF MAY, 2009**