



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 9 of 2006**

**UNEECO PAPER PRODUCTS LTD.....PLAINTIFF**

**VERSUS**

**MULTI OPTIONS LIMITED.....DEFENDANT**

**RULING**

Ecobank Kenya Limited (hereinafter “the objector”) has applied, by Chamber Summons dated 2<sup>nd</sup> March 2009, for an order that the attachment of the objector’s property described in the proclamation of attachment dated 1<sup>st</sup> December 2008, be raised on the ground that the attachment is unlawful and wrongful in that the said property is secured to the objector by virtue of a debenture and further debenture pursuant to which the objector appointed receivers to realize the security and pay off the defendant’s indebtedness to it. The objector, therefore, contends that the defendant has no interest or claim whatsoever in the said property and consequently, the whole of the execution proceedings herein are a nullity as the plaintiff being an unsecured creditor, cannot attach the said property to recover its indebtedness in priority to the objector. The application is expressed to be brought under the provisions of Order XXI Rules 56 and 57 of the Civil Procedure Rules. The application is supported by an affidavit sworn by one Wilfred Oroko, the objector’s Company Secretary. In the affidavit, it is deponed that the property attached in purported execution of the decree in the suit is secured to the objector in respect of the defendant’s indebtedness to it by a debenture and further debenture dated 2<sup>nd</sup> September 2002 and 13<sup>th</sup> September 2005 respectively. Annexed to the affidavit are copies of the said debenture, further debenture and Notices of Appointment of Receiver and Manager. It is further deponed that in view of the foregoing, and given that the objector has a fixed charge as well as a floating charge that crystallized upon the appointment of the Receiver, the objector has a legal and equitable interest over the attached property which cannot be attached by the plaintiff an unsecured creditor seeking to recover its indebtedness in priority to that of the objector.

The application is opposed by the Decree holder upon the main ground that the application is incompetent and frivolous. In his oral submissions before me, counsel for the Decree holder contended that as the debenture is between Akiba Bank Limited and the defendant, the objector cannot base its claim upon the same.

I have read the affidavit sworn in support of the application and the Grounds of Opposition. I have also perused the annexed debenture and further debenture. Finally, I have given due consideration to the submissions of Learned counsel appearing. Having done so, I take the following view of the matter. The objector’s Company Secretary has deponed in the supporting affidavit that the defendant’s property under attachment is infact secured to the objector in respect of the defendant’s indebtedness to it by a debenture and further debenture which he has exhibited. He has further exhibited Notices of Appointment of

Receiver and Manager. Those appointments were made by the objector. The Notices clearly state that Ecobank Kenya Limited was formerly known as EABS Bank Limited and Akiba Bank Limited. They also refer to the debenture and further debenture dated 2<sup>nd</sup> September 2002 and 13<sup>th</sup> September 2005. The appointment of the Receiver and Manager has not been challenged by either the plaintiff or the defendant. Indeed the only way the plaintiff would have challenged the factual position presented by the Objector's Company Secretary, would have been by way of a replying affidavit. None was filed. The facts as presented by the Company Secretary of the Objector are therefore deemed correct. Those facts in my view have established that the objector is the legal and equitable owner of the attached property. The property should not have been attached at all. I will therefore allow this application with costs. The decree holder shall also pay the auctioneer's charges if any.

Orders accordingly.

**DATED AND DELIVERED AT MOMBASA THIS 20<sup>TH</sup> DAY OF MAY 2009.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Khagram for the Applicant.

**F. AZANGALALA**

**JUDGE**

**20<sup>TH</sup> MAY 2009**