



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA**

Civil Case 376 of 1992

JECKIE JUMBA..... OBJECTOR/APPLICANT

A N D

LULU DRY CLEANERS 1ST PLAINTIFF

DISHON JUMBA 2ND PLAINTIFF

A N D

KENYA INDUSTRIAL ESTATE & OTHERS 1ST DEFENDANT

LABAN ANZIYA 2ND DEFENDANT

KURONYA AUCTIONEERS 3RD DEFENDANT

R U L I N G

The applicant filed his application dated 27th March 2009 on the same date and the same seeks among other things –

- 1. THAT the objector be granted for leave to issue Third Party notice to the 1st and 2nd third parties respectively.**
- 2. THAT any ruling or order passed by this Honourable court in absentia of the objector be or STAYED or SET ASIDE until further Notice.**
- 3. THAT this Honourable court do issue an injunction for STAY of the sale of an Isuzu Uhuru Saloon Car white Reg. No. KYR 845 valued KShs.600,000/= which the auctioneers nick-named it Reg. No. KXP 845.**
- 4. THAT the defendant be and or are summoned to show cause why this Honourable Court should not declare the attachment of Isuzu Uhuru Saloon Car white Reg. No. KYR 845 by the defendant or their Agents as UNLAWFUL.**

The application is supported by the affidavit of Jeckie Jumba sworn on 27-3-2009. The application was brought under **Order 1 rule 13 and 14. Order XX Rule 53 (1)(2) , 54, 55 56 and Order 57 section 3A** of

the Civil Procedure Act.

The Applicant's first prayer is for leave to issue third party notice to the 1st and 2nd third parties respectively. **Order 1 rule 14 (1)** provides as follows:-

14. (1) Where a defendant claims as against any other person

not actually a party to the suit (hereinafter called the third party)-

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff or

(c) that any question or issue relating or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party or between any or either of them.

he may by leave of the court, issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.

It is evident that the applicant herein is not one of the defendants in the suit neither is he a plaintiff. **Order 1 rule 14** therefore does not apply to the applicant who had described himself as an objector.

Similarly **Order 1 rule 13** which has been cited by the applicant provides as follows:-

13. Any application to add or strike out or substitute a plaintiff

or defendant may be made to the court at any time before

trial by summons or at the trial of the suit in a summary

manner.

Order 1 rule 13 deals with substitution and addition of parties before trial. This suit was determined and judgement was entered on 19th June 2000. This court therefore cannot apply this rule in respect to the present application.

The second prayer in the applicant's application is that any ruling or order passed by this Honourable Court in absentia of the Objector be or is stayed or set aside until further notice. The applicant is relying on **Order XXI rules 53, 54, 55, 56 and 57**. **Order XXI** deals with execution of orders and decrees. The main operational rule for objectors is rule 53 which provides as follows:-

53 (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such

property give notice in writing to the court and to the decree-holder of his objection to the attachment of such property.

(2) Such notice shall contain the objector's address for service and shall set out shortly the nature of the claim which such objector or person makes to the whole or portion of the property attached.

It follows that **Order XXI rule 53** can only operate prior to a sale or an auction having been conducted. In the current case, the decree was executed, and vesting orders were issued in favour of the purchaser of Motor vehicle KYR 845, one Morrice Ndenge Omeno. Therefore I am not able to set aside all the orders issued by this court in absentia of the applicant as prayed in prayer 2 of the application.

Prayer 3 of the application is for an order of injunction for stay of the sale of motor vehicle KYR 845 valued at KShs.600,000. As explained above, the said motor vehicle has already been sold and the same belongs to someone who is not a party to this suit. This prayer as well fails as the court cannot rewind the entire process followed to execute the decree herein.

Prayer four is for an order to summon the defendant to show cause why the court should not declare the attachment of motor vehicle KYR 845 unlawful. This court issued warrants of attachment to Kuronya Auctioneers. The said auctioneers executed the warrants and did notify the court vide their letter dated 15th August 2008 that the warrants had been executed. The attachment of the motor vehicle KYR 845 was therefore lawful and a notice to show cause may not issue at this time.

Prayer five of the application seeks damages at the rate of Shs.10,000/= per day for loss of services of motor vehicle KYR 845 or payment of KShs.600,000 should the said motor vehicle go missing. It also seeks orders directing the Commissioner of Police to repossess the above vehicle as well as an order directed on Mr. Laban Anziya to furnish the applicant with the names of the court brokers who attached motor vehicle KYR 845.

It is my finding that the applicant herein is not an objector. In any case, objection proceedings cannot be entertained at this moment when the attached property has already been sold. In the alleged third party notice drawn by the applicant, it is stated that the above motor vehicle belongs to a Mr. R. V. Patel who went to India and left the vehicle in the custody of the applicant. No Power of Attorney or authority to sue on his behalf has been exhibited. Therefore I find that all the prayers included in prayer five of the application are baseless and without proof.

I find no merit in this application and the same is dismissed.

Dated, Delivered and Signed at Kakamega this 9th day of June 2009

SAID J. CHITEMBWE

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