



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

Civil Suit 329 of 2003

AWO SHARIFF MOHAMEDPLAINTIFF/DECREE HOLDER

VERSUS

ABDULKADIR SHARIFF ABDIRAHIM.....DEFENDANT/JD

AND

DAHIR SHARIFF ABDULKADIR

TIMESCOM ENTERPRISES

SASA GENERAL INVESTMENTS LTD.OBJECTORS

R U L I N G

This is an objection application dated 6th February, 2009 and filed under Order XXI rule 57 of the Civil Procedure Rules. It is seeking an order lifting the sale of properties listed under order 1(a) to (d). The property under Order 1 (e) was withdrawn from this application on grounds it is the issue of other objection proceedings. Rule 57 sets out the procedure to be followed when filing objection proceedings. Under rule 57(1) it is provided: -

“57(1) Proceedings in pursuance of rule 56 shall be by summons in chambers supported by affidavit in the suit in which the application for attachment was made.”

The Applicants have established their claim over the suit property. In respect of 1(a) of the suit property is LR No. 209/13668 formerly Block 103/564 the Applicant relies on the documents at pages 18 to 21 of the supporting affidavit. The document is a Title document for the suit property. It shows that the suit property was transferred to the 1st Objector on 12th April 2000. Mr. Wamalwa on his part submitted that the suit property was not the subject of any sale as it was not listed in the Schedule of Properties to be sold which is found at page 28 of the Applicants' documents.

In respect of 1(d) LR No. 1196/42 the Applicants relies on Title Document at pages 3 to 6 of the application to show that the property was transferred to the 3rd Objector on 25th July 2008. In regard to 1(c) LR No. 11969/119 Applicants relies on document at pages 9 to 12 to show that this property was transferred to the 3rd Objector on 25th July 2008.

Mr. Wamalwa for the Applicants urged that from Notification of Sale issued over the properties 1(b) to 1(d) and applications for Prohibition Orders were all made after the dates of transfer of the properties in question. Both the Prohibition Order and the Notification of Sale were issued on 23rd December 2008. The application for the Prohibition Order was itself filed on 23rd September 2008. Mr. Wachira has urged the court to lift and set aside the sale of these properties.

Mr. Wamalwa opposed the application in regard to the properties 1(b) to (d). Counsel submitted that the Articles of Association for Timescom Enterprise Limited, the 2nd Objector herein found at pages 43 to 53 and those for Sasa General Investment Limited at pages 68 to 75 of the Applicant's document clearly shows that the two companies are owned by the 1st Defendant/Judgment Debtor and his son, the 1st Applicant herein. Counsel urged the court to find that the transfers were made to defeat judgment as there was no evidence of valuable consideration before the transfer of the properties to the Objectors. Mr. Wamalwa urged the court to find that the application had no merit.

I have considered the submission by both counsel in this application. In regard to the suit property listed under Order 1(a) there is no dispute that this property LR. 209/13688 is not the subject of the notification of sale issued on the 23rd December 2008 and which is part of the documents relied upon by the Objector. The issue of that property is moot.

In regard to the property under Order 1(e) of the application, that is LR No. 37/362/3 that is the subject of other objection proceedings between the two parties, I therefore think that matter regarding this property should be determined in those proceedings.

In regard to the properties listed under order 1(b) (c) and (d) it is very clear to this court that the suit properties were transferred after judgment had been entered in this case and before execution proceedings were taken out. All the transfers in question are from the Judgment Debtor in this case to either his son who is the 1st Objector or to the 2nd and 3rd Objectors which are companies owned by the Judgment Debtor and his son. It was imperative for the Objectors to prove that they own these properties and that they bought the companies before the transfer of the companies to their names. I have gone through the entire supporting affidavit and the submissions by counsel of the Objectors and no where has any proof of payment of consideration been exhibited or even alleged. All the Objectors are alleging is that the properties were transferred to them on various dates in July last year just before the execution proceedings begun. That is insufficient to establish genuine ownership of the property. As noted the transfer was between a father, the Judgment Debtor and his son the 1st Objector and companies in which both them have interest. Without any evidence in which a consideration for the transfer for the properties to the objectors the doctrine of tracing catches up with the objectors applications.

I am satisfied that all the transfers in regard to the properties in question, i.e. 1(b) (c) and (d) was effected without any consideration exchanging. I have come to the firm conclusion that the transfers were effected in anticipation of the appending execution against the Judgment Debtor and were intended to defeat the Judgment of the court. Since no consideration was exchanged I find that the properties belong to the Judgment Debtor and that therefore the attachment should proceed.

I find no merit in the prayers sought in the Chamber Summons application dated 6th February 2009 and consequently I dismiss it with costs.

Dated at Nairobi this 10th day of July, 2009.

LESIT, J.

JUDGE

Read, delivered and signed in presence of:

Mr. Wachira for the Applicants

Mr. Wamalwa for the Respondent

Dated at Nairobi this 17th of July 2009.

LESIIT, J.

JUDGE