



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Civil Appeal 726 of 2006

STEPHEN MULEWA.....APPELLANT/DECREE HOLDER

VERSUS

AIR KENYA AVIATION LIMITED...RESPONDENT/JUDGMENT DEBTOR

AIR KENYA EXPRESS LIMITEDOBJECTOR

R U L I N G

1. Air Kenya Express Limited, hereinafter referred to as the objector, has moved this Court by way of a Chamber Summons dated 31st August, 2009, seeking the following orders:
 - (i) That the attachment levied herein as per the proclamation dated 17th August, 2009 on the assets of the objector made by the appellant/decree holder through Ms. Expeditious General Merchants be lifted and or set aside.
 - (ii) That costs of this application be provided for.
2. The application is based on the grounds that the objector is a distinct legal entity from the respondent/judgment debtor who is Air Kenya Aviation Limited, and therefore the proclamation by the auctioneer on goods belonging to the objector is illegal and unlawful. The application is also supported by an affidavit sworn by Dino Bisletti, the chief executive officer and a director of the objector on 28th August, 2009.
3. Bisletti depones that the assets of the judgment debtor were sold and transferred to the objector in

April, 2006 at a consideration of US dollars 8.5 million, pursuant to an agreement signed between the receiver manager of the judgment debtor and the objector.

4. A copy of the objector's certificate of incorporation showing that it was incorporated on 13th May, 2005 and a copy of the agreement of sale signed between the judgment debtor/receiver manager and the objector have been exhibited. Also exhibited is a cheque for US dollars 8.5 million issued by the objector in favour of the receiver manager.
5. Stephen Mulewa the appellant/deed holder objects to the application. A replying affidavit has been sworn by Francis Muchiri Gikanga a licensed Court broker trading under the name of Expeditious General Merchants.
6. Gikanga depones that pursuant to instructions given to him by the appellant who is a former accountant of the respondent, he proceeded to Wilson Airport where upon inquiry at the main gate, Gikanga was directed to the respondent's office. Gikanga proclaimed the respondent's goods which included aircrafts and two motor vehicles, registration numbers KAR 051V and KAS 352K. Gikanga depones that about 6 days after the proclamation, he carried out an official search of the proclaimed motor vehicles, and confirmed that both vehicles were as at that date, registered in the name of the respondent. The deponent also took photos of the two vehicles which showed that one of the vehicles was clearly marked on the side as belonging to the respondent/judgment debtor.
7. During the hearing of the application, Mr. Mutua who appeared for the objector referred the Court to the inventory attached to the agreement signed between the judgment debtor's receiver manager and the objector, which included both motor vehicles KAR 051V and KAS 352K among the assets transferred. Mr. Mutua argued that the fact that the actual transfer of the motor vehicles had not been effected with the Registrar did not negate the agreement of sale. He therefore urged the Court to allow the application.
8. Mr. Ndegwa who appeared for the appellant referred the Court to Section 8 of the Traffic Act, arguing that a vehicle is deemed to be owned by a person or entity through which it is registered. It was further argued that the premises from where the vehicles were attached belonged to the judgment debtor. Mr. Ndegwa questioned why 3 ½ years after the assets were allegedly transferred, the motor vehicles were still registered in the name of the judgment debtor. He therefore urged the Court to dismiss the objection proceedings.
9. I have considered the application, the affidavit in support and in reply as well as the annexures thereto. I have also considered the submissions which were made by counsels. I do note that the inventory which is alleged to have been annexed to the agreement of sale, signed between the judgment debtor's receiver and the objector, has not been counter signed by the parties. The inventory is on a separate sheet and there is nothing to show that that particular sheet was the inventory actually referred to in the agreement, or that the assets are the assets referred to in the agreement.
10. I find that the appellant has demonstrated through the copy of records from the Registrar of Motor Vehicles that motor vehicle KAS 352K and KAR 051V are still registered in the name of the judgment debtor. The objector has not given any good explanation why it has not transferred the two vehicles into its name more than 3 years after the alleged sale. The fact that one of the motor vehicles is inscribed on the side as belonging to the judgment debtor is further evidence that the vehicle actually belongs to the judgment debtor, and not the objector. Further, with regard to the aircrafts, the objector has not produced any documents to show that the vehicles belong to it nor why the goods were still at the respondent's premises.
11. I therefore find that the objector has failed to establish his claim to the attached goods. Accordingly, the objection is dismissed and appellant given liberty to proceed with execution.

Costs to the appellant.

Dated and delivered this 13th day of November, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Ms. Nthuku holding brief for Mutua for the objector

Ndegwa for the decree holder

Eric, court clerk