



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

**Civil Case 723 of 1996**

**HUGHES LIMITED .....PLAINTIFF/DECREE-HOLDER**

**V E R S U S**

**MOHAMMED S KASSAM.....DEFENDANT/JD**

**AND**

**CMC MOTORS GROUP LIMITED.....OBJECTOR**

**R U L I N G**

This is an application (by chamber summons dated 15<sup>th</sup> September, 2006) under Order 21, rules 56 and 57 of the Civil Procedure Rules (the Rules). The Objector, CMC MOTORS GROUP LTD, would have to prove on a balance of probabilities that it is entitled to or to have a legal or equitable interest in the whole or part of the property attached in execution of the decree herein. That decree is in favour of the Defendant, MOHAMMED SHAFFI KASSAM, against the Plaintiff, HUGHES LIMITED. The decretal sum stood at about KShs. 25 million when execution issued.

There is a legal and factual issue that I must determine first, that is, whether there was attachment in law and in fact in the first place. The proclamation dated 25<sup>th</sup> August, 2006 by the auctioneer states:-

“The security personnel have refused me permission to take proper inventory. All attachable goods enough to satisfy the costs and decretal amount are hereby proclaimed, i.e., motor vehicles, office furniture, office equipments.”

Under section 23(b) of the Auctioneers Act, 1996-

“A licensed auctioneer shall –

(a) .....

(b) act in accordance with such rules as may be prescribed when repossessing, attaching, storing or selling any property pursuant to the provisions of any written law or contract;

(c).....”

Such rules have been prescribed. They are the Auctioneers Rules, 1997 made under section 30 of the Auctioneers Act aforesaid. Rule 12(b) thereof provides:-

“Upon receipt of a court warrant or letter of instruction the auctioneer shall in case of moveables, other than goods of a perishable nature and livestock-

(a) .....

(b) Prepare a proclamation in sale form 3 of the schedule indicating the value of specific items and the condition of each item, such inventory to be signed by the owner of the goods or an adult person residing or working at the premises where the goods are attached or repossessed, and where any person refuses to sign such inventory the auctioneer shall sign a certificate to that effect;

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

In the present case the auctioneer did not prepare an inventory of the attached goods. He simply says:-

“All attachable goods enough to satisfy the costs and decretal amount are hereby proclaimed, i.e., motor vehicles, office furniture, office equipment.”

No specific items attached and the conditions and values thereof are indicated.

The auctioneer’s excuse for not complying with the mandatory requirements of rule 12 (b) aforesaid is that security personnel refused him permission to take a proper inventory. But rule 9 of the Auctioneers Rules provides:-

“9. Where an auctioneer has reasonable cause to believe that-

(a) he may have to break the door of any premises where goods may be seized or repossessed, or

(b) he may be subject to resistance or intimidation by the debtor or other person; or

(c) a breach of the peace is likely as a result of seizure, repossession or attempted seizure or repossession of any property, the auctioneer shall require for police escort from the nearest police station in order to carry out his duties peacefully.”

The auctioneer herein is saying, in essence, that he was subjected to resistance. He does not say that he requested police assistance and did not get it. And even if he had been unable to get police assistance he could have obtained a breaking order from the court.

The question therefore is whether there was attachment in execution of decree in accordance with the law. There was not. The auctioneers’ failure to prepare an itemized inventory of the goods attached indicating the condition of each specific item and the value thereof renders the purported attachment fatally flawed. It is not for nothing that rule 12 (b) exists. It is to ensure that the specific goods attached and their conditions and values are clearly known. This would ensure that there are no unnecessary disputes regarding what may or may not have been attached. It would also ensure that there is transparency in the subsequent sale of such attached goods and the proceeds thereby realized.

It is therefore for good reason that the Objector does not accept that there was due attachment. Its first ground of the application is that the auctioneer “purportedly proclaimed the motor vehicles, office furniture and office equipment ....”. I must uphold that ground. The proclamation was fatally defective for the reasons already given. There was no due and proper attachment of the goods in question. There was no attachment in law and in fact. For that reason alone I would allow the application.

The Objector has also claimed ownership of the purportedly attached goods (grounds 2, 3 and 4). But having ruled that there was no attachment in law or in fact, the proclamation having been fatally defective, it would be futile to adjudicate over ownership of goods that were not, either in law or in fact, attached. I decline to do so.

In the result, I will allow the chamber summons dated 15<sup>th</sup> September, 2006 as prayed. It is so ordered.

DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2008

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2008**