

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL SUIT 210 OF 2005

SWITCHGEAR & CONTROLS LIMITED.PLAINTIFF

VERUS

UNISPAN LIMITED.....DEFENDANT

RULING

The present application with a Chamber Summons dated 19th January 2006 is brought under Order XXI Rules 56 and 57 of the Civil Procedure Rules. The same is brought by an Objector who claims that goods that were proclaimed on 16th December 2005 by the **Expeditious General Merchants** in execution of the judgment in favour of the plaintiff belong to the objector. The application is supported by a short affidavit sworn by the Director of the objecting Company. That affidavit simply states that the objector is the owner of the goods listed in the aforesaid proclamation and that those goods were purchased by the objector from a Company known as **Janmohamed Investment Ltd**. In support of that averment the objector attached what can only be described as a letter dated 14th February 2005 which listed items of properties that are said to have been sold by **Janmohamed Investment Ltd** to the objecting Company. In opposition to that application the plaintiff's replying affidavit is sworn by its advocate who states that his employee accompanied the auctioneer for the purpose of pointing out the Judgment Debtor and that the said employee confirmed that the attachment took place at the defendant's premises. The advocate concluded that the objector has failed to prove its claim to the attached goods.

I have looked at the proclamation by Expeditious General Merchants dated 16th December 2005 it cannot be said that the items contained in that inventory are exactly the same items that are alleged to be owned by the objecting Company. So on that score, the objector's application in respect of those items must fail. Order XXI Rule 53 provides that an Objector has to be one who claims to be entitled legally or equitable in the property that has been attached in execution of a decree. The objecting Company by merely attaching a letter from another Company seems to confirm that it sold the items of property to the objecting Company does not suffice for that rule. I find the objecting Company's application to be wanting for failing to attach invoices or receipts relating to the items of property the subject of this attachment. The objecting Company application is so poor I find that the court can rule no otherwise other than dismiss the Chamber Summons dated 19th January 2006 which is hereby dismissed with costs being awarded to the plaintiff as against the Objector. Orders accordingly.

MARY KASANGO

JUDGE

Dated and delivered on the 21st day of February 2007.

MARY KASANGO

JUDGE