



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

Civil Case 223 of 2005

JOSEPHAT NDERITU KARIUKI (*Legal Representative of*

JOHN KINYUA NDERITU (DECEASED) PLAINTIFF

VERSUS

PINE BREEZE HOSPITAL LTD DEFENDANT

AND

VIJAH SINGH 1ST OBJECTOR

RITA WALIA 2ND OBJECTOR

RULING

The objectors, *Vijah Singh* and *Rita Walia* who are husband and wife and co-directors of the defendant have filed two chamber summons in support of their notice of objection against the attachment of goods which were proclaimed by M/s Legacy Auctioneers on 27th October 2006 and the notice of objection against the attachment of goods by M/s Tango Auctioneers and General Merchants.

Counsel for the objectors submitted that both applications are premised on the same law and grounds and the same were argued together. The objectors seek to lift the proclamation issued against the assets of **Pine Breeze Hospital Ltd** for reasons that the assets proclaimed belong to them. The objectors contend that they donated those assets to the defendant for use but retained the proprietary interest. At any rate he proclaimed goods are the tools of trade which are insulated against execution. In the case of **Brar Vs Wareng Quarry Achare Construction [1984] KLR 707** the Court of Appeal held

“Where in such proceedings the objector is able to establish his claim to the attached property and also that the judgment debtor has no attachable interest in it, the attached movable property should be ordered to be released to the objector.”

This application was opposed by Counsel for the decree holder. He invited the court to find that the objectors have not established their ownership of the attached assets which were found in the premises of the judgment debtor and the trading licence hanged on the wall showed that it was the judgment debtor who was licenced to carry on the business and not the objectors.

Counsel argued that the objection proceedings are without merit and merely meant to frustrate the decree holder from enjoying the fruits of the judgment for the following reasons;

Ø *When the first auctioneer, M/S Tango proclaimed the goods, the objectors paid them their auctioneer's charges which is an indication that the objectors recognized the attachment was within the law and they paid the charges to compromise the auctioneers.*

Ø *Secondly, the objectors have not provided any prove of ownership of the proclaimed goods such as company resolutions or transfer of charters. Moreover, if the proclaimed goods were donated to the judgment debtor, then the assets belong to the judgment debtor by virtue of the donation as a donation cannot be recalled.*

Ø *Lastly, the objectors are also the directors of the judgment debtor company which clearly show that they are the beneficiaries.*

The issue for determination in this application is whether the objectors have been able to establish their claim over the attached property and also, whether the judgment debtor has no attachable interest in the proclaimed goods.

Secondly, whether the proclaimed goods are the judgment debtor's tools of trade.

Apart from the averment in the supporting affidavit of the objector that they donated the assets for the use of the defendant's hospital but retained the proprietary rights over them, there is no material in terms of documents of ownership to prove the ownership. The objectors have not shown the terms under which they donated assets, as directors of the judgment debtor. Moreover, this application was not served upon the judgment debtor so that, they too could have come to court and declared that they have no attachable interest on the proclaimed goods. Objectors further contended through their Counsel that the proclaimed goods were the judgment debtors' tools of trade. Although, they did not elaborate in what respect the goods were tools of trade, I agree with the holding in the case of **Blackwood Hodge Kenya Ltd Vs Lead Gasoline Tank Clearing Sam and Chase (K) Ltd** where *Bosire J (as he then was)* held

“Section 44 of the Civil Procedure Act (Cap 21), in which it is provided that the tools and implements of a person for the performance of his trade or profession shall not be liable to attachment or sale, is not intended to protect corporate entities but artisans whose livelihood depends on their workmanship. The word person in that section does not include a corporate body.”

I entirely agree with this holding and in conclusion, I find the objections raised herein by the objectors lack merit and I hereby dismiss both applications with costs to the respondents.

It is so ordered.

Ruling read and signed on 15th day of February 2007.

MARTHA KOOME

JUDGE