



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

Civil Case 232 of 2001

KESHRA VISHRA T/A ALPESH ENTERPRISESPLAINTIFF

VERSUS

REUBEN MUSYOKI MULI T/A KONZA MERCHANTSDEFENDANTS

KONZA MERCHANTS LTD.OBJECTORS

R U L I N G

On the 23rd day of May 2005, Thaara Auctioneers, attached the following motor vehicles:

KQX 129, Mercedes Benz Lorry with trailer No. 7724, KVZ 167 make Mercedes Benz Lorry and KTK 369, MAKE Mercedes Benz with Trailer No. ZA 7727. These motor vehicles were listed in a proclamation notice of the same date.

When this news of attachment reached Konza Merchants Ltd, hereinafter referred to as the objector, the company made inquiries of the attachment. It emerged that Thaara Auctioneers had been instructed to execute a decree in favour of Keshra Vishra t/a Alpesh Enterprises, hereinafter referred to as the Respondent. The decree is the offshoot of a judgment entered against one Reuben Musyoki Muli t/a Konza Merchants.

The objector felt aggrieved hence it took objection proceedings pursuant to Order XXI rule 53 of the Civil Procedure Rules. The Respondent notified the objector that he intended to proceed with the attachment. This action prompted the objector to file the Chamber Summons dated 23rd December 2005 in which it sought for the attachment to be lifted and for the attached property to be released forthwith to the objector. The Summons is the subject matter of this ruling. The same is supported by the affidavit of Stella Ann Musyoki and a supplementary affidavit of Maundu Makima.

The summons is opposed by the Respondent who relied on the replying affidavit of Manazes Lubia Alwenya. The Respondent also relied on grounds of opposition.

It is the submission of the objector that the attached motor vehicles are its property and not that of the judgment creditor. It was pointed out that the motor vehicles were not available for attachment because the objector had no debt due to the Respondent neither was it a party to the suit that gave rise to the decree. Copies of the logbooks in respect of the aforesaid motor vehicles were attached to the supporting affidavits indicating that the same were registered in the names of different persons and not Reuben

Musyoki Muli t/a Konza Merchants. Copies of agreements of Purchase of the aforesaid motor vehicles by the objector were annexed to the affidavit in support of the summons. There is evidence that that motor vehicle registration No. KQX 129 is already registered in the name of Konza Merchants. The agreement and the transfer forms indicate that the aforementioned motor vehicle was bought by the objector from one Mutia Nzomo.

In the replying affidavit, the Respondent states that since Reuben Musyoki Muli and Maundu Makima are directors in Konza Merchants Ltd, then the objector and judgment debtor are one and the same consortium hence the objection proceedings are meant to frustrate the Respondent's efforts to realize the fruits of his judgment. The Respondent further challenged the validity of the

affidavit of Stella Ann Musyoki in that she is not a shareholder or director to the objector. The objector responded to this averment in the supplementary affidavit by showing that Stella Ann Musyoki had resigned as a director and shareholder as of 2nd February 2006.

I have carefully considered the submissions of both Mrs. Maina and Mr. Alwenya, learned Counsels for the objector and Respondent respectively. I have also considered the material placed before me. It is not denied that the attached motor vehicles are not registered in the names of Reuben Musyoki Muli t/a Konza Merchants. There is evidence that the same have been acquired by the objector in view of the annexures in form of transfer forms and purchase agreements. The objector is yet to be registered as the proprietor of the aforesaid motor vehicles. I agree that unless contrary evidence is given, the objector is deemed as the owner of the motor vehicles. It was incumbent upon the Respondent to show that the motor vehicles were the property of the judgment debtor. In fact the Respondent regarded the objector and the judgment debtor as one and same thing in view of the fact the judgment debtor is a director and shareholder of the objector. It is trite law that a director or shareholder is a separate and distinct person from a company. The liabilities of one cannot be the liabilities of the other.

It has been said that Stella Ann Musyoki had no authority to swear the affidavit in support of the summons because by then she was not a director nor shareholder of the objector. I have perused the aforesaid affidavit. It is clear that the affidavit was sworn on 22nd day of December 2005. There is evidence which is uncontroverted in the supplementary affidavit of Maundu Makima

that Stella Ann Musyoki resigned as a director of the objector on 2/2/2006. I am convinced that she was a director of the objector at the time of deponing the affidavit.

It has also been argued that motor vehicle registration No. KQX 129 is the property of Konza Merchants, hence it was properly seized on attachment. I have anxiously considered this objection. What comes out of the logbook annexed to the affidavit of Stella Ann Musyoki is that the name of Konza Merchants is noted in the logbook. The objector is of the view that it is its name. Copies of the transfer forms and the purchase agreement are annexed to the affidavit in support of the summons to show that the objector is the owner. Unfortunately that issue was raised from the bar hence it was not answered in the supplementary affidavit of Maundu Makima. I have carefully examined that exhibit and it is clear that some information was cut out by the photocopying machine. What is missing is the word 'Ltd'. It has not been alleged that the transfer form and the purchase agreement are fake. I am satisfied that Motor vehicle registration KQX 129 is the property of the objector in view of the two annexures. I am fortified in this respect by the decision of the court of Appeal in the case of Osumo Apima Nyaundi =vs= Onyancha Kibondori & 3 others C.A. No. 125 of 1991 in which the court of Appeal expressed itself as follows:

"The Traffic Act is an Act of Parliament to consolidate the law relating to traffic on roads. It is not an Act which decides the defacto or dejure ownership of vehicles. Ownership of a vehicle passes by sale and delivery. The registration book of the vehicle is only evidence of title.

S.8 of the said Act reads:

"A person in whose name a vehicle is registered shall unless the contrary is proved be deemed to be the

owner of the vehicle”.

This section signifies that a registered owner will be deemed prima facie, the owner. It is open for the real owner to prove the contrary.”

In the end and for the above reasons I find the summons were founded. The same is allowed as prayed.

Dated and delivered at Mombasa this 8th day of March 2007.

J.K. SERGON

J U D G E

In open court in the presence of Mrs. Maina for the Applicant and Mr. Alwenya for Respondent.