



REPUBLIC OF KENYA

HIGH COURT OF AT NAIROBI (MILIMANI LAW COURTS)

Misc Cause 207 of 2005

IN THE MATTER OF TARGET CARRIERS LTD (IN RECEIVERSHIP)

AND

IN THE MATTER OF THE COMPANIES ACT

AND

IN AN APPLICATION FOR DIRECTIONS BY THE RECEIVER MANAGER

SHAMMIT GHAI

RAJAN GHAI

T/A UNIKEN ENTERPRISES.....APPLICANTS

RULING

This is an application expressed to have been brought under the provisions of **Order XLIV Rule 1** of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for the following main orders:-

- 1) That the orders of 15.3.2007 be reviewed and the condition given for depositing KShs.9.5 million be set aside and/or varied.
- 2) That alternatively there be an order that motor vehicles Registration Nos. KAP 248Y, KAP 581V and KAP 519V be preserved as the security herein and/or the court orders for provision of such other alternative security it deems fit and the period for so doing be extended.

There are two reasons given for the application on the face of the application as follows:-

- (a) That the amount of KShs.9.5 million ordered to be deposited is far too high and much above the value of the trucks.
- (b) That the applicants cannot raise the enormous amount ordered and which in effect may lead to an attachment of their trucks.

The application is supported by an affidavit of one Shammit Ghai one of the applicants sworn on 12.4.2007. It is inter alia deponed in the affidavit that the said sum of KShs.9.5 million is far above the purchase price of the subject trucks of KShs.4.74 million. It is also deponed that the value of KShs.9.5 million relied upon by the receivers is far fetched and was taken way back in 2003 and the motor vehicles have now deteriorated in value. In the applicants' view, the order of deposit of KShs.9.5 million has the effect of denying them the stay. Hence the application.

The application is opposed and there is an affidavit in opposition sworn on 18.4.2007 by Kolluri Ventaka Subbaraya Kama Sastry one of the Receivers/ Managers. It is deponed inter alia in the affidavit that the applicants have not satisfied the provisions of Order XLIV of the Civil Procedure Rules and are instead re-opening their application for stay and if their application is allowed, the debenture holders will be prejudiced.

After hearing arguments on 19.4.07, I ordered for valuation Reports of the subject motor vehicles which reports were introduced in an affidavit sworn on 30.4.2007 by the same Shammit Ghai. In an affidavit sworn on 2.5.2007, Kolluri Ventaka Subbaraya Kama Sastry the Receivers/Managers objected to the said valuation reports and swore that it would be unjust for the court to order the furnishing of security based on them as the subject motor vehicles have suffered substantial wear and tear since their (Receivers/Managers) appointment on 18.8.2004. In their view, the security to be furnished should be the value of the vehicles at the time of their appointment.

I have considered the application, the affidavits filed and the submissions of counsel. Having done so, I take the following view of this matter. The applicants have argued their application primarily on the ground that there is sufficient reason for review of the order of 15.3.2007 as the sum ordered to be deposited cannot be paid without paralyzing their operations and is far in excess of the value of the said motor vehicles. I note that the valuations I relied upon in making the order now sought to be reviewed were carried out by the same AAA of Kenya in the year 2003 and at the time there was no other material upon which an opinion would be made on the status of the said motor vehicles. It was on that basis that I ordered a fresh valuation of the motor vehicles. There is no decree for the value of the motor vehicles against the applicants. Indeed in the event of success in the appeal, there will be no decree for the value of the motor vehicles. The applicants will retain possession of the vehicles. Should the appeal fail, the Receivers/Managers will get possession of the motor vehicles and if the value as at the time of their appointment is sought, the Receivers/Managers will have to institute proceedings for the same.

In the premises, I think there is sufficient reason to review my order of 15.3.2007. Both valuations of 2003 and the ones of 2007 can only be a guide. If there had been no stay, the subject motor vehicles would have been released to the Receivers/Managers on 26.5.2006 when my Learned Brother Waweru J allowed the application by the said Receivers/Managers. They would have taken the motor vehicles as they were at the time. The best valuation for purposes of fixing security would therefore be of that date. None is available. That does not prevent my ordering what I consider appropriate security.

In the result, my order of 15.3.2007 is varied as follows:- There will be stay of execution of the order of 26.5.2006 on the condition that the applicants within seven (7) days from the date hereof deposit a sum of KShs.5,700,000.00 in an account in the joint names of the parties respective advocates. The account be opened in a reputable local bank or financial institution. In default of the deposit within the period appointed, the order of stay will lapse and the Receivers/Managers are at liberty to execute the order of 26.5.2006 without a further order of this court.

The respondents shall have the costs of this application.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2007.

F. AZANGALALA

JUDGE

Read in the presence of:

Wetende Ms holding brief for Kinyenje for the Company/Respondent.

F. AZANGALALA

JUDGE

12/7/07