



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

**Civil Case 306 of 2004**

**NASHON OLUOCH.....PLAINTIFF**

**VERSUS**

**KENYA TIMES MEDIA TRUST LIMITED.....DEFENDANT**

**AND**

**NEWS AND PRINTING SERVICES LTD.....OBJECTOR**

**RULING**

On 10<sup>th</sup> March 2006, judgment was entered in favour of the plaintiff against the defendant for the sum of Ksh.1.5 million plus costs and interest. The plaintiff taxed his costs and thereafter sought to execute against the defendant. The plaintiff proclaimed some printing machines found at the premises occupied by the defendant. The objector herein, News and Printing Services Limited filed objection proceedings against the said attachment. By an application made under the provisions of **Order XXI Rules 56 and 57** of the **Civil Procedure Rules**, the objector sought an order of this court to declare the proclamation against its properties to be declared null and void ab initio and consequently therefore set aside.

The grounds in support of the objector's application are on the face of application. The objector stated the decree holder's auctioneer had proclaimed properties and assets belonging to it. The objector stated that its properties were distinct and different from the properties of the defendant. The objector further stated that it was not part of the proceedings that led to the decree issued by this court against the defendant. The application is supported by the annexed affidavit of Charles Ruto, the Senior Operations Manager of the objector. In the said affidavit, he swore that the defendant had sold some of its business assets and equipment to the objector between August 1995 and October 1997. He deponed that although some of the said assets were still in the premises of the defendant, title to the said equipment had passed to the objector once the said properties were sold. He therefore urged the court to lift the attachment.

The plaintiff objected to the application. Sally Njoki Mbeche, the advocate for the plaintiff swore an affidavit in opposition to the application. She deponed that the objector had not established that it owned the said properties which were proclaimed at the defendant's premises. She urged the court to lift the stay of attachment and allow the plaintiff to proceed with the attachment. She deponed that the document annexed to the affidavit in support of the plaintiff's application was a bargain and sale deed which expressed the intention to sell various equipments and was not proof of ownership of the said equipment. She urged the court to dismiss the application with costs.

At the hearing hereof, Mrs. Manyarkiy for the objector reiterated the contents of the application and the supporting affidavit thereof. She urged the court to find that the objector had established ownership of the said proclaimed properties and was therefore entitled to seek the orders of this court to lift the said attachment. Mrs. Mbeche on behalf of the plaintiff basically repeated the contents of the replying affidavit in opposition to the application. She urged the court to find the objector had not established ownership of the said proclaimed properties. She urged the court to dismiss the application with costs.

The issue for determination by this court is whether the objector established ownership of the proclaimed properties in its application. The objector annexed to its application two bargain and sale deeds which were executed on the 1<sup>st</sup> January 1995 and another deed executed on the 24<sup>th</sup> October 1997 between itself

and the defendant. The said bargain and sale deeds identifies certain equipments which it is claimed were transferred to the ownership of the objector on the dates of the signing of the said bargain and sale deed. However, it is apparent that although the said bargain and sale deeds provide for the sale of the said equipment, there is no evidence that the purchase consideration for the said equipment was paid. Further, although the two agreements were entered into more than twelve years and ten years ago respectively, the objector has not taken possession of some of the equipment it allegedly purchased from the defendant. The objector, apart from the two bargain and sale deeds, did not annex any document to its application that established that it is the registered owner of the said equipment and printing machinery.

Although Clause 5 of the bargain and sale deed of 1<sup>st</sup> January 1995 provides that the defendant would notify the owners of the equipment in writing of the charges, debentures and lien, no such document was annexed to the application to support the objector's contention that it owns the said properties which were proclaimed. It is the view of this court that nothing could have been easier than for the objector to annex documents of ownership of the said equipment and further annex proof of payment of the said purchase consideration. As it were, the bargain and sale deeds, as far as this court is concerned, establishes the intention of the defendant to sell the said equipment to the objector. No consideration passed. The said equipment being still in the possession of the defendant, prima facie is presumed to be the properties of the defendant.

It is clear from the above reasons that the objector failed to establish that it owns the equipment which was proclaimed. The application to prohibit the attachment of the said equipment by the plaintiff/decree holder is hereby dismissed with costs. The plaintiff/decree holder is hereby granted leave to proceed with the said attachment.

**DATED at NAKURU this 30<sup>th</sup> day of November 2007**

**L. KIMARU**

**JUDGE**