



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

CIVIL APPEAL 101 OF 2006

NANCY NJERI KIMANI.....1ST APPELLANT

ROSE WAKIO KIMANI.....2ND APPELLANT

VERSUS

KIBUCHI WATHONDU.....RESPONDENT

AND

CIVIL APPEAL NO. 102 OF 2006

(CONSOLIDATED)

NANCY NJERI KIMANI.....1ST APPELLANT

ROSE WAKIO KIMANI.....2ND APPELLANT

VERSUS

RAPHAEL NDAIGA GATHAIYA.....RESPONDENT

RULING

Civil Appeals 102 and 101 of 2006 are by same Appellants against two different Respondents Raphael Ndaiga Gathaiya in 102 and Kibuchi Wathondu in 101. Both appeals arise out of two suits. RMCC No.128/2005 and RMCC No.122/2005.

In Appeal No. 101/2006 stay of execution and proceedings was granted on 10/5/2007. In that appeal the applicants sought stay because objection proceedings regarding the motor vehicles KAH 314 T and KAE 915 L were dismissed and they filed appeals against the dismissal of their objections proceedings. In the meantime they sought stay of execution pending their appeals. The grounds relied on is mainly that the Applicants were not parties to suits No. 127 & 128 of 2005 and therefore their interests are separated from that of Judgment debtor. The supporting affidavit shows that a decree in Civil Case No. 128/2005 was made in favour of Respondent against one Paul Kimani. That in pursuance of execution of the decree the Respondent proclaimed several motor vehicles including the applicants vehicle and towed KAH 314 T to the premises of Muranga Motors. That the said motors were the properties of the applicant as shown by log books. But it is to be noted that these vehicles are shown as being owned by :

1. Nancy W. Kimani and Paul Kimani Muna

2. Rose Wakio Kimani and Paul Kimani

The application is opposed and the auctioneers have notified the court as of 23/3/2007 the amount outstanding on storing charges amounts to Ksh.196,000/-. By affidavit sworn on 6/6/2007 the Respondent admits that the decretal amount has been paid definitely by decree debtor but he says it is only fair that they pay storage charges since the vehicle was attached.

Now this dispute arising from objection proceedings Order 21 Rule 53, 54, 55, 56, 57 and 58 Rule 54 a stay of execution proceedings is ordered until objection proceedings are ended. Therefore in this case attachment should have been lifted as soon as objection proceedings Notices were received by court. The issue of storing charges were raised in Chamber Summons dated 11/9/2006.

It was submitted that vehicle No. KAH 314 T had not been proclaimed in the notice and that vehicle KAE 915 L was jointly owned by 3rd Applicant and deceased.

However the vehicles continued to be detained despite stay orders again under Section 57 (3) the filing of Summons shall operate as a stay of attachment. It is to be noted that this rule is couched in mandatory terms. The vehicles continue to be in attachment and stored by the auctioneers.

It is my find in the circumstances that the continued attachments of the vehicles was unlawful and there was no obligation by the decree holder to continue storing the same. He was acting at his own risk. He is not entitled to payment of storing charges at all. He must release the vehicles at once as he admits he has been paid in full including auctioneer charges.

This application is allowed pending hearing of appeal by Objectors in relation to objection proceedings. The costs of this application be paid by applicants by the decree holder.

Dated this 7th November, 2007.

J. N .KHAMINWA

JUDGE

This Ruling relates to appeal 102/2006 as well.

J. N. KHAMINWA

JUDGE

