



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL
COURTS)**

Misc Appli 986 Of 2003

KEMBI GITURA T/A KEMBI GITURA & COMPANY ADVOCATES..... PLAINTIFF

VERSUS

MENNO TRAVEL SERVICES LIMITED.....DEFENDANT

RULING

This Notice of Motion has been brought under Order XX1 Rules 41, 59, 70(3), (4), (5) and (6) Order XLVIII Rule 5(1)(b)(x) and Order L Rule 1 of the Civil Procedure Rules. It seeks the following orders:-

- 1) That the shares held by Menno Travel Services Limited, the Judgment/debtor, in Menno Plaza Limited be sold through a broker.
- 2) That the proceeds of sale be paid directly to the decree-holder.
- 3) That Menno Travel Services Limited be prohibited from making any transfer of its shares in Menno Plaza Limited to any person except the purchaser or receiving payment of any dividend or interest thereon.
- 4) That the directors Secretary Registrar or any other officer of Menno Plaza Limited be prohibited from permitting the transfer of the shares or making any payment to any person except the purchaser.
- 5) That the directors Secretary, Registrar or other officers of Menno Plaza Limited do execute the transfer or other instrument and all necessary documents in respect of the judgment debtors shares to the purchaser and in default the Registrar of this Court do execute such transfer or documents as may be necessary for purposes of transferring the shares to the purchaser.

The primary grounds for the application are:-

- a) That the applicant/decreed holder obtained judgment against the respondent judgment debtor on 24.6.2004 and no payment has been made towards settlement of the decretal amount since then.
- b) That an application for execution of decree was filed on 26.8.2004 pursuant to which a Prohibitory Order attaching the judgment debtor's shares in Menno Plaza Limited was issued.
- c) That the Prohibitory Order was duly served on the Company Secretary of Menno Plaza Limited

and on a director of the judgment debtor despite which the decree remains unsatisfied.

The application is supported by an affidavit sworn by Steven Gatembu Kairu Advocate a partner in the applicant firm of Advocates. The affidavit elaborates the above grounds.

The application is opposed upon the grounds set out in the replying affidavit of one Wilfred Dickson Katibi a director of the respondent. The only substantive ground in the said replying affidavit is that this application is premature and does not lie.

I have considered the application, the affidavits and the submissions by Learned Counsels. I feel that the replying affidavit of the said Wilfred Dickson Katibi is not an answer to the application at all. The applicant has complied with the procedural requirements for the sale of shares in Menno Plaza Limited and is entitled to the orders sought.

Accordingly the application dated 18.8.2005 and filed on 6.10.2005 is allowed in its entirety with costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 30th DAY OF MARCH, 2006.

F. AZANGALALA

JUDGE

30/3/2006