

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1602 of 1992

JACKSON WAMAI NDEI.....PLAINTIFF

VERSUS

KENYA CO-OPERATIVE CREAMERIES LTD.....DEFENDANT

RULING

The Objector New Kenya Co-operative Creameries Society Ltd brought this Chamber Summons under Order XXI Rule 56 and 57 of Civil Procedure Rules seeking orders that a proclamation herein by Wright Auctioneers.

On 22nd June 2005 on the Objectors properties as set out in the Proclamation Notice dated 22nd June 2005 be lifted and that the costs of this application and of the purported execution upon the objector be borne by the Decree Holder.

The application is based on the ground that the Decree Holder has in purported execution of a decree issued herein on 2nd June 1998 proclaimed on the objector's goods, that the proclamation was done on 22nd June 2005 at the objectors premises on LR NO.209/6849, that the proclaimed goods do not belong to the Judgment Debtor but to the Objector who has a legal title to the same and that the proclamation is unlawful.

The application is also supported by an affidavit sworn by Milcah Mugo on 18th July 2005 in which she avers that the Decree Holder has in purported execution of a decree issued herein on 2nd June 1998 against the Judgment Debtor unlawfully proclaimed upon the Applicant's goods at the Applicants premises on LR NO.209/6849, that the proclaimed goods do not belong to the Judgment Debtor but to the Applicant and/or are in the custody of the Applicant on behalf of a third party, that pursuant to an agreement dated 12th April 2001 amongst the Kenya Co-operative Creameries Limited (then in Receivership) Kenya Commercial Bank Limited (the Bank) and the Kenya Co-operative Creameries 2000 Limited (KCC 2000 LTD) and in the exercise of its powers of sale under Debentures dated 31st October 1994, 8th May 1994 and 13th November 1995 made by Kenya Co-operative Creameries Limited (KCC LTD) in favour of the Bank, the Bank having appointed a Receiver over KCC Ltd on 5th August 1999, the Bank sold all the assets of KCC Ltd to KCC 2000 Ltd.

That the liabilities of KCC Ltd were not subject to the Sale that on 30th January 2003 KCC Ltd was wound up upon a petition in that regard made in HCC W/C NO.1 OF 2002 that the Winding Up Order in respect thereof was duly gazetted in Notice No. 1756 and published in the Kenya Gazette Notice in that regard, that in the circumstances, any such creditors that were owed by KCC Ltd including the Decree Holder were obliged to prove and satisfy their debts in the liquidation of KCC Ltd, that on 22nd June 2003 the Government of the Republic of Kenya took over the assets and liabilities of KCC 2000 Ltd and registered the Applicant Society under the provisions of the Co-operative Societies Act NO.12 OF 1997 to carry out the business of the KCC 2000 Ltd, that any such liabilities that were taken over and given to the Applicant did not include the Decree Holder's claim, that on 16th November 2004 the Government of Kenya, the Kenya Co-operative Creameries Holdings Limited executed a Sale Agreement in furtherance of the above, that on 3rd May 2005 the Government of Kenya, Kenya Co-operative Creameries 2000

Limited and Kenya Co-operative Creameries Holdings Limited, Kenya Commercial Bank Limited and the Applicant executed a Deed of Assignment in furtherance of the above, that the aforesaid transactions were duly published in the local dailies, that motor vehicle KAJ 132C is duly registered in the name of the Applicant, that motor vehicle KAS 408B is duly registered in the name of Payless Car Hire, that the assorted furniture referred to in the proclamation is the Applicants goods and were proclaimed upon the Applicants premises on LR NO.209/6849; that in view of the above, the proclamation was made on the wrong party and the same is unlawful, and that in the circumstances it is imperative that the orders sought in this Application be granted in order to safeguard the Applicant's interest.

Mr. Nyakemo in opposing the application submitted that the transfer was done to defeat justice and the Objector should not be allowed to hide under the mischief of illegal transfers. But he concedes that at the time the proclamation was done the subject motor vehicles KAJ 132C had already been transferred to the name of the Objector and KAS 408B in the name of Payless Car Hire.

The Kenya Commercial Bank in exercise of its powers of Sale under Debentures dated 31st October 1994, 8th May 1995 and 13th November 1995 sold the assets of Kenya co-operative Creameries Limited through the Receiver Manager who was then managing the affairs of Kenya Co-operative Creameries then under receivership and the Government was involved in the sales and the said sales were legally done.

There being no evidence that the sale and transfer of the assets of Kenya Co-operative Creameries Ltd was done to defeat justice and the transfers having taken place before the proclamation it cannot be said that the objectors application lacks in merit and therefore it must succeed and the same is allowed in terms of prayer 1 and 2 of the Chamber Summons.

Dated and delivered at Nairobi this 29th day of March 2006.

J.L.A. OSIEMO

JUDGE