



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

**Civil Case 129 of 2006**

**JAPSER TECH ENTERPRISES LT...PLAINTIFF/JUDGMENT DEBTOR**

**VERSUS**

**JOSEPH MATHAI NDUNGU.....1<sup>ST</sup> DEFENDANT**

**KARASI POWER LIMITED.....2<sup>ND</sup> DEFENDANT**

**TEX PALACE LIMITED.....3<sup>RD</sup> DEFENDANT/DECREE HOLDER**

**AND**

**PAUL MUCHAT.....OBJECTOR**

**RULING**

By a chamber summons brought under Order XXI Rules 56 and 57 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Paul Muchai (herein after referred to as the objector) has come to this court seeking to have the attachment of the goods listed in the proclamation dated 24<sup>th</sup> November 2006 by Base Auctioneers raised and the goods released from attachment. The Objector seeks a further order for costs of this application to be borne by the 3<sup>rd</sup> Defendant Decree Holder.

The application is premised on the grounds that the property proclaimed by Base Auctioneers on 24<sup>th</sup> November 2006 belong to and are wholly owned by the Objector. That the premises in which the goods were proclaimed belong to the Objector, and that the Objector is a total stranger to the 3<sup>rd</sup> Defendant's claim and is therefore not liable to pay the 3<sup>rd</sup> Defendant.

In an affidavit sworn on the 11<sup>th</sup> December 2006, the Objector has deponed that the attached goods belong to him. Copies of receipts for purchase of the goods have been annexed. The Objector also maintains that He is the tenant of the shop from which the goods were attached. A copy of the lease agreement and a bundle of receipts for payment of rent for the shop has also been exhibited.

The 3<sup>rd</sup> Defendant on its part objects to the application. In a replying affidavit sworn by Vimal Shah a director of the 3<sup>rd</sup> Defendant, the 3<sup>rd</sup> Defendant depones that the Objector has no claim over the proclaimed goods, and that the goods though ordered by the Objector and stored by the Objector, actually belong to the Judgment Debtor. The 3<sup>rd</sup> Defendant maintains that the receipts and invoices exhibited are

not conclusive proof of ownership of the proclaimed

goods and that the Objector is only delaying or denying the Decree-Holder the chance to execute and enjoy the fruits of its judgement.

Relying on the case of **Commerce Bank Ltd v Caroline W. Wanjihia HCCC 433 of 2001**, Mr. Ombati who appeared for the Objector urged the court to find that the applicant has established that the goods actually belong to him and has therefore discharged the burden of proof.

Mr. Ongundi who appeared for the 3<sup>rd</sup> Defendant/Decree Holder urged the court to reject the receipts as inadmissible in evidence, Section 19 of the Stamp Duty Act not having been complied with. He submitted that the Objector not having produced any trading licence for any business at the shop the Objector had failed to prove that He was carrying on business at the premises where the goods were attached. Consequently there was no conclusive proof that the goods stored in the premises belong to the Objector.

older

It is evident from the case of **Brar v Warrens Quarry Achare Construction [1984] KLR 705**, which was relied upon by Njagi J in **Commerce Bank Ltd v Caroline W. Wanjihia** that the burden rests upon the Objector to establish his claim to the attached goods. In this case the Objector has sought to do this by demonstrating that He is the owner of the goods having purchased the same and also the goods having been attached from premises leased to the Objector. The court was urged to find the receipts produced as evidence for the purchase of the goods as inadmissible as Section 19 of Stamp Duty Act was not complied with. It was not however established that the receipts are instruments chargeable with duty under Section 19 of the stamp duty Act.

As regards the failure by the Objector to produce a trading licence, the Objector having produced a lease agreement and rental receipts for the premises, that is clear evidence that the premises belong to him. While the

trading licence would have provided further proof, the failure to produce the

trading licence does not in any way give the judgement debtor a better claim to

the goods. Moreover the 3<sup>rd</sup> Defendant's allegation that the goods were bought by the Objector on behalf of the Judgement Debtor has not been substantiated.

I am satisfied that the Objector has clearly demonstrated that the goods were purchased by him and were in his premises at the time of attachment. On the other hand there is no evidence that the judgement debtor has any connection with the Objector, or the goods or the premises in which the goods were attached nor is there any evidence that the Objector is in any way party to the 3<sup>rd</sup> Defendant's claim against the Judgement Debtor.

In the circumstances I find that the attached goods belong to the Objector and that the attachment levied on the goods by Base Auctioneers is not justified. Accordingly I order that the attachment be lifted and that the goods be forthwith released to the Objector. The 3<sup>rd</sup> Defendant/Decree Holder shall pay costs of attachment and costs of this application.

Orders accordingly.

Dated signed and delivered this 12<sup>th</sup> day of March 2006.

**H. M. OKWENGU**

**JUDGE**