



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

**Civil Case 972 of 1999**

**KEM PAPER LIMITED.....PLAINTIFF**

**VERSUS**

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

**AND**

**NEWS AND PRINTING SERVICES LIMITED.....**  
**.....OBJECTOR**

**R U L I N G**

This application (by chamber summons dated 4<sup>th</sup> April, 2005) is by an Objector under rules 56 and 57 of Order 21 of the Civil Procedure Rules challenging the attachment of various office furniture and appliances, and also one motor vehicle registration number KAN 906V, in execution of decree. The attached items are set out in the proclamation dated 21<sup>st</sup> February, 2005 which is annexed to the supporting affidavit. The grounds for the application are that the properties belong to the Objector; that the Objector is not and has never been a party to this case; and that the Objector is a distinct and separate legal entity from the Judgment/Debtor and is not liable under the decree herein. There is a supporting affidavit sworn by one CHARLES RUTO, the Senior Operations Manager of the Objector. The Plaintiff/Decree-Holder has opposed the application upon the grounds (as set out in the grounds of opposition dated 10<sup>th</sup> may, 2005):-

1. **That the application is bad in law and the orders sought do not lie.**
2. **That the application is frivolous, vexatious and an abuse of the process of the court.**
3. **That the application offends mandatory provisions of the law and ought to be struck out.**
4. **That the application is intended to perpetuate a fraud.**
5. **That the application does not serve the ends of justice.**

There is no replying affidavit filed.

I have considered the submissions of the learned counsels appearing. It has not been pointed out how the application is bad in law. It seems to me that it has been brought under the right provisions of procedure and it is properly before the court. Nor is the application frivolous, vexatious or an abuse of the process of the court. It has also not been pointed out what mandatory provisions of the law the application offends. I consider that the application deserves to be determined on merit.

To succeed, the Objector must show on a balance of probabilities that it is entitled to or has a legal or

equitable interest in the whole of or part of the attached property. See rule 53 (1) of Order, 21. Indeed the Objector is a limited liability company separate and distinct from the Defendant/Judgment-Debtor. See paragraph 2 of the supporting affidavit. It is further deponed in paragraph 5 of the supporting affidavit that between August, 1995 and October, 1997 the Defendant/Judgment-Debtor sold some of its business assets and equipment to the Objector. See the bargain and sale deed dated 21<sup>st</sup> August, 1995 annexed to the affidavit. In the schedule to that deed are lists of the assets and equipment sold. There were some 338 items of office furniture and equipment sold. It is apparent that the attached properties were part of these items that were sold to the Objector by the Judgment-Debtor, except for motor vehicle registration number KAN 906V. This sale was long before the present suit was filed or judgment obtained against the Defendant. So, no ill motive can be read into the sale. There is no replying affidavit filed; all the averments of fact contained in the supporting affidavit are thus unchallenged. I have no reason not to accept them, all the technical objections raised by the Plaintiff/Decree-Holder in its learned advocate's submissions notwithstanding.

I am therefore satisfied on balance of probabilities that the Objector

is the legal owner of the properties attached in execution of decree herein except motor vehicle registration number KAN 906V. No evidence has been adduced by the Objector of its legal or equitable interest in the motor vehicle. The Objector being a legal entity distinct and separate from the Defendant/Judgment-Debtor, its properties cannot be lawfully attached in execution of decree herein. I will therefore allow this application as sought in prayer No. 1 of the application by notice of motion dated 4<sup>th</sup> April, 2005, except with regard to the said motor vehicle. As the motor vehicle is probably of greater value than the other properties attached, I shall make no order as to the costs of the application. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MARCH, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 10<sup>TH</sup> DAY OF MARCH, 2006.**