



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

**Civil Case 34 of 2003**

**DIPAK PREMCHAND SHAH.....1<sup>ST</sup> PLAINTIFF**  
**KAILESH DIPAK SHAH.....2<sup>ND</sup> PLAINTIFF**  
**HARISH PREMCHAND SHAH.....3<sup>RD</sup> PLAINTIFF**  
**PRITH HARISH SHAH.....4<sup>TH</sup> PLAINTIFF**  
**SOBHANGCHAND PREMCHAND SHAH.....5<sup>TH</sup> PLAINTIFF**  
**SURESHCAND PREMCHAND SHAH.....6<sup>TH</sup> PLAINTIFF**  
**JASODABEN PREMCHAND SHAH.....7<sup>TH</sup> PLAINTIFF**

**VERSUS**

**AKIBA BANK LIMITED.....DEFENDANT**

**R U L I N G**

The Judgment-Debtors herein seek by chamber summons dated 25<sup>th</sup> November, 2005 the main order that the decree dated 30<sup>th</sup> September, 2004 together with all consequential orders thereof be set aside. There is also a prayer for stay of execution of warrants of attachment dated 11<sup>th</sup> November, 2005 pending hearing and determination of the application. That prayer does not appear to have ever been pursued. The application itself was heard on 7<sup>th</sup> February, 2006.

The following provisions of law and procedure have been invoked in the application: Order 21, rule 22 of the Civil Procedure Rules which deals with instances when the court may stay execution, and which does not appear to be relevant to this application; section 3 of the Civil Procedure Act which saves the special jurisdiction and powers of the court, again irrelevant; section 3A of the Civil Procedure Act which saves the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of its process; and section 63 (e) of the Civil procedure Act under which, where it is so prescribed, the court may make interlocutory orders as may appear to it to be just and convenient in order to prevent the ends of justice from being defeated.

The grounds for the application appearing on the face thereof are:-

- 1. That the Judgment-Debtors were not invited for the fixing of the Plaintiffs bill of costs; nor were they served with hearing notice thereof.**
- 2. That the decree sought to be executed is more than one year old and contravenes the provisions of rule 18 of Order 21 of the Civil Procedure Rules.**
- 3. That the decree was drawn without sending the same for approval by the Judgment-Debtors' advocates on record contrary to rule 7 (2) of the Civil Procedure Rules.**
- 4. That the rule of natural justice that no party should be condemned unheard was breached.**

There is a supporting affidavit sworn by one of the Judgment-Debtors.

The Decree-Holder has opposed the application upon the various grounds set out in the replying affidavit sworn by its learned counsel, JAMES RIMUI, filed on 13<sup>th</sup> January, 2006.

I have read both the supporting and the replying affidavits. I have also given due consideration to the submissions of the learned counsel appearing. It is to be noted that there is no complaint by the Judgment-Debtors that the decree as drawn and issued is not in agreement with the judgment of the court. The complaint that the decree was issued without compliance with rule 7 (2) of Order 20, even if true, cannot without more render the decree void if it in fact agrees with the judgment.

The formal decree was issued on 21<sup>st</sup> September, 2005. That date of issuance is the date of the decree, though the decree will also reflect within its body the date that judgment was delivered. It is that formal decree that is executed. The application for execution was filed on 2<sup>nd</sup> November, 2005, well within one year of the date of the decree. It was therefore not necessary for a notice to show cause to be served upon the Judgment-Debtors under rule 18 (1) (a) of Order 21. I so hold.

The other complaint of the Judgment-Debtors relates to taxation of the Decree-Holder's bill of costs. There is not before me any application with regard to the taxation under the relevant provisions of the Advocates (Remuneration) Order. This complaint is misconceived.

In the circumstances I find no merit in the Judgment-Debtors' application. It is hereby dismissed with costs. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 4<sup>TH</sup> DAY OF MAY, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 5<sup>TH</sup> DAY OF MAY, 2006.**