



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1587 of 1976**

**JOSHUA MWELESA KALWALE.....PLAINTIFF**

**VERSUS**

**UNION OF KENYA CIVIL SERVANTS AND ANOTHER....DEFENDANTS**

**RULING**

The applicant by way of this Chamber Summons brought under Order XXI Rule 56 and 57 of the Civil Procedure Rules seeks orders that the attachment of the objector's property by the Decree Holder herein be raised. The application is based on the grounds:

1. That the objector herein was never and has never been a party to the suit herein and the Decree Holder has no right in law to attach its property through its agents or otherwise.
2. That the objection herein has an indefeasible legal title and interest in the property that has been attached by the Decree Holder herein and the Decree Holder has no right in law to attach its property.
3. That if the attachment is not lifted forthwith, the object stands to suffer irreparable harm to its business and reputation.
4. That it is in the interest of justice and fairness that the court do grant the orders sought. The applications also supported by an affidavit sworn by **ALPHAYO NYAKUNDI**, the General Secretary of the Objector herein the Union of Kenya Civil Servants, who avers that the Union of Kenya Civil Servants was deregistered in 1980 by the Government of Kenya and it therefore ceased to exist for all intents and purposes under the law, that in the year 2001, a new Civil Servants Union.

Coincidentally named the Union of Kenya Civil Servants was formed which said union had no relations whatsoever that the objector was never and has never been party to the suit herein, that the similarity in names between the Union of Kenya Civil Servants against which the suit was filed in 1976 and the current Union of Kenya Civil Servants established in 2001 is of no legal bearing as the two are distinct and separate legal entities, that the objector cannot be liable for the debts and even judgments entered prior to its existence that the Decree Holder has no right or legal basis to attach the objector's properties as he purported to.

The application is opposed by the Decree Holder who has filed a replying affidavit sworn by the respondent. Decree Holder who has avers that the Judgment Debtor and the Objector is one and the same Union, that when the Union of Kenya Civil Servants was deregistered in 1980 and in 2001 when the new was formed the officials were the same and in fact the present Secretary General who swore the affidavit a behalf of the objector is the same. The attachment of the objectors good was through a judgment of this court which was delivered on 27<sup>th</sup> October 2004.

The hearing proceeded ex parte because the Decree Holder had obtained Interlocutory Judgment. The Objectors submit that they were never served. What they ought to have done was to apply for orders to set aside the ex parte judgment. Denials of service at this stage when the exparte judgment is in force does not assist the objector.

The respondent has proved that the union is the same as well as the officials at the time of deregistration and at the time of revival and the objectors are using the same facilities.

In the result the objectors' application fails and the same is dismissed with costs.

Dated and delivered at Nairobi this 22<sup>nd</sup> day of June 2006.

**J.L.A. OSIEMO**

**JUDGE**