



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

Civil Case 575 of 2003

**JAMES KARIUKI NGANGA t/a NDARANGU MERCHANTS.....
PLAINTIFF**

VERSUS

**JOSEPH NGAJE NJUGUNA.....1ST
DEFENDANT**

**CROSSBOW LIMITED2ND
DEFENDANT**

AND

**CROWN COFFEE CO. LIMITED.....
.....OBJECTOR**

RULING

The plaintiff seeks for orders that:

“The stay of execution order dated the 24th May be set aside and or be discharged forthwith;” and that “There be no further orders of stay granted to the objector herein in respect of the motor vehicle KAM 918U.”

The plaintiff’s application is by Notice of Motion brought under Order 21 Rule 56, 57 and 59 and Order 50 Rule 17 of the Civil Procedure Rules, and Section 3 and 3 A of the Civil Procedure Act.

The objector herein, CROWN COFFEE CO. LTD raised its objection to the attachment of motor vehicle KAM 918U, in the first instance in November 2004. Its application for declaration to its entitlement to legal or equitable interest in the motor vehicle KAM 918U, the court by its ruling of 20th December 2004 dismissed that application.

The objector was dissatisfied with that order of dismissal and filed a Notice of Appeal and an application for stay pending appeal.

On 20th March 2006 the court granted conditional stay. It was submitted by the plaintiff that the conditions of stay had not been met by the objector.

On 24th May, 2006 the plaintiff’s advocate was yet again served with a Notice of stay of execution

issued under Order 21 Rule 54 of the Civil Procedure Rules.

I have perused this case massive court file and I was unable to trace a notice of objection filed by this objector under Order 21 Rule 53. It is not clear how then the registry issued and served the plaintiff with a notice under Order 21 Rule 54. I want to believe that such issuance and service was in error.

The objectors counsels M/s Ogetto, Kerongo & Company Advocates were served with the present application but they did not file any papers in opposition and did not attend the hearing of the application.

The court finds that there is no basis for the Notice of Stay execution dated 24th May 2006, indeed the issuance of that notice and service of it on the plaintiff was an abuse of the court process. Accordingly the court will strike out that Notice.

The plaintiff's second prayer also has merit since the objector has previously filed an objection, which was dismissed, by this court.

I am of the view that the following orders are merited and are hereby granted.

- (1) That the Notice of stay of Execution dated 24th May 2006 be and is hereby struck out of the record hereof.**
- (2) That CROWN COFFEE CO. LTD is hereby barred from raising an objection under Order 21 Rule 53 of the Civil Procedure Rules in respect of motor vehicle KAM 981U, without the leave of this court.**
- (3) That the costs of the Notice of Motion dated 29th May 2006 are awarded to the plaintiff as against the objector CROWN COFFEE CO. LTD.**

MARY KASANGO

JUDGE

Dated and delivered this 9th June 2006.

MARY KASANGO

JUDGE