



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 768 of 2002**

**EAST AFRICAN PACKAGING INDUSTRIES LTD.....  
....PLAINTIFF**

**VERSUS**

**MONA FRESH VEGETABLES LTD. .... DEFENDANT**

**EASTWEST VEG. LIMITED .....  
OBJECTOR**

**RULING**

The objector has brought this application with a view to having the attachment of its property declared unlawful. The property which was attached and which is the subject matter of this application is a motor vehicle registration number KAM 808J.

In support of the application, the Managing Director of the Objector swore an affidavit, stating that the vehicle in issue belongs to the objector. A copy of the logbook was attached to the said affidavit, and it shows that the vehicle was the property of EastWest Veg. Limited of P. O. Box 47105 – 0500, Nairobi.

Mr. Zumo, the advocate for the objector notified the court that the vehicle had been transferred to his client on 30<sup>th</sup> April 2006.

He also submitted that the manner of attachment was irregular as there was no proclamation before the attachment was effected.

For those reasons, the objector asked the court to uplift the attachment.

But the decree-holder believes that the objector is undeserving of the remedy sought. It submitted that the prayer sought was one for a declaration that the vehicle belongs to the objector; and that to become entitled to obtain such an order the objector would have to prove ownership of the vehicle.

The decree-holder pointed out that the decree herein was dated 6<sup>th</sup> February 2003. Therefore, the transfer of the vehicle to the objector, on 30<sup>th</sup> April 2006 was seen as a deliberate attempt by the judgement/debtor, to defeat execution. In that regard, it should be noted that the logbook shows that the vehicle belonged to the judgement-debtor before it was transferred to the objector.

The decree-holder emphasized that in its considered opinion the attachment was not unlawful, as alleged

by the objector. It was pointed out that the Notice of Intention to Proceed with Attachment, which is dated 1/8/05, makes reference to a Notice of Proclamation dated 7/6/05. In effect, the decree-holder is denying the assertions by the objector, that the only proclamation in this matter was dated 19<sup>th</sup> July 2005, which was also the date when the attachment itself was carried out.

As the said Notice of Intention to Proceed with Attachment is dated 1<sup>st</sup> August 2005, that means that as at the date of its issuance, the decree-holder did not yet know that the objector would challenge the manner in which the attachment was carried out. Therefore, the decree-holder had no reason, at that time to make reference to "**the Notice of Proclamation dated 7<sup>th</sup> June 2005.**" In the circumstances, I find that there was a proclamation, and that it was issued on 7<sup>th</sup> June 2005. In other words, the attachment was not irregular.

However, the most significant consideration in this application is the fact that the transfer of the property occurred long after the attachment was in place. The objector itself concedes that the attachment took place on 19<sup>th</sup> July 2005. Therefore, by the time the vehicle was being transferred to the objector, on 30<sup>th</sup> April 2006, it was already the subject of attachment. In the circumstances, this court would be failing in its duty, if it were to allow the judgement-debtor to avoid execution by causing the vehicle to be transferred to the objector. Accordingly, I find no merit in the application dated 3<sup>rd</sup> August 2005, and the same is hereby dismissed, with costs to the decree-holder.

The stay of execution is hereby vacated, so as to enable the process be completed.

If the objector was an innocent victim of the judgement-debtor, it may take appropriate action against the said judgement-debtor. But the dispute between those two parties should not stand in the way of the decree-holder's execution process.

It is so ordered.

Dated and Delivered at Nairobi this 5<sup>th</sup> day of June 2006.

**FRED A. OCHIENG**

**JUDGE**