



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 329 of 2003

**AWO SHARIFF MOHAMED T/A A.S MOHAMMED INVESTMENTS
.....PLAINTIFF**

VERSUS

**ABDULKADIR SHARIFF ABDIRAHIM.....1ST
DEFENDANT**

**ABDINASIR ABDIRAHIM MOHAMED T/A A.S ABDIRAHIM ENTERPRISES.....2ND
DEFENDANT**

R U L I N G

The present application is made by Dahir Shariff Abdulkadir who objected to the attachment of motor vehicle registration No. KAD 662W.

The application seeks the release of the said motor vehicle on the grounds that the objector is the sole and exclusive owner of the motor vehicle; and that, the objection is not a party to this suit.

The objector swore an affidavit in support of the application and averred that the motor vehicle, KAD 662W is his motor vehicle and that it had no connection to the judgment debtor. To support that assertion the objector annexed the logbook of the said motor vehicle. The objector concluded by stating that the attachment should be lifted, on that vehicle, unconditionally released to him.

The application was opposed on the basis that attachment took place on proclamation of the judgement debtors goods which was on or about 13th March 2006. That the search carried out at the Registrar of Motor vehicle, on 30th April 2006, revealed that the aforesaid motor vehicle belonged to the judgment debtor. That the judgment debtor dishonestly transferred the said motor vehicle to the objector, who is his son, on 10th April 2006. The decree holder plaintiff in his affidavit in reply stated that the aforesaid transfer, of ownership of the subject motor vehicle, was in bad faith, made with unclean hands, and made with the sole object to help the judgment debtor to delay, obstruct and defeat the execution of the decree.

By the objector filing the present objection proceeding he was claiming to have a legal or equitable interest in the whole of the aforesaid motor vehicle.

The burden to prove that legal or equitable interest lay with the objector. To support his claim the objector attached a copy of a log book which showed that the vehicle was registered in the judgment

debtor's name and who as at 10th April 2006 transferred it to the objector. That transfer was done after goods, which included the subject motor vehicle, were proclaimed by the auctioneer. Section 27 (1) of the Sale of Goods Act [Cap 31] provides:

“A writ of fieri facias or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed;”

That section goes further to state that such a writ will not prejudice a title to goods acquired by a person in good faith and for valuable consideration.

The decree holder stated in his affidavit in reply that the objector is the judgment debtor's son. That statement was not controverted by the objector.

That being the case, and more particularly in view of section 27 of the Sale of Goods Act, the objector has failed to prove he has a legal or equitable interest in the vehicle. On the judgement debtors goods being proclaimed the judgement debtor was not free to transfer any of the sated goods thereof, for all intents and purpose, attachment on those goods had already been effected.

Accordingly the objectors application fails and therefore the order of this court is as follows: -

That the objector's chamber summons dated 24th May 2006 is hereby dismissed with costs to the plaintiff decree holder and accordingly the stay of execution in respect of motor vehicle registration No.KAD 662 W is hereby lifted.

MARY KASANGO

JUDGE

Dated and delivered this 26th September 2006.

MARY KASANGO

JUDGE