

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 699 of 1997

KARANJA KAHIA.....PLAINTIFF

VERSUS

KENYA TIMES MEDIA TRUST LTD.....DEFENDANT

RULING

This objection proceedings are expressed to be brought under Order XXI Rules 56 and 57 of the Civil Procedure Rules and Section 3 A of the Civil Procedure Act. The objector prays that the attachment/proclamation against the applicant/objector assets in this suit be set aside.

The application is made on the ground that the proclaimed assets belong to the objector and the defendant/judgement –debtors have no legal claim or property rights in them.

The application is supported by an affidavit sworn by Charles Ruto a senior operations manager of the objector on 15th May 2003. The application is opposed. There is a replying affidavit sworn by Karanja Kahia the plaintiff – Decree holder on 2nd July 2003.

The sole issue in the objection proceedings is whether the objector has on a balance of probability sworn that it has a legal or equitable interest in the goods attached in execution of decree.

The case of the objector is that goods proclaimed by the court broker namely Panasonic Fax Machine, 8 computers 10 coffee desks, 14 office chairs, “21” old colour T.V, and 3 filing cabinets, belong to it. In support of its claim it has annexed sale agreement executed on 24th October 1997 whereby it is sworn that the attached goods were part of the goods sold by defendant to the objector.

In opposition to the application it was argued that the objection proceedings were an abuse of the process of the court and were untenable.

The objector had filed an earlier objection on 26th January 2000 through Kandie and Co. Advocates which objection was abandoned. The decree holder indicated that he was prepared to proceed with the attachment since the objector had abandoned his claim for the ownership of the goods for over 2 years. The decree holder filed a letter in court dated 4th June 2002 for warrants to issue. It was at this second execution that the judgment-debtor came with the second objection proceedings through a different firm of advocates.

Counsel for the decree holder argued that the transfer of the goods to the objector was done through the sale deed dated 24th October 1997 after the suit had been filed which was filed on 21st March 1997 and that this was done with a view to defrauding the creditors. He further submitted that the directors of the **KENYA TIMES MEDIA TRUST LTD** were **DANIEL TOROITICH ARAP MOI** and **BURUNDI NABWERA** who owned one share each while the directors of **NES AND PRINTING SERVICES** were **JOSEPH KAMOTHO** and **JAPHETH LIJOODI** who owned one share each.

The judgment – debtor was the owner and distributor of the Kenya Times News and the objector was the Printer of the Kenya Times and they share the same address and the two companies are run by the

same group of people.

He concluded that the application is not brought in good faith and urged the court to dismiss the same as the transfer was intended to defeat justice. The decree holder having proved that the two companies are run by the same group of people and the transfer having been effected through the Bargain and Sale Deed dated 24th October 1997 while the suit was filed on 21st March 1997, the same was intended to defeat justice and there an abuse of the process of the court.

The upshot of this matter is that the objection is dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 12th day of September 2006.

J.L.A. OSIEMO

JUDGE