



**CYPRIAN MASAFU WANYONYI WEKESA.....APPLICANT**

**VERSUS**

**JASWINDER SINGH ENTERPRISES LTD.....RESPONDENT**

**SKYLINE ROLLERS LTD.....1<sup>ST</sup> OBJECTOR**

**KENYA UGANDA MINING AND TRANSPORT COMPANY...2<sup>ND</sup> OBJECTOR**

### R U L I N G

This is an application by two objectors, messrs Skyline Rollers Limited and Kenya Uganda Mining and Transport Company.

The objectors seek the unconditional lifting of the proclamation or attachment of all the properties cited in the proclamation dated 4<sup>th</sup> July 2006.

In the alternative, the objectors ask the court to find that they have legal or equitable interests in the property which had been attached by Keysian Auctioneers, through the proclamation abovesited. Having made such a finding, the court is asked to order that the proclamation or attachment be raised.

According to the objectors, the proclamation by Keysian Auctioneers was carried out at the premises of the 1<sup>st</sup> objector, Skyline Rollers Limited, which are situated along Pemba Road, Industrial Area, Nairobi. To prove ownership of the premises, the objectors have produced a copy of a Certificate of Grant for L.R. No. 209/10821, which is in the name of Skyline Roller Limited.

It is the objectors' case that the said premises are leased out by the 1<sup>st</sup> objector to various people, for purposes of parking their motor vehicles. One of the people who had leased space for parking on the premises was said to be the 2<sup>nd</sup> objector.

At the same time, it was said that the said 2<sup>nd</sup> objector was the trading name of the 1<sup>st</sup> objector. And to prove that contention, the objectors produced a certificate of business name.

The 2<sup>nd</sup> objector then produced logbooks for the vehicles bearing the following registration particulars.

- (i) KAR 544D – Mercedes Benz Truck.
- (ii) ZC 0153 - Bhachu Trailer.
- (iii) KAR 551D – Mercedes Benz Prime Mover.

Based on the logbooks, the 2<sup>nd</sup> objector lays claim to ownership of those vehicles.

But in response, the plaintiff has produced certificates of official search issued by the Registrar of Motor Vehicles, which show that the following vehicles are registered to the Defendant, Jaswinder Singh Enterprises Ltd;

- (a) KAR 146D – Mercedes Benz, Prime Mover.
- (b) KAR 551D – Mercedes Benz, Prime Mover
- (c) KAJ 187T – Mercedes Benz, Lorry/Truck.
- (d) KAR 554D – Mercedes Benz, Lorry/Truck.
- (e) ZC 0153 – Bhachu, Fiat Bed.

As is evident, the three vehicles, whose logbooks the objectors produced, were all said to belong to the defendant. Therefore, the question that must be addressed is whether the court should accept the certificates of official search, in preference to the logbooks.

The respondent says that, by virtue of the provisions of Sections 5, 8, and 9 of the Traffic Act, the issue of ownership is to be conclusively determined by the records kept by the Registrar of Motor Vehicles. It is thus contended, that inasmuch as the logbooks are inconsistent with the records maintained by the Registrar of Motor Vehicles, the latter were more conclusive.

S. 5 (1) of the Traffic Act requires the Registrar to keep records of all vehicles and trailers registered in Kenya. Such records are to be available for inspection by any police officer, collector of customs and the chairman of the Transport Licensing Board, all of whom shall be entitled to copy any entry in such records free of charge.

The records can also be inspected by any other person, who satisfies the Registrar that he has reasonable cause to do so. However, all such other persons would have to pay a prescribed fee to copy any entry from the records.

It is by virtue of that authority that the plaintiff herein did obtain the copies of the records from the Registrar of Motor Vehicles.

Section 8 of the Traffic Act stipulates as follows;

**“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”**

It is because of that provision that the plaintiff submitted that the court should order that the extracts from the records of the Registrar were more conclusive than the logbooks.

That is said to be even more so, because whenever there is any change in ownership of a vehicle or trailer, the new owner is required, by law, to notify the registrar in writing. The requirement is spelt out in Section 9 of the Traffic Act.

In the case of **FRANCIS NZIOKA NGAO V SILAS THIANI NKUNGA, CIVIL APPEAL NO. 92 of 1998**, the Court of Appeal found nothing wrong with the finding by the trial judge that the appellant had failed to prove that he had sold the vehicle, as he had not notified the Registrar that he had transferred the said vehicle to Muinde.

The reason for upholding that finding was that the appellant had admitted having failed to notify the Registrar of Motor vehicles that he had sold and transferred the vehicle in issue to Muinde, in accordance with the provisions of Section 9 (2) of the Traffic Act.

In this case, the objectors have made no admissions. Instead, they have said that the presence of the 2<sup>nd</sup> objector's name on the logbook is clear proof that the Registrar had been duly notified.

In my considered view, the 2<sup>nd</sup> objector appears to have a legitimate point. I say so because by virtue of the provisions of Section 9 (4) of the Traffic Act, the registration of a new owner becomes effective upon the surrender of the log book to, and reissuance of the same by, the Registrar. Therefore, unless the entry in any of the logbooks is shown to be a forgery, it would, by virtue of Section 6 (5) of the Traffic Act, be deemed to be proof of registration of the vehicle.

On the face of the documents before me, I find that the three vehicles, as follows, appear to be the property of the 2<sup>nd</sup> objector;

- (i) KAR 544D - Mercedes Benz Truck.
- (ii) ZC 0153 - Bhachu Trailer.
- (iii) KAR 551D - Mercedes Benz Prime Mover.

Those three vehicles should be released forthwith to the 2<sup>nd</sup> objector.

In **SIMBA COLT MOTORS LTD V LUSTMAN & CO. (1990) LTD, AND E. M. MATHENGE T/A PROPERTY CONSULTANTS & ANOTHER, HCCC No. 729 of 2002**, the Hon. Waki J., (as he then was) said;

**“The purpose of Rule 57 is to provide the objector with an opportunity to establish his claim to the attached moveable property. The rule casts the onus of proof on the objector to prove that the property belonged to him and not, as submitted before me, for the Decree-holder to prove that the property belonged to the Judgement-Debtor.”**

In the circumstances, as the objectors did not discharge the onus of proving that any of the other attached vehicles belonged to them, the objectors cannot be entitled to the orders sought, in relation to those other vehicles.

In arriving at that conclusion, the court needs to emphasize that the mere fact that the shareholders or directors of the objectors were related, or operated from the same premises as the judgement-Debtor, was not reason enough, (as was suggested by the plaintiff herein) to justify the attachment of their goods, property or assets. Even if the objector was a relative to the proprietors of the Judgement-Debtor, if the objector proved ownership to the attached goods, to the exclusion of the Judgement-Debtor, the attachment thereof would be lifted.

To my mind, the plaintiff cannot be faulted for having facilitated the attachment of the three vehicles which have been ordered released. I say so because the plaintiff did cause appropriate searches to be conducted, which appeared to show that the vehicles were registered to the defendant. Therefore, as between the plaintiff and the 2<sup>nd</sup> objector, each party shall bear its own costs.

However, as regards the 1<sup>st</sup> objector, his application has been wholly unsuccessful. Therefore, the 1<sup>st</sup> objector shall pay costs to the plaintiff.

Dated and Delivered at Nairobi, this 29th day of November 2006.

**FRED A. OCHIENG**

**JUDGE**