

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (COMMERCIAL DIVISION, MILIMANI)

CIVIL CASE NO. 919 OF 1999

AKIBA BANK LIMITED.....PLAINTIFF

VERSUS

JETHA & SONS LIMITED.....DEFENDANT

RULING

An Objector coming to court under Rule 57 of Order 21 of the Civil Procedure Rules (the Rules) so as to establish his claim to attached goods as required by Rule 56 of the same Order must exhibit evidence of his legal or equitable interest in the whole or part of any property attached in execution of a decree. See Rule 53 of the same Order. An Objector may set in motion these objection proceedings any time prior to payment out of the proceeds of sale of such attached property (same Rule 53).

On 8th October, 2004 an auctioneer called **KEYSIAN AUCTIONEERS** attached by proclamation motor vehicles Reg. Nos. KAJ 135A and KAG 809S in execution of decree herein. On the same day **EXCEL MILLING LIMITED** (hereinafter called the Objector) filed a notice of objection to attachment under Rule 53 aforesaid. In due course it filed proceedings under Rules 56 and 57 aforesaid. In the supporting affidavit the Objector has exhibited a copy of a sale agreement dated 14th September, 2004 by which **MAIZENA MILLERS LIMITED** (the Defendant/Judgment-Debtor) sold to the Objector the two motor vehicles in question among three others. Also exhibited are copies of the Registration (Log) Books of both motor vehicles showing that both were transferred unto the Objector on 4th October, 2004. This was before the attachment on 8th October, 2004.

At any rate, when the Objector filed his objection the motor vehicles had not, and have not since, been sold, and so there was not any payment out of the proceeds of their sale. Both original Registration Books were produced in court by learned counsel for the Objector and were inspected by the court and the learned counsel for the Plaintiff/Decree- Holder. Upon this, it was agreed that the attached motor vehicles be handed back to the Objector upon his advocate's undertaking that they would not dispose of pending delivery of this ruling.

I consider that the Objector has established to the required standard its legal interest in both motor vehicles. Such legal interest existed at the time the motor vehicles were attached, and they should not have been attached as they then did not belong to the Judgment-Debtor. It is true that as at 30th September, 2004 the motor vehicles were still registered in the name of the Judgment-Debtor as indicated in the copy of the records of the motor vehicles dated 27th October, 2004 forwarded to the Decree-Holder's advocates which are exhibited in the replying affidavit sworn by **SEKOU OWINO**, Advocate. But that ownership changed on 4th October, 2004 when the motor vehicles were registered in the Objector's name. And, as already indicated, attachment was on 8th October, 2004.

Not that it would matter even if attachment had been before, so long as sale and paying out of proceeds thereof had not taken place.

In the circumstances I must allow the Objector's application by chamber summons dated 27th October, 2004 with costs. The Plaintiff/Decree-Holder shall pay the auctioneer's charges. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2005.

H. P. G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF FEBRUARY, 2005.