

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 632 of 2003

**TWIGA CHEMICAL INDUSTRIES LIMITEDPLAINTIFF/DECREE
HOLDER**

VERSUS

**MUGAMA FARMERS CO-OPERATIVE UNION LIMITED
.....DEFENDANT/JUDGMENTS DEBTOR**

R U L I N G

The objector has brought a chamber summons under Order 21 Rule 57 of the Civil Procedure Rules. The application, amongst other orders, seeks that the order for the attachment of the proclaimed goods be lifted or set aside.

The objector is a savings and credit co-operative society, which lends money to its members. The defendant as security for financial facility extended to it by the objector extended to it by the objector charged its property L.R. NO. 4953/679 in favour of the objector. The objector argued that by virtue of that charge it had right over all the developments on that property including fixtures and accordingly this included the attached animal feed manufacturing plant and machinery.

The objector in December 2003 appointed a receiver manager over the charged property but the receiver manager was not in physical possession of the charged property because of an injunction was subsisting.

The plaintiff opposed the application on the basis that the objector had an obligation under Rules 56 and 57 to prove their right over the attached property; that the objector needed to prove that it had possession of the attached goods at the time of attachment. On the submission that the objector needed to prove possession of the charged property, the plaintiff relied on case *HARILAL & COMPANY – V – BUGANDA INDUSTRIES LTD (1960) EA 318*.

The plaintiff also argued that the objector had failed to prove that the attached goods were attached to the ground and further said that those goods had been removed during attachment, without them losing their identity. Plaintiff noted that the objectors' security was the immovable property since they had not raised a floating charge over the machinery attached.

I have considered the opposing argument and the authorities cited to me and I am of the view that the objector failed to shift the burden placed upon it. Order 21 rule 53 requires the objector to prove equitable or legal right over the attached goods.

The objector's claim to ownership of the attached goods is based on the charge. I have perused the charge and the only mention of fixtures is in regard to the chargor's obligations keep in good repair of the property and fixtures. Schedule four of the charge shows the property charged is L.R. NO. 4953/679. There is no mention of the machinery or the attached goods.

The objector had also prayed for the court to extend the time for filing the present application. The objector had filed an earlier application dated 9th November 2004. On 31st January 2005 the objector without assigning a reason for it, withdrew that earlier application. Consequently by filing the present

application the objector failed to file it within the ten days period required under rule 56. Counsel for the objector made some submissions on the reason why the application was withdrawn but failed either by affidavit or otherwise to present reason why the court should exercise its discretion in its favour. For the court to exercise its discretion it's necessary for a party to provide reason for such exercise.

For the above reason and because the objector has failed to satisfy the onus of proving ownership of the attached good the application must fail.

The application dated 3rd February 2005 is dismissed with costs.

Dated and delivered this 28th day of April 2005.

MARY KASANGO

JUDGE

Read and delivered at Nairobi by Azangalala J, this 28th day of April 2005.

F AZANGALALA

JUDGE

Read in the presence of: -