



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT

MILIMANI COMMERCIAL COURTS, NAIROBI

Civil Case 187 of 2000

COLOUR PRINT LIMITED TD.....PLAINTIFF

VERSUS

PRE-PRESS PRODUCTIONS.....DEFENDANT

RULING

The application is brought by way of a chamber summons dated and filed in court on 6th August, 2004. It is expressed to be brought under O.XXI Rules 56 and 57 of the Civil Procedure Rules, S.3A of the Civil Procedure Act, and all other enabling provisions of the law.

The application seeks from the court orders –

1. THAT attachment against the applicant/objector be set aside
2. THAT the costs of the application be provided for.

It is based on the grounds-

- (a) THAT the plaintiff/decreed holder's auctioneers have proclaimed property belonging to the objector and the plaintiff/decreed-holder has intimated that it wants to proceed wholly with the attachment and sale of the property whereas the objector is not the judgment debtor;
- (b) THAT the applicant/objector is not a party to this suit and there is no judgment entered against it in the suit.

The application is also supported by the annexed affidavit of JAMES KARIUKI, a director of the objector.

In opposition to the application, the plaintiff/decreed holder filed a replying affidavit through KUL BHUSHAN VIDYARTHI, one of its directors. In that affidavit, Mr. Vidyarthi avers that judgment in this case was initially supposed to be delivered on 21st February, 2003, but that it was finally delivered on 28th March, 2003. Digital Products Limited, the objector, was meanwhile incorporated on 13th March, 2003. Its subscribing members are Dinesh Premchand Shah and Pauline Marie Adam. The said Dinesh Premchand Shah is also a subscribing shareholder of Altocid limited. Of his own knowledge, the deponent avers that Mr. Dinesh Shah closed down Pre-press Production, the judgment-debtor, and incorporated Digital Productions Limited, which is now conducting identical business to what had

previously been conducted by Prepress. He finally states that the affidavit sworn by James Kariuki is defective as the said Kariuki is incompetent to swear the affidavit, and that Wanjagi Macharia & Co., advocates for the objector, are also on record as advocates for the judgment debtor and were actively engaged in the defence of the decree holder's claim against Pre-press.

In canvassing this application before the court, Mr. Mungai appeared for the objector while Mr. Goswami appeared for the respondent. Mr. Mungai referred to exhibit JK 3, which is a bundle of invoices. It refers to items and equipment bought from suppliers in both names of Digital Imaging Limited and also Digital Productions Limited, and that the property belongs to the objector. The objector is a stranger to the debt.

Execution should therefore be levied against the goods of the judgment – debtor, but not those of the objector.

In his response for the respondent, Mr. Goswami submitted both the judgment debtor and the objector use the same directors. Mr. Dinesh Premchand Shah is a director of both companies and also the managing director of the objector. Both companies are in the same kind of business and use the same address. Mr. Goswami thereupon submitted that the objector and the judgment debtor are one and the same, and that the objector is a mere facade for the judgment debtor. He urged the court to dismiss the application with costs.

Mr. Mungai submitted, in reply, that many companies share directors but their separate personalities prevail. The fact that companies are represented by the same law firm is not of any consequence. Attachment should therefore proceed against the judgment debtor. Counsel thereupon urged the court to grant the orders as prayed.

After considering the application and submissions of counsel, one gets the distinct impression that the three players in this drama, i.e. Altoaid Limited, Digital Productions Limited and Pre-press Productions are inter-related. The inter relationship is not very clear as Digital Productions Limited, the objector/applicant herein, has been very economical with the truth. The factual position is that on admission by Altoaid Limited itself, it carried on business under the name and style of Pre-press Productions. This is evident from paragraph 1 of the amended defence under protest by Pre-press Productions, the defendant herein.

The evidence on record further shows that Digital Productions Limited was initially called Digital Imaging Limited and that a certificate of change of name was issued by the Registrar of Companies on 11th February, 2004. The postal address of Prepress Productions, the name under which Altoaid carries on business, is Box 39676, Nairobi. According to the business card of Mr. Shah, the Managing Director of Digital Productions Limited, the postal address of the said Digital Productions Limited is also Box 39676, Nairobi. Most significantly, its E-mail address is "press productions.com."

The fact that this address is carried on a business card for Digital Productions Limited lays bare the fact that there is a business link between the two companies. And yet the two companies are non others than the defendant/judgment debtor and the objector/applicant herein. They and they alone know the exact nature and scope of the relationship between them. But they are not about to divulge it.

In paragraph 6 of the replying affidavit, the deponent, Mr. Kul Bhushan Vidyarthi, a director of the plaintiff/decreed holder, states-

"THAT I know DINESH PREMCHAND SHAH personally through business transactions between my company and his pre-press productions and say that he closed down pre-press production and incorporated DIGITAL PRODUCTIONS LIMITED on 13th March, 2003 to deny my company the fruits of its judgment which had been initially promised for 21st February 2003 but was finally delivered on 28th March, 2003. Digital Productions is conducting identical business to what had previously been conducted by pre-press."

Regrettably, the objector has not found it fit to react to this allegation. Granted, Digital Productions Limited is a corporate entity. But that is all it is. Considering that its managing director is also a director of the judgment debtor; the two organisations share a common postal address as well as an electronic mail address, on a balance of probability and without any explanation from Digital Productions Ltd., it would not be far fetched to conclude that the objector is clearly a façade for the judgment debtor.

For these considerations, the objector's application is dismissed with costs.

Dated and delivered at Nairobi this 14th day of April 2005

L. NJAGI

JUDGE