

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL CASE 97 OF 2003

SANOBER LIMITED.....PLAINTIFF

VERSUS

GEORGE SAMUEL ESHIWANIDEFENDANT

AND

KENYATTA UNIVERSITY.....OBJECTOR

RULING

In this application by chamber summons dated 31st January, 2005 the Objector, Kenyatta University, seeks orders to lift the attachment of goods in execution of decree (as is evidenced by the proclamation dated 22nd December, 2005) and release to itself of those goods upon the ground that the attached goods belong to it and not to the Judgment- Debtor, GEORGE S. ESHIWANI. The application is brought under rules 56 and 57 of Order 21 of the Civil Procedure Rules (the Rules). To succeed the Objector must prove on balance that it is entitled to or has a legal or equitable interest in the whole or part of the attached goods (see rule 53 of the same Order).

The Decree-Holder, SANOBER LIMITED, opposes the application upon the ground that there is no “conclusive” evidence before the court that the attached goods belong to the Objector, and, further, that the application has been brought in collusion between the Judgment-Debtor and the Objector.

I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing. The attached goods are a motor vehicle Regn. No. KWN 853 make Volvo sedan and household furniture and appliances. There is a copy of the log (registration) book of the motor vehicle annexed to the supporting affidavit. It shows that the motor vehicle is in the joint names of Prof. G. Eshiwani and Kenyatta University College. The latest date that is discernible in the log book is 30th September, 2001. There is no evidence that at the time of the attachment on 22nd December, 2004 the motor vehicle was still registered in the joint names of the Judgment-Debtor and the Objector. Such evidence could have been easily obtained from the registrar of Motor Vehicles in the form of a copy of records. It is also to be noted that there is no background information in the supporting affidavit of how the motor vehicle came to be registered in the joint names of the Judgment-Debtor and the Objector. Was it, for instance, a hire-purchase arrangement? And if it was, had the Judgment-Debtor not paid off to the Objector whatever financing had been advanced between 5th December, 1984 (the date of registration of the motor vehicle) and the date of attachment? In these circumstances I am not satisfied that the Objector has established on balance that it is entitled to the motor vehicle or that it has a legal or equitable interest in the same.

The other attached goods comprise furniture and appliances of the kind that may be found in a middle-class home. Apart from the bare assertion that they belong to it, the Objector has not provided a single shred of evidence of its ownership. There is not a single purchase receipt exhibited. There is no evidence that the Judgment-Debtor occupies a furnished house or apartment belonging to the Objector. There is even no evidence that the Judgment-Debtor is a housed employee or tenant (in furnished premises) of the Objector. In these circumstances I am not satisfied that the Objector is entitled to the attached furniture and appliances or that it has a legal or equitable interest in them.

In the circumstances this application fails. It is hereby dismissed with costs.

Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF JUNE, 2005.

H.P.G. WAWERU

JUDGE