



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**

**Civil Case 575 of 2003**

**JAMES KARIUKI NGANGA.....PLAINTIFF**

**VERSUS**

**JOSEPH NGAI NJUGUNA .....1<sup>ST</sup> DEFENDANT**

**CROSSBOW LIMITED.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

This ruling is further to the one delivered hereof on 16<sup>th</sup> June 2005. the court by that ruling entertained prayer No. 6 of the Notice of Motion dated 14<sup>th</sup> March 2005. The only prayer stills subsisting and the subject of this ruling is prayer No. 3, in the following terms: -

**“That this Honourable court do stay the execution of the warrant of attachment issued by this Honourable court, on or before 8<sup>th</sup> March 2005.”**

The court by its aforesaid ruling ordered the plaintiff to file a statement of account of the decretal amount due. The plaintiff on 23<sup>rd</sup> June 2005 prepared a statement and the balance reflected as due, on that statement, as at 23.6.2005 was kshs 10, 890, 797. 90. The deputy registrar also prepared a statement of amount due and showed that as at 16.6.2005 the decretal amount due was kshs 11, 597, 088. 66.

The 1<sup>st</sup> defendant by his affidavit sworn on 21<sup>st</sup> July 2005, faulted the plaintiff for giving him credit for sale proceeds of items of property which are the subject of objector’s proceedings. Further he deponed that since the amount in the plaintiff’s account reflected a different amount to that stated in previous warrant of attachment all warrants of attachments hereof ought to be nullified. The defendant’s counsel in oral submissions argued that the deputy registrar in processing the warrants, hereof, conducted what is known as a procedure. On that point counsel quoted the case of MANDAVIA VERSUS RATTAN SINGH [1968] E.A. 146. He submitted that since the warrants were issued on the wrong figure those warrants ought to be nullified, including the prohibitory order, issued against, defendant’s property, which, he said, ought to be lifted.

Counsel for the plaintiff opposed the prayer sought and contended that the orders issued by deputy registrar were under O 21 R 48, and that being so, they were appealable. That the defendant having failed to appeal, thereof, the order of the deputy registrar cannot be interfered with. He finally submitted that execution should be allowed to proceed as per the amount shown in the plaintiff’s statement.

The issue I believe I need to consider is whether the difference in the figures reflected in previous warrants of attachment and the figure in plaintiff’s statement justifies this court to either stay or set aside warrants, hereof, issued. I am of the opinion that the answer is in the negative. Perhaps what would be just is to have the deputy registrar re – issue warrants of attachment to reflect the amount shown as due in the plaintiff’s statement of account. The differences stated hereof do not go to the ‘root’ of the previous

execution because there is no evidence that the plaintiff has realized in execution an amount in excess of the amount due. The issue raised by the defendant that goods sold, which are alleged to belong to other third parties, should not be credited to the defendant is a non starter. The court having not upheld the objections of those third parties such sales can only be credited to the defendants.

The order of this court is as follows: -

**(1) That deputy registrar should hereof re-issue warrants of attachment on the application of the plaintiff, and in calculating the amount due the deputy registrar should follow the account filed in court on 23<sup>rd</sup> June 2005 by the plaintiff, which account reflected the decretal amount outstanding as at 23<sup>rd</sup> June 2005 to be kshs 10, 890, 797. 90.**

**(2) That there shall be no order as to costs of the application dated 14<sup>th</sup> March 2005.**

Dated and delivered this 27<sup>th</sup> September 2005.

**MARY KASANGO**

**JUDGE**