



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET**

CIVIL CASE 27 OF 1998

JACKSON RUIRUPLAINTIFF

-VERSUS

SAKI HOLDINGS LIMITED DEFENDANT

AND

BASHIR CHACHA MUMBAHA OBJECTOR

RULING

Before me is a Chamber Summons dated 17th May 2005, brought by Messrs. Mogire & Company Advocates for the objector, Bashir Chacha Mumbaha. It is purported to be brought under section Order XXI rule 56 and 57 of the Civil Procedure Act (Cap.21). It seeks for the following orders –

- 1. That a notification of sale of movable property of the objector's goods done on 20th April 2005 in execution of the plaintiff's decree herein be lifted.**
- 2. That the plaintiff be restrained from further acts of execution against the objector's goods.**
- 3. That costs of this application be in the cause.**

The application has grounds on the face of the Chamber Summons and is supported by the affidavit of the objector, Bashir Chacha Mumbaha, sworn on 17th May 2005. The grounds of objection are that, the objector is the lawful owner of the attached motor vehicle, secondly that the objector was not a party to the suit herein; thirdly, that the judgment debtor has no legal claim to the attached motor vehicle; fourthly, that the objector stands to suffer irreparable loss and damage unless the attachment of his motor vehicle is lifted.

Mr. Okach for the applicant made submissions in support of the objector's application. He submitted that there was a sale agreement executed between the objector and Saki Holdings Limited. Following the agreement, the subject vehicle was paid for by the objector and therefore he became the owner.

Mr. Mutei for the respondent opposed the objection application. He submitted that judgement was obtained on 22nd January 2004 and the decree was drawn in January 2005. The sale agreement was executed after judgement and decree. It was therefore meant to defeat execution. He submitted that he had annexed to the further affidavit copy of the record of ownership of the subject motor vehicle dated 4th May 2005 and the objector is not the owner of the motor vehicle. He therefore cannot claim to be the owner. Also, in terms of section 9(2) of the Traffic Act(Cap.403) a transfer form has to be registered with

the Registrar of Motor vehicles within fourteen (14) days, which was not done in this case. The objector has also contravened section 19 of the Stamp Duty Act (Cap. 480). I have considered this application and the submissions of both counsel. I have also perused the documents in the file. It is not in dispute that a suit was filed by Jackson Ruiru against Saki Holdings Limited and a judgement entered against Saki Holdings Limited. It is also not in dispute that a decree was extracted in January 2005. A Certificate of Taxation was also issued on 31st January 2005. Then in April 2005 a Notification for Sale of movable property was issued by Gillete Traders for the sale of the subject lorry registration KAG 592S. From the records of ownership of the vehicle, as contained in the copy of records of ownership ("MTI") from the Registrar of Motor Vehicles dated 4th May 2005, the said motor vehicle Isuzu Lorry/Truck KAG 592S belongs to Saki Holdings Limited and NIC Bank Limited.

I have also perused the sale agreement dated 3rd February 2005, in which the objector is the purchaser of vehicle KAG 592S. The sale agreement is between the objector and Saki Holdings Limited and NIC Bank Limited. However, on the side of the sellers, it was only Saki Holdings Limited that signed the agreement. From the documents attached by the objector, payment for the vehicle totaling Kshs.1million were made to Saki Holdings Limited. Under the agreement, the objector was to pay Kshs.1 million to NIC Bank Limited before the logbook could be released to him. There is no evidence that he paid that amount to NIC Bank Limited. There is no evidence that the transfer of ownership form dated 3rd February 2005 was submitted to the Registrar of Motor Vehicles to effect the transfer of the said motor vehicle.

The ground of the application herein is that the objector is the lawful owner of the subject motor vehicle KAG 592S. However, from the foregoing, the objector has not become the legal owner of the said motor vehicle. Firstly he has not paid or shown that he has paid all the amounts payable by him for the vehicle as per the sale agreement to entitle the release of the logbook to him so that the transfer can be registered with the Registrar of Motor Vehicles. Secondly, he has not been registered as the owner of the vehicle as required by law to entitle him to claim ownership. It is obvious that the said vehicle still belongs to Saki Holdings Limited and NIC Bank Limited. The objector has not proved his ownership on the balance of probabilities. The objector, therefore has no legal basis for challenging the execution against Saki Holdings Limited, who are co-owners of the vehicle, because he is not one of the co-owners of the vehicle. The only co-owner of the vehicle is NIC Bank Limited, who have not objected to the attachment and I therefore cannot make any decision regarding their interests.

For the above reasons, the application fails and I dismiss the same with costs to the plaintiff/respondent.

Dated and delivered at Eldoret this 12th day of October 2005.

George Dulu

Ag. Judge

In the Presence of: