



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 13 of 2005 [No 2]

MOHAWK LIMITEDPLAINTIFF

VERSUS

DEVCON GROUP LIMITEDDEFENDANT

DEVCA SERVICES LIMITEDOBJECTOR

RULING

By its Chamber Summons of the 26.8.2005 the objector seeks the following orders:-

- “a) That the execution of goods belonging to the objector DEVCA SERVICES LIMITED be declared null and void**
- b) The notice of objection issued by DEVCA SERVICES LIMITED dated 9th August 2005 be upheld.**
- c) The costs of the objection be met by the plaintiff judgement creditor.**
- d) The cost of this application be provided for.”**

The application is supported by the affidavit of Joseph Njoroge Macharia a director of the Objector company. Annexed to the affidavit are receipts showing that the goods attached by the Plaintiff belong to the Objector.

The Plaintiff filed grounds of opposition and took a number of objections to the application.

The first point was that although supported by an affidavit the Chamber Summons does not say so and only grounds are set out.

It merely states that the affidavit intended to be used shall be served, as it was in this case.

This in my view is at most an irregularity, which is not fatal to the application. Order L Rule 3 states as follows:-

“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”

I see no merit in the submission that the affidavit is sworn after the date of the Chamber Summons so long as the affidavit is sworn before the application is filed then it is in order.

The third point is that the receipts annexed to the affidavit are not stamped according to the provision of the Stamp Duty Act. A court will always allow documents not stamped to be relied on subject to the document being stamped. I order that the Applicant produce stamped receipts within 21 days from today which must be filed in court.

Fourthly, the Respondent submitted that the application was filed outside the 10 days referred to in Order 21 Rule 56.

If it is true that the matter must be filed within 10 days and failure to do so is fatal to the application. ***(See Diamond Trust Bank (K) ltd. vs. David Maina Mimano & another HCCC. No.1444 of 1999).***

In this case the Notice of Objection was served on the 18.8.2005 and the application had to be filed on or before the 28.8.05. However, 28.8.2005 fell on a Sunday and Order 49 Rule 3 states:-

“Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof, such act or proceedings cannot be done, or taken on that day, such act or proceeding shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.”

From this it follows that the applicant was at liberty to file its application on the 29.8.2005, which it did.

In the result the preliminary Objections fail and I made the orders sought in the application with costs of the application to the Applicant.

Dated and delivered at Nairobi this 9th day of November, 2005

P. J. RANSLEY

JUDGE