



**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**  
**Civil Case 280 of 2000**

**NATIONAL BANK OF KENYA LIMITED.....PLAINTIFF**

**VERSUS**

**INNOCENT OBIRI MOMANYI.....DEFENDANT**

**R U L I N G**

This is a curious application. It (notice of motion dated 21<sup>st</sup> October, 2004) is brought by the Defendant/Judgment-Debtor seeking the following main orders:-

1. ***That the Plaintiff/Decree-Holder be compelled to sell the Defendant/Judgment-Debtor's 150 shares with Kenya Commercial Bank Limited and 1,000 shares with Kenya Breweries Limited, and the proceeds thereof be applied towards payment of the decretal sum herein.***
2. ***That the said sale be done through a reputable stock broker at the Nairobi Stock Exchange.***
3. ***That the Plaintiff/Decree-Holder be compelled "to pay for any diminution in the value of the shares since the demand was first made until the date that they shall be liquidated".***

In other words, the Defendant/Judgment-Debtor is seeking to compel the Plaintiff/Decree-Holder to execute the decree in a particular way. The application is said to be brought under Rule 72 of Order 21 of the Civil Procedure Rules. Section 3A of the Civil Procedure Act, Cap 21 is also quoted. Rule 72 aforesaid merely states that sale of immovable property in execution of decrees may be ordered by the court. To begin with, shares in a company are not immovable property. They are eminently movable. Secondly, even if they were immovable property, the court would order their sale where a proper application in execution of decree has been brought by the decree-holder. I do not consider an application by a judgment-debtor, such as the present application, to be a proper application in execution of decree.

I have considered the submissions of the learned counsel for the Defendant/Judgment-Debtor. I note that no grounds of opposition or replying affidavit have been filed in response to the application. That notwithstanding, I do not consider that it would be a proper exercise of the courts discretion in the circumstances of this case to grant the orders sought. The application is therefore refused. It is hereby dismissed with no order as to costs. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2005.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 16<sup>TH</sup> DAY OF DECEMBER, 2005.**