



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

**Misc Appli 986 of 2003**

**IN THE MATTER OF THE ARBITRATION ACT 1995**

**AND**  
**IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**KEMBI GITURA t/a KEMBI GITURA & CO. ADVOCATES.....APPLICANT**

**VERSUS**

**MENNO TRAVEL SERVICES LIMITED.....RESPONDENT**

**R U L I N G**

On 8th June, 2004 this court (Kasango, J.) granted the Applicant, **KEMBI GITURA (t/a KEMBI GITURA & CO. ADVOCATES)**, orders of entry of judgment in terms of the arbitral award filed herein and enforcement thereof against the Respondent, **MENNO TRAVEL SERVICES LIMITED**. Decree was subsequently issued, and by application dated 20th August, 2004, the Applicant sought its execution under Order 21, Rule 41 of the Civil Procedure Rules by issuance of a prohibitory order attaching 614 ordinary shares held by the Respondent in **MENNO PLAZA LIMITED**. A prohibitory order dated 7th October, 2004 was issued, and the same was addressed to the Company Secretary of Menno Plaza Limited and also to the Respondent/Judgment-Debtor.

The Applicant/Decree-Holder has now applied by notice of motion dated 18th August, 2005 seeking various orders in settlement of terms of sale of the attached shares. When the application came up for hearing on 2nd December, 2005 learned counsel for the Respondent/Judgment-Debtor Mr. Wandabwa applied to cross-examine the process server with regard to service of the prohibitory order upon the Respondent/Judgment-Debtor. Mr. Wandabwa said that in the replying affidavit such service is denied. In opposing the application for cross-examination of the process server Mr. Kairu, learned counsel for the Applicant/Decree-Holder, suggested that the issue of service of the prohibitory order can be canvassed at the hearing of the application without the necessity of cross-examination of the process server. In his view the application to cross-examine the process server is intended to delay satisfaction of the judgment. He pointed out that due notice of filing of the arbitral award was served upon the Respondent. It did not file any application to challenge the award under section 35 of the Arbitration Act, 1995, nor did it pay the sum awarded. The said judgment (and decree) has not been challenged, yet the Respondent has not bothered to satisfy it.

Rule 41 (2) of Order 21 of the Civil Procedure Rules provides that a copy of an order in attachment of a share in the capital of a corporation or other moveable property not in the possession of the judgment-debtor shall be affixed on some conspicuous part of the precincts of the court, and another copy be sent, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid) to the person in possession of the same. The shares in question

are obviously not in the possession of the Respondent/Judgment-Debtor. They are in the possession of Menno Plaza Limited. Under the aforesaid sub-rule (2) of Rule 41, it was not necessary to serve the prohibitory order upon the Respondent/Judgment-Debtor. No other rule as mandates service of the prohibitory order upon the judgment-debtor has been brought to my attention. A cross-examination of the process server will thus not serve any useful purpose. I therefore refuse the application for his cross-examination. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 7TH DAY OF DECEMBER, 2005.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 9TH DAY OF DECEMBER, 2005.**