



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 453 OF 2001

GERPAS ODUOR OYUGI.....PLAINTIFF

=V E R S U S=

1. PEUM ENTERPRISES

2. PHILIP OTIENO.....DEFENDANTS

A N D

UWE CYGAN.....APPLICANT

R U L I N G

In this case the Plaintiff is **GERPAS ODUOR OYUGI**. There are two Defendants: (1) **PEIUM ENTERPRISES** (2) **PHILIP OTIENO**.

Ex-parte judgment was granted against the Defendants but has been set aside on the application of the 1st Defendant on 14/11/2003.

One **UWE CYGAN** a director and shareholder of 1st Defendant was abroad when he was informed by his friend in Kenya that there was a threatened attachment of assets in Case No.453/01. The friend one MR. PIM NICOLAI of Magic Designs Ltd offered to pay Kshs.500,000/- to keep off the attachment on Plot No.1142 Mango Park 2 Diani Breach which plot was said to belong to Mr. Uwe Cygan aforementioned. An Agreement shows that the Kilimanjaro Auctioneers took a motor vehicle Toyota Hilux owned by Mr. Cygan as security.

It will be noticed here that the property which was broken into was not belonging to any of the Defendants or decree-holders who were bound by decree. In fact the exhibited Title Deed shows that the property was held by:

(1) Margarete Eveline Gregor

(2) Marrieta Beatrix Lisk.

Courts of Kenya do not follow the procedure of entering motions for hearing. I accept the interpretation of Mr. Asige that in Kenya the fixing of a motion for hearing is made at registry like all other matters. In any case the order of the court stated that "Motion be filed within 14 days" and this was done. Under our system it would be quite inconvenient to list motions or any other matters within a prescribed time. There is only one diary of the High Court in Civil Matters and this would bring only confusion. For these reasons I do not find any merit to sustain the Preliminary Objection. There are very serious issues in this matter which have to be dealt with in the interest of justice.

I have already pointed out that the goods attached and the property broken into are not of Judgment Debtor and that the judgment has been set aside.

For these reasons I do not sustain the objections. The same are dismissed and disallowed.

Costs of this Preliminary Objection to the Applicant.

Dated at Mombasa this 2nd day of June, 2004.

JOYCE KHAMINWA

J U D G E

2/6/2004

Khaminwa, J.

Chege – Court Clerk

Mr. Asige – present

Mr. Mburu – N/A

Ruling read in presence of Mr. Asige.

JOYCE KHAMINWA, J.