



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
COMMERCIAL DIVISION, MILIMANI
CIVIL CASE NO. 1677 OF 2000**

FIDELITY COMMERCIAL BANK LIMITED ...DECREE-HOLDER

VERSUS

AGRITOOLS LIMITED1ST JUDGMENT DEBTOR

SALIM BHANJI2ND JUDGMENT DEBTOR

S BHANJI (MS).....3RD JUDGMENT DEBTOR

AND

HUSSEIN BHANJI1ST OBJECTOR

JAMNADASS PREMIUM FINANCE LTD....2ND OBJECTOR

R U L I N G

The application before me is brought by the 2nd objector namely **JAMNADASS PREMIUM FINANCE CO. LTD.** It is under Order 21 Rule 57 of the Civil Procedure Rules.

The second objector seeks an order to raise and or lift the attachment of motor vehicle registration No. **KAQ 180V.**

The objector's counsel, Mr. Macharia began his argument by saying that the subject motor vehicle was legally owned by the 2nd objector and that the 2nd judgment debtor was merely a hirer. The parties had executed a hire purchase agreement annexed to the supporting affidavit and consequently had paid the relevant fees to the Registrar of Motor Vehicle to have the vehicle registered in the name of the 2nd objectors jointly with the 2-judgment debtor. Mr. Macharia said that the hire is still subsisting to date because it was to run for 23 months, which have not expired.

The judgment creditors advocate Mr. Kajama opposed the application and in so doing relied on the filed grounds of opposition.

In support of the 1st and 2nd grounds counsel argued that the Hire Purchase agreement was defective and was unenforceable for failure to register the same as required by the Hire Purchase Act Cap 507. Section 5 (1) requires every Hire Purchase Agreement to be registered within 30 days after execution. The Hire Purchase Agreement the subject of this application was executed on 7th August 2003 and it was not denied that it had not been registered. Such a document under Section 5 (2) shall not be registered unless, it is liable for payment of stamp duty, and stamp duty is duly paid. The 2nd objector's counsel did not deny that the Hire Purchase Agreement was subject to the Stamp Act and nor did he deny that such duty had not been paid. Counsel was heard to argue that the fact the agreement was not registered nor stamp

duty paid thereof did not detract the agreement from being a contract and he emphasized that the logbook reflected the 2nd objectors joint ownership and that interest reflected in the log book came first before the judgment creditors interest.

I find that Section 5 (4) of the Hire Purchase Act to be very specific that an agreement which is not registered is not enforceable against the hirer. That would mean that the 2nd objector would have no right to recover the subject motor vehicle from the 2nd judgment debtor. If that is the case in law the vehicle does therefore belong to the 2nd judgment debtor and is therefore subject to execution. I do not accept that the agreement can be regarded as a contract because it would be unenforceable as against the motor vehicle; at most the 2nd objector may have a right to claim for damages against the 2nd judgment debtor.

I am also persuaded by the judgment creditor's argument that the objector's interest is not at arms length. The vehicle indeed was first registered in the name of the 2nd judgment debtor's name on 10th June 2003. In August 2003 the vehicle was jointly registered in the 2nd judgment debtor's name and the 2nd objectors name. The 2nd objector did not sufficiently explain whether it purchased the vehicle from the 2nd judgment debtor then hired the same to the same 2nd judgment debtor. There is a web weaved by the 2nd judgment debtor and the 2nd objector which leaves the court to accept that what is presented before court is not entirely genuine.

The Stamp Duty Act Cap 480 Section 19 (1) provides that instruments chargeable with stamp duty shall not be received in evidence in criminal and civil proceedings unless they are duly stamped. The Hire Purchase Agreement was not stamped and cannot therefore be received in evidence in this matter.

That being the case the court's holding is that the application by the objector must fail.

The judgment creditor can proceed with execution under the comfort of Section 44 of the Civil Procedure Act, which states: -

“ALL property belonging to a judgment debtor including property over which or over the profit which he has a disposing power which he may exercise for his own benefit, whether the property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree.” (Underlining mine).

The second objector's application dated 12th October 2004 is hereby dismissed with costs to the Plaintiff judgment creditor which costs shall be paid by the 2nd defendant.

Dated and delivered this 29th November 2004.

MARY KASANGO

AG JUDGE