



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL SUIT NO 1753OF 2001**

**HARLEY'S LIMITED .....PLAINTIFF**

**VERSUS**

**WOCKAINE (K) LIMITED .....DEFENDANT**

**RULING**

The Chamber Summons dated 12th March 2004 is brought by the objector under Order XXI Rules 56 and 57 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The Objectors seeks orders that;

- (1) That the Court do order the raising of the attachment as to the whole of the property attached in execution of the decree;
- (2) That the court do make orders as to which party should pay the auctioneer's fees.

The application is based on the ground that the goods attached are the property of the objector as per the assignment agreement.

By that assignment agreement the judgment debtor gave as security all its moveable assets in consideration of loan by the objector of kshs 6 million; the agreement actually states that those moveable assets become the property of the objector on signature of the assignment agreement. The assets the subject of that agreement range amongst others from computer, printer, executive chairs, metal drawer, sony cordless phone, 3 motor vehicles and a arrange of pharmaceutical products.

The Plaintiff opposed the objector's application on the basis that the agreement contravened various statutes, namely;

- (1) The Stamp Duty Act, since no stamp duty had been paid neither had the agreement been registered;
- (2) The Chattels Transfer Act in that such an agreement ought to have been registered in compliance with that Act;
- (3) The Companies Act, in that such an agreement constituted a floating charge and accordingly the same should have been registered at the Companies registry as provided in Section 96.

Order 21 Rule 53 of the Civil Procedure Rules makes it abundantly clear that the burden is upon the objector to prove that he has a legal and equitable interest in the assets being attached.

I am in agreement with the Plaintiff's counsel that the assignment agreement having failed to comply with the statutes stated hereinabove it fails the test laid down in Order 21 Rule 53.

Over and above that, there are other anomalies in the objector's evidence that are not reconcilable. The objector by his affidavit in support of the application states that the assignment agreement is dated 23rd April 2004, marked "NKS 2". Looking at that exhibit, I note that it is dated 16th May 2003. So one wonders whether the objector is referring to an agreement not before the court. Secondly it does not seem conceivable that ownership of pharmaceutical goods which may very well be in the possession of the defendant for purpose of sale, passed on to the objector. Thirdly, if the assignment agreement is to be believed one would expect that the Motor vehicles would have been registered in the objector's name or at least the objectors name could have been noted in the Logbook together with the name of the judgment debtor to ensure that the interest of the objector is reflected thereof.

Having examined the affidavit in support of the objector's application, I am of the view that the assignment agreement has been prepared with intention of defeating the judgment creditor in realizing the decree passed herein.

In view of my finding the court's orders are as follows: -

- (1) The Objector's application dated 12th March 2004 is hereby dismissed with costs to the Plaintiff which costs shall be payable by the Objector.
- (2) That the Auctioneer's charges hereof shall be paid by the judgment debtor.

Dated and delivered this 3rd day of december 2004

**MARY KASANO**

**AG. JUDGE**