

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 276 OF 1998

HARAMBEE CO-OPERATIVE SOCIETY LTD.....PLAINTIFF
VERSUS
ELITE COMPUTERS LTD.....DEFENDANT
RULING

In HCCC No. 279/98 where a similar application was made in a similar suit, I upheld a similar preliminary objection. I held in part:

“Since there is no decree in existence the objection proceeding under Order XXI Civil Procedure Rules are grossly incompetent plaintiff did not attach the objectors goods in execution of a decree. Plaintiff levied distress as a landlord against a tenant pursuant to section 3(1) of the Distress for Rent Act. Plaintiff in levying distress was exercising a statutory right as a landlord and not judgment debtors rights under a decree of the court. The applicants remedy lies under the distress for rent Act and not under the Civil Procedure Act or Rules.....”

The circumstances in this case are similar and I apply that passage Mutatis Mutandis to the application filed on 27.6.2002.

Consequently I uphold the preliminary objection and strike out the application filed on 27.6.2002 for an order to lift the attachment with costs.

E. M. Githinji
JUDGE
7.11.2002