



BM (A minor suing through his mother and next friend PKK) v Simba Coach Limited & another (Civil Appeal E004 of 2020) [2023] KEHC 22219 (KLR) (20 April 2023) (Judgment)

Neutral citation: [2023] KEHC 22219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL APPEAL E004 OF 2020
F WANGARI, J
APRIL 20, 2023**

BETWEEN

BM APPELLANT

A MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND PKK

AND

SCANIA CREDIT SOLUTION (PROPRIETY) LIMITED 1ST RESPONDENT

SIMBA COACH LIMITED 2ND RESPONDENT

(Being an appeal from the Ruling of Honourable J. Wang'ang'a, Resident Magistrate in PMCC no. 44 of 2012 at the Resident Magistrate Court at Mutomo Law Courts delivered on 08/10/2012)

JUDGMENT

1. This is an appeal from the ruling of the Hon J W Wang'ang'a (RM) given on October 8, 2020 in Mutomo PMCC No 45 OF 2012. This was pursuant to an objection made by the Appellant under Order 22 Rule 51 of the [Civil Procedure Rules](#). The Appellant and the 2nd Respondent were Decree holder and Objector. Leave to appeal was granted.
2. The main contention is brought under Order 22, Rule 51, which provides as follows;
 1. Any person claiming to be entitled to or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and to the decree-holder of his objection to the attachment of such property.
3. The Appellant contends that the attached motor vehicle belongs to the judgement debtor while the Objector submits that the judgement debtor is simply but a lessee. The Appellant makes reference to the motor vehicle copy of records which clearly show the judgement debtor and Objector being jointly registered. Therefore, on this, the Appellant states that the vehicle can be attached and sold and the



balance of the proceeds be paid to the Objector to cover its balance that remains unpaid if any by the judgement debtor. The authorities of *Josphat Munke Ole Mpoke v David Waiganjo Koinange* [2005] eKLR and *Imperial Bank Ltd v Treadsetters Ltd & Another* [2012] eKLR supports this position.

Analysis and Determination

4. I have considered the submissions and authorities cited by the parties in support of their rival positions, the Lower Court ruling which is the subject of this appeal and the law and I opine that there is only one issue for determination which is, whether the Objector is a co-owner with the judgement debtor or is it a lessor. Corollary to this is the issue of costs.
5. In *Arun v C. Sharma Astana Raikundalia t/a Raikundalia & Co. Advocates & 4 Others* [2014] eKLR the court stated as follows “...the objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The key words are, entitled or to have a legal or equitable interest in the whole or part of the property...” Did the Objector discharge this burden? I have looked at the lease agreement which appears at pages 172 to 174 of the record of appeal. At clause 5 of the said agreement, it provides for ownership. It is very categorical that ownership in and to the goods with at all times vest with the Objector and the customer understands that it will at no time become the owner of the goods or have any claim in relation thereto, save for the right to use the goods while the agreements are in force. On the effect of termination, it leaves no doubt as to who is the owner of the goods.
6. Therefore, though the Appellant submits that the Objector is a joint owner, the lease agreement leaves no doubt as to who the owner is and the copy of records which show the judgement debtor and Objector as co-owners cannot supersede the clear terms of the lease agreement. In its submissions, the Objector submitted that the joint registration was to safeguard its interests in the motor vehicle as well as facilitate the judgement debtor in its possession and use during the lifetime of the lease. This is a plausible explanation which this court readily accepts.
7. I thus do not agree that the Objector is a financier as submitted by the Appellant. Just like the Lower Court, I am satisfied that the Objector established a legal and equitable interest in the whole of the subject motor vehicle as at the date of proclamation.
8. On the issue of costs, the same follows the event. However, this court retains the discretion to award the same and considering the circumstances, though the Objector is successful, I direct that each party to bear their own costs.
9. Based on the foregone discourse, I proceed to make the following orders: -
 - a. The appeal is devoid of merit and it is accordingly dismissed;
 - b. Each party to bear their own costs. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA ON THIS 20TH DAY OF APRIL, 2023.

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HON. F. WANGARI

JUDGE

In the presence of:

N/A by parties

Guyo, Court Assistant

