



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO.122 OF 2008

DALBIT PETROLEUM LIMITED.....PLAINTIFF/DECREE HOLDER

VERSUS

VICTORY CONSTRUCTION

COMPANY LIMITED.....RESPONDENT/JUDGMENT DEBTOR

TECHNO ASPHALT LIMITED.....OBJECTOR

RULING

1. Before this Court the Chamber Summons dated **8th March 2019** by which **TECHNO ASPHALT LIMITED** (hereinafter referred to as “**the Objector**” seeks for orders that:-

“1. SPENT

2. SPENT

3. SPENT

4. THAT the proclamation dated 20th February 2019 by Vintage Auctioneers be declared unlawful.

5. THAT the items proclaimed on the 20th February 2019 by the agents of the Plaintiff Decree/Holder belongs to the Objector.

6. THAT the costs of this application be provided for.”

2. The application which was brought under **Order 40, Order 22 Rule 51** and **52** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act** and any other enabling provisions of law was supported by the Affidavit of even date sworn by **OSCAR MMBUKA** the Administration Manager of the Objector.

3. The Plaintiff Decree/Holder **DALBIT PETROLEUM LIMITED** filed Grounds of Opposition to the application. The application was canvassed by way of written submissions. The Applicant/Objector filed its written submissions on **8th March 2019** whilst the Decree/Holder filed their submissions on **26th June 2019**.

BACKGROUND

4. On **5th January 2006** the Plaintiff and Defendant entered into a Petroleum Products Supply Agreement. In furtherance of this agreement the Defendant through local purchase orders placed various orders for petroleum products from the Plaintiff. The Plaintiff proceeded to supply the goods as ordered by the Defendant. However the Defendant failed and/or neglected to pay for goods delivered to the tune of **Kshs.5,826,200/=**.

5. On **2nd August 2018** the Court entered judgment in favour of the Plaintiff against the Defendant for the sum of **Kshs.5, 826,200** plus interest at court rates from January 2007 until payment in full as well as costs of the suit.

6. On or about **20th February 2019** **VINTAGE AUCTIONEERS** upon instructions from the Plaintiff/Decree Holder visited the premises at **Ndeiya/Ndeiya/921** and proclaimed various items as follows:-

- (i) Motor Vehicle Registration KBQ 458C
- (ii) Motor vehicle Registration KND013
- (iii) Motor vehicle Registration KAT 343K
- (iv) Motor vehicle Registration KBB 556A
- (v) Caterpillar roller
- (vi) Caterpillar shovel
- (vii) Office Desks
- (viii) Office Chairs
- (ix) Assorted Construction Equipment.

7. The Objector then brought this application under **Order 22 Rule 51** of the **Civil Procedure Rules 2010**, seeking a stay of execution of the judgment, on grounds that the proclaimed items belonged to the Objector and **not** to the Defendant/Judgment Debtor.

ANALYSIS AND DETERMINATION

8. **Order 22 Rule 51(1)** and **(2)** of the **Civil Procedure Rules 2010** provides as follows:-

“51(1) Any person claiming to be entitled 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.

(2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such Objector or person makes to the whole or portion of the property attached”

I find that the present objection having been filed in compliance with the provisions of **Order 22 Rule 51** is properly before this Court.

9. The Objector challenges the proclamation of the various goods cited above on grounds that the same belong **not** to the Judgment Debtor but to the Objector. That the premises which was visited by the auctioneer being **NDEIYA/NDEIYA/921** where the proclaimed goods were found is actually occupied by the Objector. It is claimed that the Defendant judgment debtor as landlord leased this premises to the Objector sometime in the year 2018. Thereafter the Objector took possession of the premises and placed their vehicles and equipment therein.

10. In support of this claim the Objector has annexed to the Chamber Summons dated **8th March 2019** document styled **“Agreement for Hire of Extra Piece of land in Ndeiya”** (annexture **BM”3”**). This Agreement is dated **15th February 2018** and is signed by one **Peter Mbatia Ngugi** and **Amritpal Singh** of **Techno Asplialt Ltd.** The document is apparently signed by a representative of the Objector and is prima facie evidence of the fact that the Objector is the lessee of the premises in question. In that regard any property found within the said premises can reasonably be presumed to belong to the Objector. There is no evidence that the property in question belongs to the Defendant.

11. The Objector further alleges that the items recovered in that premises and which were proclaimed belong to third parties and are only being stored in the premises. In support of that contention they have annexed to the Chamber Summons the log books for the vehicles. I have examined at the said log books. Motor vehicle **KND 013, Daihatsu** does not bear the name of the owner. Motor vehicle **KAT 343K** Toyota is registered to one **“Ali Said Swaleh”** while motor vehicle Registration **KBB 556A** is registered to **Kenya Commercial Bank** and **Porters Emerald Limited**. There therefore is persuasive evidence that the proclaimed vehicles do not belong to the Judgment-Debtor, but belong to third parties who are not named in this suit.

12. This lends credence to the Objector’s claim that he was using the premises as a yard at which vehicles and other properties belonging to third parties were being stored. I am satisfied that the Objector has adduced sufficient evidence to show that he was the lessee of the premises in question and that therefore the properties found therein did not belong to the Judgment/Debtor. Execution can only lawfully proceed against property belonging to the Judgment/Debtor not in respect of property belonging to third parties.

13. Based on the above I find merit in this objection and I declare the proclamation dated **20th February 2019** by vintage Auctioneers as unlawful. Costs in the cause.

Dated in Nairobi this 15th day of April 2020.

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