



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 123 OF 2007

PETER K. AYIRO.....PLAINTIFFS/DH

V E R S U S

MASH BUS SERVICES LIMITED.....DEFENDANT/JD

AND

MASH EAST AFRICA LIMITED.....OBJECTOR

RULING

The Objector herein has applied by Notice of Motion dated 9th October, 2013 challenging the attachment of motor-vehicles whose particulars are set out in the proclamation annexed to the supporting affidavit sworn by one Abeid Said Jumaan, the General Manager of the Objector. Those motor vehicles bear registration numbers KBK 444D, KBE 330P, KBD 400P and KAW 020B. The Objector claims that the motor-vehicles belong to it by virtue of being the registered owner. Their logbooks are annexed to the supporting affidavit.

The Decree-Holder has opposed the application as set out in a replying affidavit sworn by its advocate and filed in court on 22nd October, 2013. It is the Decree-Holder's stand that the Objector has not placed adequate evidence before court to show when the ownership of the motor-vehicles changed from the Judgment Debtor to the Objector. It is also contended that in an application dated 15th November 2011, the motor-vehicles were all described as belonging to the Judgment Debtor. In view of the foregoing, the Decree Holder contends that the objection proceedings are frivolous, vexatious and a total abuse of the court process.

The Objector filed a supplementary affidavit on 18th November 2013 whose main points of opposition are

- i. That the replying affidavit should be struck off as it is sworn by Counsel for the Decree Holder who delves into contested matters.
- ii. That the objector was never a party to the previous proceedings between the Decree Holder and the Judgment Debtor and thus cannot be bound by assertions made by the Judgment Debtor or its agents.
- iii. That the claim by the Decree Holder that the ownership of the motor-vehicles was transferred to

the Objector to avoid execution is not supported by any evidence.

The court has read the supporting and replying affidavits. It has also considered the submissions of the learned counsel appearing including the authorities cited.

An Objector who claims that goods attached in execution of decree belong to him and not to the Judgment-Debtor must discharge the evidential burden placed upon him by **Order 22, rule 51(1) of the Civil Procedure Rules (the Rules)**. That sub-rule provides -

“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 the 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.”

The issue for determination is whether there is a valid objection and whether the Objector has proved to the Court that it has a legal and equitable interest over the properties attached. An Objector in objection to attachment proceedings must establish on a balance of probabilities that he has a legal or beneficial interest in the whole or part of the attached property. See **Akiba Bank Limited vs Jetha& Sons Limited [2005]eKLR.**

The Decree-Holder is certain that there is reason to believe that the attached motor-vehicles belong to the Judgment-Debtor and that together with the Objector, they are colluding to deny him the fruits of his judgment. There are copies of log-books annexed to the Supporting Affidavit. They show that the Motor-vehicles are in the name of the objector. The dates on the logbooks range between 18th January 2012 and 3rd January 2013. There is no evidence that on the date of attachment, 5th October 2013, the motor-vehicles were still registered in the name of the objector or that during the pendency of the suit they still belonged to the objector. There is also no evidence of who the vehicles belonged to between the first date when they were registered in Kenya (2006-2009) and the time the objector came into being on 16th November 2011. A transfer of a motor-vehicle is effected by filling of forms by the current owner to the succeeding owner. Those forms are filed with the Registrar of Motor-Vehicles. Such evidence could have easily been obtained from the registrar of Motor-Vehicles in the form of a copy of records. That this evidence has not been provided points to concealment of material facts intended to mislead the Court. This therefore casts doubt on the ownership of the motor-vehicles during the pendency of the suit. The objector has therefore not established on a balance that it is entitled to the motor-vehicles or that it has a legal or equitable interest in the same.

In view of this, there is no need to delve into the other issues raised by the objector as already stated, he has failed to meet the evidential burden of proof on a balance of probability. After review of the evidence presented before court, one is left with an impression that it is more probable that the motor-vehicles' ownership was changed in order to defeat the ends of justice.

In view of the foregoing, the objection proceedings must fail and attachment allowed to proceed. The Decree Holder shall have costs of this application.

Dated and delivered at Nairobi this 6th day of May, 2015

A. MBOGHOLI MSAGHA

JUDGE