

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HIGH COURT CIVIL APPEAL NO. 47 OF 2012

ERASTUS ONYANGO APPELLANT

VERSUS

MANOA MALENYA RESPONDENT

AND

VINCEN OJIANGO MAGERO OBJECTOR

RULING

Vincent Ojiango Magero (the Objector/**applicant**) has moved this court by way of a Notice of motion dated 21st September, 2015 and filed in court on even date, seeking an order that Motor Vehicle Registration No.KAE 208R be released to him. He also sought any other orders the court may deem fit to grant and costs of the application. The application is supported by the affidavit of the application sworn on 21st September, 2015.

The applicant deponed that he is the registered proprietor of Motor Vehicle Registration No.KAE 208R. He depones that he had left his motor vehicle at the judgment/debtor's garage for repairs where it was attached in execution of a decree passed against the appellant (JD) herein in *Kakamega Chief Magistrate Civil Case No.392 of 2010* and eventually in this appeal. The applicant further says that he is neither a party to the proceedings before court in *C.M.C.C. No.392 of 2010* nor in the appeal before this court, and therefore, there was no basis for the attachment of his motor vehicle. He therefore prays that the attachment of his motor vehicle be lifted and the vehicle released.

This matter came up under certificate of urgency and I directed that the respondent be served and set it for hearing on 5th October 2015. And although the respondent's counsel was served, they neither filed a response to the application nor attended court on the date of hearing. The matter therefore proceeded ex-parte.

Mr Mukavale, learned counsel for the objector/applicant, moved the application and submitted that the applicant being the registered owner of the motor vehicle in question and not being a party to the proceedings which gave rise to the decree sought to be executed, should not suffer through the attachment of his vehicle. Counsel submitted that the applicant had annexed a copy of the motor vehicle registration certificate to show that the vehicle belonged to the applicant and therefore the attachment was wrongful. He prayed that the application be allowed.

I have considered this application and submissions by counsel. I have also perused the record and the pleadings herein. It is true that the name of the applicant does not appear in the pleadings and was therefore not a party to the suit before the Chief Magistrate's court and the appeal before this court.

When the motor vehicle was attached, the objector/applicant filed a Notice of objection on 14th September, 2015 under *order 22 rule 51* of the Civil Procedure Rules and served it upon counsel for the decree-holder/respondent herein, who in turn, filed a Notice of intention to proceed with attachment pursuant to *rule 54* prompting the applicant to file this application.

The decree-holder/respondent did not file any response to the application as required by *rule 54* and the

applicant's averments in his affidavit therefore are uncontroverted. The applicant has also exhibited in his application, a copy of a certificate of registration of the motor vehicle, (log book) which shows that the vehicle is registered in his name.

Section 8 of the Traffic Act (Cap 403), Laws of Kenya, provides as follows:-

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”

According to the registration book, the objector/applicant is, prima facie, the owner of motor vehicle KAE 208 R. And he is presumed to be the owner unless the contrary is proved. The applicant's title and ownership to the subject motor vehicle has not been challenged and I have no reason to think otherwise. The attachment of the said motor vehicle was therefore without justification.

For the foregoing reasons, the application dated 21st September 2015 is hereby allowed. The attachment of Motor Vehicle Registration No. KE 208R is hereby lifted and the motor vehicle shall be released to the objector/applicant forthwith. The applicant shall also have costs of the application.

Dated and delivered at Kakamega this 14th day of October, 2015.

E. C. MWITA

JUDGE