



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 157 OF 2005**

**TREADSETTERS TYRE LTD. .... PLAINTIFF**  
**VERSUS**  
**COUNTY MOTORS LTD. .... DEFENDANT**

**R U L I N G**

1. The application for determination before the Court is dated 13<sup>th</sup> August, 2013 filed by the Defendant. The application is brought under the provisions of **Sections 1A, 1B, 3, 3A and 63(e)** of the *Civil Procedure Act*, **Order 22 Rule 18** and **Order 49** of the *Civil Procedure Rules*. The applicant seeks prayers *inter alia*:

“1. ....

2. ....

**3. THAT an order for stay of execution of the decree herein do issue pending the hearing and determination of this application inter parties;**

**4. THAT the ruling of the Deputy Registrar made in this suit on 12<sup>th</sup> July, 2013 pursuant to the Defendant/Applicant’s application dated 11<sup>th</sup> July, 2013 and all subsequent orders arising there from be set aside;**

**5. THAT in the alternative, the Defendant/Applicant be granted leave to appeal the Deputy Registrar’s ruling made on 12<sup>th</sup> July, 2013 before a Judge of this Court;**

**6. THAT the Honourable Court do issue any further orders or grant further relief that it may deem apt in the interest of justice;**

**7. THAT a date for inter parties be given;**

**8. THAT the costs of this application be provided for”.**

2. The application is predicated upon the grounds as set out in the application and further supported by the affidavit of **P.S Pandhal** sworn on even date. The applicant alludes that the Deputy Registrar had no jurisdiction to hear and determine the application dated 11<sup>th</sup> July, 2013 and that the said ruling was extremely prejudicial. Further, the applicant contends that the said ruling contradicts the ruling of this Court issued on 14<sup>th</sup> December, 2012 and that the warrants issued are without notice to show cause or without reference to the applicant. Further, the applicant avers that it stands to suffer irreparable damage and that the adjudication of this matter will be impossible as its right to A fair and just hearing has been curtailed. The deponent reiterates the contents of the Grounds, and further contends that the Deputy Registrar re-issued warrants of proclamation and attachment premised on a previously disputed decretal sum. It is further deponed that the actions by the Deputy Registrar in issuing “break-in” orders were unfair and unjust and that there is imminent and legitimate danger of miscarriage of justice.
3. The application is opposed through the Grounds of Opposition filed by the Plaintiff dated 14<sup>th</sup> August, 2013. It is contended therein that the application as filed is frivolous, vexatious and an abuse of the process of the Court. It is further contended that the application is incompetent, defective and inadmissible as this Court has declined to grant more than four applications similar to the instant one, and that there is no contradiction as between the Deputy Registrar’s said Ruling and that delivered by this Court on 14<sup>th</sup> December, 2012. Further, it is averred that the Defendant was served with the proclamation as stated in the affidavit of service sworn on 3<sup>rd</sup> July, 2013 and that no prejudice will be suffered by the applicant should the application be dismissed.
4. From the record, it can be discerned that the Defendant has previously made similar applications dated 29<sup>th</sup> February, 2012, 27<sup>th</sup> September, 2012, 17<sup>th</sup> May, 2013 and 11<sup>th</sup> July, 2013. On the various occasions that the Applicant has proffered its said applications before the Court, they have been dismissed and relevant directions issued to the Deputy Registrar to amend the warrants for attachment and notice to show cause to be in line with this Court’s Ruling dated 14<sup>th</sup> March, 2012. At paragraph 10 of the afore mentioned Ruling, it was found *inter alia*:

**“I believe that the total of Kshs. 9,045,340.13 which includes interest up to the 22<sup>nd</sup> March, 2010 to be an accurate figure. To this amount must be added the certified costs of Kshs. 320,529.33 giving a total of Kshs. 9,365,869.46. From this must be deducted the sum already paid by the Defendant of Kshs. 3,823,986 which would give a total still to pay of Kshs. 5,541, 883.46. It must be remembered that as long ago as 19<sup>th</sup> June, 2009 Lady Justice Lesiit ordered that interest would be payable on the sum due from the Defendant to the Plaintiff at the rate of 16.75% from the date of filing suit until payment in full. On top of the said amount of Kshs. 5,541,883.46, I also find that the Defendant also owes for the said auctioneer’s charges at Kshs. 244,722/- as above.”**

5. The Court issued directions to have the file placed before the Deputy Registrar on 3<sup>rd</sup> July, 2013, ostensibly and for the purpose of reviewing the position as regards the execution of the Decree as well as to hear and determine the two applications filed, both dated 3<sup>rd</sup> July, 2013. The Deputy Registrar allowed the application by the auctioneer for security for serving warrants of attachment on 8<sup>th</sup> July, 2013. In the application dated 11<sup>th</sup> July, 2013 brought under the provisions of **Sections 1A, 1B** of the *Civil Procedure Act* and **Order 51** of the *Civil Procedure Rules* (which is the bone of contention in the instant application), the Deputy Registrar determined that all Orders as issued by this Court on 14<sup>th</sup> December, 2012 and 4<sup>th</sup> June, 2013 had been complied with by the Plaintiff.
6. The Defendant contends and submits that the application dated 11<sup>th</sup> July, 2013 which the Deputy Registrar heard and determined on 12<sup>th</sup> July, 2013 was brought under provisions of the law not under her purview as Deputy Registrar as provided under **Order 49 Rule 7** of the *Civil Procedure Rules*. It however, admitted that **Order 49 Rule 5** empowers the Deputy Registrar to make formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court. It was submitted that the Court limited its directions to amending the notice to show cause and warrants of attachment as necessary for further service upon the Defendant. It is the applicant’s contention that the Deputy Registrar did not have the jurisdiction to hear and determine the application dated

11<sup>th</sup> July, 2013 and as such it should be set aside.

7. In contending that the Defendant has not shown any prejudice or that it has suffered or will suffer should the application be dismissed, the Plaintiff in its submissions dated 7<sup>th</sup> November, 2013 detailed that there was no contradiction between the Ruling of the Deputy Registrar dated 12<sup>th</sup> July, 2013 and that of this Court dated 14<sup>th</sup> December, 2012. In any event, the application dated 11<sup>th</sup> July, 2013 sought the discretion of the Deputy Registrar to determine the application, in accordance with the said Ruling of this Court.
8. The afore mentioned application, at paragraph 1 reads:

**“1. THAT this Notice of Motion be placed before the Deputy Registrar and certified as urgent and heard ex-parte and service thereof on the Plaintiff/Respondent be dispensed with in the first instance owing to its extreme urgency”.**

The Orders issued by the Deputy Registrar on 8<sup>th</sup> July, 2013, which the Defendant sought to have set aside in its application dated 11<sup>th</sup> July, 2013, were to the extent of setting aside the “break-in” Orders issued to the Auctioneers to enter the Defendant’s premises and attach its property in execution of the Decree arising from the Ruling of Lesiit, J. The applicant contends that the said Orders were issued in contravention of this Court’s Ruling dated 14<sup>th</sup> December, 2012. The issues arising for the determination of the Court are therefore: (a) whether the Deputy Registrar had the requisite jurisdiction to make her determination of 8<sup>th</sup> July, 2013 and (b) whether the Orders issuing therefrom should be set aside.

9. As regards the issue as to whether the Deputy Registrar had the requisite jurisdiction to make the determination on 8<sup>th</sup> July, 2012, the Court has considered the Court’s record of proceedings from the date of its Ruling dated 14<sup>th</sup> December, 2012. At paragraph 11 of the aforementioned Ruling, the Court directed *inter alia*:

**“The conclusion to my reasoning above is that I dismiss the defendant’s application dated 29<sup>th</sup> February, 2012 as well as its application dated 27<sup>th</sup> September, 2012 with costs to the Plaintiff. I direct that this file be placed back before the Deputy Registrar of this Court to amend the notice to show cause/warrants of attachment as necessary for further service upon the Defendant/ Judgment debtor.”** (Emphasis mine).

Further, the Court issued directions on 3<sup>rd</sup> July, 2013 in the following context:

**“Accordingly I direct that this file be placed before the Deputy Registrar on 5<sup>th</sup> July, 2013 in order that she/he can review the position as regards the execution of the decree herein as well as hear and determine the two applications dated today 3<sup>rd</sup> July, 2013 pending before the Court.”** (Underlining mine).

10. The Court’s direction as above was for the Deputy Registrar to review the position as regards the process of execution and to amend the notice to show cause/warrants of attachment as necessary. The application dated 11<sup>th</sup> July, 2013 seeks for accounts be taken to determine the decretal amount. To review issues as regards execution, the matter of determining the decretal amount falls squarely within the purview of the Deputy Registrar as directed by this Court. **Order 49 Rule 5** of the *Civil Procedure Rules* empowers the Deputy Registrar to make formal orders for attachment and sale of property and the issue of notices to show cause. By this Court giving directions as to the review of the position as regards execution, the Deputy Registrar therefore, by virtue of **Order 49 Rule 5** as read together with **Order 49 Rule 7**, was empowered to make her determination of 12<sup>th</sup> July, 2013. **Sections 1A, 1B and 3A** of the *Civil Procedure Act* provide for the expedient, fair and equitable determination of matters in the exercise of the inherent powers of the Court. In exercise of its authority therefore, this Court issued directions to the Deputy Registrar, to enable

her act in accordance with **Section 1B (c)** for the efficient use of available judicial and administrative resources and for the expedient determination of matters.

11. With regard to the issue of setting aside the Ruling of the Deputy Registrar dated 12<sup>th</sup> July, 2013, the applicant contended that the said Ruling contradicts the directions and Ruling of this Court dated 14<sup>th</sup> December, 2012 and therefore was a miscarriage of justice and it was bound to suffer irrevocably. The warrants of attachment were amended pursuant to the directions issued by this Court on 6<sup>th</sup> June, 2013. The Deputy Registrar corrected and amended the warrants by reviewing the decretal sum and the interest thereon, as well as the taxed costs. In her Ruling on 12<sup>th</sup> July, 2013, the Deputy Registrar set out the reasons for her Ruling. She reiterated that the warrants were properly served upon the applicant, as was evidenced in the affidavit of **Joshua Ohuya Omugunda** sworn on 3<sup>rd</sup> July, 2013 in support of the application even dated. This was entirely in accordance with the directions of this Court in its 14<sup>th</sup> December, 2012 Ruling.
12. From the foregoing, the applicant has not shown any indiscretion or fault in relation to the actions of the Deputy Registrar. The delivery of her Ruling, as with regard to her jurisdiction, has been within the ambit of the law. The upshot of the foregoing is that this Court hereby finds that the Deputy Registrar had the jurisdiction to hear and determine the application dated 11<sup>th</sup> July, 2013 by the Defendant. Accordingly, the Applicant's application dated 13<sup>th</sup> August, 2013 is hereby dismissed with costs to the Respondent.

**DATED and delivered at Nairobi this 1<sup>st</sup> day of April, 2014.**

**J. B. HAVELOCK**

**JUDGE**