

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.4157 OF 1986

TRANS-NATIONAL FINANCE CO. LTDPLAINTIFF

VERSUS

BARANABAS SOME BUSIENE & 2 OTHERS.....DEFENDANT

R U L I N G

The defendants, apply that the impending attachment and execution against them, be lifted absolutely as the decree, has fully been paid. The defendants be fully discharged from liability and the suit be marked as settled. There be stay of execution pending the determination of this application. In the alternative an account be taken as to the monies paid to the plaintiff. Some of the defendant's vehicles were attached and sold to recover the alleged judgment sum. All these payments notwithstanding, the plaintiff still insists that the defendants owe some Kshs.700,000/=. The plaintiff opposes the application. Some of the claims for payment made by the defendants are false and ridiculous. A sum of Kshs.20,000/= paid to M/s Kangwana & Co. Advocates was for disbursements. It is false to exaggerate that sum to one of Kshs.200,000/=.

It is contended, that the plaintiff is unaware of any money recovered by the Auctioneer who is an officer of the court, not an agent of the plaintiff. Even if, that auctioneer has pocketed any part of the money realized, that recovery and subsequent withholding by this 3rd party who is an agent of the court, cannot operate to prejudice the rights given to the plaintiff by the judgment. It be remembered, that O. 21 r.50 requires that where the decree and other charges, have been paid and certified so by the court, it is only then that the decree is set aside or reviewed. I am afraid there has not been certification by the court under O. 21 r.50. Accordingly the application is dismissed with costs.

Dated and Delivered this 7th day of March, 1997.

in the presence of:

Otenyo for plaintiff absent

Mativo for defendant

M. OLE KEIWUA

JUDGE