

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO 3086 OF 1989

ROBERT LETAPIN OLE KIDOTU.....PLAINTIFF

VERSUS

STEPHEN MUIRURI.....RESPONDENT

RULING

The objector herein, Loise Njoki Murathi seeks release of a motor vehicle, KZZ 658 attached at the instance of the plaintiff herein, Mr Kidotu for a debt owed by the defendant Mr Muiruri who is the husband of the objector. The application is supported by an affidavit sworn by the objector and opposed on an affidavit sworn by the counsel for the respondent.

The objector is the wife of the judgment debtor herein. The respondent obtained judgment against the judgment debtor on 23/10/90. On 28/2/92, court brokers, Messrs Magic Traders were served with attachment warrants to attach vehicles registration Nos KXB 669, KYE 136 and KZZ 658 said to belong to the judgment debtor. On 7th March, 1992, they attached the said vehicles.

On the above attachment taking place, the judgment debtor on 10th March, 1992 moved the Court for stay and setting aside of the judgment as it was obtained *ex parte*. In that affidavit he did not deny ownership of the vehicle KZZ 658. On 18/6/92 the stay application was dismissed and warrants reissued.

On 7/8/92, the objector filed an objection to the attachment of the current vehicles, KZZ 658. The affidavit states that the objector became owner of the vehicle on 18th April, 1991 and that she repaid the loan owed by her husband to the financiers. In support she attached a copy of the log-book which shows that she is currently the registered owner.

The learned counsel for the objector Mr Iseme submitted that by the date of attachment, which in his view was 5/8/92, the vehicle which had previously belonged to the judgment debtor had become the property of the objector, as from 18th April, 1992 after paying off the financiers. Mr Keyonzo however argued that the transfer was fraudulent as at the time it was done execution was in process.

Attempts by judgment debtors to deprive their creditors their grants of judgment of alienation of property to third parties especially their relatives is of common occurrence. Indeed the Legislature through s 27 of the Sale of Goods Act has had to legislate against such alienation. Under that section the goods of a judgment debtor are deemed to be under attachment as from the time the warrant is delivered to the court broker until the execution is completed and any alienation in the meantime is declared invalid unless the purchaser at the time he acquired title was unaware of such warrant which was unsatisfied. This matter therefore requires consideration of the ownership of the goods at the time the warrant was issued, the time when ownership passed to the objector and whether or not the objector was aware of the warrant.

It is common ground that the first warrant herein was served on the court broker on 28/2/92 and by the time of the purported transfer to the objector, the warrant had not been satisfied and the second warrant was a mere follow up. It is also common ground that the objector is the judgment debtor's wife and in the absence of evidence to the contrary they were cohabiting together at the time of the attachment of the goods herein. There is also no evidence that the objector was not aware of the attachment in March, 1992 and in the ordinary course of events and on balance of probabilities, it is this Court's finding of fact that the objector must have been aware of the attachment and the application for stay of execution made by her husband. Consequently she could not acquire a good title to the vehicle subsequently, while the

attachments remained unsatisfied. The vehicle therefore still remained the property of the judgment debtor in August, 1992 and the decree holder was entitled to have the vehicle attached and sold in execution of the decree issued against the judgment debtor as the earlier warrant was unsatisfied.

In the circumstances, I hereby dismiss this objector's application with costs.

Dated and delivered at Nairobi this 24th day of November 1992

G.P MBITO

JUDGE