

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CIVIL CASE NO 1333 'B' OF 1982

WAITHERERO.....PLAINTIFF

V

KIMUNYE INVESTMENTS.....DEFENDANT

RULING

The defendant herein Kimunye Investments Ltd, moved the court under Section 3A of the Civil Procedure Act (Cap 21) asking for orders that:-

“The sale of motor-vehicle Reg No KTJ 996, in August 1986 or thereabouts be set aside for being illegal and or fraudulent and unjust.”

The application was supported by the affidavit of Mr. Mungai Kamotho the defendant’s advocate. Mr Kamotho’s complaint was that the warrant of attachment issued for the sale of this motor-vehicle had expired and it was not re-issued so that the auctioneers had no authority to sell the vehicle as they did. That this was illegal, fraudulent and unjust. Mr Macharia Njore, the advocate for the plaintiff filed a lengthy replying affidavit, explaining the circumstances that led to the vehicle being sold. These are contained in his affidavit at paragraphs 4,5,6,7,8,9, and 10. He contended in court during submissions that after the order for stay was dismissed on 26th June, 1986, and the attachment order was still in force, he instructed another firm of auctioneers, Excellent Auctioneers to advertise the vehicle for sale. That this was after he had written to the Registrar to issue a new warrant. This was in compliance with Order XXI Rule 63. Thereafter, Excellent Auctioneers advertised their proposed sale in the Daily Papers to the Public. A Notice to this effect appeared in the Daily Nation, which was an annexure.

From this Mr Macharia submitted that his client’s obligation to defendant was complete, ie discharged as he had given public notice of the indented sale.

Mr Macharia also drew court’s attention to Rule 69 of Order XXI, should it be found tht there was any irregularity in this sale which he denied, anyway. I considered the application, plus the submissions of both learned counsel.

I came to the conclusion that the sale of the vehicle in question was conducted in accordance with the Rules and I therefore do not find any fraud or unjust dealings in the matter. In the circumstances therefore I decline to exercise my discretion under Section 3A Civil procedure Act (Cap 21) to set aside sale as I was requested. The result is that I dismiss application with costs.

March 3, 1987

ALUOCH J