

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 2735 OF 1984

BLACKWOOD HODGE (KENYA) LTD
PLAINTIFF

versus

LEAD GASOLINE TANK
CLEANING

SAM AND CHASE (K) LTD
DEFENDANT

RULING

Sam and Chase (K) Ltd, the 2nd defendant/applicant herein in this chamber application prays for:

1. An order staying the execution of the decree issued by the court on April 7, 1986.
2. An order that the second defendant/applicant liquidate the decretal sum and costs of the suit by monthly instalments until payment in full.

The application which is expressed to be brought under order 94 rule 10 and 11, order XXI rule 22, order XII rule 1 and order XXII rule 11(1) and (2) Civil Procedure Rules was filed on 27th, two days before the date fixed for the sale of goods attached in the suit to recover the amount of the decree. The goods include, an air compressor, two sand blasting units, three air spray guns, three tool kits and some spare parts. These goods were said to be tools of trade of the second defendant, even though there was no statement in the affidavit of the defendant's director as to what the second defendant is engaged in. It was further urged on behalf of the second defendant that the goods being tools of trade are not attachable.

On behalf of the plaintiff/respondent it was contended that the second defendant has no other attachable assets, that it did not provide any security for the payment of the decretal sum, that no reasonable instalments had been proposed and that there have been several efforts made in the past to look for the defendant and assets of it that granting the prayers sought will greatly delay the settlement of the claim and expose the plaintiff to hardship. Finally that some of the goods attached, in particular the air compressor, is not the property of the second defendant.

I have considered the second defendant's application and in my view it must fail. The second defendant became indebted to the plaintiff way back in May 1984. Full payment in settlement of the money owing to the plaintiff was expected to be made by August 22, 1984. No payment had been made to date. The second defendant was all along aware that the money was still outstanding but did nothing to settle the claim. He now seeks the indulgence through the court. The conduct of the second defendant has been such as would not persuade this court to come to its aid.

It was urged on second defendant's behalf that the goods attached are tools of trade. With due respect to learned counsel for the second defendant section 44 of the Civil Procedure Act, which I think he had in mind, is intended to protect, not corporate entities but artisans – whose livelihood depends on their workmanship. The relevant provision reads:-

“section 44(1)(ii) the tools and implements of a person for the performance by him of his trade or profession;” (underlining mine).

In my view “person” as used in the sub-section does not include a corporate body. The submission by learned counsel does not therefore avail his client.

Learned counsel for the plaintiff pointed out, and the affidavit in reply is also clear on it, that the second defendant is also indebted to other people. This was not denied by the applicant. This would suggest that the second defendant in making this application is seeking some breathing space. There is the high probability that the attached property if released may be attached in these other suits.

Bearing in mind the foregoing I am not persuaded to grant the application. I will accordingly dismiss it with costs. The sale to proceed.

Dated this 19th day of June, 1986.

S E O BOSIRE

JUDGE

19.6.86