



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO 1520 OF 1971**

**KANJI NARAN PATEL.....PLAINTIFF**

**VERSUS**

**OLKALOU SAW MILL LTD.....DEFENDANT**

**JUDGMENT**

On 8th October 1971 the plaintiff filed his plaint in this suit claiming payment of a sum of Shs 29,322/60 for goods sold and delivered by him to the defendant company, of which he was a director. The defence pleaded an agreement between the parties that whatever goods were supplied would be counted as part of the plaintiff's contribution towards the purchase price of his share in the company. The hearing commenced before me on 16th September 1974 and, at the conclusion of the second day, was adjourned and did not come on again until December 1975, after which judgment was reserved and was delivered on 10th March 1976. The plaintiff was awarded the sum claimed with interest and costs.

The decree was issued on 16th June 1976 and the plaintiff as decree-holder applied on 21st June for execution by attachment and sale of certain chattels described as "belonging to the judgment debtor company". Difficulties were encountered in effecting execution and on 30th September 1976 the Court, on the application of the plaintiff, made an order that execution be levied against the defendant company trading as "Geta Saw Mills" and such of its vehicles as bear the name of "Gachohi Njuguna" who is the present objector.

In the meantime the defendant on 25th October 1974, as a consequence of its failure to comply with provisions of the Companies Act, was struck off the Register of Companies and dissolved, but this matter was not disclosed during the hearing of the suit and it seems possible that neither the plaintiff (although apparently still a director) nor his advocates were aware of the matter at the hearing.

On 17th November 1976 Mr Gachohi Njuguna filed a notice of objection to the attachment on the ground that the vehicles in question were his property and not that of the defendant company and in his supporting affidavit he stated that the defendant company had been dissolved in 1974. This would appear to be the first intimation to the Court that the company had been dissolved.

The objector now seeks to have the attachment raised and during the course of the discussion I drew the attention of counsel to the possibility that, as mentioned in 7 *Halsbury's Laws of England* (4th edn), paragraph 1448, the judgment obtained in 1976 might be invalid by reason of the defendant company's having been dissolved two years previously. At their request I granted the parties an adjournment to enable them to consider the position.

The objector now submits, relying upon the authority to which I have referred, that the whole judgment is void, that (apart from the fact that the vehicles are his own property) the attachment should therefore be raised, and that the costs incurred by him should be paid by the plaintiff. Then plaintiff for his part contends, relying upon the same authority, that the advocates who were acting for the defendant company at the time of the hearing should be held liable personally to pay the plaintiff's costs of the suit as from the date of dissolution.

I am satisfied that the position indicated in the passage from *Halsbury* correctly represents the law in this

country and that the judgment obtained by the plaintiff is invalid by reason of the defendant company having already been dissolved at that time. It follows that the attachment must be raised forthwith and the objector's taxed costs of, and incidental to, the attachment and his application to have it raised, including this order and all his costs reserved or not already dealt with, must be paid by the plaintiff. It is so ordered.

I cannot, however, deal with the plaintiff's claim for costs against advocates who represented the defendant company in the action. These advocates are not before me and may be unaware of the present situation and, in any event, it is not clear that such a claim could be entertained by the Court otherwise than in a separate suit.

*Order accordingly.*

Dated and delivered at Nairobi this 20th day of January 1978.

**L.G.E HARRIS**

**JUDGE**