



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: O'KUBASU, ONYANGO OTIENO & NYAMU, JJ.A.)

CIVIL APPLICATION NO. NAI 267 OF 2010 (UR 188/2010)

BETWEEN

BHALVINDER PAL SINGH PANDHA.....APPLICANT

AND

CREDIT BANK LIMITED.....RESPONDENT

*(An application for stay of execution for the ruling and order of the High Court of Kenya at Kisumu
(Aroni, J.) dated 15th October, 2010
in*

H.C.C.C.NO.30 OF 2009)

RULING OF THE COURT

The application before the Court dated 5th November 2010 has been brought under **rule 5(2)(b)** of this Court's rules. It seeks an injunction order to restrain the respondent bank from seizing or repossessing the applicant's chattels namely motor vehicles/tractors registration numbers of which have been given in the body of prayer (1) of the application. The injunction order has been sought pending the hearing and determination of an intended appeal against the ruling and order of the superior court (**Justice Ali-Aroni**) dated 15th October, 2010.

The superior court, after hearing an injunction application which had been brought by the applicant, granted the prayers for injunction as sought but on condition that the applicant would within 30 days deposit Kshs.25 million in an interest earning account in the joint names of counsel on record for the parties. It is not disputed that the applicant did not comply with the order. Instead he appealed against the ruling and now seeks a fresh injunction order in this Court pursuant to this Court's original jurisdiction as set out in **Rule 5** of this Court's rules. At the hearing, the applicant was represented by **Miss Sewe advocate** and the respondent was represented by **Mr Wetangula advocate**. Miss Sewe's principal submissions were that the chattels mortgage in favour of the respondent was not properly registered and that the superior court's order for the applicant to deposit Kshs.25 million was onerous and unreasonable and both points are arguable. Miss Sewe further submitted that the items intended to be attached and sold pursuant to the Chattels Mortgage were the only tools of trade of the applicant hence the success of the intended appeal would be rendered nugatory if they were sold.

On his part **Mr Wetangula**, learned counsel for the respondent submitted that the applicant had not shown that there was any arguable point for the purpose of satisfying the requirements of the rule under which the application was grounded and that the success of the intended appeal would not be rendered nugatory since the superior court had granted an injunction order which the applicant failed to honour. In addition

the applicant had not demonstrated that it had repaid the loan of Kshs.70 million and the assets the subject matter of the Chattels Mortgage were commercial in nature because they were tractors and motor vehicles and their accessories and therefore the applicant could be compensated in damages fully if eventually successful in the intended appeal.

We have anxiously considered the affidavits filed, both in support and against the application including the submissions of learned counsel for the parties. In view of the Court's order of extension of the Chattels Mortgage which has been exhibited, the arguability of the point raised is not apparent. Moreover the injunction order which is intended to be appealed against had been imposed on a condition which the applicant has failed to satisfy. Indeed, what the applicant is now seeking from this Court is a grant of another injunction order in a situation where the applicant has not shown that the order of the superior court was either onerous or unreasonable in circumstances. In addition the applicant has not disclosed the amount he is prepared to deposit in lieu of Kshs.25 million ordered by the superior court. In a nutshell, this Court's resources by way of time, are being tapped to rehear the matter afresh. This is contrary to the overriding objective. We re-echo this Court's decision in the case of Hunker Trading Company Ltd vs Elf Oil Kenya Limited 2010 eKLR. In the case this Court differently constituted stated:-

“Disobedience of a court order that was intended for the same purposes being pursued by the applicant in this Court is a clear violation of the “O2principle” ...

The applicant is in effect seeking a fresh injunction on fresh terms without demonstrating his willingness to comply with a relevant past order of a competent court. Although permitted to do so in view of this Court's original jurisdiction as expressed in **rule 5**, in our view an applicant must satisfy the Court why a fresh injunction should be granted since the application is in effect a duplication of effort or an invitation to this Court to apply further resources in a matter competently handled by the superior court. It follows therefore that to grant the order sought would, in our view, defeat some of the principal aims of the overriding objective.

The application is dismissed with costs.

It is so ordered.

DATED and delivered at Nairobi this 4th day of March 2011.

E.O. O'KUBASU

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JUDGE OF APPEAL

J.W. ONYANGO OTIENO

.....

JUDGE OF APPEAL

J.G. NYAMU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

