



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 365 OF 2013

JOSPHAT MUNKE OLE MPOE

CLAIMANT

v

DAVID WAIGANJO KOINANGE

RESPONDENT

and

CFC STANBIC BANK LTD

OBJECTOR

RULING NO. 3

1. On 5 June 2015, the Court dismissed an application by the Respondent seeking stay of execution of decree issued after the Court awarded the Claimant Kshs 5,400,000/-.
2. Before the application, the Claimant had commenced execution and a tractor registration number KTCB 393L was among the assets attached.
3. On 15 June 2015, CFC Stanbic Bank Ltd (Objector) filed objection proceedings asserting that the attached tractor was jointly owned by it and the Respondent. A copy of registration book annexed to the application attested to the joint ownership.
4. The objector also asserted that it had granted a loan facility to the Respondent to purchase the tractor and that to secure its interest, it had entered into a Hire Purchase Agreement with the Respondent.
5. In the view of the objector, the attachment was consequently wrong and illegal, and ought to be lifted unconditionally.
6. The Claimant/decree holder opposed the objection application and he filed a replying affidavit on 18 June 2015.
7. The Claimant admitted that according to the registration book, the attached tractor was jointly owned by the Objector and Respondent but the true, beneficial, possessory owner was the Respondent, as the Objector was only a financier.
8. In this respect, the Claimant contended that the Hire Purchase Agreement ought to have been registered but there was no proof before Court that it was so registered in terms of section 5 of the Hire Purchase Act. According to the Claimant, an unregistered Hire Purchase Agreement was invalid and legally unenforceable.
9. The Claimant also contended that by virtue of section 44(1) of the Civil Procedure Act, and Order 22 rule 41 of the Civil Procedure Rules, a jointly owned property could be attached and sold in execution of a decree
10. The Claimant also faulted the Objector for not moving Court earlier while the tractor had been proclaimed on 2 March 2015, and submitted that the objection was an afterthought.
11. The Court has considered the rival arguments presented by the disputants.
12. It is not disputed that the copy of Hire Purchase Agreement annexed to the objection proceeding does not show whether it was registered or not. It is also not clear whether stamp duty was paid on

- the agreement.
13. In this respect, I would endorse and apply the decision by Mabeya J in *Geminia Insurance Co. Ltd v Sedco Consultants Ltd & Ar* (2013) eKLR and Kasango J in *Fidelity Commercial Bank Ltd v Agritools Ltd & 3 Ors* (2004) eKLR, and which were cited by the Claimant that a Court should not take cognizance of a hire purchase agreement which has not been registered. Such an agreement is unenforceable.
 14. The Objector did not draw my attention to any statutory or legal principle that a jointly owned property cannot be attached and sold in execution of a decree against one of the owners as provided for the procedural law cited by the Claimant.
 15. And I find comfort in the decision of Ojwang J (as then was) in *Imperial Bank Ltd v Treadsetters Ltd & Ar* (2012) that a joint owner of an attached property would have a remedy in law as against the co-owner in the event the property was attached and sold. The objector's interest would not disappear with the sale in execution of the property.
 16. The Claimant further raised an issue with the timing of the objection proceedings noting that the tractor had been proclaimed on 2 March 2015.
 17. Although the Objector's supporting affidavit deposes that the proclamation notice was not served upon it, it has not disclosed or explained exactly when it became aware of the proclamation and or attachment.
 18. The Court would agree with the Claimant that the objection proceeding was an afterthought.
 19. The upshot of the foregoing is that the motion filed in Court on 15 June 2015 is dismissed with costs to the Claimant.

Delivered, dated and signed in Nakuru on this 3rd day of July 2015.

Radido Stephen

Judge

Appearances

For Claimant	Mr. Kanyi Ngure
For Respondent	did not participate in objection proceedings
For Objector	Ms. Litunda
Court Assistant	Nixon