



he had possession of it. In this regard he referred court to a Memorandum of Understanding dated 12<sup>th</sup> December, 2009 between M/S Alliaz Pharmacy Ltd and Rev. Ezra Bikangiso on the basis of which the said bus was sold.

Counsel for the Applicant while conceding that the bus was on lease with Stanbic Bank nonetheless submitted that the Applicant was prejudiced by the bus being in the hands of strangers. He pointed out that Applicant therefore sought to protect his proprietary interest in the bus. He submitted that there was confusion on the part of the Respondents as to who the correct party should be either Alliaz Tours and Travel Ltd or Alliaz Pharmacy Ltd the two being separate corporate bodies.

Counsel for the Applicant submitted that his client had met the required tests for the bus to be released from attachment in that he had shown that he was in possession of the said bus and that he was the owner of the bus. In this regard, Court was referred to Order 40 rules 8 and 9 and rules 55 and 57 of the Civil Procedure Rules. I was also referred to the case of

**Joseph Mulenga V FIBA (U) Ltd M.A 308 of 1996**

and

**Trans Africa Assurance Co. V National Social Security Fund CA 1 of 1999 (SC).**

as his authorities that sufficient evidence had been adduced to establish the Applicant's interest in the property.

Counsel for the Respondent submitted that the Applicant had failed to make out his case for the release of the attached bus. He submitted that the Applicant had failed to show that at the time of the attachment that he was in possession of the bus. Counsel for the Respondent faulted the memorandum of understanding referred to by the Applicant as not amounting to an agreement of sale. In particular Counsel for the Respondent pointed out that the bus in question was on lease from Stanbic Bank and yet a clause of the Memorandum of Understanding warranted to

buyer that the bus was without any encumbrance. This Counsel for the Respondent termed a deliberate falsehood.

As to the documentation that sometimes referred to Alliaz Tours and Travel Ltd on the one hand and the Alliaz Pharmacy Ltd on the other Counsel submitted that the ownership of the two companies was the same. He however insisted that the buses that had been fuelled at the Respondent's petrol station and had inscribed on it the words "Alliaz Tours & Travel Ltd" and there was no doubt fuel had been supplied to these buses which had not been paid for.

Counsel for the Respondent submitted that the real purpose of the Memorandum of Understanding was to defeat the attachment. He pointed out that memorandum was executed after the Respondent filed the head suit on the 12<sup>th</sup> November, 2009 and a written statement of Defence was filed on the 26<sup>th</sup> November, 2009. Counsel submitted that the same Director of M/S Alliaz Tours & Travel Ltd Mr. Chris Kakama who was served with court process was the same person who signed the Memorandum on the part of Alliaz Pharmacy Ltd.

Counsel for the Respondent submitted that where it is shown that a sale of an asset was fraudulently executed for the purpose of defeating the expected execution of a judgment of a creditor but not yet issued then such a sale is void. In this regard, I was referred to the case of

**Chotabhai M. Patel V Chaturbhai M. Patel & Anor [1958] 1 EA 743 (HCU)**

Furthermore, Counsel for the Respondent submitted that where there was a purported sale but no evidence of actual or constructive possession by the Objector and that the agreement was entered into for the express purpose of saving the moveable property from execution then the objection should be dismissed. In this regard I was referred to the case of

**Harilal & Co. V Buganda Industries Ltd [1960] 1 EA 318 (HCU)**

I have perused the summons and the affidavit for and against it. I have also addressed my mind to the submissions of both Counsel. I agree with both Counsel that any investigation under Order 40 rule 8 of the CPR of property attached before judgment should follow the same

investigation and tests set out in Order 9 rules 55 and 57 of the Civil Procedure Rules; with respect to objections to attachment of property.

The Objector in this matter claims to have bought the bus and that he had possession of it at the time of the attachment.

In support of this claim, the Applicant showed court a Memorandum of Understanding (MOU) between himself and Alliaz Pharmacy Ltd dated 12<sup>th</sup> December, 2009. An investigation of this Memorandum of Understanding reveals interesting findings. First that the Memorandum of Understanding is actually a sale of two buses (including the attached bus) which according to para 1

*“...are on lease with Stanbic Bank...”*

A facility letter to the Directors of M/S Alliaz Pharmacy Limited dated 27<sup>th</sup> October, 2008 shows that the attached bus No. UAK948T (para 2.8.16) has its logbook No. 468221 held by the bank as security for lease facility. The Memorandum of Understanding on the other hand shows that the bus is without encumbrance. This I agree with Counsel for the Respondent is a deliberate falsehood and a lie. The bus in question though leased to M/S Alliaz Pharmacy Ltd has inscribed on its body Alliaz Tours & Travel Ltd. A quick investigation of the documents attached to the Plaint i.e. A64 and A66 shows that bus UAK 948T is one of the buses that took fuel at the Respondent's petrol station that is said not to be paid for.

There is no independent evidence outside that Memorandum of Understanding brought by the Applicant to show that he has actual or constructive possession of the said bus. Just like in the case of **Harilal & Co.** (supra) and in the words of **Lewis J.** (as he was then was), I am satisfied that the Memorandum of Understanding was entered into for the express purpose of saving the Defendant's moveable property from execution. I am unable to see any alternative explanation for Mr. Kakama accepting court process in the head suit in November then purporting to sale a lease bus in December 2009.

A lessee, without special authority to the contrary (which in this case has not been shown), cannot sell what is owned by a lessor.

All in all, the Applicant has failed to establish that on the date of the attachment, he was in possession either actual or constructive of the said bus.

I therefore dismiss this application with costs.

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**Geoffrey Kiryabwire**  
**JUDGE**

**Date: 17/02/2010**

17/02/2010

**Ruling read and signed in open Court in the presence of:**

- R. Oyine for Respondent
- Ms. Mugabi Director of Respondent
- Rose Emeru - Court Clerk

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Geoffrey Kiryabwire.

**JUDGE**

**Date: 17/02/2010**