



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Misc Cause 207 of 2005**

**IN THE MATTER OF TARGET CARRIERS LIMITED (IN RECEIVERSHIP)**

**AND**

**IN THE MATTER OF THE COMPANIES ACT**

**AND IN AN APPLICATION FOR DIRECTIONS BY THE RECEIVER/MANAGER**

**R U L I N G**

Before me is an application by way of Notice of Motion dated 31.5.2006. It is by the interested parties Rapid Response Transport Limited (hereafter RRTL) and Hassan Sidi. The application has been brought under the provisions of Section 3A of the Civil Procedure Act. Section 228 and 348 of the Companies Act and Rule 9 (R) of the Companies (High Court) Rules have also been invoked. RRTL primarily seeks an order that the following vehicles be released to it:

- a) Truck Registration No.HZ 0792C
- b) Trailer Registration No.ZA 3437
- c) Trailer Registration No.743 UG
- d) Trailer Registration No.737 UBG

And Hassan Sidi principally seeks an order that the following vehicles be released to him:

- a) Truck Registration No.KAP 517V
- b) Trailer Registration No.ZA 8834
- c) Truck Registration No.KAP 092X
- d) Trailer Registration No.ZA 5597.

The reasons for the application are as follows:-

- 1) That the interested parties are the legitimate and lawful proprietors of the said vehicles.
- 2) That the interested parties purchased the said vehicles from several and diverse individuals or entities for valuable consideration and without notice or knowledge of the fraud alleged by the

Receiver/Manager of Target Carriers Limited (In receivership).

3) That the Receivers/Managers and their agents or servants exceeded the authority conferred upon them by the order given by the court on 12.4.2005 by taking possession of vehicles which were not set out in the order.

4) That the continued possession of the vehicles by the Receivers/Managers of Target Carriers Limited (In receivership) is causing immense loss to the interested parties.

The application is supported by affidavits sworn by Hassan Sidi and one Hamirsidi Hamir Jokhiya the Managing Director of RRTL. Annexed to the said affidavits are several exhibits.

The application is opposed and there are affidavits sworn by the receivers and Managers of Target Carriers Limited M/S Kolluri Ventaka Subbaraya Kama Sastry and Ronangipelli Ramana Rao. The affidavit of Sastry has annexed to it several exhibits.

The application was debated before me at length on various dates by Mr. Macharia Learned counsel for the interested parties and M/s Malik Learned counsel for the Receivers/Managers of Target Carriers Limited (In Receivership). I have considered the application, the supporting affidavits and those in opposition together with the annexures thereto. I have also given due consideration to the submissions of counsel and the authorities cited. Having done so, I take the following view of the matter.

The genesis of this litigation is the application by the Receivers/Managers of Target Carriers Limited dated 16.3.2005. By that application, the said Receivers/Managers sought repossession of various motor vehicles and trailers that were said to belong to Target Carriers Limited on 12.4.2005, Hon. Waweru J granted the orders sought and gave liberty for any interested party to apply to court in regard to the order and any of the motor vehicles or trailers. This application is pursuant to that order. The vehicles that were the subject of the order are given in the order a copy of which is at page 127 of this application. None of the vehicles claimed by RRTL appears in the said order. The Receivers/Managers did not seek any orders against those vehicles and naturally, no order could issue in respect of the same. Yet "**HJ4**" clearly shows that one Paul Musyimi "**repossessed 3 prime movers (M/Benz)**

**(1) HZ 0792C + trailer**

**(2) Two Prime without Number plates + Two trailers".**

That repossession elicited a complaint from RRTL through Hamir Sidi vide his letter dated 30.4.2005 addressed to the Receiver Target Carriers Limited (In receivership). That letter is at page 123 of this application and the receivers response is at page 124. The same was signed by P.V.R. Rao one of the Receivers/Managers of Target Carriers Limited. He said that the vehicles had been repossessed under the said Court Order of 12.4.2005 and could not be released. The basis for the repossession given by P.V.R. Rao was clearly erroneous. Besides, RRTL sufficiently showed that the said vehicles legitimately belonged to them. There is annexure J6 at page 133 of the application. It is a copy of Records in respect of trailer registration number ZA 3437. There is further annexure HJ2 which comprise several exhibits. At page 120 there is a sale agreement between a Mr. Chohan and RRTL in respect of vehicle registration number HZ0792C and pages 118 and 119 are copies of the Registration Books for vehicle registration numbers 743 UBG and 737 UBG registered in Uganda. The letters show that the vehicles do not belong to Target Carriers Limited.

In the premises the said vehicles namely Truck Registration No.HZ0792 C, Trailer Registration No.ZA3437, Trailer Registration No.743 UBG and Trailer Registration No.UBG should be restored to M/s Rapid Response Transport Limited by the Receivers/Managers of Target Carriers Limited and/or their agents servants and/or employees.

Turning now to the vehicles claimed by Hassan Sidei, I have found as follows: Regarding vehicle Registration No.KAP 517V, Mr. Sidi has exhibited the following documents:

(a) A copy of records dated 18.1.2006 issued by the Registrar of Motor Vehicles (Annexure “**HS 17**”).

(b) A copy of the vehicle Registration Book of the said vehicle (Annexure “**HS 18**”).

(c) A copy of a receipt issued by KRA on payment of second hand motor vehicle purchase tax (Annexure “**HS 19**”).

(A) and (b) are in the name of Hassan Sidi. There is also annexure “**HS 20**” and “**HS 21**”, showing that he was offered a loan facility of KShs.1,000,000.00 by Giro Commercial Bank Limited for the purchase of a second hand Truck/Trailer (**Prime Mover**). That was on 4<sup>th</sup> May, 2004 and by 10.6.2005, the facility had been repaid in full. There are also the receipts exhibited as HS 16 for a total sum of Kshs.2,300,000.00 to support the allegation of purchase. The first receipt is dated 15.10.2004 and was issued by Kerase Carriers Limited who were the owners of the said vehicle as evidenced in annexure “**HS 18**”, the Registration Book. That annexure shows that M/s Kerase Carriers Limited were registered as owners of the vehicle in April, 2004. The said Karase Karriers Limited were registered on transfer from M/s Target Carriers Limited.

The Receivers/Managers of Target Carriers Limited have based their claim to the said vehicle on the terms of a debenture dated 8.4.2002 In favour of Akiba Bank Limited. They contend that by that debenture, a fixed and floating charge were credited over Target Carrier’s property including the vehicle in question. The undisputed fact however is that the Receivers/Managers were appointed on 18.8.2004. The instrument appointing them is exhibited at page 30 of the application. Relying on the letter dated 10.3.2004 from Target Carriers Limited to a firm called Uniken Enterprises exhibited at page 81 of the application the Receivers/Managers have argued that Kerose Carriers Limited was incorporated merely to facilitate transfer of Target Carriers properties to Third Parties and that they were not purchasers for value without notice and could therefore not transfer any interest in what they purported to transfer as they themselves had no legitimate interest to transfer. It was also argued that the directors of Kerase Carriers Limited and its shareholders were related to Hassan Sidi and because of that relationship the transfer of the above vehicle was without consideration and consequently Hassan Sidi has no legitimate claim to the vehicle which is now subject to the floating charge. It is clear however that as in April, 2004 when Kerase Carriers Limited were registered as owners of the said vehicle, there was no bar to their registration as such. The interest of Akiba Bank Limited was not registered. A basic principle of Company Law is that an incorporated company has a separate legal existence from its shareholders or directors. There is no evidence that Hassan Sidi was aware of the letter dated 10.3.2004 written by Target Carriers Limited to Uniken Enterprises which letter would have put him on alert that Kerose Carriers Limited was probably a conduit created by Target Carriers Limited.

Akiba Bank Limited were aware that their interest should have been protected in the registration book. Indeed, transfers were prepared to register that interest and a letter of caution was done. But the fact remains that their interest was not registered and the caution was not acted upon and as in April 2004, the said vehicle was available to purchasers including Hassan Sidi and Kerase Carriers. Akiba Bank cannot escape blame completely. No fraud is alleged and counsel for the Receivers/Managers emphasized that their case was not based on fraud. In the premises and Regarding vehicle Registration No.KAP 517V I find and hold that Hassan Sidi has established a legitimate claim upon the same. By the time Kerase Carriers were registered as owners of the vehicle, the receivership over the vehicle had not crystallized and Hassan Sidi obtained a valid title to the same. Vehicle Registration No.KAP 517V should be released to him forthwith.

With regard to vehicle Registration No.KAP 092X, I have found as follows. The only evidence exhibited by Hassan Sidi regarding payment of purchase price is in annexures “**HS 14**”, “**HS 15**” and “**S 16**”. “**HS 14**” is in the name of Kerasa Carriers. “**HS 15**” is a copy of the Agreement of Sale between Kerase Carriers Limited and Hassan Sidi in respect of the said vehicle. The purchase price is given as KShs.2,000,000.00. “**HS 16**” are copies of receipts for a total sum of KShs.2,300,000.00. It is illustrative that the same payments were for vehicle Registration No.KAP 517 V together with trailer Registration No.ZA5597.

It is clear to me that the payments could not be for the two vehicles. Indeed Hassan himself stated that he had not completed the purchase price. It could be for that reason that vehicle Registration No.KAP 092X was not registered in the name of Hassan Sidi. The relevant Registration Book exhibited as “**HS 13**” shows that the vehicle is still registered in the name of Kerase Carriers Limited. Kerase Carriers have not made any claim over the said vehicle. In the premises, I hold that no consideration has passed in respect of this vehicle and Hassan Sidi cannot be said to be a bona fide purchaser for value without notice in respect of that vehicle. His claim over the same is dismissed. Turning to Trailer Registration Nos. 7A 883U and ZA 5597, I have found as follows: Regarding Trailer Registration No.ZA 5597, the same was not contained in the Order of 12.4.2005. However, Hassan Sidi has not paid for it. He is not entitled to it. His claim over the same is refused. Regarding Trailer Registration No.ZA 8834 the same was not in the order of 12.4.2005. The Registration Book (“**HS 11**”) in respect of the same shows that Target Carriers Limited had no interest in the same. As it was in the possession of Hassan Sidi, it should be released to him.

In summary, this application succeeds to the extent that vehicle Truck Registration No.HZ0792C, Trailer Registration Nos. ZA 3437, 743 UG and 737 UBG are ordered to be released forthwith to Rapid Response Transport Limited by the Receivers/Managers of Target Carriers Limited and or their agents, servants and or employees.

Vehicle Registration No.KPV 517V and Trailer Registration No.8834 should be released to Hassan Sidi by the same Receivers/Managers of Target Carriers Limited and or their agents, servants and/or employees.

Rapid Response Transport Limited are awarded the costs of the application against the Receivers/Managers of Target Carriers Limited. As regards Hassan Sidi and the said the Receivers/Managers, each party shall bear his/its own costs.

Those then are the orders of the court.

**DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH, 2007.**

**F. AZANGALALA**

**JUDGE**

**14/3/2007**

Read in the presence of:-