**Diversey Lever East Africa Ltd v Mohanson Food Distributors Ltd and**

**another**

**Division:** Milimani Commercial Courts of Kenya at Nairobi

**Date of ruling:** 20 January 2004

**Case Number:** 1693/01

**Before:** Mutungi J

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Civil procedure – Execution – Attachment of motor vehicles subject of a debenture – Whether*

*debenture holder can obtain stay by execution – Order XXI, rules 56 and 58 – Civil Procedure Rules.*

*[2] Company – Debenture – Attachment of motor vehicles in execution – Motor vehicles subject of a*

*floating charge created under a debenture – Receiver – No receiver appointed as at time of attachment –*

*Whether debenture had crystallised – Whether debenture holder has priority over execution creditor if*

*receiver not appointed at time of execution.*

**Editor’s Summary**

The Plaintiff obtained judgment in its favour against the First Defendant and proceeded to levy execution by attaching six motor vehicles belonging to the First Defendant. These motor vehicles were the subject of a hire-purchase agreement between the First Defendant and Kenya Commercial Finance Company Limited and a floating debenture had been created over these motor vehicles in favour of Kenya Commercial Bank Limited (the successor in title of Kenya Commercial Finance Company Limited). Kenya Commercial Bank Limited brought objection proceedings seeking the lifting of the execution against the Plaintiff’s motor vehicles on the strength of the debenture. It transpired that the execution was levied before the Objector had appointed a receiver under the debenture.

**Held** – Where there was a floating charge over the movable property of an execution debtor created by a debenture, the floating charge crystallised on the date of the appointment of the receiver. As no receiver had been appointed by the Objector in the present case, the debenture had not crystallised. If before the appointment of a receiver by a debenture holder the machinery of execution by attachment and sale has been put in motion by an execution creditor, then the execution creditor has priority over the debenture holder whose charge has not yet crystallised (*Kahagi v Kencity Clothing*

*Limited* [1982] KLR 464 applied).

Application dismissed.

**Case referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Kahagi v Kencity Clothing Limited* [1982] KLR 464 – **AP**