



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

JUDICIAL REVIEW APPLICATION NO. 38 OF 2011

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR

UASIN GISHU DISTRICT THRO'

THE ATTORNEY GENERAL.....RESPONDENT

EX-PARTE: SALLY J. KIBET

ESTHER J. KURUI

JOSEPH OUMA RASAWO

MAURICE OMONDI AKECH

PASCHALIA OPANY AKECH

PHILIP RABURU

MURIGI WANYOIKE.....INTERESTED PARTIES

AND

JOSEPH NJOROGE.....OBJECTOR

RULING

1. By a Notice of Motion Application dated 7th October 2021, the Applicant seeks orders that;

1) Spent

2) Pending the hearing inter-partes and the determination of the application there be an order staying the sale of motor vehicle (tractor) registration number XGK Chassis No. RBX3040912R4.

3) Pending the hearing and determination of the objection, motor vehicle (tractor) registration number XGK Chassis No. RBX3040912R4 be unconditionally released to the objector.

4) Costs of the application be borne by the applicants

2. The application is premised on the grounds set out there in and further supported by the affidavit sworn by Joseph Njoroge on 7th October, 2021. The applicant's case is that he is the owner of motor vehicle (tractor) registration number XGK Chassis No. RBX3040912R4. Further that, he filed an objection to the attachment of the said motor vehicle and obtained an order staying execution or attachment

3. The applicant deposed that he was surprised to see personnel from Seventy-Seven Auctioneers in his compound on 4/10/2021 and when he inquired about their visit, he was informed that they had come to attach the said motor vehicle. The applicant further deposed that he was

informed by personnel from the auctioneer's firm that the stay of execution order that he has obtained had been discharged. That surprised by the said developments the applicant inquired from his advocate on record who upon perusal of the court file found that the order staying execution had not been set aside.

4. The applicant contends that the warrants of attachment were therefore irregular and improperly issued. That the attachment is wrongful and improper.

5. The applicant further contends that the stay order has never been vacated. The applicant is apprehensive that the said motor vehicle may be sold during the pendency of the objection rendering the objection proceedings nugatory.

6. The applicant prayed that the motor vehicle be preserved and released to him pending the hearing and determination of the objection proceedings.

Response

7. The application is opposed by way of a replying affidavit sworn by Sally J. Kurui who deposed that she is the decree-holder in this matter. That the objector herein filed an application dated 25th June, 2021 and was issued with order of stay on 29th June, 2021. The said application was set down for mention for direction on 8th July, 2021 but the Objector having obtained orders of stay slept of his rights and never followed up on the matter to have the interim orders extended.

8. The order not having not been extended, lapsed by operation of the law 14 days after 29th June, 2021 being the 12th July, 2021. The ex-parte applicant also contends that in any event the stay orders lapsed for want of compliance with the requirements of service stipulated in Order 22 rule 51 (3) of the Civil Procedure Rules, 2010 which required the objector to serve a notice of objection together with the application for objection proceedings with 7 days.

9. It was the ex-parte applicant's case that execution proceedings were validly ordered by the Deputy Registrar High Court based on the warrant issued on 21st September, 2021. That there ought to be an end to litigation; that judgment in this matter was delivered on 26th February, 2020 the matter having been instituted in the year 2011.

Determination

10. I have considered the rival affidavits and the submissions filed by the parties and find that the issues for determination are as follows:

a) What is the legal consequence of the interim order which was granted by this Court on 29th June, 2021;

11. The express terms of the interim orders granted on 29th June, 2021 by the Court were as follow;

“That pending the hearing inter-partes and the determination of the application there be stay of attachment of motor vehicle (tractor) registration number XGK-chassis number RBX3040912R4.”

This means that prayer “2” of the Notice of Motion Application dated 25th June, 2021 was granted in its entirety. It is deemed she said order was duly served on the ex-parte applicants as the subsequent proceedings in the said suit show.

12. The effect of the said interim orders as against the ex-parte applicants/decrees-holders and or their agents is clear on the face thereof. The ex-parte applicants could not attach motor vehicle (tractor) registration number XGK-chassis number RBX3040912R4 pending the hearing and final determination of the application dated 25th June, 2021. The objectives of the order and the effect is the preservation of the said motor vehicle which is the subject-matter of the suit, until the hearing and determination of the application dated 25th June, 2021.

13. **In view of the foregoing, it is my finding** that besides the restraining of the ex-parte applicants/decrees holders from attaching the Objector's motor vehicle no one was supposed to interfere with it or deal with it as to dispossess the court of the subject-matter of the suit

14. It is my finding as a matter of fact that the interim order of 29th June, 2021 was in force when the warrants of attachment were being issued and was still in force when the said motor vehicle got attached.

15. The motor vehicle herein was not attachable or available for attachment by way of execution of the decree and warrants herein. It had been preserved and protected by lawful and valid orders of this court which were granted and obtained before the warrants were executed.

16. If the ex-parte applicants/ decrees-holders herein were aggrieved by the interim order, they ought to have filed an application to set aside the said order. They should have moved the court to discharge it. But instead, they chose to arrogate themselves the powers of the court to interpret and find whether the interim order was valid or not and arbitrarily purported to execute the decree here upon the said motor vehicle.

17. From the foregoing, the application before the court succeeds and is allowed with costs to be paid by the respondents.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 26TH DAY OF JANUARY 2022.

E. O. OGOLA

JUDGE