



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

CIVIL CASE NO. 79 OF 2017

ROSEMARY WANJIRU KUNGU.....PLAINTIFF/RESPONDENT

-VERSUS-

PETER WILLIAM KINYANJUI.....DEFENDANT/APPLICANT

RULING

The objector herein, **Effort Movers Ltd**, took out the motion dated 4th February 2021, whereof it sought for the following orders:

This honourable court be pleased to certify this matter as urgent and service of the same be dispensed with in the first instance.

This honourable court be pleased to order an interim stay of execution of the warrants issued in the matter herein pending the interpartes hearing of the application hereof.

This honourable court be pleased to call upon the attaching creditor to intimate to court and to all parties whether she proposes to proceed with the attachment wholly or in part on the face of the objection.

This honourable court be pleased to make an order raising the attachment as to the whole of the property known as motor vehicle registration Numbers KCT 596W, KCT 597W, KCW 281A, KCW 283A, KCU 093U, KCU 135U and KCA 605M and attached in execution of the warrants issued herein.

This honourable court be pleased to make an order for the unconditional release by the plaintiff's/respondent's auctioneers the objector's/applicant's of any of the above seven (7) motor vehicles that may be seized pursuant to execution of the decree in the matter hereof.

The motion is supported by the affidavit sworn by Robert

Karanja Ngunu. The plaintiff/respondent, namely Rosemary Wanjiru Kung'u filed a replying affidavit she swore to oppose the motion.

When the motion came up for interpartes hearing, the court directed the same to be disposed of by written submissions.

I have considered the grounds stated on the motion and the facts deponed in the supporting and opposing affidavits plus the rival written submissions together with authorities. The objector pointed out that it is not the judgment/debtor in this matter hence it is a stranger to the plaintiff's case.

The objector stated that on 2nd September 2020, **Icon Auctioneers** on the instructions of the plaintiff proclaimed its motor vehicles registration number KCT 596W, KCT 597W, KCW 281A, KCW 283A, KCU 093U, KCU 135U and KCA 605M it is said that the objector protested to no avail. It is also averred that on 2/2/2021 the auctioneer sold motor vehicle registration KCA 605M in execution of the decree.

The objector attached to the supporting affidavit copies of the log books of the seven motors showing that the motor vehicles are registered in the name of the objector. For the above reasons this court was beseeched to grant the orders sought in the motion.

The plaintiff/respondent opposed the motion arguing that the objectors application is only intended to frustrate all attempts by the plaintiff to

enjoy the fruits of her judgment. She pointed out that at all material times to the execution proceedings, the vehicles were held by the objector for the benefit of the judgement debtor. The plaintiff further stated that the insurer of the judgment/debtor has always confirmed that the judgment debtor is the insured.

Having considered the rival submissions, it is not in dispute that the proclaimed motor vehicles are registered as owned by the objector. It is also not denied that the objector is not a party to the suit neither is it the judgment debtor.

I am convinced that the objector's application has merit hence it is allowed giving rise to issuance of the following orders:

The attachment of motor vehicles registration numbers KCT 596W, KCT 597W, KCW 281A, KCW 283A, KCU 093U, KCU 135U and KCA 605M in execution of the decree is raised.

The auctioneer namely Icon Auctioneers is hereby ordered and directed to unconditionally release to the objector motor vehicles registration numbers KCT 596W, KCT 597W, KCW 281A, KCW 283A, KCU 093U, KCU 135U AND KCA 605M which were attached in execution of the decree.

Costs of the motion is granted to the objector to be paid by the plaintiff/respondent.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF MAY, 2021

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendants