



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 49 OF 2010**

**KILONZO & CO. ADVOCATES.....PLAINTIFF/DECREE HOLDER**

**VERSUS**

**JOHN MICHAEL**

**NJENGA MUTUTHO.....DEFENDANT/ JUDGEMENT DEBTOR**

**MARY W. KAMAU.....OBJECTOR**

**RULING**

1) The subject matter of this ruling is the chamber summons dated 27<sup>th</sup> April 2021 taken out by Mary Kamau, the objector herein in which she sought for the following orders:

*i. This application be certified urgent and service thereof be dispensed with in the first instance.*

*ii. Pending hearing and determination of this application, the honourable court be pleased to issue a temporary injunction against the plaintiff/decree holder by itself, its servants, and/or agents from selling or offering for sale by auction or by private treaty, or interfering in any way or at all with the objector's matrimonial properties as proclaimed in the proclamation notice dated 21<sup>st</sup> April, 2021.*

*iii. The honourable court be pleased to issue an injunction against the plaintiff/decree holder by itself, its servants, and/or agents from selling or offering for sale by auction or by private treaty, or interfering in any way or at all with the objector's matrimonial properties as proclaimed in the proclamation notice dated 21<sup>st</sup> April, 2021.*

*iv. The costs of this application be provided for.*

2) The objector filed an affidavit she swore in support of the summons. The firm of Kilonzo & Co. Advocates, the plaintiff/ Decree Holder filed the replying affidavit sworn by Mutula Kilonzo Junior to oppose the application.

3) When the summons came up for interpartes hearing, this court directed the parties to file and exchange written submissions. At the time of writing this ruling, the Decree/Holder was the only party who had filed its written submissions.

4) I have considered the grounds stated on the face of the summons plus the facts deponed in the rival affidavits. I have further considered the plaintiff's written submissions.

5) It is apparent that the plaintiff obtained judgment against John Mututho, the defendant/Judgement Debtor herein on 30<sup>th</sup> September 2016 in the sum of ksh.5,475,136/= **Little Vineyard Auctioneers**, visited the house where the objector resides and proclaimed goods therein in execution of the decree prompting the objector to file the instant summons.

6) It is the averment of the objector that the goods that the auctioneer proclaimed are her property and do not belong to the Defendant/Judgment Debtor. The objector attached to her affidavit payment receipts to prove that she bought them. She deponed that she bought the items while she served as a civil servant in the Ministry of Agriculture before she retired.

7) The Decree/Holder opposed the application arguing that the Judgment/Debtor who is the objector's husband colluded with her to defeat the execution of the decree.

8) It was also argued that the objector did not provide evidence of her monthly earnings for the years 2015 and 2017. This court was urged

to presume that the Judgment/Debtor bought the attached goods in the name of the objector to avoid execution.

9) The plaintiff further argued that the objector has not proved her legal or equitable interest in all the proclaimed goods so as to discharge the burden placed upon her by law.

10) Having considered the rival submissions and the material placed before this court, it is clear from the averments in the objector’s supporting affidavit that the objector supplied this court with receipts showing that the goods proclaimed were registered and or purchased in her name. It is not disputed that the objector was working as a civil servant at the time the goods were purchased. The purchase receipts were not also disputed.

11) I am satisfied that the objector has managed to establish the proprietary interest she has over the proclaimed property. There is no proof that the objector connived nor colluded with her husband, the Judgment/Debtor to frustrate the attachment of the proclaimed goods. It is not disputed that the objector is not a party to this suit. There is also no judgment passed against her.

12) In the end, I am satisfied that the objector has discharged the burden of proof and therefore she is entitled to the orders sought. Consequently, the summons dated 27<sup>th</sup> April 2021 has merit. The same is allowed thus giving rise to issuance of the following orders:

**i. An order of injunction is issued to restrain the plaintiff/Decree Holder by itself, its servants and or agents from selling or offering for sale by auction or by private treaty or interfering in any manner or at all with the objector’s matrimonial properties as proclaimed in the proclamation notice dated 21.4.2021.**

**ii. In the circumstances of this case, a fair order on costs is to order, which I hereby do, that each party meets its own costs.**

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26TH DAY OF AUGUST, 2021.**

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**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent