



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NUMBER 79 OF 2017**

**ROSEMARY WANJIKU KUNGU..... PLAINTIFF**

**VERSUS**

**PETER WILLIAM KINYANJUI.....DEFENDANT**

**AND**

**EFFORT MOVERS LIMITED.....1<sup>ST</sup> OBJECTOR**

**MARTIN NGUKU KARANJA/**

**T/A COUNTRY MUTHIGA INN.....2<sup>ND</sup> OBJECTOR**

**CHARLES NJOGU WANJEMA.....PROPOSED 1<sup>ST</sup> INTERESTED PARTY/APPLICANT**

**AND**

**LISBIN MAINA CHEGE..... PROPOSED INTEESTED PARTY/ APPLICANT**

**RULING**

1. **Martin Nguku Karanja t/a Country Muthiga Inn**, the 2<sup>nd</sup> Objector/Applicant herein took out the motion dated 18<sup>th</sup> June, 2021 in which he sought the following orders inter alia:

***This Honourable Court be pleased to make an order unconditionally raising the attachment as to the goods attached in execution of the Warrants herein.***

2. The 2<sup>nd</sup> Objector/Applicant filed the affidavit, he swore in support of the motion.

3. The Plaintiff filed a notice of preliminary objection to oppose the motion.

4. I have considered the grounds stated on the face of the aforesaid motion plus the facts deponed in the supporting affidavit.

5. I have also considered the grounds stated on the preliminary objection.

6. It is the submission of the 2<sup>nd</sup> Objector/Applicant that he is a stranger in the Plaintiff's case and that he is not indebted to the defendant.

7. He stated that he is a tenant in the Defendant's premises known as Plot No. 5, Kinoo, where he operates a bar, restaurant and butchery business as sole proprietor.

8. He stated that on 16<sup>th</sup> June, 2021, Janice InvestmentS Auctioneer wrongly proclaimed his goods in execution of a decree issued against the defendant.

9. The applicant further stated that despite protesting, the auctioneer still proceeded and proclaimed his goods.

10. The applicant, therefore has urged this court to stay further execution and to unconditionally raise the attachment
11. In the preliminary objection, the plaintiff opposed the motion arguing that the same cannot stand without the inclusion of Janice Investments Auctioneer.
12. Having considered the material placed before this court, it is apparent that the averments made by the 2<sup>nd</sup> Objector have not been contravened.
13. It is not denied that the 2<sup>nd</sup> Objector operates a sole proprietorship business in the name and style of Country **Muthiga Inn, Kinoo**. It is also not disputed that the 2<sup>nd</sup> Objector is not indebted to the plaintiff or to the defendant.
14. It is further not in dispute that the decree in execution is not directed against the 2<sup>nd</sup> Objector.
15. I am convinced that the 2<sup>nd</sup> Objector/Applicant is a stranger to the claim by the Plaintiff as against the defendant.
16. The fact that Janice Investment Auctioneer was not made a party to the application does not render the 2<sup>nd</sup> Objector's application fatally defective. It is clear the Auctioneer acted on the instructions of the plaintiff.
17. In the end, I find the 2<sup>nd</sup> Objector's motion dated 18<sup>th</sup> June, 2021 to be meritorious, it is allowed.
18. Consequently, the attachment levied against, Martin Nguku Karanja t/a Country Muthiga Inn is lifted and the goods attached should be released to the 1<sup>st</sup> objector/applicant unconditionally.
19. I make no order as to costs since the applicant did not seek for the same.

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

.....

**J. K. SERGON**

**JUDGE**

*In presence of*

..... for the Plaintiff

..... for the Defendant

..... for the 1<sup>st</sup> Objector

..... for the 2<sup>nd</sup> Objector

..... for the Proposed Interested Party