



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**CIVIL CASE NO. 114 OF 2008**

**BETWEEN**

**STEPHEN OTIENO GWER.....PLAINTIFF/JUDGMENT CREDITOR**

**AND**

**CHARLES MOMANYI MAGETO.....1ST DEFENDANT/JUDGEMENT DEBTOR**

**CHARLES BUKHALA BULEMI.....2ND DEFENDANT/JUDGEMENT DEBTOR**

**AND**

**IN THE MATTER OF OBJECTION**

**BY**

**GEOFFREY ORINA OGANGA.....OBJECTOR/APPLICANT**

**AND**

**IN THE MATTER OF OBJECTION**

**BY**

**SAMMY TRADERS.....OBJECTOR/APPLICANT**

**RULING**

**Background**

1. On 17<sup>th</sup> November, 2017, **GEOFFREY ORINA OGANGA** and **SAMMY TRADERS** (*Objectors*) filed notices of objection to execution by the Plaintiff/ Judgment Creditor.
2. Simultaneously with the notice of objection, the Objectors filed notices of motion dated 17<sup>th</sup> November, 2017, under the provisions of Order 42 Rule 6 (1) and (2) and Order 51 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking unconditional release of their properties attached by the auctioneer to the and for costs of this application.
4. By a notice dated 22<sup>nd</sup> November, 2017, the Judgment Creditor's advocate issued a notice to cross-examine **GEOFFREY ORINA OGANGA** and **CHAUNDRHRY SHAHZAD AHMED** a director of **SAMMY TRADERS**.
5. On 10<sup>th</sup> December, 2018, the objections were dismissed on account of the objector's failure to appear for cross-examination.
6. Subsequently and more particularly on 14<sup>th</sup> May, 2019, the Judgment Creditor filed bills of costs dated 10<sup>th</sup> May, 2019 and filed on 14<sup>th</sup>

May, 2019 against the two objectors.

7. By a ruling dated 07<sup>th</sup> November, 2019, the Taxing Master declined to tax the bills of costs on the ground that there was no express order for costs against the Objectors.

8. By a chambers summons dated 17<sup>th</sup> February, 2020, the Judgment Creditor seeks review, variation and setting aside of the taxing master's order on the grounds that costs follow the event.

9. The Objectors' counsel by his affidavit sworn on 28<sup>th</sup> February, 2020 supports the decision by the taxing master.

10. I have carefully considered the chamber summons vis a vis the supporting affidavit and the replying affidavit.

**11. Section 27 of the Civil Procedure Act provides that:**

**1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:**

**Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.**

12. The Supreme Court in Jasbir Singh Rai & 3 others vs. Tarlochan Singh Rai & 4 others [2014] eKLR expressed itself as follows:

**“It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or Respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation... Although there is eminent good sense in the basic rule of costs – that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the applicant.”**

13. I have outlined the steps that had been taken in the matter. While appreciating that the objections were dismissed, there were responses and appearances which must have involved preparations on the part of Judgment Creditor. In this case, the Judgment Creditor being a successful litigant ought to be fairly reimbursed for the costs that he has had to incur and was within his rights to draw bills of costs.

14. Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya gives this court inherent power to make such orders as may be necessary for the ends of justice to be met. Ends of justice cannot, in my humble view be met or seen to be met if the Applicant being the successful litigant is denied costs.

15. The upshot of the foregoing is that the chambers summons dated 17<sup>th</sup> February, 2020 is considered and allowed. The taxing master is directed to proceed with the taxation of the Judgment Creditor bills of costs dated 10<sup>th</sup> May, 2019 and filed on 14<sup>th</sup> May, 2019.

**DELIVERED AND SIGNED IN KISUMU THIS 12<sup>th</sup> DAY OF March, 2020**

**T.W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

**Court Assistant - Amondi**

**For Objectors/ Respondents - Mr. Otieno Njoga hb for Kimanga**

**For Plaintiff/Judgment Creditor - Ms. Achieng hb for Mr. Mr. Otieno**