



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPL. NO. 60 OF 2007

IN THE MATTER OF THE ADVOCATES ACT CAP 16 OF THE LAWS OF KENYA

IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER, 2006 IN

THE MATTER OF TAXATION OF ADVOCATES AND CLIENTS BILL OF COSTS

BETWEEN

LUBULELLAH & ASSOCIATES ADVOCATES.....ADVOCATE/DECREE HOLDER

-VERSUS-

MINT HOLDINGS LTD.....CLIENT/JUDGMENT DEBTOR

AND

SAMSON KEENGU NYAMWEYA.....OBJECTOR/APPLICANT

RULING

1) Samson Keengu Nyamweya, the objector/applicant took out the motion dated 27/8/2019 whereof he sought for the following orders:

a) THAT this application be certified urgent and service be dispensed with in the first instance.

b) THAT this Honourable court be pleased to stay the execution of the Warrants of attachment and proclamation in execution of the decree herein and all the other consequential orders pending the hearing and determination of this application.

c) THAT in the alternative to the above the Status Quo be maintained.

d) THAT this Honourable Court be pleased to set aside the purported Proclamation and attachment of the objector's property and find that the said attachment is unlawful.

e) THAT the costs of the application be borne by the Decree Holder.

2) The objector/applicant filed an affidavit in support of the motion.

3) When the motion was served upon Kiriiyu Merchants Auctioneers, it filed the replying affidavit of Stephen Kimani Karuu to oppose the motion. I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit. It is the submission of the objector that he is not a party to this suit yet his properties have been attached in execution of the decree to recover the decretal sum.

4) It was pointed out that the movable assets which were purportedly proclaimed from his private residence belong to him therefore the decree holder has no colour of right in respect of the objector's property and that he is using unlawful and underhand tactics to harm and execute illegally.

5) The objector stated that the decree should be executed against **Mint Holding Ltd** which is the Judgment debtor. It is said that the goods proclaimed are household goods at the objector's private residence in Karen standing on LR. 1026/12.

6) In response to the objector's submissions, the auctioneer averred that he proceeded to execute the warrants on the goods found in the Judgment debtor's premises located along Mewes Road off Kuwinda road, Karen, Nairobi.

7) It is the averment of Stephen Kimani Karuu that the property known as L.R. no. 12494/10 was sold and transferred to the Judgment/Debtor on 29/8/1995 and that the objector is a director of the Judgment debtor.

8) It was also pointed out that there is no evidence that the goods proclaimed belong to the objector hence the objection proceedings is a smoke screen to avoid payment of the decretal sum. It is said that the objector has come to court with unclear hands.

9) Having considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion, it is not in dispute that the decree/holder has proclaimed the items stated on the inventory dated 6/8/2019 to recover a sum of ksh. 230,879/=.

10) The objector avers that the aforesaid goods belong to him and that they were proclaimed inside his private residence situated in the premises standing on title no L.R no 10261/2. The auctioneer denied proclaiming from L.R no 10261/2.

11) It is apparent that neither the auctioneer nor the objector has tendered evidence to show who was the owner of the goods proclaimed. The auctioneer states that he proclaimed the goods in a house standing on LR. No 12494/10 while the objector claims the goods proclaimed are in a house standing on L.R no 10261/2.

12) After weighing the two conflicting submissions, I am persuaded by the submissions of the auctioneer that the goods he attached were in the premises standing on L.R no 1249/10 which is owned by the Judgment debtor. I am satisfied that the goods attached belong to the Judgment/debtor since the objector did not prove ownership of the same.

13) In the end, I find no merit in the objector's motion dated 27th August 2019. The same is ordered dismissed with costs to the decree/holder.

Dated, signed and delivered at Nairobi this 20th of December, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the advocate/decre holder

..... for the client/Judgment Debtor

..... for the Objector/applicant