



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/RESPONDENT

AND

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

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

AND

IN THE MATTER OF OBJECTION

BETWEEN

JESCA TAAKA WANYONYI.....OBJECTOR/APPLICANT

AND

STEPHEN OTIENO GWER.....PLAINTIFF/RESPONDENT

RULING

Background

1. The Plaintiff/Respondent filed a claim for damages and upon obtaining judgment against the defendants/respondents applied for execution by an application for execution filed on 10th November, 2017.
2. On 13th November, 2017, the Plaintiff/Respondent issued with warrants of attachment of movable property in execution of decree for money and warrants of sale of property in execution of decree for money.

Application

3. On 17th November, 2017, the Objector/Applicant filed a notice of objection. Simultaneously with the notice of objection, the Objector/Applicant filed notice of motion dated under 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 orders 5 orders. Three of the prayers have been spent. The remaining two prayers seek orders **THAT:-**

a. *The Honourable Court be pleased to order the unconditional release of properties by the auctioneer to the objector/applicant*

b. *Costs of this application be provided for*

4. The application is based on the grounds among others that the objector/applicant is the bonafide owner of the attached motor vehicles KBH 206V and KBR 231F; Sony TV, home theatre, one glass table, one dining table with 6 chairs, 15 plastic chairs, water dispensers, Samsung TV and 80 plastic chairs.

5. The application is supported by an affidavit sworn by the objector/applicant on 17th November, 2018 in which she reiterates the grounds on the face of the application. Annexed to the affidavit is a Proclamation Notice; logbooks for motor vehicles KBR 215 F and KBH 206V, receipt for 200 plastic chairs; receipt for seven seater sofa set; glass table and 7 seats and receipt for Sony TV, Sony Home Theatre, Ramtons water dispenser and Samsung TV marked JTW 1, 2 (a) to respectively.

6. The application is opposed on the basis of a replying affidavit sworn by the plaintiff/respondent on 22.11.18. He avers that the receipts in support of are not accompanied by ETR receipts and are therefore false documents procured to support these objection proceedings.

Cross-examination of the objector

7. At the hearing of the objection proceedings, the plaintiff/respondent sought to cross-examine the objector. The objector in cross-examination told court that:

- i. She lives at Riat and not in Milimani Estate in Kisumu
- ii. That the 1st Defendant/Judgement Debtor is her husband
- iii. That the 1st Defendant/Judgement Debtor has a home in Milimani Estate in Kisumu and that she has never lived in that home
- iv. That the goods were proclaimed in her absence

Analysis and determination

8. The law is clear; under Order 22 rule 51(1) of the Civil Procedure Rules that:

Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all parties to the decree-holder, of his objection to the attachment of such property.

9. The objector bears the burden of proving that she is entitled to or has legal or equitable interest on the whole or part of the attached property.

10. The applicant/objector's claim over motor vehicle KBH 206V and KBR 231F has been demonstrated by copies of logbooks which are in her name. I however note that receipts for household goods are not accompanied by ETR Receipts which are important document of ownership. Further to the foregoing, the objector has conceded that she does not live in Milimani Estate from where the household goods were attached.

DISPOSITION

11. Consequently, the notice of motion dated 29.6.18 is considered and is allowed on the following terms: -

- a. **Motor vehicles KBH 206V and KBR 231F belong to the objector and their attachment is accordingly lifted.**
- b. **Each party shall bear its own costs**

DATED AND DATED IN KISUMU THIS 20TH DAY OF DECEMBER 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

For Objector/Applicant -N/A

For plaintiff/respondents - Mr Otieno

For Defendants/Respondents - N/A