



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 388 OF 2014

GEORGE NJOGU WAKIBI.....1ST PLAINTIFF

SOLOMON MUNGAI WAKIBI.....2ND PLAINTIFF

V E R S U S –

TOUGH HIDE LIMITED.....1ST DEFENDANT

LITTLE VINEYARD AUCTIONEERS.....2ND DEFENDANT

AND

GERALD NJOROGE MUGURE.....OBJECTOR

RULING

1. Gerald Njoroge Mugure, the objector herein, took out the motion dated 21st August 2015 pursuant to the provision of Order 22 rule 51(2) of the Civil Procedure Rules, 2010 in which he sought for inter alia the attachment of his goods to be lifted. The motion is supported by the affidavit of the objector. When served with the aforesaid motion **Tough Hide Ltd** and **Little Vineyard Auctioneers** the 1st and 2nd defendants respectively filed a notice of preliminary objection and the replying affidavit of James Ng'ang'a Wanjiku to oppose the application.

2. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the motion. I have also considered the grounds stated on the face of the notice of preliminary objection (P.O) dated 7th September 2015, the subject matter of the ruling. Before delving deeper into the merits or otherwise of the preliminary objection, let me set out in brief the background of this dispute. It would appear **Little Vineyard Ltd**, the 2nd defendant was instructed by **Tough Hide Ltd**, the 2nd defendant, to levy distress against proprietors of the business known as **New Thimbigua Provision Stores**. The 2nd defendant proceeded to proclaim the goods believed to belong to **New Thimbigua Provision Stores**. **George Njogu Wakibi** and **Solomon Mungai Wakibi**, the plaintiffs herein unsuccessfully attempted to stop the distress for rent. This turn of events prompted the objector to file the current motion in which the objector avers that he is a stranger to the grounds advanced giving rise to the attachment of his goods which included wines and spirits. The objector is of the view that his goods were wrongly attached.

3. Mr. Ongegu who held brief for the learned advocate for the Respondent argued one preliminary point

of law which is to the effect that the attachment was done pursuant to the provisions of the Distress for Rent Act, Cap. 293 Laws of Kenya hence no objection proceedings under Order 22 rule 51, of the Civil Procedure Rules can lie. It is further argued that order 22 rule 51 of the Civil Procedure Rules comes into play where there is a decree being executed which is not the case here. Mr. Kisoo, learned advocate holding brief for Mr. Isoe for the objector was of a different opinion. He argued that the objection proceedings were competently before this court since the goods attached belonged to the objector hence they should not have been attached. Mr. Kisoo appears not to have addressed his mind to the question as to whether or not the objection proceedings contemplated under Order 22 rule 51 of the Civil Procedure Rules could apply to attachments carried out pursuant to the provisions of the Distress for Rent Act. In other words, can the provisions of Order 22 Rule 51 apply where no decree has been issued? It is important to examine the provisions of Order 22 rule 51 which provides as follows:

“51(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole of 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 the parties and to the decree-holder of his objection to the attachment of such property.

(2) Such notice shall be accompanied by an application supported by affidavit and shall set out in brief the nature of the claim which such objector or person makes to the whole or portion of the property attached.

(3) Such notice of objection and application shall be served within seven days from the date of filing on all the parties.

4. It is clear to me that the provisions of Order 22 rule 51 is applicable to situations where the property is attached in execution of a decree. In the case before this court attachment was done to distress for rent. In such cases the aggrieved party’s redress is to file and action instead of resorting to objection proceedings under the Civil procedure Act. With respect, I agree with the submissions of Mr. Ongegu and find his preliminary objection to be with merit.

5. Therefore the motion dated 7.9.15 is incompetently before this court. The same is ordered struck out with costs to the respondents.

Dated, Signed and Delivered in open court this 13th day of May, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant