



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**MISCELLANEOUS NO. 113 OF 2013**

**PHILIP MUOKA & CO. ADV. : ::::: APPLICANT/DEBTOR HOLDER**

**VERSUS**

**JAMES MULINGE : ::::: 1ST RESPONDENT**

**JOSEPH KIAWA NTHIWA : ::::: 2ND RESPONDENT**

**JOSEPH MUTUA KAIND : ::::: 3RD RESPONDENT**

**CALIFORNIA DREAM HOTEL LTD. : ::::: OBJECTOR/APPLICANT**

**R U L I N G**

1. The application before the court is a **Notice of Motion** dated filed **9th October 2014**. It is filed under Order 22 Rules 51 and 52 of the Civil Procedure Rules, Sections 3 & 3A of the Civil Procedure Act and all enabling provisions of the law.

2. The application seeks orders as follows:-

- 1. That the application be certified as urgent and the same be heard ex-parte in the first instance and service thereof be dispensed with.***
- 2. That a temporary stay of attachment and sale by public action of the Applicant's movable goods proclaimed by M/s Auctioneers on 03/10/2014 pending the hearing of the application inter-partes.***
- 3. That this Honourable Court be pleased to issue stay of execution of the Orders/Decree herein and all consequential orders made pursuant thereto pending the hearing and determination of the application.***
- 4. That Status Quo be maintained until the application is heard and determined.***
- 5. That costs of the application be provided for.***

3. The application is premised on the grounds set out therein and is supported by affidavit of **Kennedy Mulinge Mutonga** dated **9th October 2014**.

4. The application is opposed by the Advocate/Applicant's Grounds of Opposition filed in court on 28th October 2014.

5. The brief background of the application is that the Advocate/Applicant secured a decree of this court in his favour which he sought to execute against the Defendants on or about 3rd October 2014. The Advocate/Applicant appointed M/s Sure Auctioneers to perform the said execution. The said auctioneers then or or about the 3rd October 2014 proclaimed and attached property which the Objector now alleges to belong to the Objector and not to the Defendant. Indeed, the Objector states that all the Defendants are individual persons and the Objector is a limited liability company with absolutely no connection with the Defendants. It is on that basis that the current application has been filed by the Objector to stay the said execution process.

6. When the application came for hearing on 28th October 2014 Mr. Kosgei for the advocate/Applicant sought adjournment to enable them notify the court whether or not they would proceed with the execution process the said objection notwithstanding. Mr. Kosgei was granted the adjournment and the leave to file the said Notice and the matter was scheduled for hearing on 16th December 2014. However, on 16th December 2014 Mr. Kosgei failed to turn up in court for the hearing and no explanation was given for his absence. The court allowed Mr. Mitambo for the Applicant to proceed with the application. Mr. Mitambo in his submissions relied on the application and the supporting affidavit and prayed for the said orders. He also noted that the application was not opposed.

7. I have carefully considered the application. I have also considered the grounds of opposition filed in court on 28th October 2014 by the Advocate/Applicant. There are no reasons given in the grounds of opposition as to why the application is defective or frivolous or vexatious. The issue for this cause to pursue is whether there is a possibility that the attached goods belonged to the Objector. The Objector is a limited liability company, quite different from the Respondents who are individual persons. In the supporting affidavit of Kennedy Mulinge Mutonga, who depones that he is the Director/General Manger of the Objector, the said deponent also states that the Objector did not have a court case with the Decree Holder Philip Muoka & Company Advocates, and that there was no basis for the attachment of the Objector's property. This court has no reason to doubt the said deponent. It was always the duty of the Advocate/Client to respond to such an allegation, which the Advocate/Client did not do. In addition, this court directed the Advocate/Applicant to notify the court whether or not he would be proceeding with the attachment the said objection notwithstanding. This also, the Advocate/Applicant did not do. I am therefore satisfied, on the basis of the evidence before the court, that this application should be allowed.

8. In the upshot, the Notice of Motion application dated 9th October 2014 is herewith allowed as prayed with no orders as costs.

Orders accordingly.

**DATED, READ AND DELIVERED AT NAIROBI**

**THIS 30TH DAY OF JANUARY 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

No appearance for the Applicant/Debtor Holder

No appearance for the Respondents

Mitambo for Objector/Applicant

Teresia – Court Clerk