

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
HIGH COURT CIVIL APPEAL NO. 4 OF 1999

KHAEMBA CHIMAKILE

NYONGESA KHAEMBAAPPELLANTS

VERSUS

SYLVESTER KHAEMBA KWANUSU

MACHESO KWANUSU.....RESPONDENTS

RULING

1. The respondent in this appeal filed an application under order 51 rule 1, order 22 and all enabling statutes seeking orders;

The application be certified as urgent and the same be dispensed with in the first instance.

(ii). The honourable court be pleased to issue an order that one acre be carved out of land parcel no. Ndivisi/Mihuu/400 and be sold by public auction to offset the decree in Sirisia Magistrate's court, civil suit no. 167 of 1998 and costs in Bungoma High court civil appeal No. 4 of 1999.

(iii). That costs of this application be provided for.

2. The application is premised on the grounds on the face of it and on the supporting affidavit sworn by the applicant Nyongesa Khaemba. The grounds include inter alia that the lower court decree in Sirisia RMC civil suit no. 167 of 1998 has remained unpaid by the respondents. Secondly the costs of this appeal taxed remains unpaid in the sum of Kshs. 98,885/= plus interests. The land parcel cited is the only known asset that can be sold to realize the decree.

3. The application was served both upon the respondents and their advocate on record Ms. Makokha, Wattanga and Luyali associates. Neither of them filed affidavit in opposition to the application. The date fixed for the hearing of the application was served on the said firm of advocates on 24th June 2014 as per the affidavit of service filed on record. They did not attend court on 3rd July 2014 and therefore the application proceeded unopposed. The applicant thus asked the court to grant the orders as prayed.

4. Order 51 rule 1 requires parties to file applications by way of notice of motion. Order 22 is execution of decrees generally. The relevant rule is rule 9 of order 22 which gives guidelines on attachment of immovable properties. I have perused this file. It was an appeal from the decision of the lower court which had awarded the applicant herein 10 heads of cattle, one goat, two blankets, 2 bed sheets and cash of Kshs. 10,000/= plus costs. The appeal was dismissed with costs which costs were taxed off at Kshs 99,885/=. The applicant took out notice to show cause and so far realized Kshs. 6,000/= which was paid in court. It means that the decree owing and outstanding is over Kshs. 100,000/=.

5. The respondents have not shown efforts towards realizing the decree prompting the applicant to seek attachment of their land. Order 22 rule 9 requires an applicant to provide details of the unimmovable property. In the instant application, the applicant has annexed a certificate of official search for L.R. Ndivisi/Mihuu/400 which is registered in the name of Macheso Kwanusu. The said Macheso Kwanusu was the 2nd appellant/respondent. The land is 1.8 acres. In my view the applicant has given sufficient

description of the property to be sold and I so find.

6. The application is unopposed and the decree outstanding is substantial. I therefore grant the prayers sought with costs of the application awarded to the applicant.

DATED, SIGNED and DELIVERED this 17th day of September 2014

**A. OMOLLO
JUDGE.**