



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 797 OF 2009

BUSINESS PARTNERS INTERNATIONAL KENYA

SME FUND LTD PLAINTIFF

VERSUS

ZINGO INVESTMENTS LIMITED.....
....1ST DEFENDANT

ROBERT NJOKA MUTHARA
.....2ND DEFENDANT

RULING

1. This ruling relates to objection proceedings brought by Evangeline Wanjira Njoka. By a notice of motion dated 27th February 2012, she prays that execution of the decree under a proclamation by Domicile Auctioneers be stayed. She states that the goods listed in that proclamation belong to her and not the judgment debtor. The objector avers that she is not indebted to the decree holder and has no relationship with the judgment debtor.
2. The application is expressed to be brought under order 22 rule 51 (2) of the Civil Procedure Rules. It is supported by an affidavit of the objector sworn on 27th February 2012.
3. The application is opposed by the decree holder. There are filed grounds of opposition dated 28th February 2012. The decree holder acknowledges that motor vehicle KBP 354 N Toyota Prado listed in the proclamation belongs to the objector. By a consent order recorded in court on 2nd March 2012, I ordered that the attachment and proclamation over the vehicle be lifted at the cost of the decree holder.
4. The decree holder states that all the other items in that proclamation do not belong to the objector. At the very least, the decree holder says there is no evidence of ownership by the objector. The decree holder thus prays that the remainder of the motion be dismissed with costs.
5. I take the following view. The other goods listed in the proclamation are general household items. They include a television, refrigerator, sofa set, coffee table and a gas or electrical cooker. The objector says the properties belong to her and are in a house she owns. She has exhibited a copy of the title over LR No 209/10504/11 jointly owned with one Robert Njoka Muthaura. The latter is the judgment debtor. It is not deponed to, but it would seem there is a connection between the objector and the judgment debtor. That is why the proclaimed goods are in their joint property. It then follows that in the

absence of any documentary evidence, it can be presumed that all or some of the household items either belong to one of them or both of them. Unlike a motor vehicle that has registration documents, many household items have no proprietary documents. Receipts on purchase may be long lost. In a marriage situation, it becomes increasingly difficult to assign ownership of household items between the couple. Strict proof becomes very difficult. But it would be desirable. See James Kariuki Nganga T/A Ndarugu Merchants Vs Joseph Ngae and another Nairobi, High Court case No 575 of 2003 [2004] e KLR.

6. If the decree holder had presented a deposition to controvert the claim on ownership by the objector, the objector would have required to say a little more. But at the moment, I am faced with an affidavit by the objector in which she asserts ownership. That cannot be controverted by a statement in the grounds of opposition that the goods do not belong to her. It matters little that the judgment debtor stays in the same household. The objector, as earlier stated has proved she is the owner of motor vehicle KBP 354 N Toyota Prado listed in the proclamation. I have no evidence or cause to doubt her claim on ownership of the household goods in the proclamation.

7. Accordingly, in terms of order 22 rule 53, I raise the proclamation and attachment as to the whole of all the properties listed in the proclamation dated 24th February 2012 by Elam Lumwaji trading as Domicile Auctioneer Services. The goods shall be released forthwith to the objector. The costs of the attachment including any advertisement or storage charges shall be paid by the decree holder. As I have expressed certain doubts as to ownership and in view of the fact that the goods are in a residence shared with the judgment debtor, I decline to award the objector any costs on the motion.

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 20th day of April 2012.

G.K. KIMONDO

JUDGE

Ruling read in open court in the presence of

Mr. Ogunde for the decree holder.

Mr. Mureithi for the Objector.