



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT 215 OF 2011

NARAN HIRANI t/a CLASSICO BUILDERS.....PLAINTIFF

-VERSUS-

MAINA MWANGI.....DEFENDANT

AND

EVERLYN WANJIKU KARANJA.....OBJECTOR

RULING

1. Before me is a Notice of Motion dated 5th July 2012. It is taken out under Order 22 rule 51 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. The application seeks for orders mainly that the proclamation dated 22nd June 2012 by Big Step Enterprises Auctioneers was unlawful.
2. The application is based on grounds that the goods proclaimed on 22nd June 2012 belong to the objector and that the defendant/Judgment Debtor does not have any legal or equitable interest in the property proclaimed. It is also stated that the objector is a partner in a partnership entered into between her and the defendant/Judgment Debtor.
3. The application is supported by the affidavit of EVELYN WANJIRU KARANJA sworn on 5th July, 2012 with its annexures. The deponent contends that the Motor Vehicle KBJ 141V, which the auctioneers proclaimed belong to SHETRACK COMPANY LIMITED and not the Judgment Debtor. To this effect she has annexed a copy of the motor vehicle search. She also contends that the household goods which the auctioneers proclaimed belong to her and not the judgment debtor.
4. The application is opposed vide the replying affidavit of NARAN HIRANI sworn on 20th July, 2012 with its annexures.
5. The brief history of the application is that on 8th December, 2011, this Honourable Court entered summary judgment against the defendant for a sum of Kshs. 10,243,343.40/= together with costs. Subsequently, on 31st January, 2012 the plaintiff and the defendant entered into a consent whereby it was agreed that the Defendant would liquidate the decretal sum by way of monthly instalments. The plaintiff claims that the defendant defaulted in paying the monthly instalments for the months of May and June 2012. As a result he instituted execution proceedings against the defendant which resulted to the attachment of the Defendant's moveable goods on 22nd June 2012. Following the said attachment, the Objector herein filed the instant objection proceedings.

6. The objector's case is essentially that the goods proclaimed by the agents of the plaintiff belong to the objector and therefore the Judgment Debtor has no legal or equitable interest in them.
7. In opposing the application, the plaintiff states that the objector has not demonstrated to the court by way of any concrete evidence that she has a legal or equitable interest in the attached goods or that the attached goods do not belong to the Judgment Debtor.
8. The plaintiff also intimates to this court that on 16th March 2012 they instructed Base auctioneers to execute against the Judgment Debtor. The plaintiff has attached warrants of attachment together with the proclamation notice. The plaintiff alleges that, with a view to scuttle the execution process, the Judgment Debtor made an application dated 18th April 2012 seeking to set aside the consent dated 31st January 2012 and obtained orders for stay of execution. The plaintiff notes with amazement that the Objector did not make a claim to the aforesaid proclamation. In view of the foregoing, it is the plaintiff's contention that the objection proceedings have been brought in bad faith and are solely calculated to delay the execution of the decree with the intention to deprive the plaintiff of its fruits of judgment.
9. I have considered the application herein, the affidavits and submissions both in support and opposition of the application.
10. The issue for determination is whether there is a valid objection and whether the objector has proved to this Court that she has a legal and equitable interest over the properties attached. It is a well settled principle that the objector must prove on a balance of probabilities that he is entitled to or has legal or equitable interest in the whole or part of the property attached. In the case of **AKIBA BANK LTD VS JETHA & SONS LTD (2005) eKLR**, Waweru J. held that for an objector to succeed in his objection he must exhibit evidence of his legal or equitable interest in the whole or part of any property attached in execution of a decree.
11. Under Order 22 Rule 51 of the Civil Procedure Rules, as I understand it, any person claiming to be entitled to or to have a legal or equitable interest in the property attached in execution of a decree may file an objection against the attachment of such property. The objector in this case is EVELYN WANJIRU KARANJA. There is no objection filed by SHETRACK COMPANY LIMITED, which is the registered owner of motor vehicle registration No. KBJ 141V. Therefore, the attachment to the said motor vehicle is not objected to and the attachment should proceed.
12. As regards the household goods attached, the Objector has not produced any evidence to indicate that the goods belong to her. In fact, there is no logical explanation as to why the goods are in the occupation of the Judgment Debtor and not the Objector. There is a strong, though rebuttable presumption, that since the proclaimed goods were found in the Judgment Debtor's house, the same belong to him. I do not find any convincing submission that the attached goods do not belong to the Judgment Debtor.
13. Consequently, I find the Objector's application as lacking tangible evidence as to the legal and equitable interest over the attached goods.
14. In the upshot, the Notice of Motion dated 5th July, 2012 is hereby dismissed with costs to the plaintiff/decree holder.

IT IS SO ORDERED.

DATED, DELIVERED AND SIGNED THIS 18TH DAY OF SEPTEMBER 2012

J.M MUTAVA
JUDGE