



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE 559 OF 2006

JAZORA AGENCIES (NRB) LIMITED.....PLAINTIFF

V E R S U S

HASSAN AHMED ZUBEDIDEFENDANT

AND

1. ANISA HASSAN AHMED ZUBEDI

2. AHMED HASSAN.....OBJECTORS

R U L I N G

1. Upon attachment by proclamation of a certain motor vehicle and household goods in execution of decree herein, two Objectors challenged the attachments under **Order 22, rule 51** of the **Civil Procedure Rules** (the **Rules**). The 1st Objector was **Anisa Hassan Ahmed Zubedi** while the 2nd Objector was **Ahmed Hassan**. Their respective applications by **notice of motion** are both **dated 19th April 2011**. The objection of Anisa Hassan Ahmed Zubedi was in respect to motor vehicle registration No. KAR 222 S. The objection of Ahmed Hassan on the other hand is in respect to various household goods.

2. The court directed that both applications be heard together. When they came up for hearing on 19th September 2011, the application by Anisa Hassan Ahmed Zubedi was by consent allowed. The Plaintiff/Decree-Holder conceded that the motor vehicle did not belong to the Defendant/Judgment-Debtor but to the 1st Objector. The application by Ahmed Hassan was opposed and was heard. This ruling concerns that application.

3. **Order 22 rule 51** of the **Rules** provides as follows –

“(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole 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 given 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. The 2nd Objector must therefore establish that he is entitled to or to have a legal or equitable interest in the whole of or part of the property attached herein.
5. The properties attached are one colour television, one seven- seat velvet sofa set, one refrigerator and one gas cooker and cylinder.
6. It is the 2nd Objector’s case that he is the owner of these household goods and that the same were proclaimed in a house standing on land parcel L.R. No. 209/3440, Nairobi where he has been a tenant and in continuous possession of the house for the last three years. The 2nd Objector has further stated that the parcel of land is registered in the name of his uncle, one **Salim Abubakar**, who currently resides in Dubai in the United Emirates.
7. The 2nd Objector has further deponed in the supporting affidavit that along with his household goods, motor registration No. KAR 222 S which belonged to his mother, Anisa Hassan Ahmed Zubedi, and which she had given to him for his own personal use, was also attached. As already seen the Plaintiff has already conceded that the said motor vehicle did not belong to the Defendant/Judgment-Debtor, Hassan Ahmed Zubedi, but to Anisa Hassan Ahmed Zubedi.
8. The 2nd Objector has insisted that the Defendant has not, does not and has never, resided in the premises occupied by him and in which the attached goods were found. He has also deponed that he is a totally different person from the Defendant/Judgment-Debtor, and further that he was never served with any proclamation.
9. The Plaintiff opposed the 2nd Objector’s application by replying affidavit filed on 24th June 2011. It is sworn by one **Igbal Kanji** who has described himself as a director of the Plaintiff. He depones, *inter alia*, that the 2nd Objector is a son of the Defendant/Judgment-Debtor; that the Defendant lives with the 2nd Objector in the house where the goods were attached; that it is the Defendant who has “the disposing power” over the attached goods; and that the 2nd Objector is “only benefiting from the property”.
10. The Plaintiff has also pointed out in the replying affidavit that the 2nd Objector has not placed any evidence before the court that he is indeed a tenant of the house from where the goods were attached, or evidence of ownership of any of those goods.
11. The 2nd Objector has not denied that he is the Defendant’s son. He has not placed before the court a single document (say a lease agreement or a receipt for payment of rent) in respect to the premises where the attached goods were found. He has not exhibited a single purchase receipt in respect of any of the attached goods. Though a home owner is unlikely to keep every single receipt for all household goods he may have purchased over the years, it is also unlikely that he will not have retained one single receipt or similar document of ownership at any given time.
12. It was incumbent upon the 2nd Objector to prove on a balance of probability that he is entitled to, or that he has a legal or equitable interest in the whole or part of the properties attached. He has failed to do so.
13. In the circumstances his application by notice of motion dated 19th April 2011 is dismissed with costs. It is so ordered.
14. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have fully recovered my health.

DATED AT NAIROBI THIS 11th DAY OF OCTOBER 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER 2012