



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
THE COMMERCIAL AND TAX DIVISION OF THE HIGH COURT
CIVIL SUIT NO. 225 OF 2009

JAYESH SAINAI.....PLAINTIFF

VERSUS

CHARLES MUTISYA NYAMAI.....DEFENDANT

AND

WINFRED MULEKYE KIAMUKO.....OBJECTOR

RULING

The objector in the Chamber Summons dated 30th August, 2010, brought under **Order XX1 Rules 56 and 57** of the **Civil Procedure Rules** (2009 Revised Edition) and **Section 3A** of the **Civil Procedure Act** (CAP 21 of the Laws of Kenya) objects to the attachment of four (4) Motor vehicles , Sofa Sets, a Television Set, a Gas Cooker, Gas Cylinder and a Refrigerator proclaimed for attachment on 10th August, 2010, in execution of the Respondent's decree issued herein on 5th August, 2010. The objector states quite correctly that she is not a party to the suit in which the decree was issued against the Judgment debtor.

In the affidavit sworn by the objector in support of the Chamber Summons the she depones that the proclaimed motor vehicles belonged to one Family International (her employer) and National Bank of Kenya Ltd but that the same have since been restored to the beneficial owner. The objector claims that none of the attached goods belong to the judgment debtor.

The application is opposed on the strength of the Replying Affidavit of the Plaintiff/Decree Holder sworn on 28th October 2010, in which he depones that the proclamation was done at the judgment debtor's residential house and that, according to information obtained from the court broker who effected the proclamation, the judgment debtor was present when the proclamation was carried out on the morning of 10th August 2010. He has deponed also that one of the three (3) proclaimed motor vehicles KBC 313Z Toyota Land Cruiser belongs to the judgment debtor. His position is that the objector has not demonstrated any interest, legal or equitable in the proclaimed goods and should have her objection disallowed being a gross abuse of the process of court. Another challenge posed in regard to the objection was that the proceedings were taken out by an advocate who did not possess a practicing certificate, as proved by a letter dated 6th September 2010 from the Law Society of Kenya, annexure "JS1a". The said advocate did not attend at the hearing of the objection.

Counsel for the Decree holder submitted orally in court on the strength of the Replying Affidavit. He told the court that the objector had not discharged her onus to prove a legal or equitable interest in the proclaimed goods. I find this to be so in view of what has been stated concerning the motor vehicles and also because the objector has produced no evidence whatsoever to prove that she and not the Judgment debtor owns the other attached goods.

For the reasons stated hereinabove the objection fails and is hereby dismissed with costs to the Decree holder.

DELIVERED and SIGNED at NAIROBI this 25TH day of FEBRUARY, 2011.

M. G. MUGO
JUDGE

In the presence of:

Mr. Mutua

For Applicant

Ms Otieno

For the respondent

No Appearance

For the objector