



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CIVIL SUIT 140 OF 1999

MAWJI PATELPLAINTIFF/DECREE HOLDER

VERSUS

TONY KETER.....DEFENDANT/JUDGMENT DEBTOR

AND

SALIM SULEMAN.....OBJECTOR

R U L I N G

This is an application by the Objector Salim Suleman brought under Order V Rule 17 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking orders that he be allowed to effect service of the Notice of Objection to attachment dated 29th October 2009, the order for stay of execution dated 2nd November 2009, the Chamber Summons dated 18th November 2009, the affidavit of Salim Suleman sworn on the 18th November 2009, the Chamber Summons dated 1st December 2009, the affidavit of Salim Suleman sworn on 1st December 2009 and the orders dated 2nd December 2009 and 16th December 2009 as well as a Hearing Notice for the hearing of the objector's application by Chamber summons dated 18th November 2009 on the 24th February 2010 by way of substituted service by advertisement in one of the daily newspaper circulating in Kenya and by dispatch through registered mail within seven (7) days from the date thereof.

The application is premised on the grounds as stated on the body of the Chamber Summons and supported by an affidavit sworn by Judy Cheruiyot on 28th January 2010 in which she avers that she is an Advocate of the High Court of Kenya and practicing as such in the firm of Anjarwalla & Khanna Advocates, the advocates for the Objector in this case; that on the 30th October 2009 her firm duly filed a Notice of Objection to Attachment on behalf of the Objector seeking orders for the stay of attachment and execution of LR. No. 7741 Kitisuru Nairobi (the property) by the Plaintiff/Decree Holders Auctioneers, Jomuki Enterprises; that they duly extracted an order for stay of Attachment and Execution of the Decree and served it on the Decree Holder's advocates and auctioneers; that upon service of a Notice intimation dated 4th November 2009 by the Decree Holder's advocates, they duly filed and served a Chamber Summons dated

18th November 2009 which is set for hearing on the 24th February 2010; that upon learning that and in total disregard of the law and the Honourable Court's orders, the Decree Holder together with his advocates, attempted to unlawfully register a transfer against the title of the property in favour of the purported Purchaser at the auction, Mr. Stanley Ngethe Kinyanjui (the Purchaser). Her firm filed a Chamber Summons application on 1st December 2009 seeking inter-alia an interlocutory injunction to restrain the Decree Holder and his advocates from selling and disposing of the property and unlawfully executing and registering a transfer to the Purchaser; that the said injunction order was granted ex parte on 2nd December, 2009 by the Honourable Justice Mwilu pending inter-parte hearing; that on the 16th December 2009 after the inter parte hearing of the said application, the Honourable Justice Osiemo ordered that the status quo on the title deed and on the possession of the property be maintained until the Objector's application by way of Chamber Summons dated 18th November 2009 is heard on the 24th February 2010 and the objection proceedings be served upon the Purchaser, that they have sought to serve the objection proceedings and a hearing notice of the objector's Chamber Summons dated 18th November 2009 (the Hearing Notice) but save for the Purchaser's name and postal address, they have no knowledge of where the Purchaser is situated or located and hence it is impossible to serve him with the said proceedings and Notice; that they are therefore making an application to serve the said objection proceedings, the injunction proceedings and the Hearing Notice by way of substituted service through advertisement in one of the daily newspapers circulating in Kenya and by dispatch through registered mail and that the facts herein deponed to are true of her own knowledge save as to matters of information and belief the sources and grounds whereof have been shown.

Mr. Momanyi learned Counsel for the objector submitted that in the interest of justice the applicant should be granted leave to serve the Purchaser by advertisement in the daily press.

This Court has often said that service of summons and especially on land disputes be made on the defendant in person to the extent it is practicable. That is the ideal form of service. But there would occasions when it would not be practicable to effect personal service and therefore it becomes necessary to serve the defendant by way of substituted service. But before personal service is departed from there must be circumstances which would reasonably support the departure. In the instance case the applicant has demonstrated that efforts to trace the Purchaser have been fruitless and service upon him has become impossible.

I am persuaded that this is a proper case in which to exercise my discretion in favour of the objector.

Accordingly, I grant prayer (a), (b) and (c) of the Chamber Summons dated 28th January 2010.

DELIVERED AND DATED AT ELDORET THIS 9TH DAY OF FEBRUARY, 2010.

J. L. A. OSIEMO

JUDGE