



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 1765 of 2001

MUINDE MUTUKUPLAINTIFF//JUDGMENT/
CREDITOR

VERSUS

ROBERT NJIRU MBOGO T/A NJIRU MBOGO & CO. ADVOCATES
.....DEFENDANT/JUDGMENT DEBTOR

AND

WAKEN ENTERPRISESOBJECTOR/
APPLICANT

RULING

1. By a judgment rendered by Khaminwa J on 26th October 2009 judgment was entered against the defendant for a sum of Ksh.383,142.80/- with interests at court rates at 14%. The plaintiff proceeded to execute the decree and on 15th December 2209, M/s Waken Enterprises the objector herein, issued an objection notice against the attachment pursuant to the provisions of **Order XXI rule 53 of the Civil Procedure Rules**. The plaintiff issued a notice of their intention to proceed with the execution as per the proclamation issued by Gallant Auctioneers on the defendant's properties.
2. The objector filed a notice of motion dated 31st December 2009 seeking to lift the attachment of the properties proclaimed, on the grounds that the objector is truly the owner of the items attached. This application is supported by an affidavit of Joyce **Thara Ndiangu** sworn on 31st December 2009. The objector claims that the computers and the items of furniture that were

attached in the execution of the decree belonged to her. She claimed that the items had been let out temporary to the judgment/ debtor. Counsel for the judgment debtor also argued that the plaintiff did not serve them with the notice of their intention to proceed with the attachment as provided for under **order XXI rule 57**.

3. This application was opposed by the decree/holder. Counsel relied on his own affidavit sworn on 8th February 2010. According to counsel for the decree holder, the objector failed to prove that she has any interest either legal or equitable over the properties that were attached. The objector has not produced any documents by way of receipts or certificates to prove that she is the owner of the attached goods. She has thus failed to discharge the burden of prove placed on her as the objector. Counsel pointed out that they filed a notice of their intention to proceed with the execution on 17th December 2009 immediately they were served with the notice of objection. That indeed explains why the objector proceeded to file this application, otherwise the court can also deal with the matter *suo motto* under **Order XXI rule 25**.
4. It is trite that the onus lies on the objector to prove to the satisfaction of the court that the attached property belongs to her. There is absolutely no evidence that the properties which were attached were let out to the judgment/debtor. Those averments are not supported by any evidence. Accordingly, I have no difficulty to come to the conclusion that this application lacks merits and it is hereby dismissed with costs.

RULING READ AND SIGNED ON 12TH MARCH 2010 AT NAIROBI.

M.K. KOOME
JUDGE