



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL CASE 1108 OF 2005**

**GRACE WANJIRU MBUGUA.....PLAINTIFF/APPLICANT**

**VERSUS**

**PHILIP KARUMI MATU.....DEFENDANT/RESPONDENT**

**R U L I N G**

**Introduction**

1. This dispute concerns a proclamation that was made by M/s Nyalgunga Traders on 29/11/2008 of certain items namely:-

- (a) *Wall unit*
- (b) *Sony Colour TV set*
- (c) *Sofa set*
- (d) *Sony VCD*
- (e) *Music system with Speakers*
- (f) *Sofa set (sic)*
- (g) *Cooker*
- (h) *Fridge*
- (i) *Carpet*

The said items are said to be-long to the objector, **Peris Wakiuru Gaita**. The Objector says she was once married to the Defendant/Judgment Debtor **Philip Karumi Matu**.

2. The Plaintiff here sued the Defendant/JD vide her plaint dated 3/06/2005 and filed in court on 9/09/2005 seeking from the Defendant a sum of Kenya Shillings 4,320,000/= plus interest thereon at 12% per annum from the date of filing suit until payment in full together with interest at court rates. In her

judgment dated 21/09/2007, Nambuye J awarded judgment to the Plaintiff as against the Defendant in the sum of 54,000.00 US Dollars or their equivalent in Kenya Shillings of Kshs.4,320,000/=, plus interest at court rates and costs.

3. On the 21/01/2008, the Bill of Costs against the Defendant dated 9/11/2007 was taxed by consent in the sum of Kshs.310,936/=. Thereafter the Plaintiff/Decree Holder filed for execution which led to the proclamation by Nyalgunga Traders on the 29/11/2008 of which the Objector speaks. The Objector immediately took out objection proceedings.

### **The Application**

4. The Objector's application is the Chamber Summons dated 31/12/2008 expressed to be brought under Order XXI Rules 56 and 57 of the Civil Procedure Rules. The Objector/Applicant prays for an order to lift the attachment levied upon the Objectors goods on the 29/11/2008. Details of the attached goods have been given in the preceding paragraphs of this ruling. The application is premised on the following 5 grounds appearing on the face of the application, that is to say –

- (a) *THAT the Objector and the judgment debtor were cohabiting but they are now estranged and are no longer living together.*
- (b) *THAT the Objector now has no connection or business relationship with the Judgment Debtor.*
- (c) *THAT the Objector has never been a party to the proceedings herein.*
- (d) *THAT on 29<sup>th</sup> November 2008, M/s Nyalgunga Traders illegally proclaimed the Objector's goods as enumerated above at her rental residential house at Kahawa Sukari in purported execution of a decree of Kshs.7,225,386 subsisting against the judgment debtor and which decretal sum the Objector is not party to.*
- (e) *THAT it is only mete and just that the orders sought herein be granted.*

5. The application is also supported by the Objectors affidavit sworn on 31/12/2008. The Objector says that she was never a party to the suit that gave rise to the attachment. She also says that though she once cohabited with the Defendant/Decree Holder, the cohabitation fell through and she now resides on her own at Kahawa Wendani at house No. DB3 located at plot No. LR 13425/8 and has been resident at the said house since 1/01/2006. She says that all the goods proclaimed by M/s Nyalgunga Traders belong to her and that the Defendant/Judgment Debtor has no interest whatsoever in the said goods. The Objector also denies that a motor vehicle registration No. KAR 866G was ever at her house at the time it was proclaimed by M/s Nyalgunga Traders. She asks the court to lift the attachment so as to prevent her being deprived of the goods that are rightfully hers. The Objector has annexed to her Supporting Affidavit and Supplementary Affidavit certain receipts to prove ownership of the proclaimed goods.

6. The Decree Holder filed Grounds of Objection dated 20/03/2009 on the 23/03/2009. He objects to the Objectors application on grounds that:-

- (1) *The Objector is legally married to the Judgment-Debtor and she has been living together with him as husband and wife in the same house long before he got a Green Card to go and live and work in the U.S.A. and the Judgment – Debtor is the father of her children.*
- (2) *THAT even the motor vehicle that she is now currently using KAR 566G, at all material times belonged and still belongs to the Judgment-Debtor and she is using it in her capacity as his wife and during the Judgment Debtor's absence in the USA.*
- (3) *THAT all the property that she is using belongs to the Judgment-Debtor and registration of the property in her name was a "Fraudulent Transfer" merely meant to defeat the interests of the Judgment-Debtor's creditors including the Decree-Holder.*

(4) *THAT during a recent visit to Kenya when the Judgment-Debtor had come from the USA to sell one of his properties, he has lived and still is living with the Objector even now and he was and still is “keeping house” throughout his stay here in Kenya until the transaction is concluded before he leaves for the USA.*

(5) *THAT by reason of the matters aforesaid, it is meet and just and in the interests of justice that the objection proceedings be dismissed, and the decree-holder be authorized to attach and sell the properties in the proclamation so as to recover at least apart of the decretal amount of Kshs.7,225,386/=.*

(6) *THAT the Decree holder therefore prays, that the objection proceedings be dismissed with costs, so that execution can proceed straightaway.*

For the above reasons, the Decree Holder prays that the Objectors’ application be dismissed with costs to the Decree Holder.

### **The Submissions**

7. The Objector filed written submissions through the firm of M/s Macharia Odongo & Kosgei Advocates. The Objectors line of argument is that she is the femme sole in respect of the house hold goods proclaimed by M/s Nyalgunga Traders on 29/11/2008. The annexures marked “PWG 3” (to the Supporting Affidavit and “PWG 1A” (to the Supplementary Affidavit) show some huge single purchasers on 13/09/2005 (Kshs.90,000/=); 20/04/2006 (Kshs.32,000/=) and 17/01/2007 (Kshs.57,500/=). The Objector has also taken an issue with the Decree Holder’s Grounds of Opposition which she says are not matters of law, but are matters of fact which should have been raised by way of a Replying Affidavit. I have looked at the Grounds of Opposition and note that grounds 1-4 are indeed matters of fact which should have been deponed to by the Decree Holder himself. These grounds are therefore not grounds of opposition on points of law.

8. The Decree Holder filed his written submissions on 24/04/2009. The Decree Holder contends that the Objector is not being candid in claiming that she is not the wife of the Judgment Debtor. The Decree Holder argues that the Objector has not adduced sufficient evidence to persuade this Honourable Court to find in her favour and urges the court to strike out the pleadings.

### **Issues and Findings**

9. The issue that arises for determination is whether the Objector has made out a case for the relief’s sought. I have considered the rival arguments. I accept the position held by the Decree Holder that the Objector has not placed sufficient evidence before this court to warrant the exercise of discretion in her favour. I also reject the Objector’s contention that she is estranged from the Judgment Debtor. The information given in the Supporting and Supplementary Affidavits is scanty. Apart from being the Objector, what does Peris Wakiuru Gaita do for a living? This question is important as it would help the court to appreciate the huge purchases made by the Objector on the different occasions. Another issue that would lend credibility to the Objector’s contentions is the length or period of cohabitation she had with Phillip Karumi Matu and if there are any children out of that cohabitation. The Decree-Holder has created sufficient doubt in the mind of the court as to the veracity of the Objector’s contentions. Because of the glaring omissions on the part of the Objector, the court can only infer that such information, if provided by the Objector, would have been prejudicial to her case. The lease agreement, “PWG 1” indicates that the tenancy agreement commenced on 1/01/2006 and was to terminate 12 months thereafter. The Objector did not adduce evidence of renewal to satisfy this court that the lease agreement in respect of LR 13425/8 Ruiru (Kahawa Wendani) House No. DB3 was still valid. These may seem like mundane matters, but they are critical in this case where the veracity of documents availed to court on oath are under scrutiny.

10. In the result, and by reason of the matters aforesaid, it is meet and just that the objection proceedings be dismissed and the Decree Holder be authorized to attach and sell the properties as per the proclamation dated 29/11/2008 so as to recover at least a part of the decretal sum of Kshs.7,225,386/= and I so order.

Costs of the objection are awarded to the Decree Holder.

Orders accordingly

Dated and delivered at Nairobi this 9th day of October, 2009.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:-

Mr. Mboha (present) For the Objector/Applicant

Mr. Gaturu (present) For Decree Holder/Respondent

Weche - court clerk