



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**Civil Case 229 of 2000**

**JUSTINA AUMA ANGORO .....PLAINTIFF/DECREE HOLDER**

**VERSUS**

**NELSON YABESH BICHANGA .....DEFENDANT/JUDGEMENT DEBTOR**

**AND**

**RACHEL MONYANGI/JABESH .....OBJECTOR**

**Coram**

**J. W. Mwera**

**Otete for Ongwenyi for the Objector**

**Miss Sewe for Decree-Holder**

**Court Clerk Raymond /Interpreter/English/Swahili**

**R U L I N G**

The objector, Rachel Jabesh, filed this chamber summons dated 12<sup>th</sup> October 2005 invoking the provisions of Order 21 rules 54, 56, 57 (1)(2) Civil Procedure Rules and section 3 A Civil Procedure Act,

for the main order

(1) That the plaintiff and his agents be restrained from attaching and selling her property in her house at Hardy-Karen (Nairobi) to satisfy a decree in this cause.

The court heard Mr. Otete to the effect that the objector was the owner of the household goods that were attached and she had annexed copies of documents to establish ownership. These were copies of receipts of purchase of furniture, electronic goods etc. It was added that the objector was not a party in the suit whereby the plaintiff was adjudged the decree-holder and she had no obligation to satisfy the decree. Her property thus needs be protected.

Turning to the replying affidavit, Mr. Otete submitted that there was once a similar attachment and objection. The facts had not changed. That the objection application was thrown out on technicalities in that the objector did not show up to prosecute it. But the ownership of the goods remained unchallenged.

Miss Sewe started off with a point of law in that the defendant judgment-debtor was never served with the present application contrary to Order 21 rule 57(2) Civil Procedure Rules and the case of Miben (K) Limited versus Mark Wangai Kisumu High Court civil Case 234/01 was cited in support. Further, that the matter was res judicata because on 16<sup>th</sup> January 2004 the objector filed an application similar to the present one. It was dismissed because she did not establish ownership. Then she filed a similar application on 26<sup>th</sup> April 2005. It was to be heard inter-parties. It was dismissed on 13<sup>th</sup> June 2005 for want of prosecution. Now the present application which was not even served on the judgment-debtor. There was no review or appeal in the past dismissed application(s) yet the objector continues to bring similar applications on the same facts. Miss Sewe termed this an abuse of the court process when a wife (the objector) with her husband (debtor) are acting in a manner to frustrate the plaintiff, by bringing same applications even when the previous ones were dismissed. The court was invited to consider the case of Meshallum Waweru Wanguku versus Kamau Kania (1982-1988) 1 KAR 780. And that in fact the applicant had not disclosed all that this time round.

Mr. Otete responded that the subsequent or further objection proceedings were brought when fresh attachment was commenced.

After having heard arguments back and forth, this court is of the view that the orders sought should not issue. First, it was not disputed that this chamber summons was not served on the judgment-debtor (defendant) Order 21 rule 57 (2) Civil Procedure Rule says: “57(1).....”

(2) Such summons shall be served on the attaching creditor, and, unless the court otherwise directs, on the judgment-debtor.”

The appellant has not said why she did not comply with this provision of law and there is no evidence that this court directed otherwise. The course she took here is untenable.

Secondly, it transpired during the submissions that there were earlier applications of the same nature, dismissed even if not on merit. The applicant did not disclose that state of things. And/or what she did about all the past dismissed applications e.g. by way of review, setting aside the orders or appealing the same. She simply proceeded to file (other) applications. It can be deduced from all that that bringing the second or even a third application, although not being res judicata for the reason that earlier applications were not decided on merit, all amounted to an abuse of the court process as the applicant ignored the earlier order(s) of dismissal which continued in force.

In sum the sought orders are refused with costs. The applicant appears bent on abusing the court

process with little forthrightness and candour. No wonder the plaintiff sees elements of intended acts to keep him far from realising the fruits of his litigation for all this time. This court is disinclined to exercise its discretion in favour of applicant.

The application is dismissed with costs.

Orders delivered on 9<sup>th</sup> June 2008.

**J. W. MWERA**

**J U D G E**

**JWM/mk.**